

CITY OF MANZANITA

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COUNCIL REGULAR SESSION

Zoom Video Conference https://ci.manzanita.or.us

AGENDA

NOVEMBER 9, 2022 06:00 PM Pacific Time

Video Meeting: Council will hold this meeting through video conference. The public may watch live on the <u>City's Website: ci.manzanita.or.us/broadcast</u> or by joining the Zoom webinar:

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Please note that a passcode is not required to enter the webinar.

Note: agenda item times are estimates and are subject to change

1. CALL TO ORDER (6:00 p.m.)

Mike Scott, Mayor

2. AUDIENCE PARTICIPATION (6:01 p.m.)

Comments must be limited to city business topics that are not on the agenda. A topic may not be discussed if the topic record has been closed. All remarks should be directed to the whole Council. The presiding officer may refuse to recognize speakers, limit the time permitted for comments, and ask groups to select a spokesperson. Comments may also be submitted in writing before the meeting, by mail, e-mail (to cityhall@ci.manzanita.or.us), or in person to city staff

3. CONSENT AGENDA (6:13 p.m.)

Consent items are not discussed during the meeting; they are approved in one motion and any Council member may remove an item for separate consideration.

- A. Approval of Minutes
 - a. October 5, 2022, Work Session
 - b. October 5, 2022, Regular Session
- B. Approval of Bills

- 4. COUNCILOR REPORTS (6:25 p.m.)
- 5. **PUBLIC HEARING** (6:30 p.m.)
 - **A.** View Grading Moratorium Leila Aman, City Manager
 - **B.** Second Reading ORD 22-02 Affordable Housing Tax Abatement Leila Aman, City Manager
- 6. **NEW BUSINESS** (6:50 p.m.)
 - A. Construction Manager General Contractor Contract Approval Leila Aman, City Manager
 - **B.** Dorcas Lane Reconstruction Bid Documents Dan Weitzel, Public Works Director
 - C. Planning Commission Appointments Criteria Karen Reddick Yurka, Planning Commission Chair
- **7. OLD BUSINESS** (7:15 p.m.)
 - **A.** Short Term Rental Inspection and Renewal Fees Scott Gebhart, Development Services Manager
 - **B.** Surplus Vehicle Discussion
 Dan Weitzel, Public Works Director
- 8. CITY MANAGER REPORT (7:35 p.m.)
- 9. ADJOURN (7:40)

Meeting Accessibility Services and Americans with Disabilities Act (ADA) Notice

The city is committed to providing equal access to public meetings. To request listening and mobility assistance services contact the Office of the City Recorder at least 48 hours before the meeting by email at cityhall@ci.manzanita.or.us or phone at 503-368-5343. Staff will do their best to respond in a timely manner and to accommodate requests. Most Council meetings are broadcast live on the city's youtube channel.

CITY OF MANZANITA October 5, 2022 CITY COUNCIL WORK SESSION

1. CALL MEETING TO ORDER: The meeting was called to order on October 5, 2022, at 3:00 pm via Zoom by Mayor Mike Scott.

ROLL: Members present: Mike Scott, Linda Kozlowski, Steve Nuttall, Jerry Spegman, and Jenna Edginton. Staff present: City Manager Leila Aman, Accounting Manager Nina Aiello, Development Services Manager Scott Gebhart, Short Term Program Rental Manager Judy Wilson, and Assistant City Recorder Nancy Jones.

2. STR Committee Recommendations:

City Manager Aman spoke about the selection process to fill the empty seats on the committee. With the resignation of Deb Cipolla, the top three candidates were chosen to fill the seats. Cheryl Ogburn, Anupam Narayan and Patrick Johnston. A vote will be taken tonight at the Regular session to make the decision final.

3. STR Fees Short Term Rental Inspections and Renewal Fees:

Development Service Manager Scott Gebhart spoke about how the current short -term rental fees rate structure doesn't allow for recovery of staff time cost. He proposed that fees are increased to take the current fee recovery from 57% to 100%. A resolution will be presented at next month's meeting.

4. Adjourn: Mayor Scott adjourned the meeting at 3:34 pm.

	MINUTES APPROVED THIS 9th Day of November, 2022
Attest:	Mike Scott, Mayor
Leila Aman, City Manager	

CITY OF MANZANITA October 5, 2022 CITY COUNCIL REGULAR SESSION

1. CALL TO ORDER: The meeting was called to order on October 5, 2022, at 6:00pm via Zoom by Mayor Mike Scott.

Roll: Council members present: Mayor Mike Scott, Linda Kozlowski, Steve Nuttall, Jerry Spegman, and Jenna Edginton. Staff present: City Manager Leila Aman, Accounting Manager Nina Aiello, Public Works Director Dan Weitzel, and Assistant City Recorder Nancy Jones. Panelists present: Christopher Keane and Jessie Steiger.

2. AUDIENCE PARTICIPATION: There were 19 people in attendance. There were no public comments.

3. CONSENT AGENDA:

- A. APPROVAL OF MINUTES
 - a. September 7,2022 City Council Work Session
 - b. September 7,2022 City Council Regular Session
- B. APPROVAL OF BILLS FOR PAYMENT

A motion was made by Kozlowski, seconded by Spegman, to approve the consent agenda that includes approval of the September 7, 2022, City Council Work Session and September 7, 2022 City Council Regular Session; approve payment of bills and all subsequent bills subject to approval by the Mayor or Council President and City Manager; Motion passed unanimously.

4. COUNCILOR REPORTS: Council members took turns sharing what they worked on for the month of September.

5. OLD BUSINESS:

A. City Hall Construction Project Update –

Christopher Keane with Bearing Architecture spoke about what was presented at the public meetings. He went over the feedback that was gathered from the attendees and from the survey. The meeting presentation has been posted on the city website. He provided a breakdown of the buildings by sq ft and went over building placement options. The total building NSF is 4,952 sq ft and the total building GSF is 5,942 sq ft. He presented 3 different building diagrams and stated that the police station will need to be built at risk level 4.

Jessie Steiger with the Klosh Group spoke about how a construction budget evolves over time and the differences between contingencies, hard and soft costs.

It was announced that a Notice of Intent to award was awarded to Cove Built Construction LLC to serve as the CM/GC for the City Hall Project. Staff anticipate coming before council next month to approve the CM/GC contract. .

B. First Reading ORD 22-02 Workforce Housing Tax Abatement

City Manager Aman provided an overview of ORD 22-02 stating that the language includes new proposed language from the County that simplifies the calculation of rent and changes the reference of the ORS to allow for the abatement to apply to projects with three units or more. The County will be reviewing a change in definition with their commissioners on Nov 30 and Dec 14. Any additional changes can be made to the city's ordinance by amendment if necessary.

A motion was made by Kozlowski to accept the first reading by title only of ORD 22-02, seconded by Spegman; Motion passed unanimously

C. STR Committee Appointments – City Manager Leila Aman

City Manager Aman spoke about the selection process and provided council with a slate of appointees for consideration. Aman also noted the resignation of Deb Cipolla, who served as a non STR owner in a low-density area. The committee recommended the appointment of the top three candidates to fill both the vacated seat and the Ad Hoc Positions. Cheryl Ogburn was put forward to fill the non STR owner on a low-density street position and Anupam Narayan and Patrick Johnston will were recommended as Ad Hoc Members.

A motion on 22-09 was made by Spegman to move to appoint Cheryl Ogburn, Anupam Narayan and Patrick Johnston. It was seconded by Kozlowski; Motion passed unanimously

D. City Manager Job Description - Council President Linda Kozlowski

A motion was made by Kozlowski to accept the updated City Manager Job Description. It was seconded by Spegman; Motion passed unanimously

6. New Business:

A. Committee Page and Upcoming Opportunities - City Manager Leila Aman

City Manager Aman spoke about a new resource for the community, which is helpful for those seeking upcoming opportunities to serve. The Committee & Commission Directory is located on the City of Manzanita website under the Government tab. It lists those currently serving, the term and when the term expires for each seat.

B. Envision Manzanita Town Hall Update - City Manager Leila Aman

City Manager Aman spoke about what has heard from the community at the town hall meeting.

She spoke in detail about the questions on the survey and stated that the main concern of the community is affordable housing. There will be an update by the end of the year as more feedback and information is gathered.

C. Surplus Vehicle - Public Works Director Dan Weitzel

Public Works Director Dan Weitzel asked the council to declare the Ford Ranger as surplus. It would be sent to the State Surplus to be either offered to another agency or sold to the public. Council member Nuttall asked if the future position the Staff Code Enforcer would need a vehicle and recommended staff wait to surplus the vehicle and consider it as an option for the position.

A motion was made by Spegman, no one moved to second. This was tabled for next month's meeting. Weitzel will meet with Aman and present a recommendation at next month's meeting.

7. CITY MANAGER REPORT: Aman spoke about the Envision Manzanita survey that is located on the website for the public to fill out. The Planning Commission will meet on October 17th. The last farmers Market is this Friday October 7th.

8. INFORMATION AND ADJOURN:

- 1. Manzanita Municipal Court will be held October 14, 2022 and continues to remain closed to the public.
- 2. The Planning Commission will meet October 17, 2022 at 4:00 via zoom.

Mayor Scott adjourned the meeting at 7:31PM.

	MINUTES APPROVED THIS 9 th Day of November, 2022
Attest:	Michael Scott, Mayor
Leila Aman, City Manager	

VENDOR	TOTAL	ADMIN	POLICE	BLDG	COURT	PARKS	CH Expansion	ROADS	Visitors Center	WATER
BACKFLOW UNIT TESTING (BACKFLOW TESTING)	\$296.00									\$296.00
BEARING (PROFESSIONAL SERVICES)	\$9,750.15						\$9,750.15			
CASELLE (MONTHLY SERVICE FEE)	\$2,145.00	\$1,588.00								\$557.00
CHARTER (INTERNET SERVICE)	\$589.91	\$219.98	\$129.98						\$109.97	\$129.98
CIS (PROPERTY/LIABILITY INSURANCE)				\$511.00						\$510.42
CITY OF GEARHART (BUILDING IGA)	\$1,080.00			\$1,080.00						
CITY OF NEHALEM (FINES & ASSESSMENTS)	\$813.00				\$813.00					
CITY OF WHEELER (FINES & ASSESSMENTS)	\$1,370.51				\$1,370.51					
COAST PRINTING (PRINTING SERVICE)	\$1,161.05	\$497.30								\$663.75
DATA CENTER (WATER BILLINGS)	\$1,140.21									\$1,140.21
DEPT OF MOTOR VEHICLES (DRIVING RECORDS)	\$7.30				\$7.30					
ENCORE INVESTMENTS* (BOND REPAYMENT)	\$35,370.00	\$35,370.00								
FERGUSON (MATERIAL & SUPPLIES)	\$9,663.16									\$9,663.16
GALLS (POLICE UNIFORM)	\$452.48		\$452.48							
HDR ENGINEERING (PROFESSIONAL SERVICES)	\$1,177.86									\$1,177.86

VENDOR	TOTAL	ADMIN	POLICE	BLDG	COURT	PARKS	CH Expansion	ROADS	Visitors Center	WATER
INSIDE THE TAPE (STAFF TRAINING)	\$295.00		\$295.00				·			
JEREMY JEPSON (STAFF REIMBURSEMENT)	\$99.99									\$99.99
KELLEY ROY (CONSULTANT)	\$2,300.00	\$2,300.00								
LCOG (PROFESSIONAL SERVICES)	\$346.53			\$346.53						
LARRY BLAKE (JUDICIAL SERVICES)	\$400.00				\$400.00					
LAURIE MILLER (STAFF REIMBURSEMENT)	\$30.74									\$30.74
MORGAN CPR (CITY PLANNER)	\$1,720.00	\$1,720.00								
NC CIVIL DESIGN (CIVIL ENGINEER)	\$6,889.00							\$1,955.26		\$4,933.74
ONE CALL (STATE LOCATE FEES)	\$24.00									\$24.00
ONE ELEVEN (IT SERVICES)	\$3,500.00	\$3,500.00								
ONION PEAK (SURVEYING)	\$9,300.00						\$9,300.00			
OREGON DEPT OF REV (FINES & ASSESSMENTS)	\$410.00				\$410.00					
PACE ENGINEERS (PROFESSIONAL SERVICES)	\$472.50									\$472.50
PACIFIC ALARM SYSTEMS (ALARM SERVICES)	\$375.00	\$375.00								
PACIFIC OFFICE (POSTAGE SERVICE)	\$221.27	\$221.27								

VENDOR	TOTAL	ADMIN	POLICE	BLDG	COURT	PARKS	CH Expansion	ROADS	Visitors Center	WATER
RHYNO NETWORKS (IT SERVICES)	\$387.00	\$249.00	\$66.00							\$72.00
RTI (PHONE SERVICE)	\$593.30	\$95.83		\$96.85						\$400.62
SCOTT GEBHART (STAFF REIMBURSEMENT)	\$599.98			\$599.98						
SEAN MUMEY (STAFF REIMBURSEMENT)	\$323.63		\$323.63							
SHELDON OIL CO. (FUEL)	\$2,062.40		\$1,084.74	\$163.60		\$40.70		\$203.51		\$569.85
STAPLES (OFFICE SUPPLIES)	\$347.34	\$238.35		\$108.99						
STATE OF WASHINGTON (DRIVING RECORDS)	\$0.16				\$0.16					
SWEET SEPTIC (PORTABLE TOILETS)	\$460.00								\$460.00	
TILL CO EMERGENCY MNGMT (ANNUAL SOFTWARE FEE)	\$6,332.19		\$6,332.19							
TILL CO PAYABLE (FINES & ASSESSMENTS)	\$112.00				\$112.00					
TILL CO TAX COLLECTOR (PROPERTY TAXES)	\$1,741.07						\$1,741.07			
TILLAMOOK PUD (ELECTRIC SERVICE)	\$3,605.54	\$97.23		\$112.06		\$80.60	\$47.57	\$609.00	\$58.08	\$2,601.00
TRAFFIC SAFETY SUPPLY (MATERIALS & SUPPLIES)	\$972.92							\$972.92		
US BANK (CITY VISA)	\$7,512.23	\$1,126.38	\$ 78.00	\$398.85				\$419.89	\$285.32	\$4,843.79

VENDOR	TOTAL	ADMIN	POLICE	BLDG	COURT	PARKS	CH Expansion	ROADS	Visitors Center	WATER
VAN DYKE PLUMBING (PLUMBING SERVICES)	\$633.00									\$633.00
VERIZON (TELEPHONE)	\$1,162.56	\$296.22	\$344.36	\$114.98					\$64.99	\$342.01
TOTALS	\$118,245.98	\$47,894.56	\$9,106.38	\$3,532.84	\$3,112.97	\$121.30	\$20,838.79	\$4,160.58	\$978.36	\$29,161.62

^{*}Repayment of bond payment for highlands development



COUNCIL STAFF REPORT

To: Mayor and City Council

Reviewed: Souvanny Miller, City Attorney

From: Leila Aman, City Manager

Subject: Findings to Implement a Moratorium on View Grading

ACTION REQUESTED

Hold a public hearing and adopt findings to implement a Moratorium pursuant to ORS 197.520 whereby the city shall not consider or approve any permit for view grading as defined in the Manzanita Zoning Ordinance 95-4, Section 3.085.6.

Date Written: November 4, 2022

HISTORY OF PRIOR ACTIONS AND DISCUSSIONS

<u>January 5, 2022</u> – City Council heard a presentation from Meg Reed Coastal Shores Specialist, Department of Land Conservation and Development and Dr. Jonathan Allan Coastal Geomorphologist, DOGAMI. Council discussed current foredune management plan and formed a consensus to have the City Manager explore a moratorium on dune grading.

<u>February 9, 2022</u> – City Council received a presentation from staff on next steps for a moratorium and directed staff to move forward and work with the city attorney on drafting initial findings for a moratorium.

<u>July 6, 2022</u> – Engineering Geologist Tom Horning presented a proposal for an amendment to the city of manzanita Foredune Management Plan. City council elected to proceed with a moratorium on view grading until the Comprehensive Plan could be updated.

<u>September 7, 2022</u> Staff provided draft findings for council review and discussion. Council formed a consensus to proceed with a public hearing and directed the City Manager to proceed with finalizing the findings for a public hearing to be held in November.

ANALYSIS

On October 28, 2021, the City of Manzanita approved a Dune Grading Permit for the South Management Unit of the Foredune Management Overlay Zone. The Foredune Management Plan which serves as the guiding document for dune grading was adopted in 1996. The current process for grading permits requires approval from the City Manager if the proposed plan meet the requirements of the Foredune Management Plan Sub Area Plan. The city has expressed an interest in limiting view grading until the plan could be updated but did not establish any formal procedures to deny permits that meet the current requirements set forth in the Comprehensive Plan (Goal 18) and Ordinance 95-4, Section 3.085.6. The application submitted in October of 2021 met the existing requirements and the City Manager approved the permit application with a condition that the applicant obtain approval from other agencies that regulate the dunes, including Oregon Parks and Recreation (OPRD) and the Army Corps of Engineers. The applicant submitted for an Ocean Shore Alternation permit from OPRD and a

public hearing on the application was held by OPRD on February 3rd, 2022. On March 21, 2022, OPRD denied the permit.

OPRD considered several factors in the evaluation of the request including public opinion and interest. The findings in the OPRD decision stated that "OPRD must consider "The physical characteristics or the changes in the physical characteristics of the area, and the suitability of the area for particular uses and improvements" as a factor in its evaluation. Much of the testimony in opposition to the request was directed toward concern over changes in the area since the plan was adopted in 1996 and the plan's relevance, and adequacy to protect the public interest in the current environment.

Because the land proposed for alteration is likely dedicated public right-of-way, the strong public opinion in opposition to the project displayed during the review process carries significant weight in OPRD's permit decision."

The overwhelming opposition to the dune grading application as evidenced in the OPRD public hearing process, and in written and oral communication with the Manzanita City Council further highlighted that the Foredune Management Plan, written in 1996 is substantially out of date and no longer reflective of current environmental conditions. Furthermore, public opinion allowing for view grading generally has substantially changed since the Comprehensive Plan was adopted in 1995.

As outlined in the findings there is substantial evidence that both public opinion no longer is supportive of view grading, and adverse impacts and potential for public harm of such grading are significant enough to warrant a moratorium. When the decision from OPRD was rendered Staff began moving forward with the City Attorney to draft findings to support a Moratorium on view grading.

BUDGET IMPACT

Legal fees have been incurred to prepare the findings for the moratorium.

WORKLOAD IMPACT

There will be a minor impact on staff to renew the moratorium. There will be effort required to update the comprehensive plan and enabling ordinances, and potentially an update to the foredune management plan. The workload impacts of that work is unknown at this time.

COORDINATION, CONCURRENCE, OR DISSENT

The City Attorney prepared these findings in consultation with Staff, CREST and the Department of Land Conservation and Development have reviewed the findings and concur. DLCD also received notice of the moratorium.

STAFF RECOMMENDATION

Staff recommends that the City Council adopt and approve the findings and place a Moratorium on view grading.

ALTERNATIVES

The Council can reject the findings and continue to allow view grading.

ATTACHMENTS

1. Findings

PROCEDURAL BACKGROUND

On **September 16, 2022**, at least 45 days prior to the final public hearing to be held to consider the adoption of the moratorium, the city provided written notice to the Department of Land Conservation and Development.

This notice was provided via email to Brett Estes, North Coast Regional Representative, Department of Land Conservation and Development, and Meg Reed, Ocean Shores Specialist, Department of Land Conservation and Development. Staff was provided with an email response from Mr. Estes on September 19, 2022, indicating that the notice was sufficient. On November 9, 2022, the city held a public hearing.

PROPOSED SCOPE OF THE MORATORIUM

While the Moratorium is in effect, the City shall not consider or approve any permit for view grading as defined in the Manzanita Zoning Ordinance 95-4, Section 3.085.6.

This Moratorium shall continue in effect until expiring on **March 9, 2022**, unless revoked by the City Council or extended in accordance with ORS 197.520(4).

DEFINITIONS

"Affected geographical area" includes all properties within the beaches and dunes overlay zone. This land is "urban or urbanizable land" within the meaning of ORS 197.520.

PROPOSED FINDINGS IN SUPPORT OF THE MORATORIUM

Pursuant to ORS 197.520, the City of Manzanita finds as follows:

- 1. The City's current Foredune Management Plan ("Plan"), reflected in Manzanita Development Code 3.080, is 25 years old, and a number of things have changed since the Plan was adopted. The plan does not reflect the current status of the foredune system or best practices with respect to management. For instance, the amount of sand in the dune system has grown substantially over time. This has made it virtually impossible to grade to the dune profile dimensions specified in the Plan. Additionally, more regulatory agencies have indicated to the City that they need to be more closely involved in grading activities. For example, disposal of excess sand in the intertidal zone may need to be reviewed and modified, and a separate Corps of Engineers permit may need to be obtained. The Plan also does not take into account today's tidal flooding and erosion conditions.
- 2. Because the Plan is out of date and does not reflect current conditions or best management practices, allowing view grading under the existing Plan may result in irrevocable public harm as follows:

- a. Sand being distributed from private property onto the public ocean shore recreation area, or sand being disturbed in the ocean shore recreation area for the benefit of one or a small number of private landowners, despite:
 - i. Minimal to no public need or justification for view grading and,
 - ii. Overwhelming public opposition to recent applications for view-grading projects.
- b. Negative impacts to the public enjoyment of the dunes during view grading activities.
- c. Destabilization of the vegetated dunes from unsupported view grading of the dunes which could lead to impacts to both private and public development and infrastructure.
- d. Unknown impacts on coastal shoreland resources such as razor clam and western snowy plover habitat from sand redistribution.
- e. Unknown impacts on ocean resources by sand displacement into the intertidal zone from sand redistribution.
- f. Establishment of additional European beach grass (which is allowed under the existing Plan) in the foredune area, rather than native beach grasses.
- g. Un-studied impacts on public resources and nearby private properties relating to current and future anticipated seasonal tidal events, flooding and erosion.
- 3. Existing development ordinances, regulations, and other applicable law is inadequate to prevent irrevocable public harm from development in the affected geographical area.
- 4. The moratorium is sufficiently limited to ensure that a needed supply of housing types, commercial and industrial facilities within or in proximity to the City are not unreasonably restricted by the moratorium. For instance, the delay in view grading pending adoption of a new masterplan does not prohibit remedial dune grading (movement of inundating sand within 30 feet of building foundations) and construction grading on vacant lots for site development purposes.
- 5. The alternative methods for achieving the objectives of the moratorium are unsatisfactory. View grading requires permits and approvals are issued by agencies other than the City. Those processes require the City to acknowledge that applications for grading in the foredune management area meet the requirements of the Plan. Because the Plan is outdated, the City may be obliged to acknowledge compliance, despite the City's significant concerns about view grading's negative impacts on storm surge protections, flooding and erosion, wildlife, long-term dune management, recreation, and other public harms.
- 6. Because the moratorium restricts view grading only and does not prohibit construction grading for new development, remedial grading, or sand alteration for public access or public safety:

- a. This moratorium is not anticipated to have adverse effects on other local governments due to shifts in demand for housing or economic development.
- b. This moratorium is not anticipated to have adverse effects on public facilities and services and buildable lands in other jurisdictions.
- c. This moratorium is not anticipated to have adverse effects overall on population distribution.

But even if such impacts existed, the City finds that the public harm that would result from view grading in the foredune would outweigh those concerns. Specifically:

- a. The long-term effects of grading in the foredune area, for view purposes only, according to an outdated plan will have significant adverse effects on the City of Manzanita, its citizens, and its visitors as described in Section 2, while only benefitting a small number of people.
- b. The long-term effects of grading in the foredune according to an outdated plan will have greater adverse effects on other local governments than the moratorium because of the potential unknown impacts on the public beach and coastal resources.
- 7. Based on the foregoing there is a compelling need for the moratorium.



COUNCIL ORDINANCE No. 22-02

AN ORDINANCE OF THE CITY OF MANZANITA, OREGON, ESTABLISHING A WORKFORCE HOUSING TAX ABATEMENT.

WHEREAS, the City of Manzanita recognizes that workforce housing is critically needed in our city to support local businesses, working families, and people of all incomes;

WHEREAS, a diversity of housing options contributes positively to our community; and

WHEREAS, market conditions necessitate that the City take every action possible to incentivize and encourage the development of housing affordable to a range of incomes; and

Now, Therefore, the City of Manzanita does ordain as follows:

The city shall implement a Property Tax Exemption for Workforce Housing within the City of Manzanita; Providing Administrative Procedures for Compliance and Enforcement of the Exemption Program.

Section 1. Title

This Ordinance shall be known as the "Workforce Housing Property Tax Exemption Ordinance" and may be cited and pleaded as such and shall be cited herein as "this Ordinance", or by any reference to a section or subsection of this Ordinance.

Section 2. Authority

This Ordinance is enacted pursuant to ORS 203.035.

Section 3. Purpose

The purpose of this Ordinance is to incentivize workforce housing in the City of Manzanita. Oregon House Bill 2377 (2017) and Chapter 624 Oregon Laws 2017 enable local governments to enact a property tax exemption for certain multiunit rental housing. This Ordinance implements House Bill 2377 and Chapter 624 Oregon Laws 2017 and provides additional terms for receipt and administration of the property tax exemption.

Section 4. Applicability

This Ordinance shall apply within the City of Manzanita as allowed in the provisions of Oregon House Bill 2377 (2017) and Chapter 624 Oregon Laws 2017.

Section 5. Definitions

Except where the context otherwise requires, the definitions established in this Section govern the construction of this Ordinance.

- (a) "Affordable". Housing which costs a household no more than thirty percent (30%) of Area Median Income adjusted to household size.
- (b) "Area median income". The Housing and Urban Development Area Median Income for Tillamook County that is effective as of January 1 of the calendar year in which an applicant is seeking this property tax exemption.
- (c) "Assessor". The Tillamook County Assessor.
- (d) "Building". The same as it does at Section 11.030 of the Tillamook County Land Use Ordinance.
- (e) "Claim" or "claimed". A unit that was deemed eligible and for which the applicant sought the property tax exemption.
- (f) "Community Development". The Tillamook County Department of Community Development.
- (g) "Dwelling unit". The same as it does at Section 11.030 of the Tillamook County Land Use Ordinance.
- (h) "Eligible". A building or dwelling unit that qualifies under Section 6 of this Ordinance.
- (i) "Multiunit rental housing". For the purposes of this exemption, any detached structure within which there are at least three (3) separate dwelling units.
- (j) "Real Market Value". The real market value as determined by the Assessor.

- (k) "Rehabilitation". Bringing an existing multifamily building, having been occupied for no fewer than twenty (20) years, up to full compliance with applicable building code and completing all deferred maintenance. Additionally, the cost of the rehabilitation must exceed fifty percent (50%) of the most recent Real Market Value of the structure prior to the proposed improvement.
- (l) "Transient lodging" means:
 - (A) Hotel, motel, and inn dwelling units that are used for temporary overnight human occupancy;
 - (B) Spaces used for parking recreational vehicles or erecting tents during periods of human occupancy; or
 - (C) Houses, cabins, condominiums, apartment units or other dwelling units, or portions of any of these dwelling units, that are used for temporary human occupancy.
- (m) "Unclaimed". An otherwise eligible unit for which the applicant did not claim the property tax exemption.

Section 6. Eligibility and Duration of Exemption

- (a) An applicant may apply for this exemption on the basis of new construction or rehabilitation; in either case, the property tax exemption shall apply in the first property tax year after receipt of a Certificate of Occupancy for the subject building.
- (b) Only those dwelling units which are affordable to households making up to one hundred twenty percent (120%) of the Area Median Income shall be considered eligible for the property tax exemption.
 - (A) An applicant may choose to omit an otherwise eligible dwelling unit from the exemption program; this unit shall be referred to as unclaimed.
 - (1) No more than twenty percent (20%) of the total units shall be omitted via this mechanism.
 - (B) An applicant may not claim or unclaim new units for this exemption once an application has been approved and the first property tax year of the approved exemption has begun, unless the City of Manzanita and Community Development, in conjunction with the Assessor, determines that unforeseen circumstances necessitate the change. Tax statements shall

be adjusted, including adding previously exempt property taxes as required, according to any changes in eligibility made as a result of this subsection, to be assessed on the next property tax year.

(c) The percentage of units that claim the exemption, rounded down to the nearest ten percent (10%), shall determine the duration of the exemption according to the following table:

Minimum% of Eligible Units	Years of Exemption				
10%	1				
20%	2				
30%	3				
40%	4				
50%	5				
60%	6				
70%	7				
80%	8				
90%	9				
100%	10				

- (d) No building shall be eligible for this property tax exemption more than once for its lifetime, regardless of whether it was claimed on the basis of rehabilitation or new construction.
- (e) Any limits on rent pursuant to this Ordinance shall expire on the first property tax year after the exemption expires.
- (f) A property shall only be eligible for the exemption granted under this Ordinance upon passage of a resolution by the City of Manzanita whose property tax rates, when combined with the rates of Tillamook County, equal 51 percent or more of the total combined rate of taxation on the eligible rental property.
 - (A) The exemption, if granted, shall apply to all property tax levies of all taxing districts in which eligible rental property is located.
- (g) If this Ordinance or Chapter 624 Oregon Laws 2017 is repealed, eligible rental property that is granted exemption under this Ordinance shall continue to receive the exemption under the provisions of this Ordinance for the period of time for which the exemption was granted.

Section 7. Rent Limits

- (a) The maximum chargeable monthly rent for a claimed unit shall be based on the maximum rent affordable to 120% of the Area Median Income adjusted to household size.
- (b) Rent limits are calculated based on thirty percent (30%) of the Tillamook County Area Median Income adjusted to the household size.
- (c) The average rent of the claimed units shall not exceed the average rent of the same units rented at a level affordable to a household making one hundred percent (100%) of the Area Median Income.
- (d) Any utilities separately charged from the landlord to the tenant shall count toward the charged rent. Utilities for which the tenant is solely responsible, or for which the landlord does not separately charge the tenant, shall not count

- (e)
- (f) An otherwise eligible building seeking this exemption on the basis of rehabilitation, which has received State or Federal funding and which, as a condition of securing said funding, limits rents to those affordable to households making eighty percent (80%) or less of Area Median Income at the time of application for this program, and which continues to be limited by that condition at the time of application for this exemption, shall be prohibited from setting rents on its claimed units any more than that percentage limit to which they were previously bound, for the duration of the property tax exemption.

Section 8. Additional Rules

- (a) All rents and rent limits shall be rounded to the nearest dollar for the purposes of determining compliance.
- (b) Claimed units shall be prohibited from being converted to any form of transient lodging for the lifetime of the building.
 - (A) Property owners shall record a legally binding covenant with the County Clerk identifying units for which the property tax exemption was claimed and prohibiting them from future usage as transient lodging.

Section 9. Application Process

- (a) Community Development shall provide the City of Manzanita to provide the applicant with the necessary forms to apply for this exemption both initially and as part of the yearly renewal required by this Ordinance.
- (b) The applicant must own or lease the property to which the application relates.
- (c) The applicant shall pay a fee of one hundred dollars (\$100) to Community Development to pay for review of the application.
- (d) The applicant must submit an application to the City of Manzanita renewing the exemption each year for the duration of the property tax exemption.
 - (A) This renewal shall not require a Resolution by the City of Manzanita but shall be recorded by the City of Manzanita and Community Development.

- (e) Upon receipt of an application, Community Development shall determine, as soon as practicable:
 - (A) Whether the subject property falls within the boundary of the County and City of Manzanita;
 - (B) The date on which the rehabilitation or construction of the subject property was or will be completed;
 - (C) The date on which the subject property was first offered for residential occupancy;
 - (D) The rent charged for each unit of the subject property and whether the rent meets the requirements of this Ordinance.
- (f) An application for the property tax exemption shall be filed by March 1 of the year preceding the tax year to which the application relates.
- (g) An application may be filed by December 31 of the current property tax year if accompanied by a late filing fee of two hundred dollars (\$200) or one-tenth of one percent (0.1%) of the real market value as of the most recent assessment date of the eligible rental property to which the application relates, whichever the greater.
- (h) An application may be filed on or before April 1 of the current property tax year if the application is accompanied by a late filing fee of two hundred dollars (\$200) and the applicant demonstrates good and sufficient cause, as defined in ORS 307.162, for failing to file a timely application or is a first-time filer, as defined in ORS 307.162, of an application under this property tax exemption.
- (i) Late fees collected shall be deposited to the Tillamook County General Fund.
- (j) Determinations made under this application process cannot be appealed.
- (k) An application must receive final approval via Resolution by

the Board of County Commissioners acknowledging the property tax exemption on or before April 1 of the year preceding the year to which the application relates.

Section 10. Reporting and Enforcement

- (a) The City of Manzanita and Community Development shall track active property tax exemptions under this Ordinance, including the duration as well as all units of the affected buildings, their eligibility and claim on the exemption, and their rents.
- (b) Community Development shall publish the annual rent thresholds no later than the second Monday of the year following the effective date of the Housing and Urban Development Area Median Income for Tillamook County and shall notify affected property owners via written notice as soon as practicable, in addition to publishing the thresholds on the County website.
- (c) Any activity which the City of Manzanita or Community Development deems to have violated the terms of the property tax exemption and in which Community Development has exhausted all notice requirements required by this section shall result in a recommendation to the Assessor on whether to terminate the exemption; the Assessor shall make a final determination and act accordingly without right of notice or appeal for the applicant.
- (A) Exemptions terminated via this process shall have all property taxes previously exempted via this Ordinance assessed the next applicable property tax year.
- (d) As soon as practicable, but no later than fourteen (14) days after the rent thresholds are published, all property owners receiving the exemption shall file an application to continue the property tax exemption with Community Development.
 - (A) Failure to apply within fourteen (14) days shall result in written notice to the owner.
 - (B) Failure to apply within twenty-eight (28) days shall result in immediate termination of the exemption according to

Section 10(c).

- (e) Property owners who receive the exemption must provide written notice to all tenants at time of lease that their unit is rent limited and provide contact information for the City of Manzanita and Community Development.
 - (A) Community Development shall provide the requisite language and shall have forms available to the City of Manzanita and at the Community Development office for this purpose.
- (f) Any change in rents on claimed units shall be reported to the City of Manzanita and Community Development no later than one (1) week before the change in rent is due to take effect.
 - (A) Any changes in rent must continue to comply with Section 7 of this Ordinance.
- (g) If at any time the rent of an individual claimed unit exceeds the limits set forth in the published rent limits, or if the average rent of all claimed units exceeds the average rent limit, Community Development shall notify the landlord with written notice.
 - (A) Failure to adjust the rent below the individual unit limit within fourteen(14) days of notice shall result in termination of the exemption according to Section 10(c).
- (h) Repeat offenses of the rent limits are subject to the terms of Section 10(c).
- (i) The assessment and tax rolls shall show "potential additional tax liability" for each eligible rental property granted exemption under this Ordinance.
- (j) The above subsections notwithstanding, no part of this ordinance precludes a property owner from adjusting rents on a given claimed unit.

Section 11. Severability

If any section, subsection, provision, clause or paragraph of this Ordinance shall be adjudged or declared by any Court of competent jurisdiction to be unconstitutional or invalid, such judgment shall not affect the validity or the remaining portions of this Ordinance and it is hereby expressly declared that every other section, subsection, provision, clause or paragraph of this

Ordinance, irrespective of the portion thereby or invalid, be valid.	declared to be unconstitutional
Read the first time on, and moved City Council.	to second reading by vote of the
Read the second time and adopted by the Ci	ty Council on
Signed by the Mayor on	
	Michael Scott, Mayor
ATTEST:	
Loila Aman City Managar/Dagardar	
Leila Aman, City Manager/Recorder	



COUNCIL STAFF REPORT

To: Mayor and City Council Date Written: November 3, 2022

From: Leila Aman, City Manager

Subject: CMGC Contract

ACTION REQUESTED

Authorize the City Manager to Execute a Contract with Cove Built, LLC for the purpose of serving as the City's Construction Manager/General Contractor for the Manzanita City Hall Project.

HISTORY OF PRIOR ACTIONS AND DISCUSSIONS

<u>January 5, 2022</u> – City Council approved Findings in Support of an Exemption from Competitive Bidding under ORS 279.335 (2) for the Manzanita City Hall Project.

ANALYSIS

On August 2, 2022 the City of Manzanita issued a competitive Request for Proposals for Construction Management General Contractor (CM/GC) Services for the Manzanita City Hall project. The city received 5 proposals at the close of the RFP process on August 30, 2022. Five firms submitted proposals and included Bremik Construction, Robinson Construction, O'Brien Design + Build, First Cascade Construction and Cove Built, LLC.

The proposals were independently reviewed and scored according to the criteria set forth in section VI of the RFP (Attachment 1) by a selection committee consisting of the City's Owners Representative, Jessie Steiger, Klosh LLC, the City's architect Chris Keane, Bearing Architecture, the City Manager, and Councilors Spegman and Kozlowski. As a result of this evaluation Robinson Construction, Cove Built LLC and O'Brien Construction were selected to participate in an interview process.

The interview process included a committee consisting of the same group of individuals who reviewed the written proposals in addition to the City's Development Services Manager, Scott Gebhart. Each member of the interview panel participated in the interviews and independently scored each firm in accordance with the criteria listed in the RFP. The sum total of the score of the proposal and the total score of the interview was used to determine the highest ranked proposer. The winner of this process was Cove Built, LLC.

The owner and project manager of Cove Built is Jason Stegner. Jason will serve as the main point of contact for the city. Jason has a degree in Mechanical Engineering and 20 years of construction experience. Jason served as a project engineer, superintendent and senior project manager for Anderson and Walsh construction on a variety of public projects, many of which were procured through a CM/GC process. Project highlights include the Seaside Convention Center, Nehalem Auditorium Addition, the covered play area at Nehalem Elementary School, and a remodel of the Rinehart Clinic. Jason and his team are currently engaged in a \$5.5 million dollar renovation of the Jewell School Gymnasium.

Cove Built is located in Arch Cape just north of Manzanita. Jason and his team have developed relationships with all major subcontractors on the north coast, and have significant experience building in our unique coastal climate. The key elements that set Cove Built apart was their experience with coastal projects, local connections, accessibility to the project team and site, and their clear articulation of the importance of working with the community as a partner throughout the process.

Similar to the Owners Representative contract and the Architectural contract, the CM/GC contract will be split into two phases. Phase 1 will include all Preconstruction Phase services of the CM/GC performed up to the Architects completion of 30% Schematic Design Documents. At the completion of 30% Schematic Design Phase 2 will only commence if the Citu Council authorizes the City Manager to execute Phase 2. Phase 2 will consist of the completion of the project. For the CM/GC this includes the completion of Preconstruction services, the Construction Phase services and all other work required under the contract.

The city has engaged with the City Attorney to develop and amend a standard AIA contract for the CM/GC. This document has been reviewed and finalized by the contractor and City Attorney and is included as Attachment 2.

Section 3.2 of the Construction Contract outlines the next steps associated with a Guaranteed Maximum Price Proposal. At a time that is mutually agreed upon, by the Owner and the CM/GC the CM/GC will prepare a Guaranteed Maximum Price (GMP) proposal for the Owners, Architects review and approval. The GMP proposal will include the estimate of the Cost of Work, the CM/GC contingency and the CM/GC fee. The City Council will be the entity that is ultimately responsible for approving the GMP amendment.

BUDGET IMPACT

The lump sum preconstruction fee is \$30,000 not including reimbursable expenses such as destructive or non destructive testing performed by the CM/GC. Testing performed by the CM/GC must be preapproved in writing but the Owner. The GMP Amendment will occur later if the project is approved to move in to Phase 2.

WORKLOAD IMPACT

The City Manager has prioritized her workplan to account for the management of the overall project. The inclusion of the CM/GC will not impact her workload but will help advance the project.

COORDINATION, CONCURRENCE, OR DISSENT

The City Attorney has reviewed and approved this contract.

STAFF RECOMMENDATION

City Council authorize the City Manager to execute a AIA Document A133-2019 Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price as amended and included as Attachment 2 to this staff report.

ALTERNATIVES

1. The Council can elect to not approve the contractor and require staff to conduct a new selection process.

2. The City Council can elect not to approve the contract and cancel the City Hall Construction Project.

ATTACHMENTS

- 1. Request for Proposals for Construction Manager General Contractor
- 2. AIA Document A133-2019 Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price as amended

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 <u>unless</u> 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
٧.	Evaluation of Proposals Complete	September 9, 2022

vi.Invitation to Proposers for Interview & PresentationSeptember 12, 2022vii.Interview & Presentation MeetingsSeptember 28, 2022viii.Evaluation of Interview & PresentationOctober 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. <u>Informal Questions or Requests for Clarification</u>. 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. <u>Protest</u>. 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. <u>Addenda</u>. 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 followingthe 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:

- 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 preconfee); 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/GCfee
- 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;
- ii. All proposers must be licensed under ORS 468A.720 regarding asbestos abatement projects.
- iii. All Proposers must be experienced in those services requested of City;
- iv. All Proposers must agree to execute City's Construction Agreement, if awarded; and
- v. 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 underthis 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 these lection 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



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.

TABLE OF ARTICLES

- 1 INITIAL INFORMATION
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- 5 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES
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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.)

[<mark>TBD</mark>]

§ 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:

[<mark>TBD</mark>]

.2 Construction commencement date:

August 2023

.3 Substantial Completion date or dates:

July 2024

.4 Other milestone dates:

[<mark>TBD</mark>]

§ 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 E234TM–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]
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]

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User Notes:

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 A201TM_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,

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 E203TM–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 E234TM–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:
- 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 E234TM–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 B133TM-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.
 - Concealed or Unknown Condition. Concealed or Unknown Conditions as described in Section 3.7.4 of the .2 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.
 - 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.
 - 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.
 - **Subcontractor Failure.** A Subcontractor goes bankrupt or otherwise fails to perform.
 - **Price Escalations.** Subject to Section 6.3.5.5, escalation of materials, equipment, or labor prices.
 - **Estimating Errors.** The Construction Manager's estimating errors. .6
 - **Expediting Costs.** Expediting costs for critical materials. .7
 - 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.

User Notes:

- .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;
 - 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.
 - 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)

- 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.)

Init.

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User Notes:

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
 - 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
- [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.

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:
 - Take the Cost of the Work incurred by the Construction Manager to the date of termination; .1
 - .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' 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.

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§ 14.3.1.1 [Deleted.]
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§ 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:

- AIA Document A133TM–2019, Standard Form of Agreement Between Owner and Construction Manager .1 as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum
- .2 AIA Document A133TM-2019, Exhibit A, Guaranteed Maximum Price Amendment, if executed
- AIA Document A133TM–2019, Exhibit B, Insurance and Bonds
- AIA Document A201TM–2017, General Conditions of the Contract for Construction

(Paragraphs deleted)

[Deleted]

Other Exhibits:

(Check all boxes that apply.)

AIA Document E234TM–2019, Sustainable Projects Exhibit, Construction Manager as [] Constructor Edition, dated as indicated below:

(Insert the date of the E234-2019 incorporated into this Agreement.)

(1633957455)

User Notes:

Document	Title	Date	Pages
Document A201–2017 pi forms, the Construction requirements, and other are not part of the Contr be listed here only if inte	, listed below: I documents that are intended to j rovides that the advertisement or Manager's bid or proposal, porti information furnished by the Own eact Documents unless enumerate ended to be part of the Contract L e day and year first written above	invitation to bid, Instrions of Addenda relationer in anticipation of red in this Agreement. A	ructions to Bidders, san ing to bidding or propo eceiving bids or propos
Time Tigitalian is anitial into the or the			
CITY OF MANZANITA	[<mark>TBD</mark>]		
		RUCTION MANAGER (S	Signature)

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]

The estimated construction cost budget for the Project is \$[TBD]. [<mark>TBD</mark>] August 2023 July 2024 [TBD] [TBD] [TBD] [TBD] [TBD] PAGE 4 [TBD] Geotechnical Engineer: [TBD] .2 Civil Engineer: [TBD] Other, if any: [TBD] [TBD]

[TBD]

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[<mark>TBD</mark>] PAGE 5

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 A201TM—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.

PAGE 6

User Notes:

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.

PAGE 7

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

PAGE 8

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

• • •

User Notes:

- 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;
- A construction schedule identifying commencement and completion dates for Project milestones; and
- 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
- § 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.

PAGE 9

- § 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. PAGE 10

§ 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. PAGE 11

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.

- 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.
- 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.
- 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.
- 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.
- 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.
- 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. PAGE 13
- § 6.3.1.1 The Architect may order minor changes in the Work as provided in Article 7 of AIA Document A201 2017, 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:
 - **Scope Changes.** Owner revisions on scope Project items previously approved by the Owner and incorporated in the pricing of the Guaranteed Maximum Price.
 - **Concealed or Unknown Condition.** Concealed or Unknown Conditions as described in Section 3.7.4 of the General Conditions.
 - 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.
 - 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.
 - **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:
 - Subcontractor Gaps. Gaps in scope coverage between Subcontractors, including self-performed Work, that occur after the Guaranteed Maximum Price Amendment is signed.
 - 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.
 - 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.
 - **Subcontractor Failure.** A Subcontractor goes bankrupt or otherwise fails to perform.
 - **Price Escalations.** Subject to Section 6.3.5.5, escalation of materials, equipment, or labor prices.
 - **Estimating Errors.** The Construction Manager's estimating errors.
 - **Expediting Costs.** Expediting costs for critical materials.

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.

PAGE 14

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

PAGE 15

- § 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. **PAGE 16**
- § 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. **PAGE 18**
- § 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:

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- .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;
- 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
- 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

User Notes:

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:

- 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;
- 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,

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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:
 - 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
 - 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).

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- § 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
- 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
- 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:

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

- 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;
- 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;
- 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
- 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

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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 2017the 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

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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. PAGE 26

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:

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

eost.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 polices 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.]

...

User Notes:

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 A133TM 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 A133TM 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 E203TM–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

AIA Document E203TM 2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below:

(Insert the date of the E203-2013 incorporated into this Agreement.)

[Deleted]

PAGE 28

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 created the attached final document rtification at 13:19:47 ET on 07/08/2022 at in preparing the attached final 2 – 2019, Standard Form of Agreement f payment is the Cost of the Work Plus are, other than those additions and

Guaranteed Maximum Price Amendment

This Amendment dated the day of in the year , is incorporated into the accompanying AIA Document A133TM–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.)

L	1	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:

§ 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:

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:

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User Notes:

§ 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	day and year first written above.	
OWNER (Signature)	CONSTRUCTION MANAGER (Signature)	
(Printed name and title)	(Printed name and title)	

Additions and Deletions Report for

AIA® Document A133™ – 2019 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 simultaneously with its associated Additions and Deletions Report and this c	
under Order No. 3104236508 from AIA Contract Documents software and to	hat in preparing the attached final
document I made no changes to the original text of AIA® Document A133TM	
Price Amendment, as published by the AIA in its software, other than those associated Additions and Deletions Report.	additions and deletions shown in the
associated redutions and Detections report.	
(Signed)	
(Title)	
	_
(Dated)	

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
- B.2 OWNER'S INSURANCE
- B.3 CONSTRUCTION MANAGER'S INSURANCE AND BONDS
- B.4 SPECIAL TERMS AND CONDITIONS

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 A201TM–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:
 - 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).
 - 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).
 - 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]

he Sele he a	Ow ect i lesc	ner sh the typ tription	nal Extended Property Insurance. nall purchase and maintain the insurance selected and described below. ness of insurance the Owner is required to purchase and maintain by placing an X in the box(es) next to n(s) of selected insurance. For each type of insurance selected, indicate applicable limits of coverage or one in the fill point below the selected item.)
	[1	§ 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.
	[1	§ 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.
	I]	§ 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.
	[1	§ 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.

User Notes:

§ 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.)

	Cov	verage Limits
[]	§ B.3.3.2.6 Other Insurance (List below any other insurance coverage to be provided by the Construction Manager and any applicable limits.)
[1	§ 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.3.3.2.4 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.3.3.2.3 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.3.3.2.2 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.3.4 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 A312TM, Payment Bond and Performance Bond, or contain provisions identical to AIA Document A312TM, 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

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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 A201TM–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

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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:
 - 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).
 - 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).
 - 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. PAGE 4

- § 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

§ 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. PAGE 5

§ 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]. PAGE 7

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 Payment Bond Performance Bond Penal Sum (\$0.00)

§ 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

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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

- 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.
- 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.

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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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;
 - 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.
- 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.
- 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
- 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.
- 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,
 - 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

§ 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

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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.

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§ 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].

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§ 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.
 - 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.
 - 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.
 - 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;
- 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.

- 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:

- 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;
- 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;
- 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.

PROTECTION OF PERSONS AND PROPERTY ARTICLE 10

§ 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:
 - employees on the Work, the Owner's staff, faculty, visitors, students, and vendors, and other persons who may be affected thereby;
 - the Work and materials and equipment to be incorporated therein, whether in storage on or off the .2 Project Site, under care, custody, or control of the Contractor, a Subcontractor, or a Sub-subcontractor;
 - 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
 - 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.
- 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:
 - 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.
 - 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
- 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):

- 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.

User Notes:

- 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.
- 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:

- 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).
- 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):

- 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.
- 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.
- 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.
- 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.
- 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.
 - 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.

- 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 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 Sub-contractor, 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;
 - 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.

- 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.
- 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.
- 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

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

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TBD PAGE 3

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 8.3.1, 15.3.2, 15.4

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2.1.2, 9.3.1, 9.3.3, 9.6.8, 9.10.2, 9.10.4, 15.2.8 **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 **PAGE 10**

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. <u>Dimensions not</u> 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 E203TM 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 E203TM 2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document G202TM 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.

...

- § 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 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 <u>or the Architect</u> 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 <u>supervise</u>, <u>coordinate</u>, <u>and</u> perform the Work <u>in accordance with the Contract Documents in a professional</u>, <u>safe</u>, <u>and workmanlike manner and in accordance with all laws</u>, <u>statutes</u>, <u>ordinances</u>, <u>codes</u>, <u>rules and regulations</u>, <u>lawful orders of public authorities</u>, <u>and professional standards applicable to the industries and trades involved</u>, <u>including without limitation strict compliance</u> with <u>all applicable federal</u>, <u>state</u>, <u>and local laws and building codes</u>, <u>certification requirements applicable to the Work</u>, <u>and other policies or standards incorporated in the Contract Documents</u>.
- § 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.

...

- § 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. PAGE 16
- § 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.

...

- § 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, <u>Subcontractor</u>, or other special <u>guarantees or</u> 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. <u>The obligations under this Section 3.5.2 shall not relieve the Contractor of its warranty</u> 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 <u>site Project Site</u> 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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- 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.

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- § 3.9.1 The Contractor shall <u>continuously</u> employ a competent superintendent and necessary assistants who shall be in attendance at the Project <u>site-Site</u> 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 <u>prepare and</u> submit for the Owner's and Architect's <u>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</u>

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.
 - 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.
 - 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.

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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.

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- § 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.

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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.

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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.

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User Notes:

- § 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

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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.

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- § 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 <u>site-Project Site</u> 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 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. **PAGE 26**
- § 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 <u>supply</u> <u>material or equipment or perform</u> a portion of the Work at the <u>site. Project Site.</u> 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.

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§ 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.

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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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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

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

§ 6.1.4 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. Contract.

§ 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

User Notes:

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 <u>cleaning up and maintaining</u> the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the <u>Architect-Owner will</u> allocate the cost among those responsible.

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§ 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.

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§ 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.

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- § 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 <u>and Owner</u> 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 eertification 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, <u>The Contract Time</u> is the period of time, including authorized adjustments, allotted in the <u>Contract Documents for time from the date of commencement to Substantial Completion of the Work.</u>

• • •

- § 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 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 eertified. 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

User Notes:

- § 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 eertify 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 PAGE 34
 - .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. <u>Documents:</u>
- .8 unsatisfactory Work progress;
- 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 eertification payment are removed, eertification 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.

<u>Payments by the Contractor to Subcontractors shall be subject to retainage of five percent (5.0%) on the total progress payment.</u>

§ 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 <u>Owner and Architect a</u> 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 <u>Owner and Architect</u> will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the <u>Owner's or Architect</u>'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 <u>Owner or Architect</u>. In such case, the Contractor shall then submit a request for another inspection by the <u>Owner and Architect</u> 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 <u>Owner and Architect will promptly make such inspection</u>. When the <u>Architect finds-Owner and Architect find</u> 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 <u>Payment, which constitutes a representation</u> 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:
 - <u>.1</u> 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;
 - 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;

- <u>a</u> 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)
- <u>.4</u> consent of surety, if any, to final payment, (5)
- documentation of any special warranties, such as manufacturers' warranties or specific Subcontractor warranties, and (6) and
- 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
- 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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- 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 <u>all necessary and reasonable</u> precautions for safety of, and shall provide reasonable protection to prevent damage, injury, or loss toto:
 - .1 employees on the Work 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 <u>site-Project Site</u> or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course <u>of construction</u>, 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 eaused 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.

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- § 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

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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 <u>reasonable</u> discretion, to prevent threatened damage, injury, or <u>loss. loss and immediately notify the Owner.</u> 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.

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§ 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
- 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.
- 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.
 - 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):

- 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.
- 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.
- 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/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).
- 1.2 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):

- 2.1 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.

- 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.
- <u>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.</u>

- 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.
- 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 <u>not related to phasing of the Work</u> 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.
- 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 <u>site Project Site</u> 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. <u>Failure to provide timely notice in accordance with Section 15.1.3 constitutes waiver of the Claim.</u>

...

§ 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
- 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]

User Notes:

§ 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.
- 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 <u>construction or mechanic</u>'s lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the <u>perfection</u>, <u>foreclosure</u>, <u>or lien</u> 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

User Notes:

- § 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.

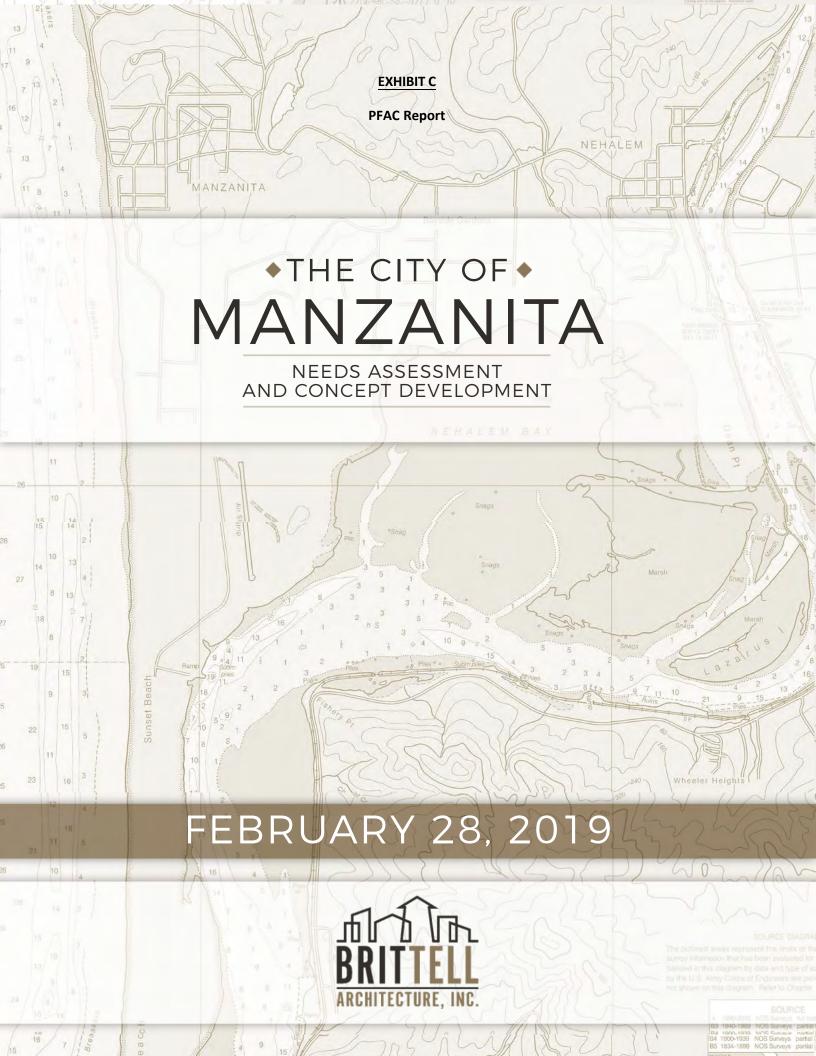
§ 15.4.4.3 The Owner and Contractor grant to any person or entity made a party to an arbitration conducted under this Section 15.4, whether by joinder or consolidation, the same rights of joinder and consolidation as those of the Owner and Contractor under this Agreement.



Certification of Document's Authenticity

AIA® Document D401 ™ - 2003

I, , hereby certify, to the best of my knowledge, information and belief, tha simultaneously with its associated Additions and Deletions Report and this counder Order No. 3104236508 from AIA Contract Documents software and the document I made no changes to the original text of AIA® Document A201 TM Contract for Construction, as published by the AIA in its software, other that the associated Additions and Deletions Report.	ertification at 13:36:27 ET on 03/31/2022 hat in preparing the attached final 4 – 2017, General Conditions of the
(Signed)	
(Title)	
(Dated)	



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

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

Nehalem, OR

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APPENDICES

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- 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

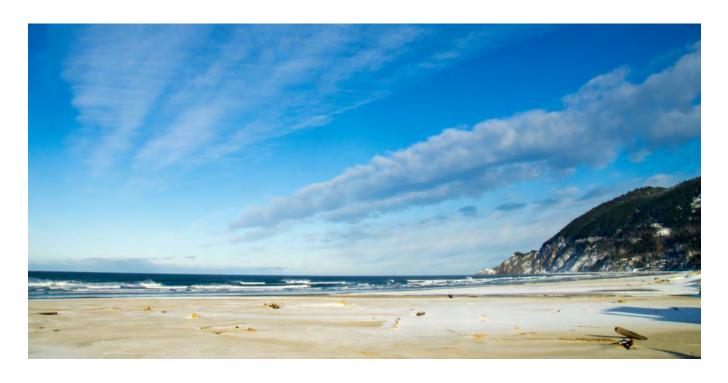
Randy Kugler

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 uni	its by year	r					
	In City limits						
		# of resident	ial			# of residential	
<u>Y</u>	'ear	dwelling unit	<u>:s</u>	Δ	Year	dwelling units	Δ
	2005	1,1	.29		2005	250	
	2006	1,1	.63	34	2006	266	16
	2007	1,1	.98	35	2007	291	25
	2008	1,2	.06	8	2008	292	1
	2009	1,2	16	10	2009	297	5
	2010	1,2	20	4	2010	298	1
	2011	1,2	25	5	2011	301	3
	2012	1,2	33	8	2012	306	5
	2013	1,2	38	5	2013	310	4
	2014	1,2	45	7	2014	316	6
	2015	1,2	.52	7	2015	315	(1)
	2016	1,2	66	14	2016	318	3
	2017	1,2	83	17	2017	327	9
	2018	1,2	98	15	2018	332	5
				42		•	
Dunia etia un		Average		13		Average	6
Projections	2020		420			205	
10 year	2028		428			395	
20 year	2038	1	558			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:

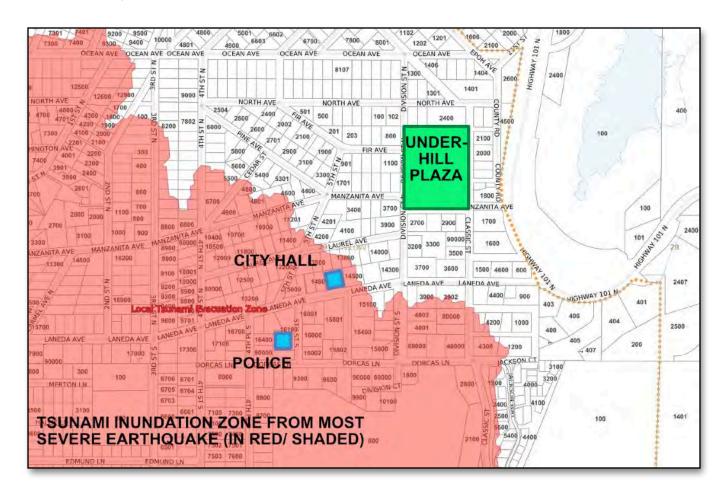
- Disaster resilience: Due to the potential for significant damage during a Cascadia subduction event, a new facility should be able to remain functional after an earthquake. Collaboration between the City of Manzanita and the Emergency Volunteer Corps of Nehalem Bay (EVCNB) produced the Underhill Plaza 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 facilites (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 facilites	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 mangers 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 highpriority item, and the PFAC discussed the issue as it related to the development of City property. It was decide 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 an largely nonfunctional mechanical, electrical, and plumbing systems. Rough order-of-magnitude cost estimates for this work are provide in the 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 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 that 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 if 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 load 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

select architect for schematic design phase
timber sale (if selected)
schematic design completed
town hall meeting
bond measure
select architect for remaining work
construction documents ready
out to bid
bid reviewed
contract awarded/ start of construction
dedication ceremony
sale 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 2021	select architect for remaining work
September 2021	construction documents ready
October 2021	out to bid
December 2021	bid reviewed
December 2021	finalize negotiations with lender
January 2022	contract awarded/ start of construction
Spring 2023	dedication ceremony



Manzanita Community Center						02/08/19
Current Space	Immediate Needs	Future Needs	Long Range or Bonus	Security	Space	Notes
City Adm						
80	150	165	182	В	Public counter	Space for 2+1 semiprivate. Room to lay out drawings. Security arrangement.
0	400	400	400	В	public restrooms	Sized to accommodate public meetings. Includes "family restroom"
0	100	100	100	С	receptionist	shared by all
450	600	660	726	С	general admin office	open plan @150sf/ person. Acoustical control.
0	140	140	140	С	workspace	copier, shredder, counter for assembling mailers, cabinets for office supplies. Adjacent to small meeting room and general admin
40	100	100	100	С	files: on-hand confidential	Active files in locked cabinets (STR, water, court) accessible to general office space
15	50	50	50	С	files: public records w/ general staff access	property files, planning commission and city council minutes
200	240	240	240	Е	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	С	meeting space, small	10 person. Admin meetings, interviews, etc (doubles as MOC). HR/personal meetings will happen in enclosed offices.
600	600	600	600	С	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	С	break room	4-6 people, coffee bar and fridge, hot water. Shared w/ police.
60	100	100	100	С	staff restrooms	secure for employees, separated by sex, 50sf ea.
120	150	165	182	С	archives	court records, property/ building permits, permanent archives. Confidential archives (payroll) kept in locked cabinets within same space
864	0	0	0	С	general storage	Lost-and-found, recycling, ready-to-shred, flags, holiday lights, bunny head. Interior and exterior access. Unconditioned?
0	80	80	80	С	IT room	discrete cooling system
1						

Subtotals

10.0% demographic growth factored (blue)

2,737 3,800 3,890 3,990 sf



Manzanita Community Center						02/08/19
Current Space	Immediate Needs	Future Needs	Long Range or Bonus	Security	Space	Notes
Police	50		50		** police areas are secure from re	
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]
-						
Emerger overlaps	-	leeting S	Space	В	MOC (Manz. Ops. Center)	collapsible wall tables w/ wall radios, 12 people. Monitors and whiteboards. Glass walls to public area?
0	80	80	80	В	public radio interface room	Adjacent to MOC, with closing cabinet to contain permanent radio equipment.
0	0	0	0	Α	white board & pinup space	located in public lobby
0	0	0	0	В	potable water access	conduit from 101 water treatment plant
overlaps		•	า	В	food prep	with provision for wood cooking
overlaps				В	indoor shelter space	for inprocessing, medical, vulnerable populations
0	30	30	30	В	storage, staff disaster supplies	cots, blankets, food for staff & volunteers.
0	150	150	150	В	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]
		_				_



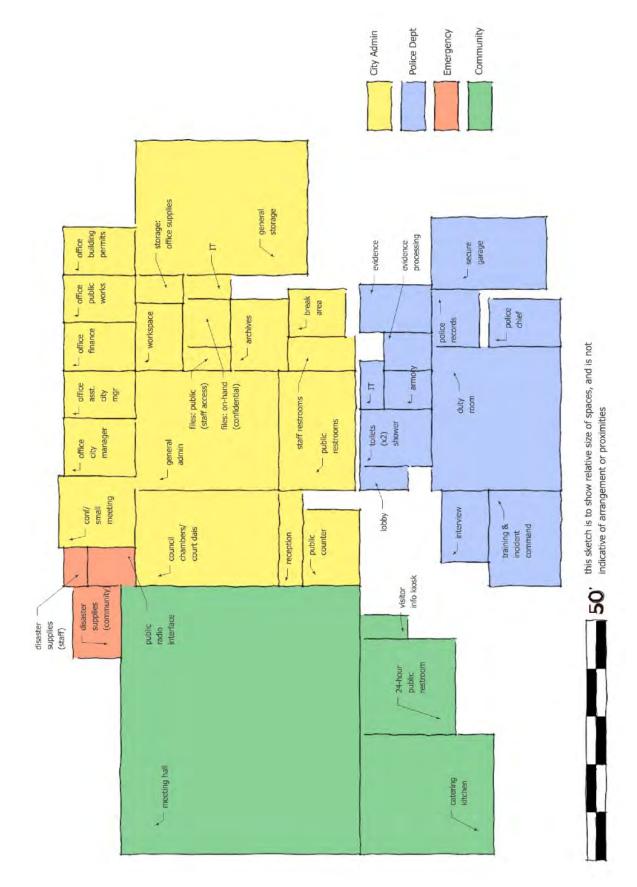
Manzanita Community Center						02/08/19
Current Space	Immediate Needs	Future Needs	Long Range or Bonus	Security	Space	Notes
Commun	ity Use					
0	400	400	400	Α	24-hour public restrooms	including "family restroom"
0	50	50	50	Α	visitor arrival/ welcome / info hub	electronic interface for phase 1?
0	2,275	2,503	2,754	В	meeting hall	for community meetings, court, city council, and audits. 325 occupants max, 160 comfortably. Movable partitionwalls.
0	700	700	700	В	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	?	Α	coffee shop / community cafe tenant	·
0	0	0	?	Α	post office integration	
0	3.425	3.653	3.904 sf		Subtotals	1



Manzanita Community	Center		02/08/19
Current Space Immediate Needs Future Needs	Range or Bonus Security	Space	Notes
Site Needs	2 222	huilding factorints (from above)	
11,023 11,733 12 1,850 2,035 2	2,239	building footprints (from above) 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	0,695	parking, offices @1 per 400sf	-
6,280 7,254 8	3,583	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	bike shelter	(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	2,722	emergency camping area (400 persons, size "M" event)	40Sf/ person +40sf/ person circulation. =32,000sf. <u>Partial overlap w/ parking or public park</u> (subtract that area)
overlap Large Meeting Spa	ce	emergency services admin	includes medical and registration areas.
overlap Emergency Campii	ng	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	9,062	Outdoor Totals	(116,300 sf total available in 2.67 acres)

B. Relative Spatial Needs Diagram





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

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	
1 01100 (2), 00 04 10 pta0 20,0 attaos.g.t.ca,	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
EXCESS/(DEFICIT)	-\$5,600	\$2,400
Additional Assumptions:		
Annual bond cost to tax payer over 15 years, based on property AV of \$500K	\$180	\$279

NOTES:

1 This is a 35% increase in sq ft of existing city hall.

2. Immediate Needs

Total sq ft

			5,1 55	
	City admin (3,800 sq ft plus 15% unassig	ned) ¹	4,370	
	Police (2,100 sq ft plus 15% unassigne	d) 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
	SOURCES			
Current fund	ds			
	Timber Sale		\$400,000	\$400,000
	City Expansion Fund		\$120,000	\$120,000

	Timber Sale City Expansion Fund	Total - current funds	\$400,000 \$120,000 \$520,000	\$400,000 \$120,000 \$520,000
Possible funds				
	Bond (net of transaction costs)		\$3,000,000	\$4,400,000
	Sell existing City Admin property	У	\$450,000	\$450,000
		Total - possible funds	\$3,520,000	\$4,920,000
		TOTAL FUNDS	\$4,040,000	\$5,440,000
		EXCESS/(DEFICIT)	\$30,500	(\$4,220)

Additional Assumptions:

Annual bond cost to tax payer over 15 years, based on property AV of \$500K

\$270 \$396

6,785

NOTES:

3. Long Range (20 year) Needs

SQUARE FOOTAGE

	Total sq ft		7,435	
	City admin (3,990 sq ft plus 15% unass	signed) ¹	4,589	
	Police (2,475 sq ft plus 15% unassig		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 S				
	Timber Sale		\$400,000	\$400,000
	City Expansion Fund		\$120,000	\$120,000
	City Expansion Fund	Total - current funds	\$520,000	\$520,000
Possible fund				
	Bond (net of transaction costs)		\$3,400,000	\$4,900,000
	Sell existing City Admin propert		\$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 bo	nd cost to tax payer over 15 years, base	d on property AV of	4265	44.0
	\$500K	· · ·	\$306	\$442

NOTES:

¹ This is a 100% increase in sq ft of existing city hall.

4. Long Range (20 Year) needs + Emergency Hub

SQUA	RE FO	OTAGE
-------------	-------	-------

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

NOTES:

1 This is a 100% increase in sq ft of existing city hall.

5. Long Range + Quonset for storage

SQUARE F	OOTAGE			
	Total sq ft		9,885	
	City admin (3,990 sq ft plus 15% unassigne	طار ¹	4 500	
	Police (2,475 sq ft plus 15% unassigned)	•	4,589	
	,, , , , , , , , , , , , , , , , , , , ,		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 stora	=	\$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 S				
	Timber Sale		\$400,000	\$400,000
	City Expansion Fund		\$120,000	\$120,000
		tal - current funds	\$520,000	\$520,000
Possible fund	S			
	Bond (net of transaction costs)		\$3,800,000	\$5,300,000
	Sell existing City Admin property		\$450,000	\$450,000
	Tot	al - 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 ho	nd cost to tax payer over 15 years, based on	property AV of		
	ilu cost to tax payer over 15 years, baseu ori		\$342	\$478

NOTES:

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		
	2,846 299	
Emergency hub (260 sq ft plus 15% unassigned) ¹ Quonset Relocate and Renovate	2,450	
Quonset Relocate and Renovate	Low Range @	High Range @
COSTS	\$435/sf	\$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	\$469	\$604

NOTES:

\$500K

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

NOTES:

1 This is a 100% increase in sq ft of existing city hall.

8. Long Range + New Meeting Hall + Quonset for storage

COLLABE	COTACE		
SQUARE F	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	
		3,904	
	New Meeting Hall Quonset Relocate and Renovate	2,450	
	Quonset helocate and henovate	Low Range @	High Range @
COSTS		\$435/sf	\$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
	Quonset Relocate and Renovate for storage	\$403,380	\$403,380
	Tota	\$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
	Tota	s419,610	\$419,610
	20% Contingenc	y \$1,208,247	\$1,446,167
	TOTAL PROJECT COST	\$7,249,481	\$8,677,001
FUNDING Current fund			
	Timber Sale	\$400,000	\$400,000
	City Expansion Fund	\$120,000	\$120,000
	Total - current fund		\$520,000
Possible fund	ds		
	Bond (net of transaction costs)	\$6,200,000	\$7,600,000
	Sell existing City Admin property	\$450,000	\$450,000
	Total - possible fund	\$ \$6,720,000	\$8,120,000
	TOTAL FUND	\$ \$7,240,000	\$8,640,000
	EXCESS/(DEFICIT	(\$9,481)	(\$37,001)
	Additional Assumptions:		
Annual bo	and cost to tax payer over 15 years, based on property AV of	\$559	\$685
	\$500K	کورو	ζους

NOTES:

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)

\$135

Additional Assumptions:

Annual bond cost to tax payer over 15 years, based on property AV of \$500K

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

	Total \$1,999,662
Quonset hut (remediation only)	\$260,358
Comm. group meeting/conf. Space (750 sf @ \$238/sf)	\$178,500
Police (2,500 sf @ \$238/sf)	\$595,000
City admin (4058 sf @ \$235/sf)	\$965,804

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 \$144

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 as 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:

•	strengthening, condition remediation, and adjustments, mechanical, electrical & plumbing)	\$1,322,628	
Wall insulation	2,700 sq. ft. @ \$1.20/ sq. ft.	\$3,240	
Ceiling insulation	5,478 sq. ft. @ \$1.30/ sq. ft.	\$7,121	
Doors	8 ea. @ \$800 installed	\$6,400	
Furniture	\$15/ sq. ft. per Brittell Architecture	\$82,170	
Permits, infrastructu	re, parking, landscaping @ 10% %	\$146,008	
Total costs for building	ng ready occupancy	\$1,606,080	
Total costs per sq.ft. @ 5,478 sq. ft\$293			

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.

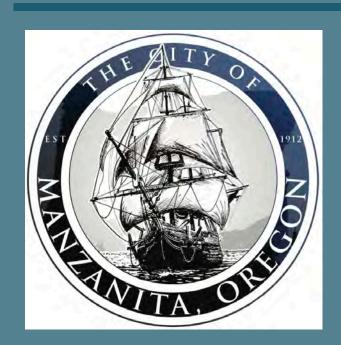
Prepare preliminary partitions of 3 building lots fronting Division Street by 2020 and announce to local builders, realtors and through other social media outlets that the City is taking reservations by interested parties on the sale of said lots which will then be sold on the earliest date allowable 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:

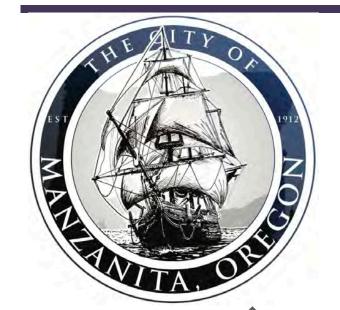
- 1. How much additional funding is the Lender willing to provide the City on say December 1, 2021? By this date, 40% of the original loan has been repaid amounting to \$621,000 which could be applied towards the new loan amount.
- 2. How much money can the City set aside in the City Hall Expansion Fund 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



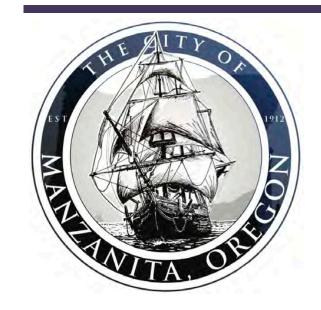
RESEARCH OBJECTIVES

- 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- Survey analysis.

January 5

January 6 Report on survey results to city council.

March Final written report.

Manzanita Listens

4



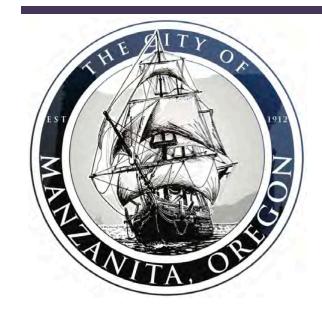
SURVEY HIGHLIGHTS

- 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)

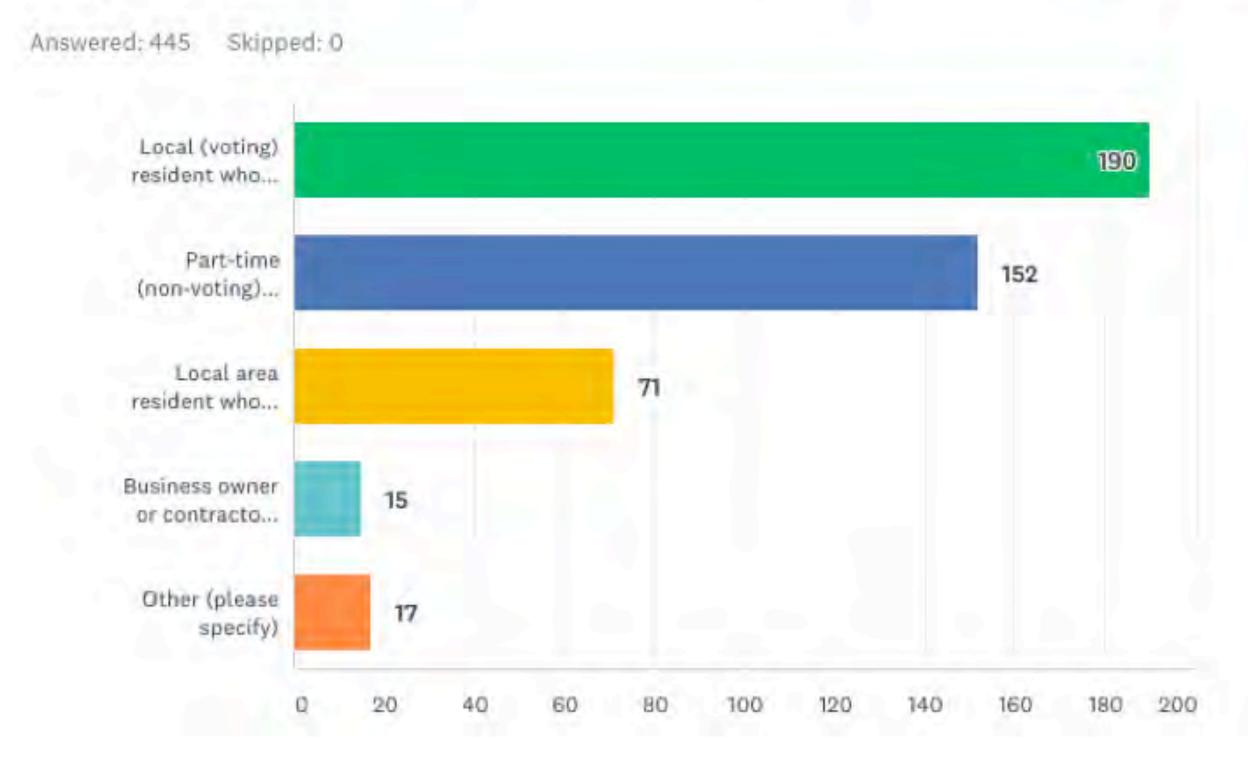
190 Local voting residents

152 Part-time, non-voting

71 Local area resident

15 Manzanita business owner or contractor

17 Other



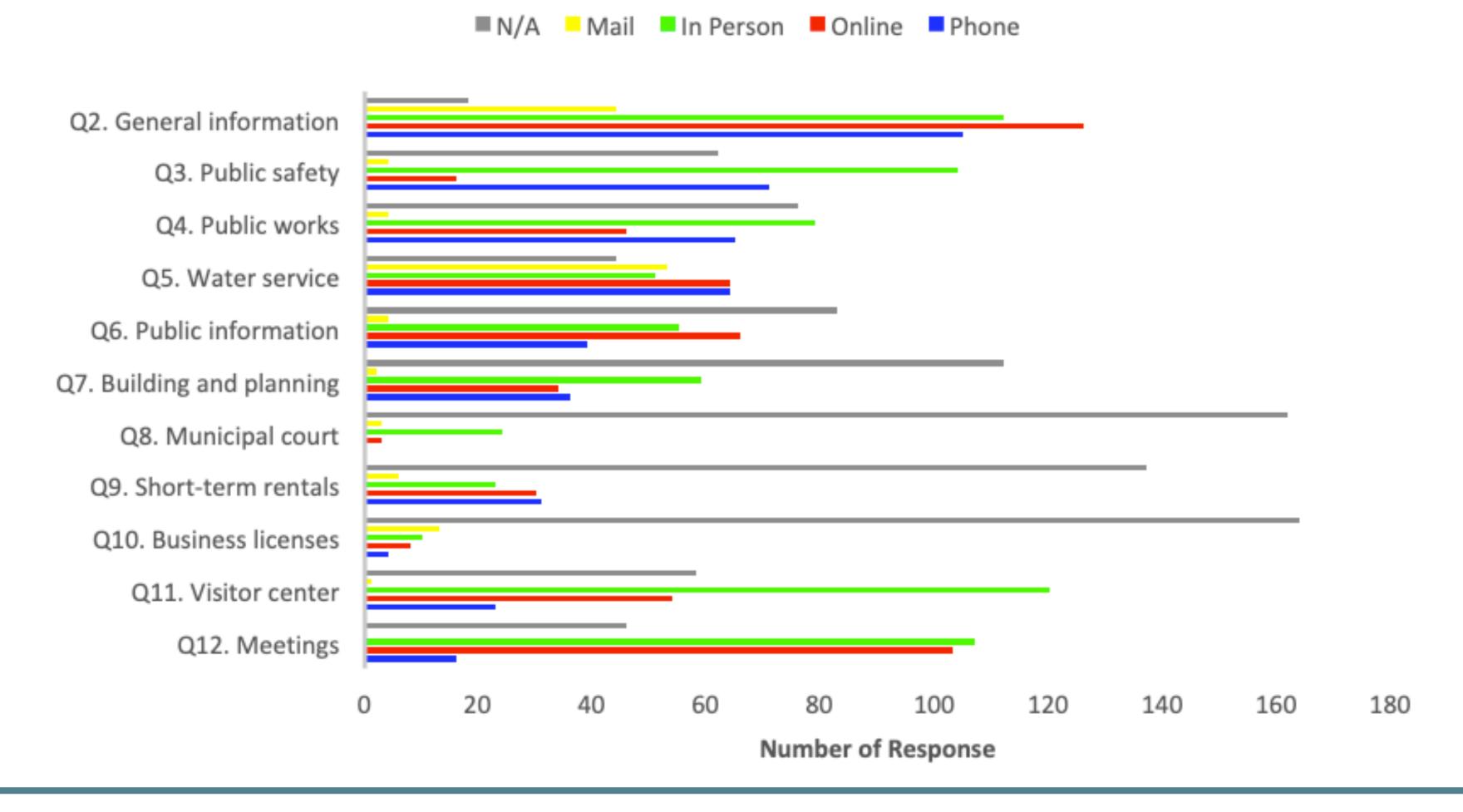


INTERACTION WITH CITY SERVICES

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.



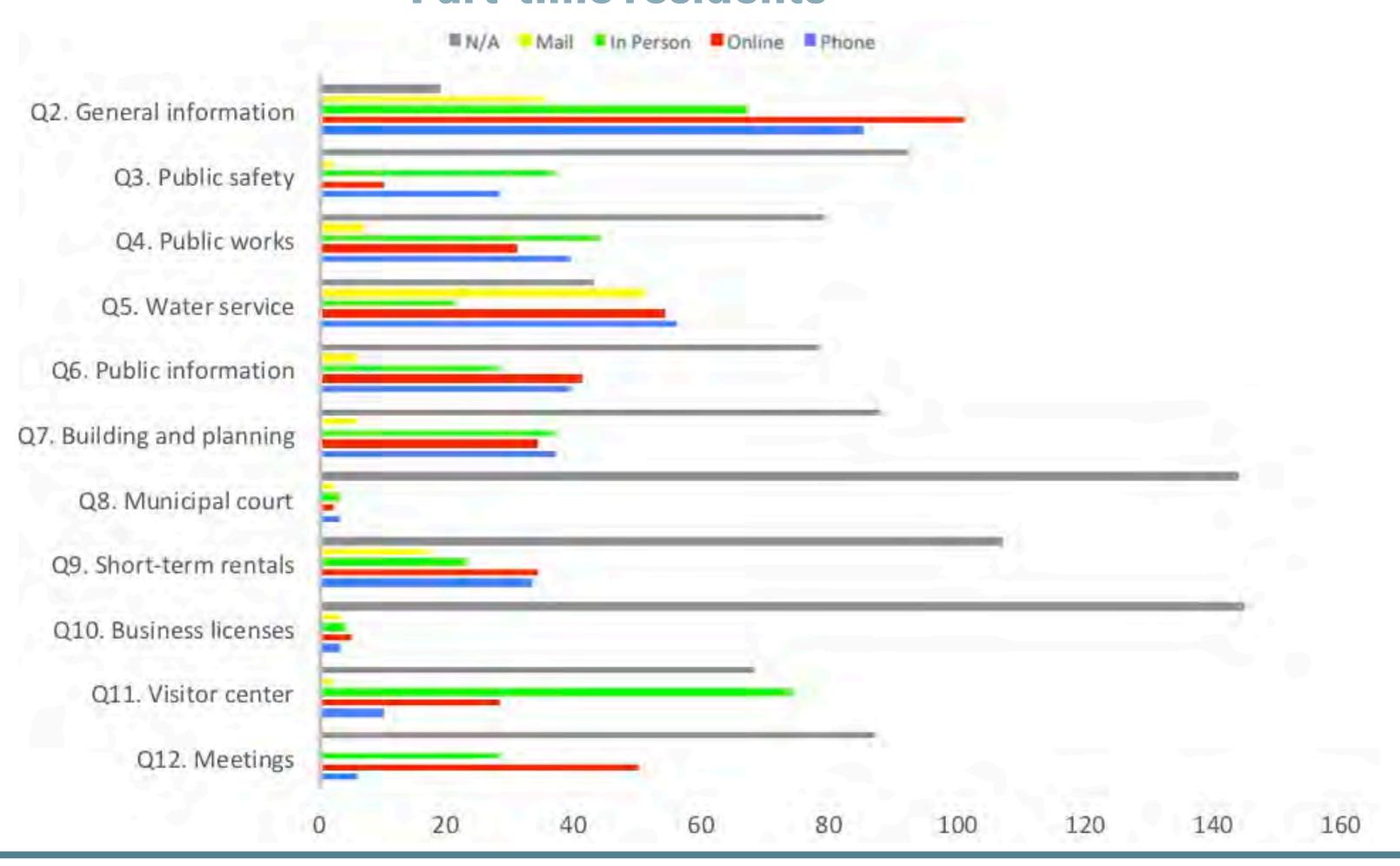


INTERACTION WITH CITY SERVICES

Part-time residents

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.

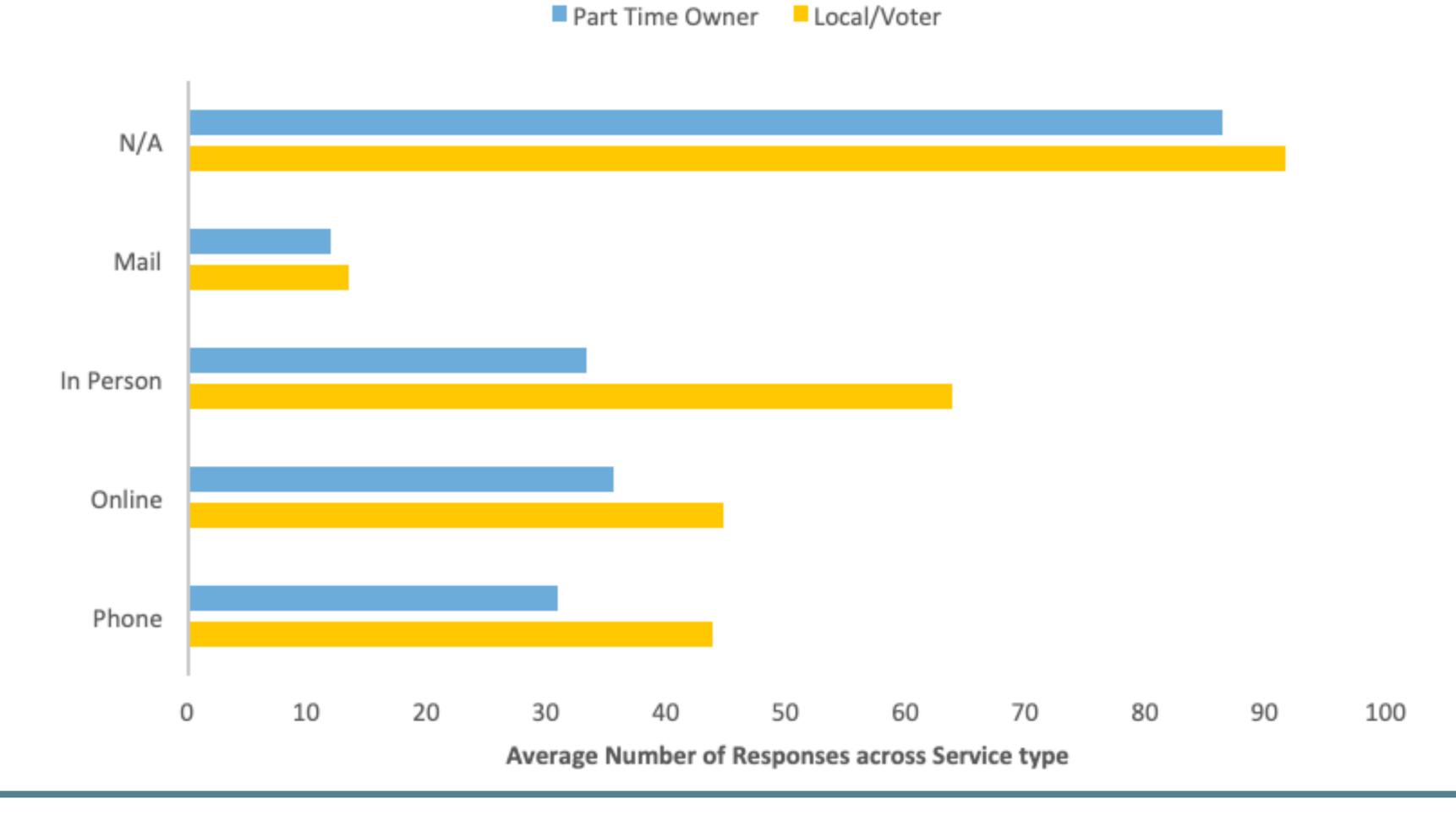




INTERACTION WITH CITY SERVICES

Local vs. part-time residents

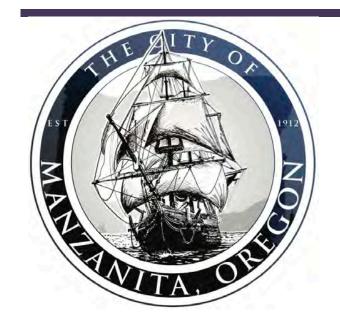
Local residents are much more likely to visit city hall to access services.





Additional services

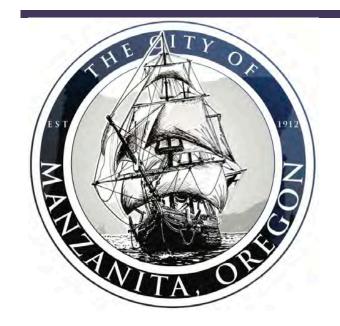
- Large and small meeting rooms
- **Electric vehicle charging**
- Disaster preparedness and gathering point
- Many suggestions for both inside and outside the building



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



Divisions: areas of disagreement

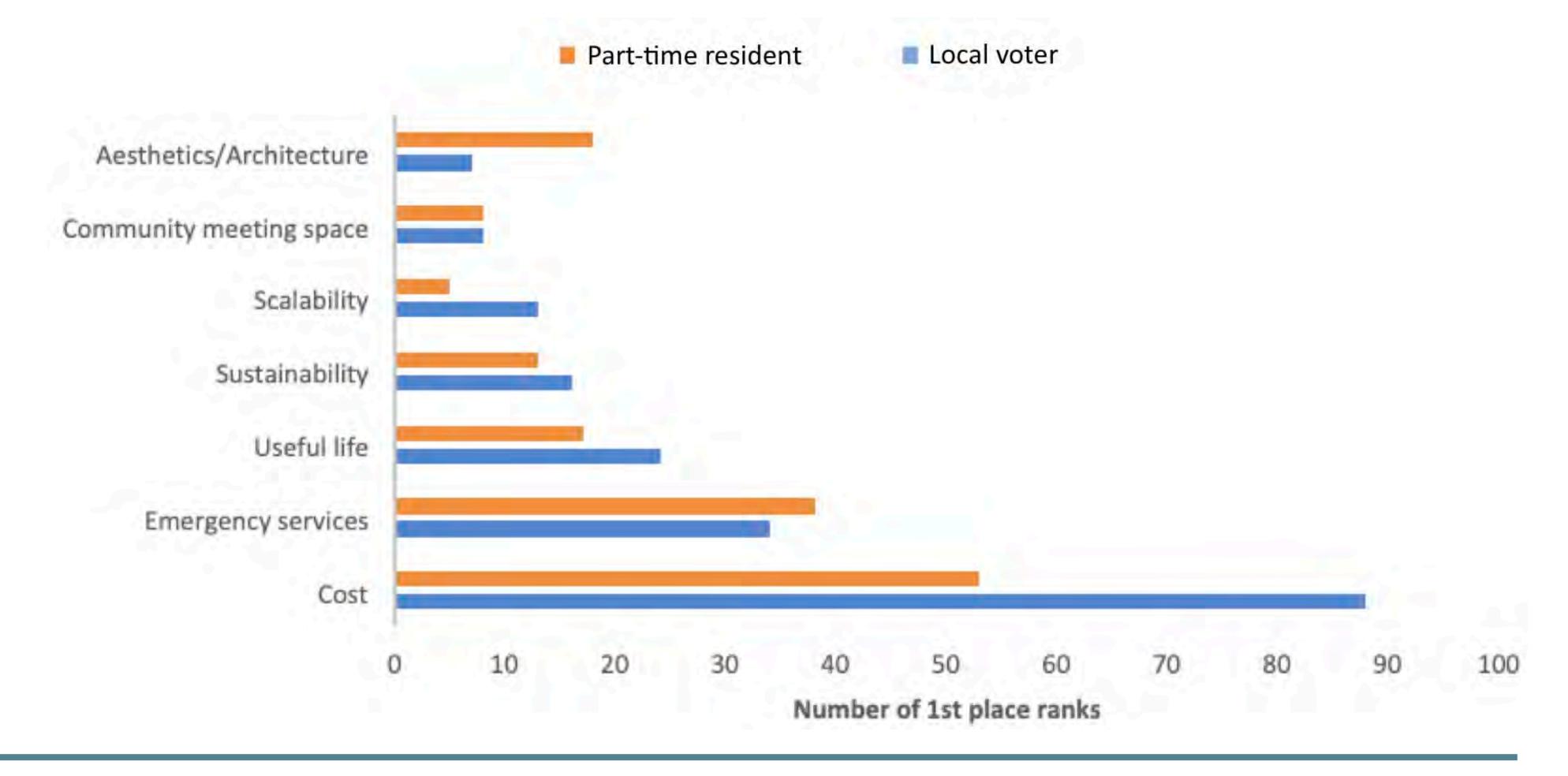
- Low cost vs. uses and durability
- Look (aesthetics) is important vs. look is not important
- **Emergency preparedness**
 - Do we try to take care of neighbors and visitors vs. everyone should prepare for themselves
 - Preparedness is not important because the fire station is supposed to cover preparedness
- 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.





Building aspects: Ranking

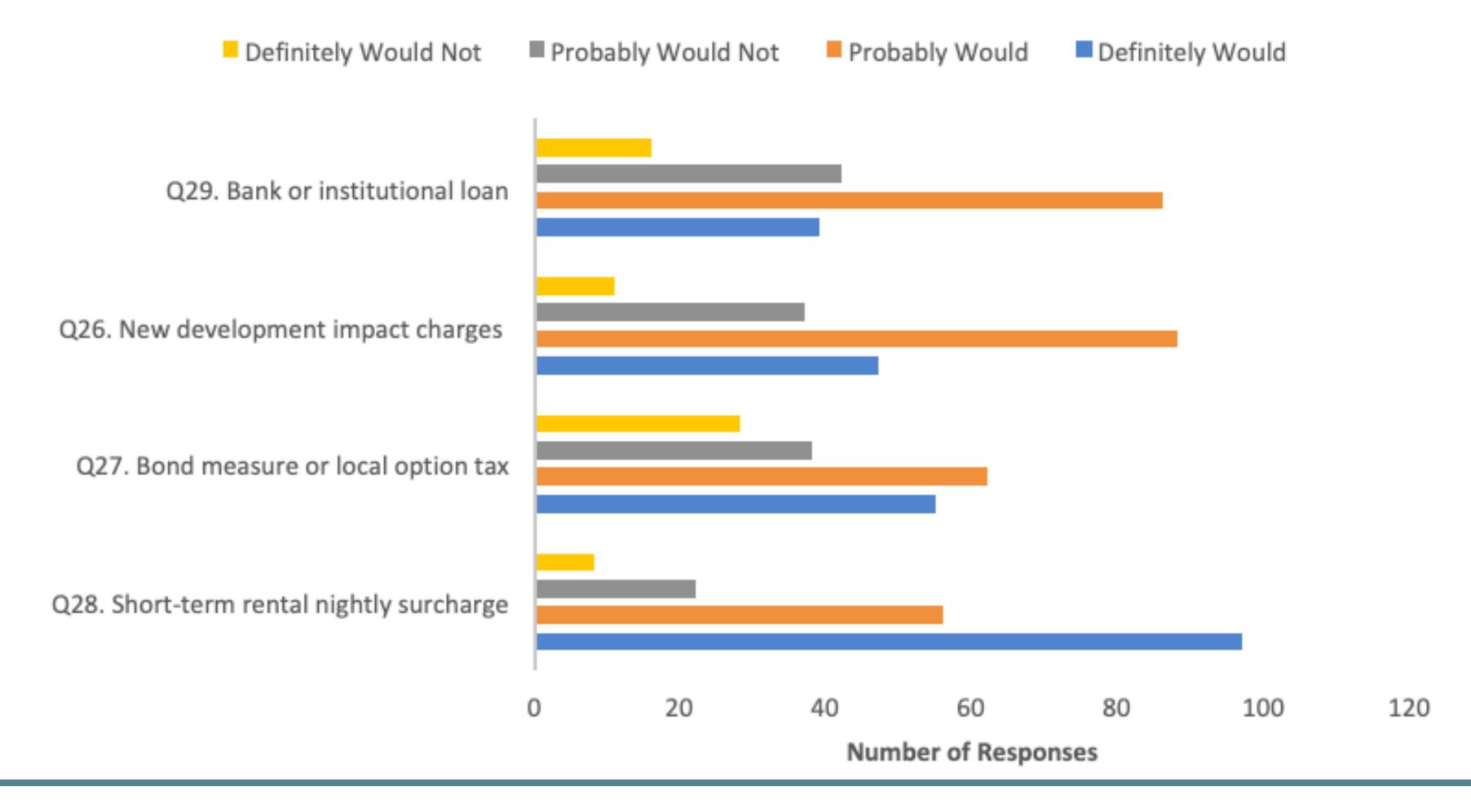
- Three most important issues: cost, emergency services, and sustainability
- Some expressed anger with the Mayor, City Council, and and government in general
- Responses showed the effects of the Covid pandemic on building plans

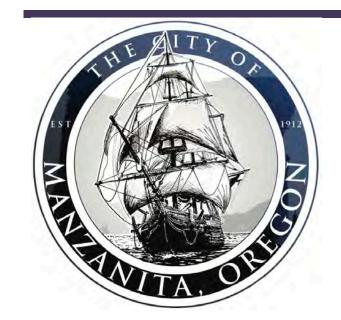


FINANCING METHODS

Local voters only

Local voters are open to several financing options, but favor a surcharge on shortterm rentals.





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



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



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

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. This report is supplemented with the feedback from the external Manzanita stakeholders separately from the main body of the report (see Appendix C).

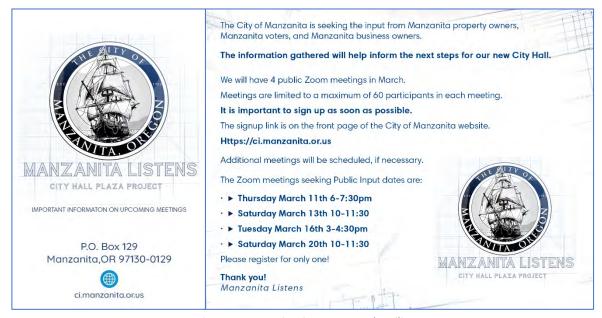


Figure 1: Manzanita Listens Postcard Mailing

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.

Manzanita Listens Public Meeting Summary 4-1-21, p. 3

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).

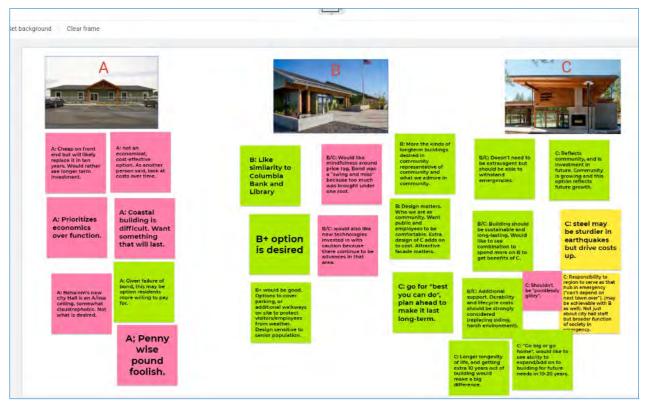


Figure 2: Example of Jamboard Virtual Whiteboard

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 the 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 option 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 questions 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. 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





- Introductions and Information (20 Minutes)
 - Meeting Call to Order

Where We Are & What We are Hearing

How This Meeting Will Work

- Listening (60 minutes)
 - Breakout Rooms (Building Concepts & Financing / Amenity Options)
- 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 com munity

..serve as the heartbeat of the City - where our com m unity goes for resources and assistance - inform ation, bill pay, and em ergencies

.. 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'needs

..effective, durable, functional, usable and sustainable

..em brace 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

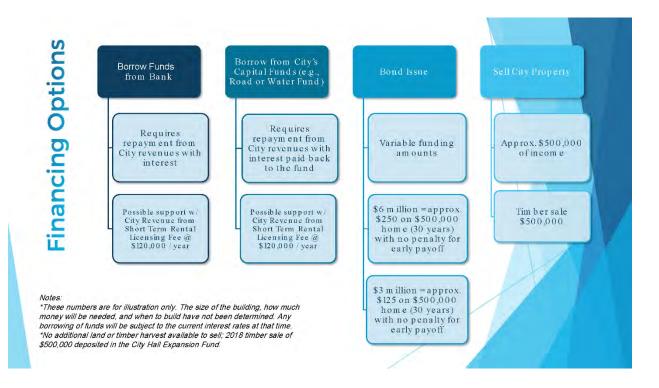
What Decisions Have Been Made

- 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











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 the 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

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 9th day of November 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)

Cove Built LLC 79117 Tide Rd. Arch Cape, OR 97102

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

City of Manzanita City Hall 635-655 Manzanita Avenue, Manzanita OR 97130

Preconstruction and construction services to build a new City Hall of approximately 6000 SF, demolition and abatement of existing facilities, and associated site work.

The Architect:

(Name, legal status, address, and other information)

Bearing Architecture LLC 215 SE 9th Ave Unit 303 Portland, OR 97214

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.

TABLE OF ARTICLES

- 1 INITIAL INFORMATION
- 2 GENERAL PROVISIONS
- 3 CONSTRUCTION MANAGER'S RESPONSIBILITIES
- 4 OWNER'S RESPONSIBILITIES
- 5 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES
- 6 COMPENSATION FOR CONSTRUCTION PHASE SERVICES
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- 10 ACCOUNTING RECORDS
- 11 PAYMENTS FOR CONSTRUCTION PHASE SERVICES
- 12 DISPUTE RESOLUTION
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- 15 SCOPE OF THE AGREEMENT

A201-2017 GENERAL CONDITIONS OF THE CONTRACT FOR CONSTRUCTION

EXHIBIT A GUARANTEED MAXIMUM PRICE AMENDMENT

EXHIBIT B INSURANCE AND BONDS

EXHIBIT C REQUEST FOR PROPOSALS (RFP) FOR CONSTRUCTION MANAGER/GENERAL CONTRACTOR

EXHIBIT D COVE BUILT LLC RFP SUBMITTAL

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 to 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.)

The building program preliminarily consists of approximately 2200 square feet of City office space, 2000 square feet dedicated to City police functions, 800 square feet of shared spaces, 1000 square feet for grossing factor, for a total of 6000 square feet.

The preconstruction phase will develop three distinct design concepts that include a variety of renovation and new construction. Also see Exhibit C, CM/GC RFP for project description and scope of work.

§ 1.1.2 The Project's physical characteristics:

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

The site of the Project is a 2.67 parcel located on the Northeast corner of Manzanita Avenue and Division Street. A topographic survey by Onion Peak Design was completed August 22, 2022. A Regulated Building Materials Survey Report by G2 Consultants was completed August 24, 2022. A geotechnical report by RhinoOne is anticipated by November 1, 2022.

§ 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 \$3,500,000.

- § 1.1.4 The Owner's anticipated design and construction milestone dates:
 - .1 Design phase milestone dates, if any:

30% Schematic Design and City Council approval to proceed with one design scheme: February 8, 2023

.2 Construction commencement date:

TBD in GMP Amendment

.3 Substantial Completion date or dates:

TBD in GMP Amendment

.4 Other milestone dates:

None

§ 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 in GMP Amendment

§ 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 in GMP Amendment

§ 1.1.6.1 If the Owner identifies a Sustainable Objective, the Owner and Construction Manager shall complete and incorporate AIA Document E234TM–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.

Init.

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User Notes:

§ 1.1.7 Other Project information:

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

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

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

Jessie SteigerKlosh Group 4854A SW Scholls Ferry Road Portland, OR 97225

§ 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.)

Geotechnical Engineer:

Rhine One, LLC 12308 NE 56th St. Unit 1107 Vancouver, WA 98682

Hazardous Materials Consultant:

Hahn and Associates, Inc. 434 NW 6th Ave., Suite 203 Portland, OR 97209

(Paragraph deleted)

.3 **ALTA Survey**

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

Onion Peak Design 11460 Evergreen Way Nehalem, OR 97131

§ 1.1.11 The Architect's representative:

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

Christopher Keane, AIA Bearing Architecture LLC 215 SE 9th Ave. Unit 303 Portland, OR 97214 503-487-0211 ckeane@bearingarchitecture.com

§ 1.1.12 The Construction Manager identifies the following representative in accordance with Article 3:

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

Jason Stegner Cove Built LLC 79117 Tide Rd. Arch Cape, OR 97102

503-572-3375Jason@covebuilt.com

Init.

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§ 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.)

Jason Stegner and Dave Cram per Cove Built RFP response dated August 29, 2022.

§ 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:

Exhibit C: CM/GC Request for Proposal, issued August 2, 2022.

Exhibit D: Cove Built LLC response to RFP, submitted August 29, 2022...

- § 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 A201TM_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, 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 E203TM—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 within 10% of each other, or as otherwise required by the Owner.
- § 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 E234TM–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 C, Request for Proposal, 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
 - .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;
 - 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
 - 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 E234TM–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 B133TM_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.)

The lump sum preconstruction fee is \$30,000 per CM/GC Proposal dated August 29, 2022. Reimbursable items would include items such as any destructive or non-destructive testing performed by CM/GC and must be pre-approved in writing by Owner.

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

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

Hourly rates are provided in CM/GC Proposal dated August 29, 2022 and listed below.

Individual or Position	Rate
Project Manager	\$100 / Hour
Superintendent	\$95 / Hour
Journey Carpenter	\$70 / Hour

- § 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 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.

§ 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.)

5%

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.)

Construction Manager Fee is 7% of the Cost of the Work. In addition to the Construction Manager's Fee: Liability Insurance is 1% of the Cost of the Work.

Performance and Payment Bond is 1.75% of the Cost of the Work

§ 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.)

None

§ 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.)

None

§ 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:
 - **Scope Changes.** Owner revisions on scope Project items previously approved by the Owner and incorporated in the pricing of the Guaranteed Maximum Price.
 - **Concealed or Unknown Condition.** Concealed or Unknown Conditions as described in Section 3.7.4 of the General Conditions.
 - 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.
 - 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.
 - 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:
 - Subcontractor Gaps. Gaps in scope coverage between Subcontractors, including self-performed Work, that occur after the Guaranteed Maximum Price Amendment is signed.
 - 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.
 - **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.
 - **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.
 - 2.3 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 D 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 D 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.)

N/A

- § 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 D 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:

- 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;
- Costs which would cause the Guaranteed Maximum Price to be exceeded; and .11
- 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.

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:
 - 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;
 - 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.
- § 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 Owner's Representative 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 Owner's Representative.

§ 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:

- That the Application for Payment represents an accurate estimate of the percentage of Work completed for .1 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;
- 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)

- 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:

- 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;

(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

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.)

Preconstruction activities prior to GMP amendment.

§ 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.)

[] Arl	oitration pursua	nt to Articl	e 15 of	the Genera	al Conditions
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[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.

[] 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' 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.)

None.

§ 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

[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 A133TM–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 A201TM–2017, General Conditions of the Contract for Construction
- .3 AIA Document A133TM-2019, Exhibit A, Guaranteed Maximum Price Amendment, if executed
- .4 AIA Document A133TM–2019, Exhibit B, Insurance and Bonds

(1297577061)

User Notes:

(Paragraph .5	Exhibit C, Request for Cove Built LLC RFP S Agreement or the Cont of the Contract. Other Exhibits:	Exhibit C, Request for Proposals (RFP) for Construction Manager / General Contractor .6 Exhibit D, Cove Built LLC RFP Submittal. No terms or conditions of this RFP Submittal are incorporated into this Agreement or the Contract Documents, however to the extent that they address matters that are the subject of the Contract.					
	Constructor E	nt E234 TM –2019, Sustainable Projection, dated as indicated below: the of the E234-2019 incorporated in the E234-2019 in the E2		tion Manager as			
	[] Supplementary	and other Conditions of the Cont	tract:				
	Document	Title	Date	Pages			
.7 This Agree	Document A201–2017 forms, the Construction requirements, and othe are not part of the Conbe listed here only if in	y, listed below: al documents that are intended to provides that the advertisement or m Manager's bid or proposal, port or information furnished by the Own tract Documents unless enumerate tended to be part of the Contract in the day and year first written above	r invitation to bid, Institions of Addenda relations of Addenda relation of relation of red in this Agreement. A	ructions to Bidders, sample ing to bidding or proposal receiving bids or proposals,			
CITY OF MA	CITY OF MANZANITA		COVE BUILT LLC				
OWNER (S	OWNER (Signature)		CONSTRUCTION MANAGER (Signature)				
	Leila Aman, City Manager (Printed name and title)		Jason Stegner, Owner (Printed name and title)				
(Printed n	ame ana titie)	(Printed	i name ana titiej				

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)

Bearing Architecture LLC] 215 SE 9th Ave Unit 303 Portland, OR 97214

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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.

- § 1.6.1 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.

User Notes:

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§ 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
 - 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

- 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
- 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.

(Paragraphs deleted)

§ 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
- 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.
 - 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.
 - 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.
 - 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.
 - 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
 - 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.
- 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.
- 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.
- 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.
- 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:
 - 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
 - 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].

§ 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.
 - 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.
 - 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;
 - 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:

- 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.
- The amount of the progress payment will be adjusted by corrections made to prior Applications for Payment, when applicable.
- The amount of the progress payment will be reduced by amounts not approved by the Owner or by the Architect.
- 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:
 - 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;
 - 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;
 - 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,
 - consent of surety, if any, to final payment,
 - documentation of any special warranties, such as manufacturers' warranties or specific Subcontractor warranties, and
 - 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
 - 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

- 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:
 - 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

- 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

User Notes:

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.

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.

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:

- 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
- 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:
 - Federal Agencies: Department of Agriculture, Forest Service, Soil and Water Conservation .1 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.
 - 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
 - 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

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- 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.
- 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.
- 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.
- 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:

- 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).
- 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):

- 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.
- 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.
- 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.
- 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:
 - Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be .1
 - .2 An act of government, such as a declaration of national emergency, that requires all Work to be stopped;
 - 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
 - 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
 - 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;
 - 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.
 - 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:
 - 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
 - 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]. (Paragraphs deleted)

User Notes:

Guaranteed Maximum Price Amendment

This Amendment dated the 9th day of November in the year 2022, is incorporated into the accompanying AIA Document A133TM—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 9th day of November in the year 2022 (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)

Cove Built LLC 79117 Tide Rd. Arch Cape, OR 97102

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:

ltem 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.)

L	1	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:

§ 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.

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		
3 A.3.1.2 The following Spe <i>Either list the Specification</i>		xhibit attached to this Am	nendment.)		
Section	Title	Date	Pages		
A.3.1.3 The following Dra Either list the Drawings he		it attached to this Amend.	ment.)		
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.)

> **Price** Item

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

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Init.

§ 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	vear first written above.

OWNER (Signature)	CONSTRUCTION MANAGER (Signature)
Leila Aman, City Manager	Jason Stegner, Owner
(Printed name and title)	(Printed name and title)

Insurance and Bonds

This Insurance and Bonds Exhibit is part of the Agreement, between the Owner and the Construction Manager, dated the 9th day of November 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)

Cove Built LLC 79117 Tide Rd. Arch Cape, OR 97102

TABLE OF ARTICLES

- B.1 GENERAL
- B.2 OWNER'S INSURANCE
- B.3 CONSTRUCTION MANAGER'S INSURANCE AND BONDS
- B.4 SPECIAL TERMS AND CONDITIONS

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 A201TM–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:
 - 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).
 - 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).
 - 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.

repair, replacement or use of the Project.

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,
- [] **§ 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.)

Limits

[] § B.2.5.2 Other Insurance

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

Coverage

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.

§ 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.		

	Cove	erage Limits
[1	§ B.3.3.2.6 Other Insurance (List below any other insurance coverage to be provided by the Construction Manager and any applicable limits.)
[]	§ 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.3.3.2.4 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.
L	§ B.3.3.2.3 Asbestos Abatement Liability Insurance , with policy limits of not less than (\$) per and (\$) in the aggregate, for liability arising from the encapsulation, removal, handling, stort transportation, and disposal of asbestos-containing materials.	

§ 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 A312TM, Payment Bond and Performance Bond, or contain provisions identical to AIA Document A312TM, 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

- 10 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.

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 <u>unless</u> 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
٧.	Evaluation of Proposals Complete	September 9, 2022

vi.Invitation to Proposers for Interview & PresentationSeptember 12, 2022vii.Interview & Presentation MeetingsSeptember 28, 2022viii.Evaluation of Interview & PresentationOctober 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. <u>Informal Questions or Requests for Clarification</u>. 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. <u>Protest</u>. 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. <u>Addenda</u>. 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 followingthe 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 preconfee); 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/GCfee
- 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;
- ii. All proposers must be licensed under ORS 468A.720 regarding asbestos abatement projects.
- iii. All Proposers must be experienced in those services requested of City;
- iv. All Proposers must agree to execute City's Construction Agreement, if awarded; and
- v. 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 underthis 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 these lection 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



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.

TABLE OF ARTICLES

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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:

[<mark>TBD</mark>]

§ 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 E234TM–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]
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]

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User Notes:

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 A201TM_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,

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 E203TM–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 E234TM–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:
- 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 E234TM–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 B133TM-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.
 - Concealed or Unknown Condition. Concealed or Unknown Conditions as described in Section 3.7.4 of the .2 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.
 - 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.
 - 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.
 - **Subcontractor Failure.** A Subcontractor goes bankrupt or otherwise fails to perform.
 - **Price Escalations.** Subject to Section 6.3.5.5, escalation of materials, equipment, or labor prices.
 - **Estimating Errors.** The Construction Manager's estimating errors. .6
 - **Expediting Costs.** Expediting costs for critical materials. .7
 - 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.

User Notes:

- .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;
 - 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.
 - 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)

- 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.)

Init.

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User Notes:

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
 - 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
- [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.

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:
 - Take the Cost of the Work incurred by the Construction Manager to the date of termination; .1
 - .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' 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.

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§ 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:

- AIA Document A133TM–2019, Standard Form of Agreement Between Owner and Construction Manager .1 as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum
- .2 AIA Document A133TM-2019, Exhibit A, Guaranteed Maximum Price Amendment, if executed
- AIA Document A133TM–2019, Exhibit B, Insurance and Bonds
- AIA Document A201TM–2017, General Conditions of the Contract for Construction

(Paragraphs deleted)

[Deleted]

Other Exhibits:

(Check all boxes that apply.)

AIA Document E234TM–2019, Sustainable Projects Exhibit, Construction Manager as [] Constructor Edition, dated as indicated below:

(Insert the date of the E234-2019 incorporated into this Agreement.)

(1633957455)

User Notes:

Document	Title	Date	Pages
Document A201–2017 p forms, the Construction requirements, and other are not part of the Contr	s, listed below: I documents that are intended to provides that the advertisement of Manager's bid or proposal, por information furnished by the Ow pract Documents unless enumerat mended to be part of the Contract	r invitation to bid, Instr tions of Addenda relati ner in anticipation of r ed in this Agreement. A Documents.)	ructions to Bidders, san ing to bidding or propo eceiving bids or propos
This Agreement is entered into as of the	e day and year first written abov	e.	
This Agreement is entered into as of the CITY OF MANZANITA	e day and year first written abov	e.	
	(TBD)	e. RUCTION MANAGER (S	Signature)

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]

The estimated construction cost budget for the Project is \$[TBD]. [<mark>TBD</mark>] August 2023 July 2024 [TBD] [TBD] [TBD] [TBD] [TBD] PAGE 4 [TBD] Geotechnical Engineer: [TBD] .2 Civil Engineer: [TBD] Other, if any: [TBD] [TBD]

[TBD]

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[<mark>TBD</mark>] PAGE 5

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 A201TM—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.

PAGE 6

User Notes:

3

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. 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.

PAGE 8

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

• • •

User Notes:

- 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;
- A construction schedule identifying commencement and completion dates for Project milestones; and
- 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
- § 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.

PAGE 9

- § 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. PAGE 10

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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. PAGE 11

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.

- 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.
- 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.
- 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.
- 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.
- 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.
- 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. PAGE 13
- § 6.3.1.1 The Architect may order minor changes in the Work as provided in Article 7 of AIA Document A201 2017, 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:
 - **Scope Changes.** Owner revisions on scope Project items previously approved by the Owner and incorporated in the pricing of the Guaranteed Maximum Price.
 - **Concealed or Unknown Condition.** Concealed or Unknown Conditions as described in Section 3.7.4 of the General Conditions.
 - 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.
 - 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.
 - **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:
 - Subcontractor Gaps. Gaps in scope coverage between Subcontractors, including self-performed Work, that occur after the Guaranteed Maximum Price Amendment is signed.
 - 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.
 - 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.
 - **Subcontractor Failure.** A Subcontractor goes bankrupt or otherwise fails to perform.
 - **Price Escalations.** Subject to Section 6.3.5.5, escalation of materials, equipment, or labor prices.
 - **Estimating Errors.** The Construction Manager's estimating errors.
 - **Expediting Costs.** Expediting costs for critical materials.

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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:
 - Job costs due to delays beyond Construction Manager's control, as defined in Section 8.3 of the General Conditions.
 - 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.
 - 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. **PAGE 16**
- § 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. **PAGE 18**
- § 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:

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- .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;
- 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
- 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

User Notes:

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:

- 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;
- 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,

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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:
 - 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
 - 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).

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- § 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
- 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
- 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:

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

- 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;
- 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;
- 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
- 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

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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 2017the 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.

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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

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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. PAGE 26

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:

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

eost.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 polices 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.]

...

User Notes:

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 A133TM 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 A133TM 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 E203TM–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

AIA Document E203TM 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 created the attached final document rtification at 13:19:47 ET on 07/08/2022 at in preparing the attached final 2 – 2019, Standard Form of Agreement f payment is the Cost of the Work Plus are, other than those additions and

Guaranteed Maximum Price Amendment

This Amendment dated the day of in the year , is incorporated into the accompanying AIA Document A133TM–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.)

L	1	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:

§ 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:

3 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:

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User Notes:

§ 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)	CONSTRUCTION MANAGER (Signature)
(Printed name and title)	(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 simultaneously with its associated Additions and Deletions Report and this c	
under Order No. 3104236508 from AIA Contract Documents software and to	hat in preparing the attached final
document I made no changes to the original text of AIA® Document A133TM	
Price Amendment, as published by the AIA in its software, other than those associated Additions and Deletions Report.	additions and deletions shown in the
associated redutions and Detections report.	
(Signed)	
(Title)	
	_
(Dated)	

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
- B.2 OWNER'S INSURANCE
- B.3 CONSTRUCTION MANAGER'S INSURANCE AND BONDS
- B.4 SPECIAL TERMS AND CONDITIONS

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 A201TM–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:
 - 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).
 - 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).
 - 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]

he Sele he a	Ow ect i lesc	ner sh the typ tription	nal Extended Property Insurance. nall purchase and maintain the insurance selected and described below. ness of insurance the Owner is required to purchase and maintain by placing an X in the box(es) next to n(s) of selected insurance. For each type of insurance selected, indicate applicable limits of coverage or one in the fill point below the selected item.)
	[1	§ 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.
	[1	§ 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.
	I]	§ 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.
	[1	§ 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.

User Notes:

§ 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.)

	Cov	verage Limits
[]	§ B.3.3.2.6 Other Insurance (List below any other insurance coverage to be provided by the Construction Manager and any applicable limits.)
[1	§ 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.3.3.2.4 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.3.3.2.3 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.3.3.2.2 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.3.4 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 A312TM, Payment Bond and Performance Bond, or contain provisions identical to AIA Document A312TM, 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

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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 A201TM–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

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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:
 - 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).
 - 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).
 - 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. PAGE 4

- § 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

§ 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. PAGE 5

§ 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]. PAGE 7

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 Payment Bond Performance Bond Penal Sum (\$0.00)

§ 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

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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

- 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.
- 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.

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;
 - 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.
- 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.
- 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
- 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.
- 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,
 - 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

§ 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

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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.

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].

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§ 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.
 - 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.
 - 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.
 - 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;
- 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.

- 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:

- 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;
- 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;
- 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.

PROTECTION OF PERSONS AND PROPERTY ARTICLE 10

§ 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:
 - employees on the Work, the Owner's staff, faculty, visitors, students, and vendors, and other persons who may be affected thereby;
 - the Work and materials and equipment to be incorporated therein, whether in storage on or off the .2 Project Site, under care, custody, or control of the Contractor, a Subcontractor, or a Sub-subcontractor;
 - 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
 - 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.
- 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:
 - 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.
 - 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
- 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):

- 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.

User Notes:

- 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.
- 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:

- 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).
- 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):

- 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.
- 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.
- 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.
- 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.
- 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.
 - 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.

- 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 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;

- 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
- 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 Sub-contractor, 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
 - repeatedly refuses or fails to supply enough properly skilled workers or proper materials; .1
 - 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:
 - 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
 - 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.

- 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.
- 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.
- 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

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

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

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TBD PAGE 3

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 8.3.1, 15.3.2, 15.4

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2.1.2, 9.3.1, 9.3.3, 9.6.8, 9.10.2, 9.10.4, 15.2.8 **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 **PAGE 10**

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. <u>Dimensions not</u> 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 E203TM 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 E203TM 2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document G202TM 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.

...

- § 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 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 <u>or the Architect</u> 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 <u>supervise</u>, <u>coordinate</u>, <u>and</u> perform the Work <u>in accordance with the Contract Documents in a professional</u>, <u>safe</u>, <u>and workmanlike manner and in accordance with all laws</u>, <u>statutes</u>, <u>ordinances</u>, <u>codes</u>, <u>rules and regulations</u>, <u>lawful orders of public authorities</u>, <u>and professional standards applicable to the industries and trades involved</u>, <u>including without limitation strict compliance</u> with <u>all applicable federal</u>, <u>state</u>, <u>and local laws and building codes</u>, <u>certification requirements applicable to the Work</u>, <u>and other policies or standards incorporated in the Contract Documents</u>.
- § 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.

...

- § 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. PAGE 16
- § 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, <u>Subcontractor</u>, or other special <u>guarantees or</u> 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. <u>The obligations under this Section 3.5.2 shall not relieve the Contractor of its warranty</u> 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 <u>site Project Site</u> 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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- 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.

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- § 3.9.1 The Contractor shall <u>continuously</u> employ a competent superintendent and necessary assistants who shall be in attendance at the Project <u>site-Site</u> 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 <u>prepare and</u> submit for the Owner's and Architect's <u>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</u>

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.
 - 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.
 - 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.

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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.

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- § 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.

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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.

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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.

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User Notes:

- § 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

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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.

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- § 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 <u>site-Project Site</u> 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 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. **PAGE 26**
- § 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 <u>supply</u> <u>material or equipment or perform</u> a portion of the Work at the <u>site. Project Site.</u> 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.

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§ 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.

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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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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

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

§ 6.1.4 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. Contract.

§ 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

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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 <u>cleaning up and maintaining</u> the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the <u>Architect-Owner will</u> allocate the cost among those responsible.

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§ 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:

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- .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.

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§ 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

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§ 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 <u>and Owner</u> 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 eertification 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, <u>The Contract Time</u> is the period of time, including authorized adjustments, allotted in the <u>Contract Documents for time from the date of commencement to Substantial Completion of the Work.</u>

• • •

- § 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.

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§ 9.3.1 At least ten-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 eertified. 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

User Notes:

- § 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 eertify 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 PAGE 34
 - .3 failure of the Contractor or a Subcontractor to make payments properly to Subcontractors Subcontractors, Sub-subcontractors, or suppliers for labor, materials or equipment;

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...

- .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. <u>Documents:</u>
- .8 unsatisfactory Work progress;
- 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 eertification payment are removed, eertification 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.

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<u>Payments by the Contractor to Subcontractors shall be subject to retainage of five percent (5.0%) on the total progress payment.</u>

§ 9.6.3 The <u>Architect Owner</u> 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 <u>Owner and Architect a</u> 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 <u>Owner and Architect</u> will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the <u>Owner's or Architect</u>'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 <u>Owner or Architect</u>. In such case, the Contractor shall then submit a request for another inspection by the <u>Owner and Architect</u> 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 <u>Owner and Architect will promptly make such inspection</u>. When the <u>Architect finds-Owner and Architect find</u> 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 <u>Payment, which constitutes a representation</u> 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:
 - <u>.1</u> 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;
 - 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;

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- <u>a</u> 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)
- <u>.4</u> consent of surety, if any, to final payment, (5)
- documentation of any special warranties, such as manufacturers' warranties or specific Subcontractor warranties, and (6) and
- 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
- 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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- 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 <u>all necessary and reasonable</u> precautions for safety of, and shall provide reasonable protection to prevent damage, injury, or loss toto:
 - .1 employees on the Work 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
 - other property at the <u>site Project Site</u> or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course <u>of construction.of construction</u>; 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 eaused 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.

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- § 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

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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 <u>reasonable</u> discretion, to prevent threatened damage, injury, or <u>loss. loss and immediately notify the Owner.</u> 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.

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§ 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.
- 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.
 - 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):

- 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.
- 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.
- 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/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).
- 1.2 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):

- 2.1 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.

- 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.
- <u>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.</u>

- 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.
- 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 <u>not related to phasing of the Work</u> 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.
- 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 <u>site Project Site</u> 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. <u>Failure to provide timely notice in accordance with Section 15.1.3 constitutes waiver of the Claim.</u>

...

§ 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
- 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]

User Notes:

§ 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.
- 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 <u>construction or mechanic</u>'s lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the <u>perfection</u>, <u>foreclosure</u>, <u>or lien</u> 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

User Notes:

- § 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.

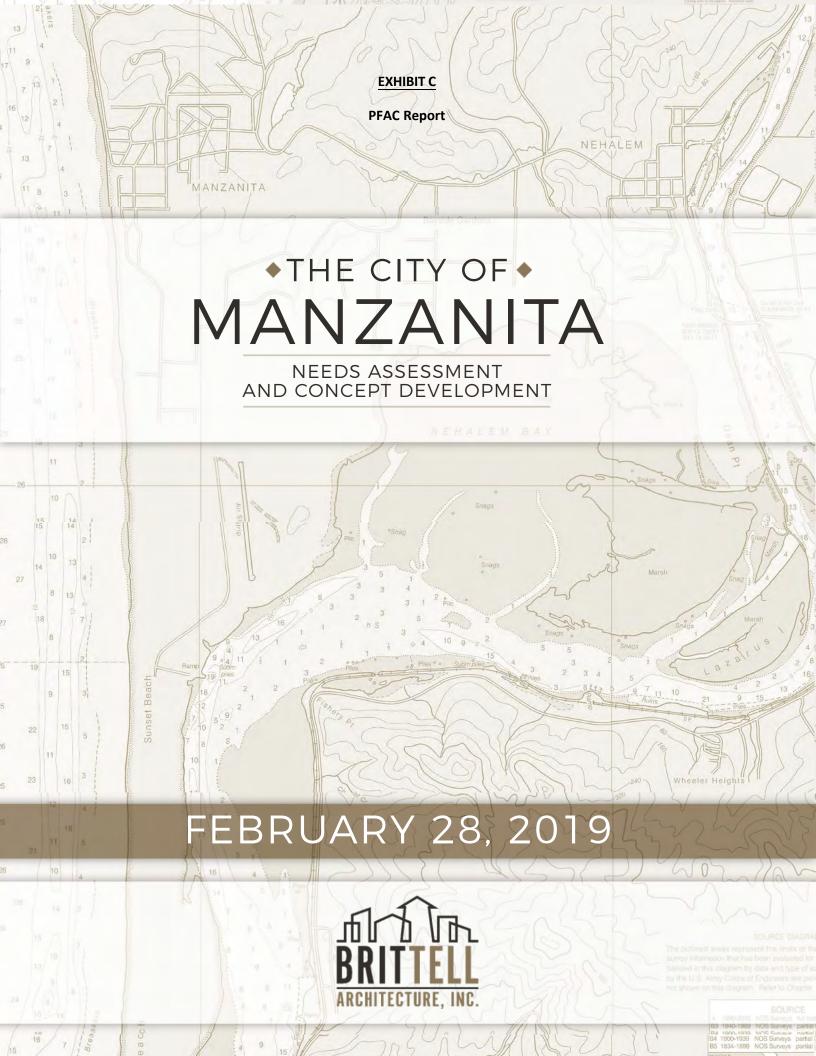
§ 15.4.4.3 The Owner and Contractor grant to any person or entity made a party to an arbitration conducted under this Section 15.4, whether by joinder or consolidation, the same rights of joinder and consolidation as those of the Owner and Contractor under this Agreement.



Certification of Document's Authenticity

AIA® Document D401 ™ - 2003

I, , hereby certify, to the best of my knowledge, information and belief, tha simultaneously with its associated Additions and Deletions Report and this counder Order No. 3104236508 from AIA Contract Documents software and the document I made no changes to the original text of AIA® Document A201 TM Contract for Construction, as published by the AIA in its software, other that the associated Additions and Deletions Report.	ertification at 13:36:27 ET on 03/31/2022 hat in preparing the attached final 4 – 2017, General Conditions of the
(Signed)	
(Title)	
(Dated)	



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

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

Nehalem, OR

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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

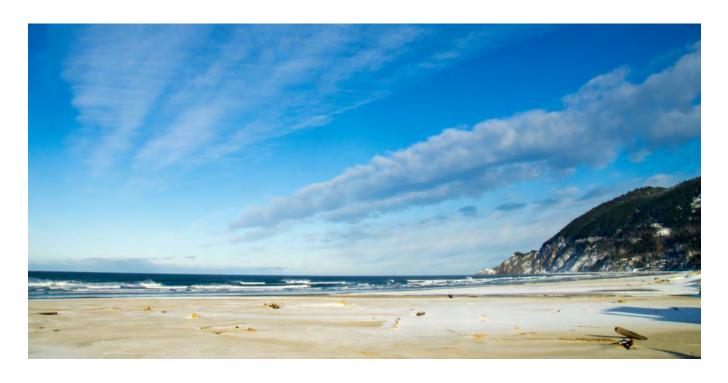
Randy Kugler

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 uni	its by yea	r					
			Outside City lim	its in UGB			
		# of residential				# of residential	
<u>Y</u>	'ear	dwelling uni	<u>ts</u>	Δ	Year	dwelling units	Δ
	2005	1,1	129		2005	250	
	2006	1,3	163	34	2006	266	16
	2007	1,3	198	35	2007	291	25
	2008	1,2	206	8	2008	292	1
	2009	1,2	216	10	2009	297	5
	2010	1,2	220	4	2010	298	1
	2011	1,2	225	5	2011	301	3
	2012	1,2	233	8	2012	306	5
	2013	1,2	238	5	2013	310	4
	2014	1,2	245	7	2014	316	6
	2015	1,2	252	7	2015	315	(1)
	2016	1,2	266	14	2016	318	3
	2017	1,2	283	17	2017	327	9
	2018	1,2	298	15	2018	332	5
				42		•	
Dunia etia un		Average		13		Average	6
Projections	2020		400			205	
10 year	2028		428			395	
20 year	2038	1	558			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:

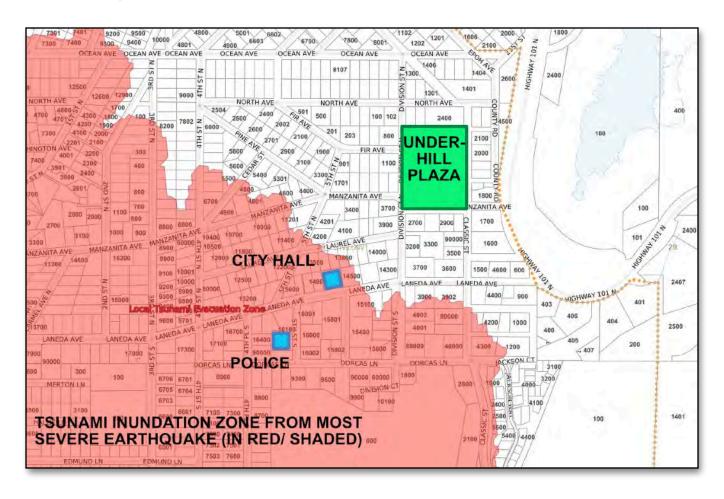
- Disaster resilience: Due to the potential for significant damage during a Cascadia subduction event, a new facility should be able to remain functional after an earthquake. Collaboration between the City of Manzanita and the Emergency Volunteer Corps of Nehalem Bay (EVCNB) produced the Underhill Plaza 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 facilites (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 facilites	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 mangers 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 highpriority item, and the PFAC discussed the issue as it related to the development of City property. It was decide 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 an largely nonfunctional mechanical, electrical, and plumbing systems. Rough order-of-magnitude cost estimates for this work are provide in the 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 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 that 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 if 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 load 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 2019	bond measure
December 2019	select architect for remaining work
July 2020	construction documents ready
August 2020	out to bid
September 2020	bid reviewed
October 2020	contract awarded/ start of construction
Fall 2021	dedication ceremony
Winter 2021	sale 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 2021	select architect for remaining work
September 2021	construction documents ready
October 2021	out to bid
December 2021	bid reviewed
December 2021	finalize negotiations with lender
January 2022	contract awarded/ start of construction
Spring 2023	dedication ceremony



Manzanita Community Center				r		02/08/19
Current Space	Immediate Needs	Future Needs	Long Range or Bonus	Security	Space	Notes
City Adm						
80	150	165	182	В	Public counter	Space for 2+1 semiprivate. Room to lay out drawings. Security arrangement.
0	400	400	400	В	public restrooms	Sized to accommodate public meetings. Includes "family restroom"
0	100	100	100	С	receptionist	shared by all
450	600	660	726	С	general admin office	open plan @150sf/ person. Acoustical control.
0	140	140	140	С	workspace	copier, shredder, counter for assembling mailers, cabinets for office supplies. Adjacent to small meeting room and general admin
40	100	100	100	С	files: on-hand confidential	Active files in locked cabinets (STR, water, court) accessible to general office space
15	50	50	50	С	files: public records w/ general staff access	property files, planning commission and city council minutes
200	240	240	240	Е	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	С	meeting space, small	10 person. Admin meetings, interviews, etc (doubles as MOC). HR/personal meetings will happen in enclosed offices.
600	600	600	600	С	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	С	break room	4-6 people, coffee bar and fridge, hot water. Shared w/ police.
60	100	100	100	С	staff restrooms	secure for employees, separated by sex, 50sf ea.
120	150	165	182	С	archives	court records, property/ building permits, permanent archives. Confidential archives (payroll) kept in locked cabinets within same space
864	0	0	0	С	general storage	Lost-and-found, recycling, ready-to-shred, flags, holiday lights, bunny head. Interior and exterior access. Unconditioned?
0	80	80	80	С	IT room	discrete cooling system
1						

Subtotals

10.0% demographic growth factored (blue)

2,737 3,800 3,890 3,990 sf



Manzanita Community Center				-		02/08/19
Current Space	Immediate Needs	Future Needs	Long Range or Bonus	Security	Space	Notes
Police	50		50		** police areas are secure from re	
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]
-						
Emerger overlaps	-	leeting S	Space	В	MOC (Manz. Ops. Center)	collapsible wall tables w/ wall radios, 12 people. Monitors and whiteboards. Glass walls to public area?
0	80	80	80	В	public radio interface room	Adjacent to MOC, with closing cabinet to contain permanent radio equipment.
0	0	0	0	Α	white board & pinup space	located in public lobby
0	0	0	0	В	potable water access	conduit from 101 water treatment plant
overlaps		•	า	В	food prep	with provision for wood cooking
overlaps				В	indoor shelter space	for inprocessing, medical, vulnerable populations
0	30	30	30	В	storage, staff disaster supplies	cots, blankets, food for staff & volunteers.
0	150	150	150	В	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]
		_				_



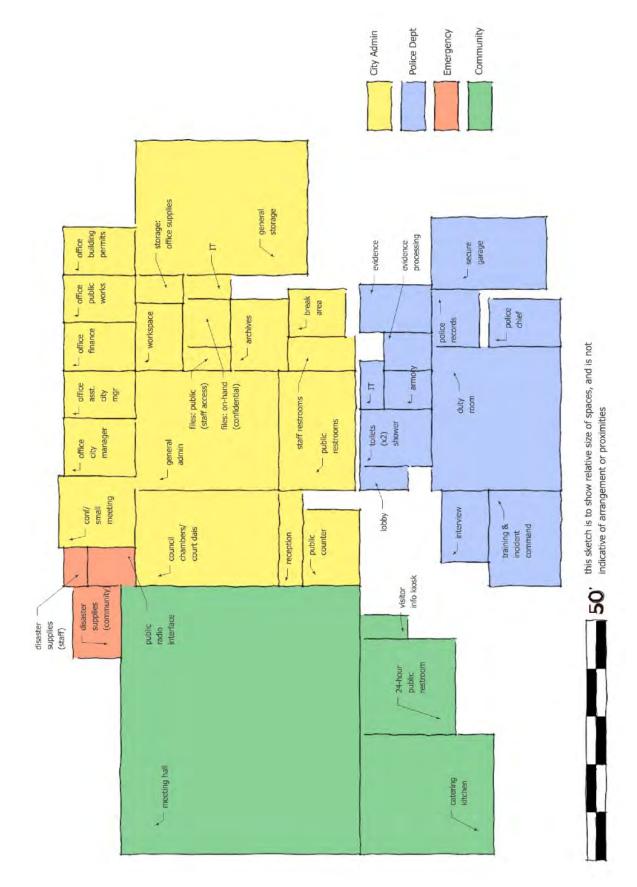
Manzanita Community Center						02/08/19
Current Space	Immediate Needs	Future Needs	Long Range or Bonus	Security	Space	Notes
Commun	ity Use					
0	400	400	400	Α	24-hour public restrooms	including "family restroom"
0	50	50	50	Α	visitor arrival/ welcome / info hub	electronic interface for phase 1?
0	2,275	2,503	2,754	В	meeting hall	for community meetings, court, city council, and audits. 325 occupants max, 160 comfortably. Movable partitionwalls.
0	700	700	700	В	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	?	Α	coffee shop / community cafe tenant	·
0	0	0	?	Α	post office integration	
0	3.425	3.653	3.904 sf		Subtotals	1



Manzanita Community Center					
Current Space Immediate Needs Future Needs	Range or Bonus Security	Space	Notes		
Site Needs	2 222	huilding factorints (from above)			
11,023 11,733 12 1,850 2,035 2	2,239	building footprints (from above) 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	0,695	parking, offices @1 per 400sf	-		
6,280 7,254 8	3,583	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	bike shelter	(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	2,722	emergency camping area (400 persons, size "M" event)	40Sf/ person +40sf/ person circulation. =32,000sf. <u>Partial overlap w/ parking or public park</u> (subtract that area)		
overlap Large Meeting Spa	ce	emergency services admin	includes medical and registration areas.		
overlap Emergency Campii	ng	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	9,062	Outdoor Totals	(116,300 sf total available in 2.67 acres)		

B. Relative Spatial Needs Diagram





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

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	
1 01100 (2), 00 04 10 pta0 20,0 attaos.g.t.ca,	_,,,,,	
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
EXCESS/(DEFICIT)	-\$5,600	\$2,400
Additional Assumptions:		
Annual bond cost to tax payer over 15 years, based on property AV of \$500K	\$180	\$279

NOTES:

1 This is a 35% increase in sq ft of existing city hall.

2. Immediate Needs

Total sq ft

			5,1.55	
	City admin (3,800 sq ft plus 15% unassig	ned) ¹	4,370	
	Police (2,100 sq ft plus 15% unassigne	d) 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
	SOURCES			
Current fund	ds			
	Timber Sale		\$400,000	\$400,000
	City Expansion Fund		\$120,000	\$120,000

	Timber Sale City Expansion Fund	Total - current funds	\$400,000 \$120,000 \$520,000	\$400,000 \$120,000 \$520,000
Possible funds				
	Bond (net of transaction costs)		\$3,000,000	\$4,400,000
	Sell existing City Admin property	У	\$450,000	\$450,000
		Total - possible funds	\$3,520,000	\$4,920,000
		TOTAL FUNDS	\$4,040,000	\$5,440,000
		EXCESS/(DEFICIT)	\$30,500	(\$4,220)

Additional Assumptions:

Annual bond cost to tax payer over 15 years, based on property AV of \$500K

\$270 \$396

6,785

NOTES:

3. Long Range (20 year) Needs

SQUARE FOOTAGE

	Total sq ft		7,435	
	City admin (3,990 sq ft plus 15% unass	signed) ¹	4,589	
	Police (2,475 sq ft plus 15% unassig		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 S				
	Timber Sale		\$400,000	\$400,000
	City Expansion Fund		\$120,000	\$120,000
	City Expansion Fund	Total - current funds	\$520,000	\$520,000
Possible fund				
	Bond (net of transaction costs)		\$3,400,000	\$4,900,000
	Sell existing City Admin propert		\$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 bo	nd cost to tax payer over 15 years, base	d on property AV of	4265	44.0
	\$500K	· · ·	\$306	\$442

NOTES:

¹ This is a 100% increase in sq ft of existing city hall.

4. Long Range (20 Year) needs + Emergency Hub

SQUA	RE FO	OTAGE
-------------	-------	-------

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

NOTES:

1 This is a 100% increase in sq ft of existing city hall.

5. Long Range + Quonset for storage

SQUARE FO	OTAGE		
•	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 So	OURCES		
	Timber Sale	\$400,000	¢400 000
			\$400,000
	City Expansion Fund Total - current funds	\$120,000 \$520,000	\$120,000 \$520,000
	Total - Current funds	3320,000	\$320,000
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	d cost to tax payer over 15 years, based on property AV of \$500K	\$342	\$478

NOTES:

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			
		2,846 299	
Emergency hub (260 sq ft plus 15% unassigned) ¹ Quonset Relocate and Renovate		2,450	
Quotiset relocate and removate		Low Range @	High Range @
COSTS		\$435/sf	\$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% Contin	gency	\$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 F	UNDS	\$6,240,000	\$7,740,000
EXCESS/(DE	FICIT)	\$73	(\$3,575)
Additional Assumptions:			
Annual bond cost to tax payer over 15 years, based on property AV	of	\$469	\$604

NOTES:

\$500K

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

NOTES:

1 This is a 100% increase in sq ft of existing city hall.

8. Long Range + New Meeting Hall + Quonset for storage

COLLABE E	COTACE		
SQUARE F	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	
		3,904	
	New Meeting Hall Quonset Relocate and Renovate	2,450	
	Quonset helocate and henovate	Low Range @	High Range @
COSTS		\$435/sf	\$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
	Quonset Relocate and Renovate for storage	\$403,380	\$403,380
	Tota	\$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
	Tota	\$419,610	\$419,610
	20% Contingenc	y \$1,208,247	\$1,446,167
	TOTAL PROJECT COST	\$7,249,481	\$8,677,001
FUNDING Current fund			
	Timber Sale	\$400,000	\$400,000
	City Expansion Fund	\$120,000	\$120,000
	Total - current fund		\$520,000
Possible fund	ds		
	Bond (net of transaction costs)	\$6,200,000	\$7,600,000
	Sell existing City Admin property	\$450,000	\$450,000
	Total - possible fund	\$6,720,000	\$8,120,000
	TOTAL FUND	\$ \$7,240,000	\$8,640,000
	EXCESS/(DEFICIT	(\$9,481)	(\$37,001)
	Additional Assumptions:		
Annual bo	and cost to tax payer over 15 years, based on property AV of	ĊEEO	¢cor
	\$500K	\$559	\$685

NOTES:

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)

\$135

Additional Assumptions:

Annual bond cost to tax payer over 15 years, based on property AV of \$500K

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

	Total \$1,999,662
Quonset hut (remediation only)	\$260,358
Comm. group meeting/conf. Space (750 sf @ \$238/sf)	\$178,500
Police (2,500 sf @ \$238/sf)	\$595,000
City admin (4058 sf @ \$235/sf)	\$965,804

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 \$144

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 as 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, \$1,3 demolition, margins and adjustments, mechanical, electrical & plumbing)		
Wall insulation	2,700 sq. ft. @ \$1.20/ sq. ft.	\$3,240
Ceiling insulation	5,478 sq. ft. @ \$1.30/ sq. ft.	\$7,121
Doors	8 ea. @ \$800 installed	\$6,400
Furniture	\$15/ sq. ft. per Brittell Architecture	\$82,170
Permits, infrastructure, parking, landscaping @ 10% %		\$146,008
Total costs for building ready occupancy \$		\$1,606,080
Total costs per sq.ft. @ 5,478 sq. ft\$293		

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.

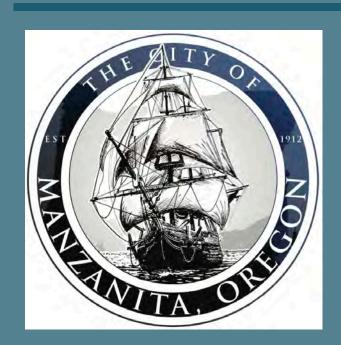
Prepare preliminary partitions of 3 building lots fronting Division Street by 2020 and announce to local builders, realtors and through other social media outlets that the City is taking reservations by interested parties on the sale of said lots which will then be sold on the earliest date allowable 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:

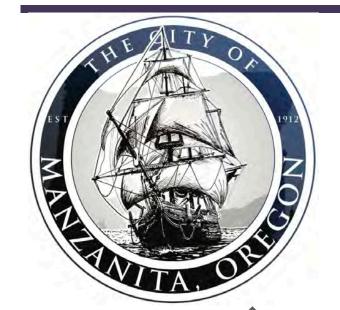
- 1. How much additional funding is the Lender willing to provide the City on say December 1, 2021? By this date, 40% of the original loan has been repaid amounting to \$621,000 which could be applied towards the new loan amount.
- 2. How much money can the City set aside in the City Hall Expansion Fund 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



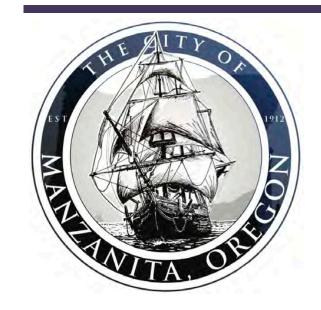
RESEARCH OBJECTIVES

- 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- Survey analysis.

January 5

January 6 Report on survey results to city council.

March Final written report.

Manzanita Listens

4



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)

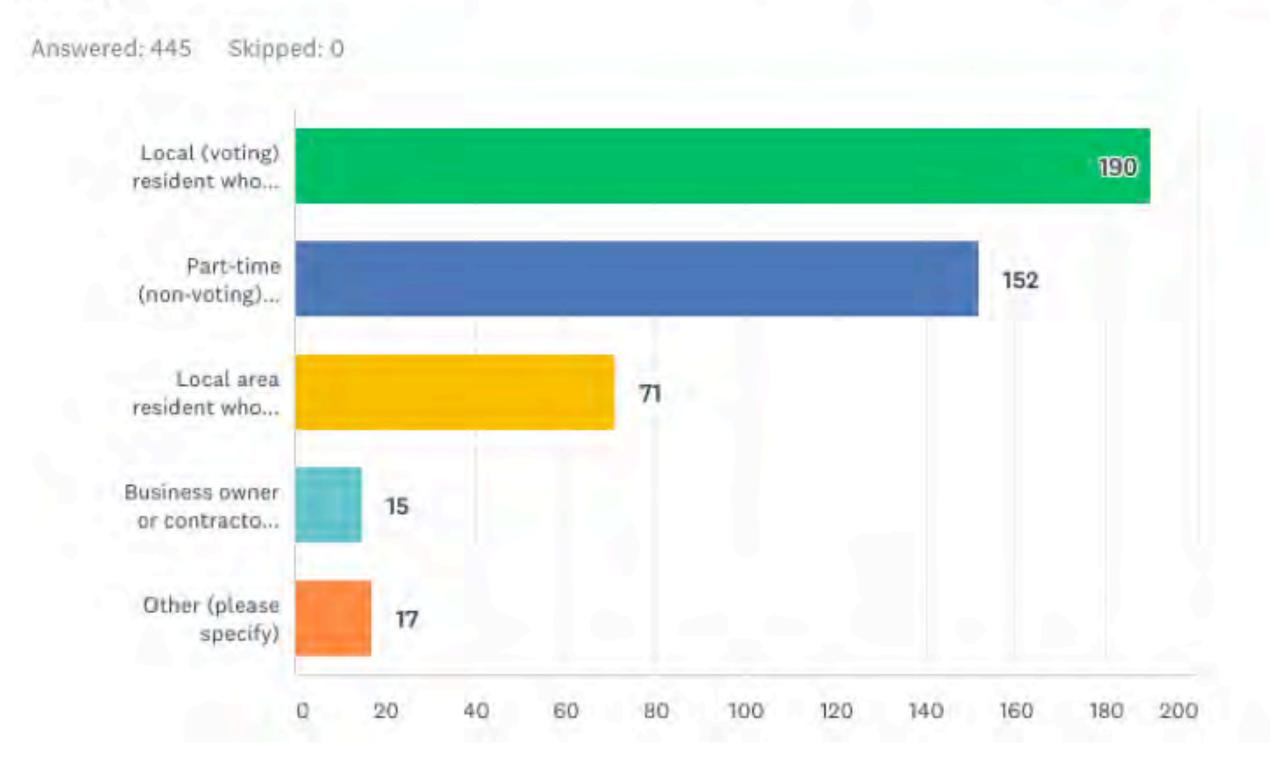
190 Local voting residents

152 Part-time, non-voting

71 Local area resident

15 Manzanita business owner or contractor

17 Other



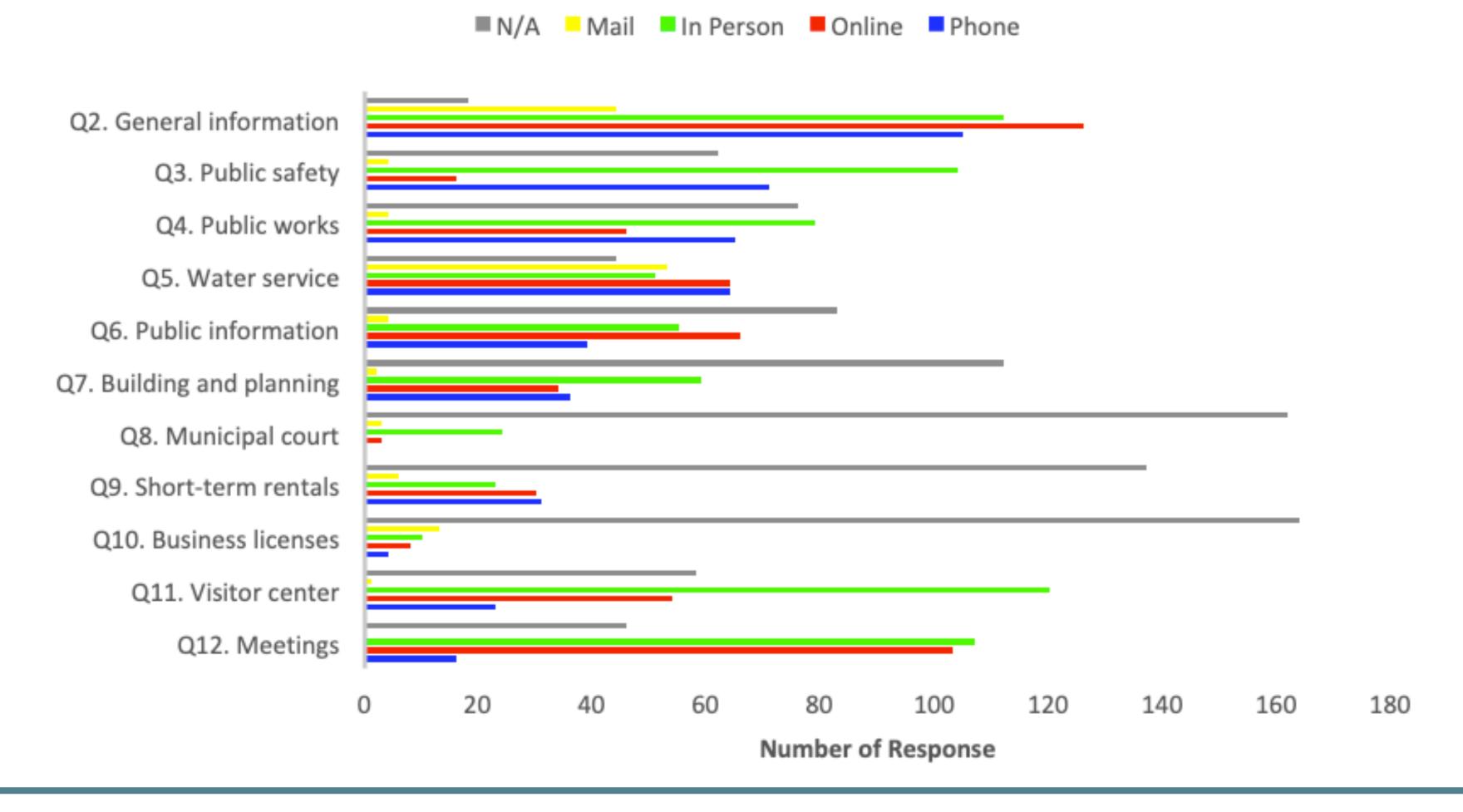


INTERACTION WITH CITY SERVICES

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.



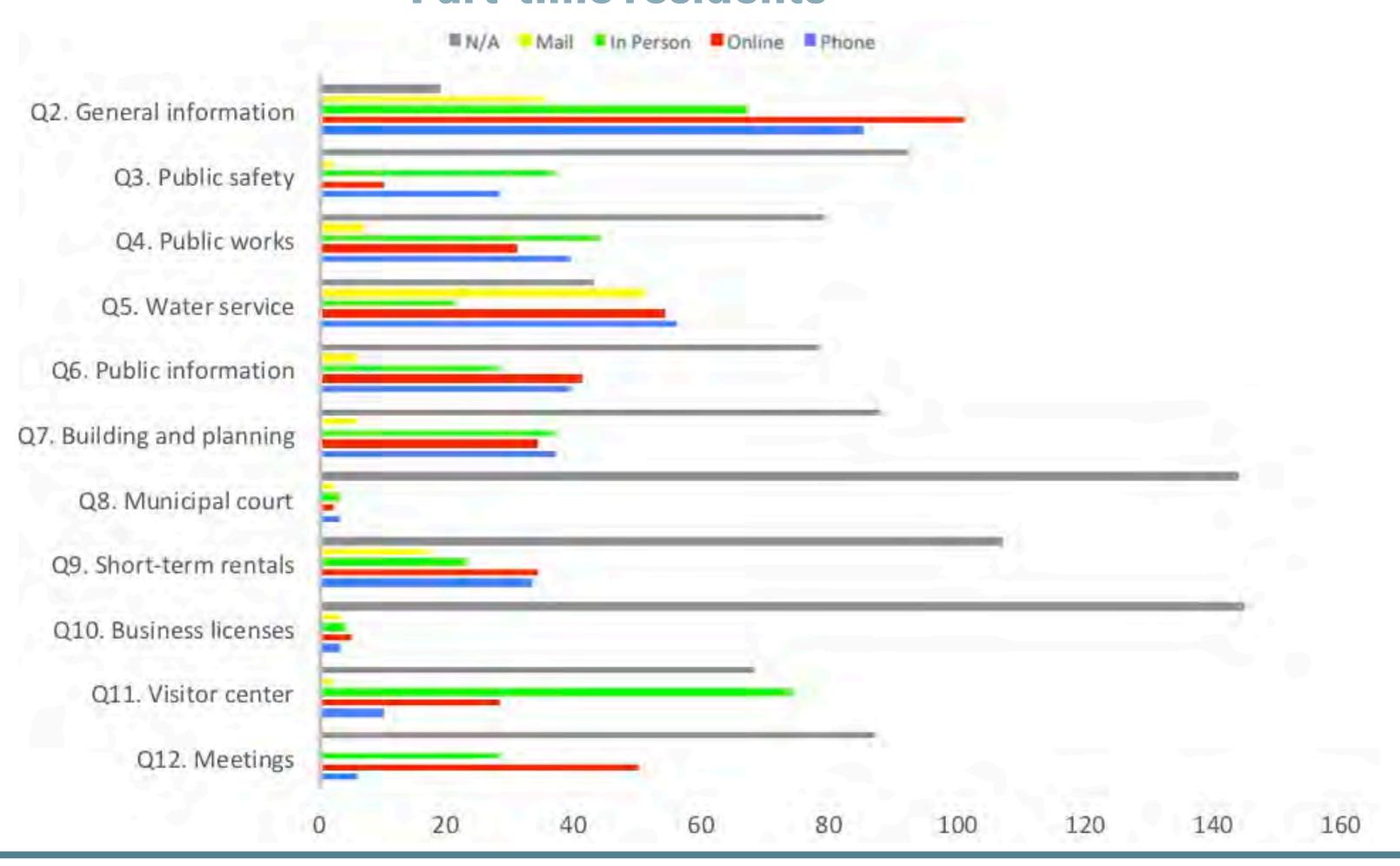


INTERACTION WITH CITY SERVICES

Part-time residents

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.

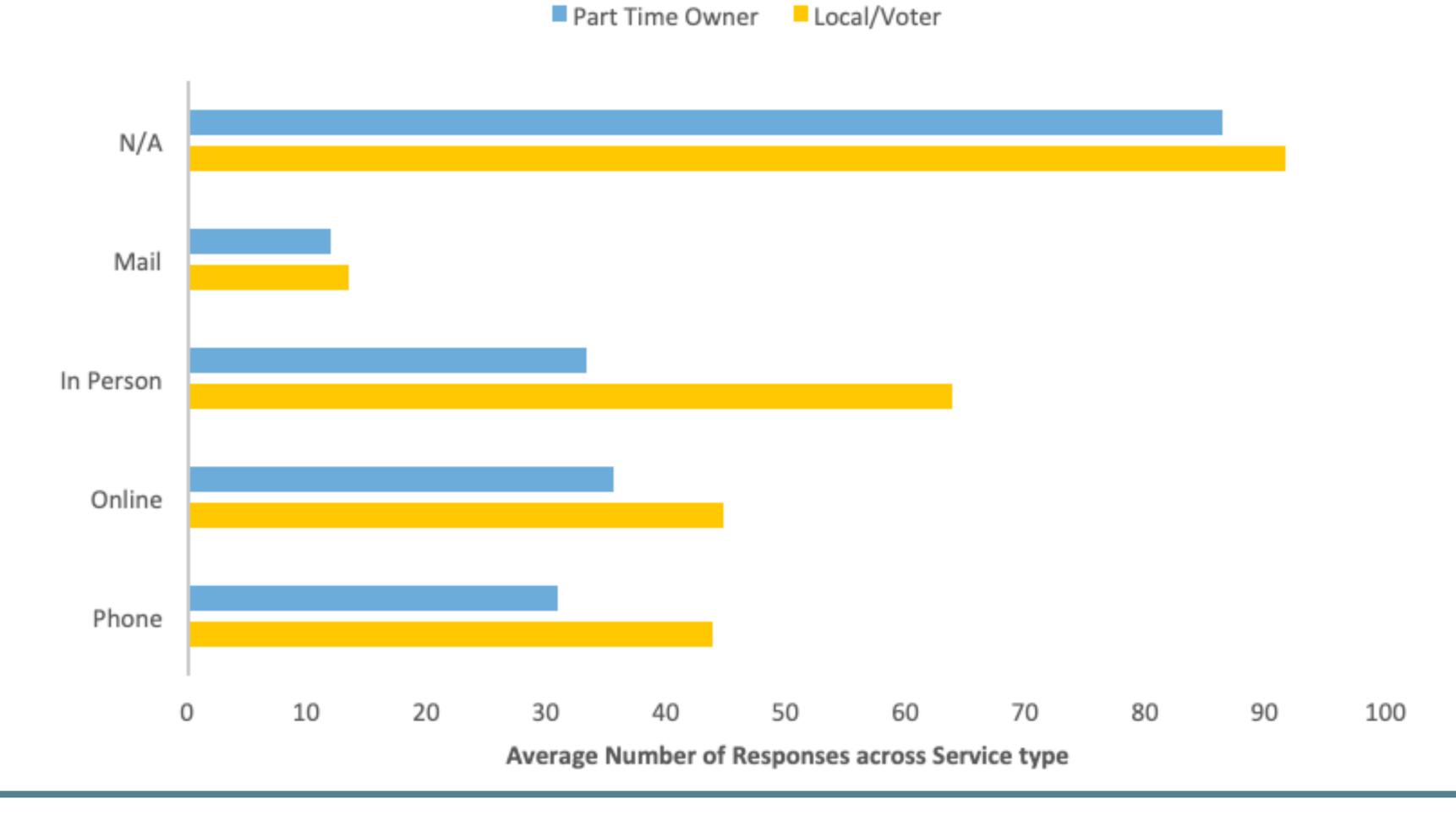


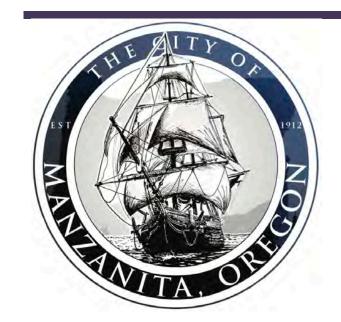


INTERACTION WITH CITY SERVICES

Local vs. part-time residents

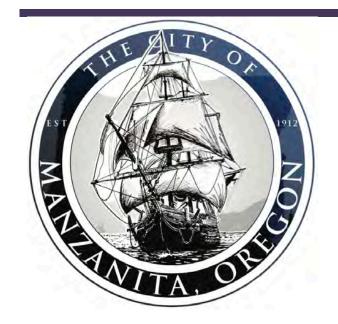
Local residents are much more likely to visit city hall to access services.





Additional services

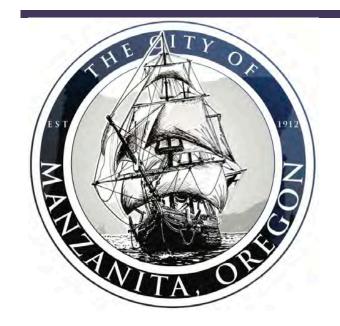
- Large and small meeting rooms
- **Electric vehicle charging**
- Disaster preparedness and gathering point
- Many suggestions for both inside and outside the building



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



Divisions: areas of disagreement

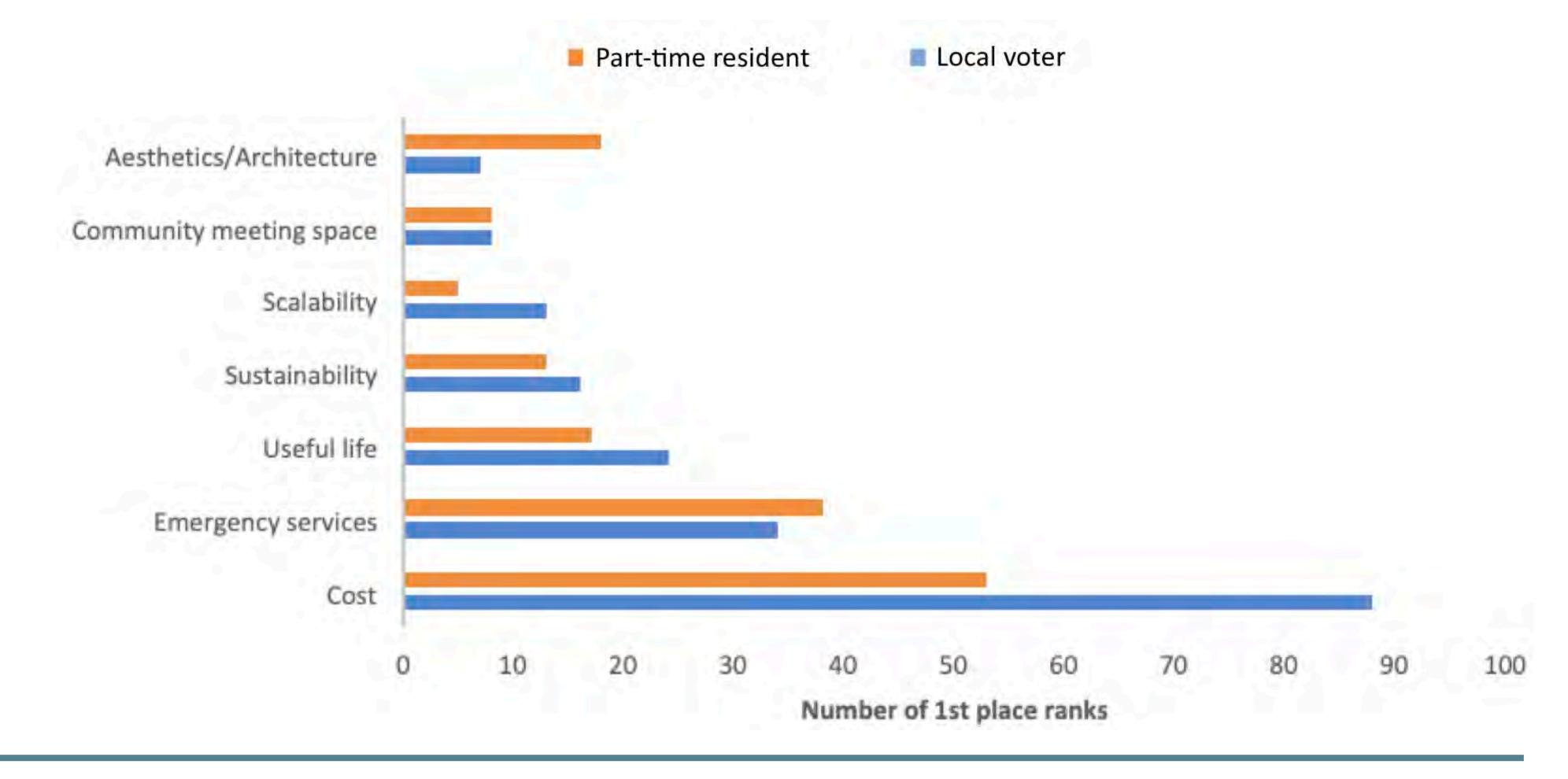
- Low cost vs. uses and durability
- Look (aesthetics) is important vs. look is not important
- **Emergency preparedness**
 - Do we try to take care of neighbors and visitors vs. everyone should prepare for themselves
 - Preparedness is not important because the fire station is supposed to cover preparedness
- 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.





Building aspects: Ranking

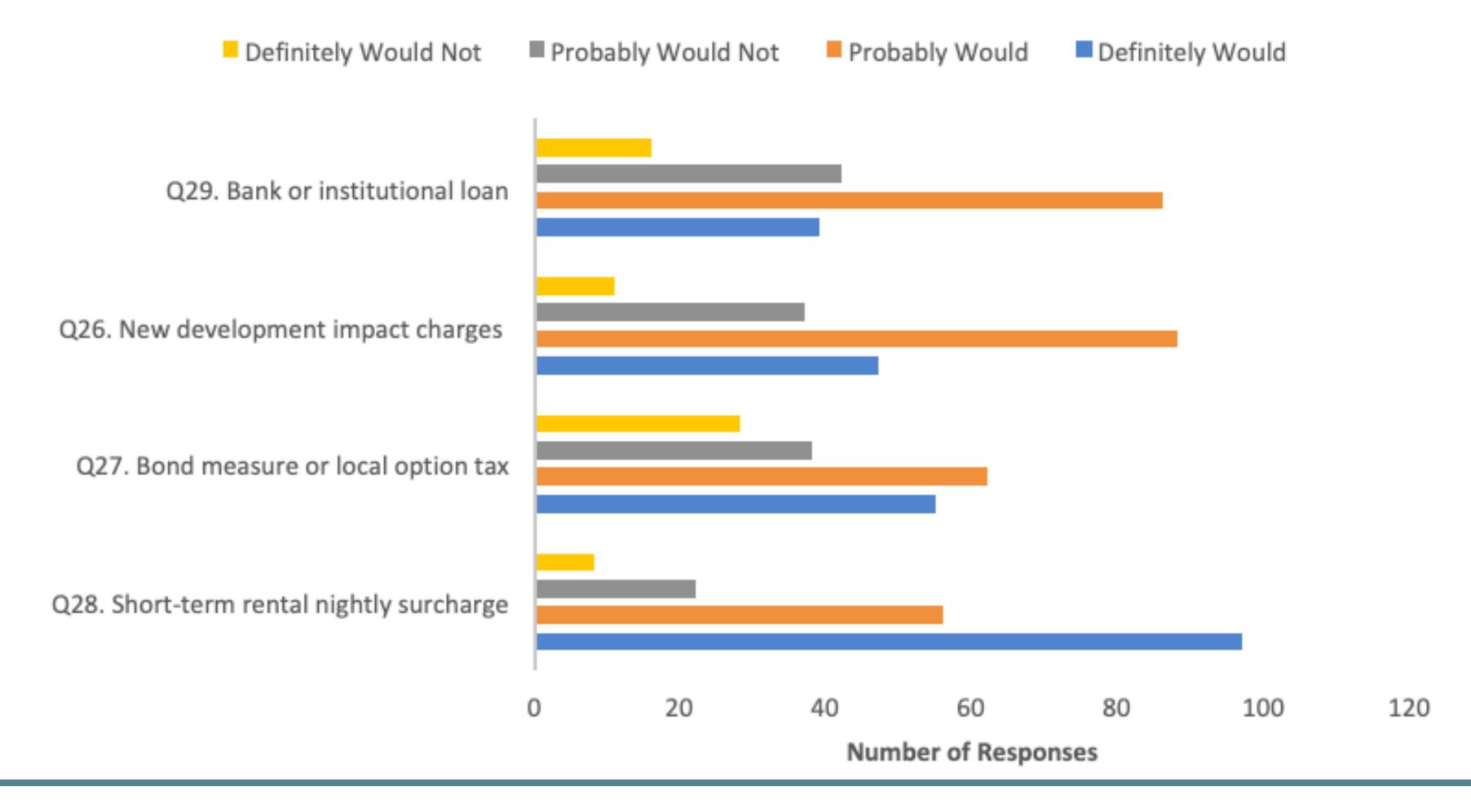
- Three most important issues: cost, emergency services, and sustainability
- Some expressed anger with the Mayor, City Council, and and government in general
- Responses showed the effects of the Covid pandemic on building plans

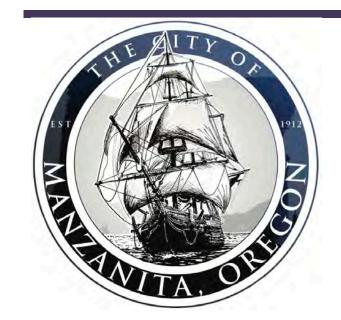


FINANCING METHODS

Local voters only

Local voters are open to several financing options, but favor a surcharge on shortterm rentals.





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

Manzanita Listens



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

Manzanita Listens

EXHIBIT E

Manzanita Listens Report



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. This report is supplemented with the feedback from the external Manzanita stakeholders separately from the main body of the report (see Appendix C).

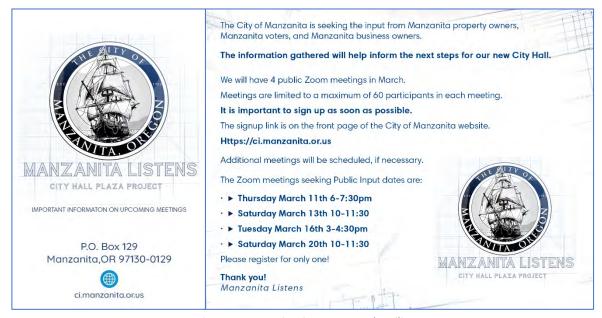


Figure 1: Manzanita Listens Postcard Mailing

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.

Manzanita Listens Public Meeting Summary 4-1-21, p. 3

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).

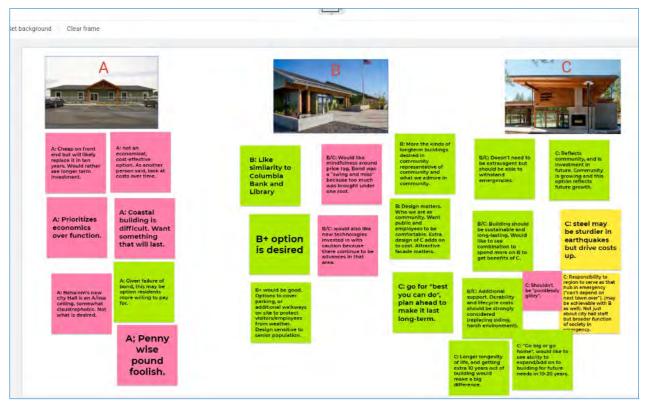


Figure 2: Example of Jamboard Virtual Whiteboard

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 the 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 option 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 questions 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. 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





- Introductions and Information (20 Minutes)
 - Meeting Call to Order

Where We Are & What We are Hearing

How This Meeting Will Work

- Listening (60 minutes)
 - Breakout Rooms (Building Concepts & Financing / Amenity Options)
- 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 com munity

..serve as the heartbeat of the City - where our com m unity goes for resources and assistance - inform ation, bill pay, and em ergencies

.. 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'needs

..effective, durable, functional, usable and sustainable

..em brace 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

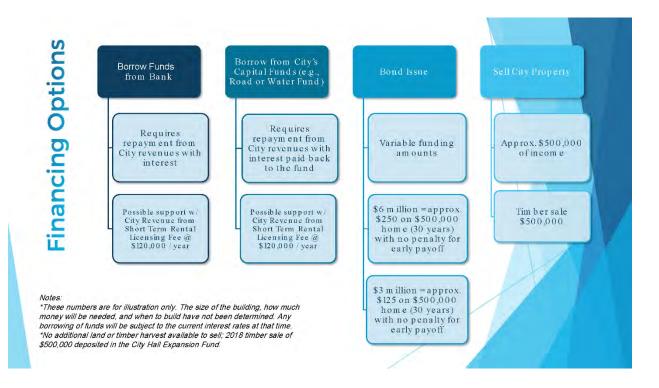
What Decisions Have Been Made

- 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











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 the 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



Leaders of Manzanita,

Cove Built LLC is excited for the opportunity to partner with the officials, Bearing Architecture, and Citizens of Manzanita to become your Builder and Construction Manager. Cove Built is owned and operated by Jason Stegner, who has been in the construction industry for the past 22 years. As a resident of Falcon Cove for the past eight years, my family has become an integral part of the north coast. We have a 10-year old daughter in Fire Mountain School, and my partner Beth volunteers on various boards to support our community. Cove Built was started after years of working as a senior project manager for larger companies such as O'brien and Company, Walsh Construction, and Andersen Construction.

The goal when creating the company was to become a building leader that focuses on community-based projects. Because this is our home, I have decided to focus our energies on projects that make the coast a better place to live. This has led us to projects with Neah Kah Nie School District, North Coast Recreation District, Care Inc., The Rinehart Clinic and Astoria Food Hub. We are currently in pre-construction with the North Coast Land Conservancy, planning the building of a future office space for their team. We would be happy to provide references for each of the partners listed above.

Our Superintendent for this job is Dave Cram. Dave lives in Nehalem. As a city councilor in Nehalem, Dave understands the varied opinions and expectations of the Nehalem citizens. Dave has built in and around Manzanita for the past 18 years in both residential and commercial projects. Dave led the completion of 3 houses in Manzanita and 3 commercial jobs in the area over the past two years. In our experience, the closer we are to a job the better attention it receives. If selected to be your partner, Dave will be onsite full time and Jason will be on site multiple times each week. Both Dave and Jason and much of our team lives within a few miles of the jobsite.

Cove Built has a complete in-house framing, siding, and finish carpentry crew. One of the keys to success to building at the coast is to have control of the crew that is building the structure. Our crews have years of experience building structures on the coast and understand how to work in our weather and how to properly dry-in and dry-out buildings.

Building civic projects in the communities where we live and work is what Cove Built does, and we are excited for opportunity for the City of Manzanita. We believe we are the most qualified, dedicated, and the local choice to build the new City Hall.

Regard, Jason Stegner – Owner Cove Built LLC



Manzanita City Hall Request for Proposal

By

Cove Built LLC

Owned and Operated from Cove Beach, Oregon

Describe your company's experience with the construction of publicly-owned buildings, and describe how this previous experience will benefit the City. (4 Pages)

The owner and lead project manager of Cove Built is Jason Stegner. Jason has 20 years of experience working on public projects. Jason started his career with a degree in Mechanical Engineering and went on to get his master's degree in Structural Engineering. Following a few years of Engineering work, Jason went on to work for Andersen Construction and Walsh Construction in Portland. During these years in Portland, Jason worked as a project engineer, superintendent, project manager and senior project manager on a variety of public projects. He led the efforts on many multi-family new and remodel projects in Portland. Most of these projects were procured through the CMGC process. Over his career, Jason has contributed to the building of over 500 million dollars of construction from Portland to the Oregon Coast. Since working and leading projects on the Oregon Coast, Jason has been involved with the Seaside Convention Center, Nehalem Auditorium Addition, Remodel of the Care Inc. office space, Construction of the covered play structures at Nehalem and Garibaldi Elementary Schools, Neah Kah Nie Nurse's office, Rinehart Clinic remodel, and Neah Kah Nie Woodshop remodel. Currently Cove Built is engaged in the 5.5-million-dollar renovation of the Jewell School Gymnasium. Jason has worked diligently to build relationships with all major subcontractors operating on the north coast. Over the past year, Cove Built has built three



homes in Manzanita and has a good working relationship with the building official. Cove Built will bring our years of construction experience, local knowledge, and a community approach to working with the city and residents of Manzanita to complete a city hall that the community will be proud of.

Cove Built has a mission of engaging with construction projects that add to our Coastal communities. Jason lives in Falcon Cove and our proposed superintendent, Dave Cram, lives in Nehalem. Our laborer and carpenter teams all live within 30 miles of Manzanita. We live in this community and strive to make the community a place that is better for all. Our children go to local schools, we shop at the local grocery stores, and we spend our free time enjoying these wonderful places. It only makes sense that we are spending our energies, creating structures that go to the benefit of all.

As mentioned, Jason has been working on public funded projects for most of his career. As such, he understands how important it is to get the best value for these dollars. We understand that there will be many opinions and voices on how the team allocates the money and we take that responsibility seriously. Manzanita is a small community with limited resources. On each of our projects, we endeavor to be as open about the cost and the process as possible. Our goal is to become a true partner in the process. We hope to leave the project with a quality building but also with lifelong relationships and ideally friendships. As members of the north coast community, we value the diverse opinions and will strive to become a partner that listens and reacts within our skillset to provide value and quality.

We are also willing to be anywhere the project requires at short notice. There may be times when someone from our team is needed immediately at the job site or at an impromptu meeting at the City offices to resolve issues, complaints, or provide an open ear. Living as close to this project as we do provides the benefit that we are going to be there when needed.



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.

Seaside Convention Center – O'brien and Company 2018 – 2019 \$10,500,000

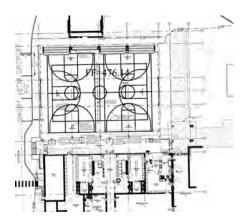


Procured as a competitive CMGC Process while working for O'brien and Company

As the area manager for O'brien and Company, Jason led the preconstruction, budget management, and oversight of the Seaside Convention Center. Project included new structure as well as remodel of existing facilities.

Worked daily with the Convention Center to manage around ongoing events and a staff that worked onsite daily

Jewell School – Locker room and new Gym 2022-2023 \$5,500,000



Currently in construction on the Jewell School locker room remodel and new gym. Jason worked with the owner's representative, architect, and owner for nine months on preconstruction of the design-build effort to get the Jewell project to construction. Jason and team navigated the heavy inflation and uncertain times to start of a basic program and get the project approved and into Construction.



Neah Kah Nie Covered Play Structures – 2020-2021 \$1,200,000



The project had numerous challenges throughout the changing times of the Covid Era. Even though the metal building was delayed due to Covid by 3 months, by the supplier, Cove Built worked hard with the School District to turn over the project before students came back to the school. The structure has become an excellent resource for the area kids to have a place to play during the rainy winter.

North Coast Recreation District Auditorium Lobby – 2020-2021 \$550,000



Cove Built procured the Lobby project on a lump-sum bid. Cove Built supplied a bid that was 20% lower than any other contractor which made it possible for NCRD to proceed with the project. The project had the challenge of adding upon a very old building. The project was completed on budget and on schedule to allow for the Recreation District to reopen the Auditorium following the Covid Closures.



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 is Project. (2 pages)

Jason will be involved at every step during the preconstruction and construction phase of the project. Jason has built a career by building relationships with the goal of true partnership on a project. Our philosophy has been that these projects take a dedicated team approach. Successful preconstruction is hard work. The outcome of an occupied structure does not happen without a dedicated effort. We have always felt that if we can build a team that is working towards a unified goal, the project will succeed. Jason will be available every day to answer questions, work through pricing, and provide experience on successes and failures to drive towards a cost and schedule that works best for the City of Manzanita. Our phones will be on every hour the of the day and will not hesitate to provide input and value as the team sees fit.

We are currently working with Klosh Group on the Jewell Gym Project. With Klosh leading the process, we successfully navigated both Covid and high inflation to successfully get the project to contract. We respect the leadership and experience that Klosh brings to each job and feel confident that we can successfully work with Klosh and Bearing Architecture to assist where needed throughout preconstruction and hopefully into the building of the future of Manzanita.

We are always excited to create a new relationship with Architects and design teams. After reviewing examples of the designs created by Bearing, we are existed to partner with them on this project. It is exciting to bring a fresh design approach to Manzanita and we believe that Bearing can provide a design that will make the citizens of Manzanita excited and proud. We look forward to meeting the team and seeing how we can assist to give the City beautiful, functional design while striving to meet budget.

Describe how you plan to promote and support the Community Values and Goals described in Section III of this RFP.

We pride ourselves in being community focused. We purposely choose to build jobs with a Community Spirit over those that do not have the same values. As mentioned in prior sections, building community is our mission and we strive to make the north coast a better place to live, work, and recreate. Throughout preconstruction Jason will be available as much as



needed to participate in community forums and community interaction. A big part of supporting the community is achieving the best product for the best price. Jason will work hard with local subcontractors to get early pricing as close as possible to reality which in turn gives the team the ability to pivot in other directions should the cost exceed the budget. We believe that we understand Manzanita better than most other contractors. We have listened to the conflicting dialogs and understand that this project is very sensitive for many in the community. Once the program has been developed and the schematic design has been completed, we will work through cost efforts. We will be a partner in proposing alternatives that may either lower cost or provide better value for the client. We are happy to think outside of the box and come up with ideas that may help find the fine line between design and budget.

Provide an example of a costing exercise evaluating 2 or more design schemes to assist an Owner in deciding which scheme to proceed with.

During the preconstruction effort for the Jewell Gym project, the team was unsure if the best current value would be to build the new Gym out of steel, wood, or masonry. Prior to completing the design of the Gym, Cove Built did an analysis of the three different structure types. The goal was clearly to bring the structure cost down as low a possible thereby putting valuable budget towards tangible items such as locker, curtains, and scoreboards. Jason reached out to various subcontractors to understand unit costs in the high inflation era. Jason created a spreadsheet that showed quantity and unit cost for each construction type. Following the exercise, it was very straightforward to select a metal building as the structure type and move directly into design. Cove Built recognizes that quick turnaround on these exercises moves the process along as soon as possible to the next series of tasks, thereby pushing the design to a revised set of documents that can be priced as needed.



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, 300/4 Preconstruction and 75% Construction) (3 Pages)



Jason Stegner

Cove Built LLC: Owner and project manager for both preconstruction and construction.

B.S. – Mechanical Engineering – Santa Clara University

M.S. - Structural Engineering - University of Idaho

Lieutenant – US Navy (retired)



50% Preconstruction – 25% Construction

2019- Present - Owner/Senior Project Manager - Cove Built LLC

Jewell Locker room and Gym, NKN Covered play structures, NKN Nurse's office, NKN Woodshop, NCRD Auditorium, Care Inc office remodel, Rinehart Clinic Remodel, Astoria Food Hub remodel.

10 new residential homes in Nehalem, Manzanita, Falcon Cove, Arch Cape, and Cannon Beach.

2014-2019 Area Manger - O'Brien and Company

General project manager and area supervisor for Fresh Foods (Cannon Beach), Alexandroff Dental, Greenwood Resources, Seaside Convention Center, Nehalem Elementary Seismic retrofit, Liberty Elementary Seismic, Nestucca Elementary School renovation, Surf Sand Remodel, Ocean Lodge Remodel.

2002-2014 Superintendent/Project Manager - Walsh Construction

A to Z Winery, Powells Books, Trenton Senior Housing, Portland Housing Authority multi-family renovation, Standard Insurance tenant improvements, Tetherow Clubhouse, Couch 9 multifamily apartment building.



Dave Cram - Superintendent

Dave Lives in Nehalem, Oregon and has contributed to dozens of construction projects in and around Manzanita.

Council member of the City of Nehalem

Avid Outdoorsman that loves fishing on the Nehalem River Journey level finish carpentry and excels at bringing finishes together



10% Preconstruction - 100% Construction

2019 to Present - Superintendent Cove Built

 Onsite Superintendent for Care remodel, NKN Covered play structures, NKN Nurse's office, NKN Woodshop remodel, NCRD Auditorium addition, and six residential homes (both new and remodels)

2015-2017 - Superintendent - Obrien and Company

- Onsite Superintendent for Greenwood Resources office building, Tom's Fish and Chips.
- Finish Carpentry Superintendent for Pelican Restaurant (Cannon Beach)

2003-2015 Licensed General Contractor - Residential Homes

Lead Forman on construction of dozens of homes in and around Manzanita



Describe your approach to subcontractor bidding and contracting once the construction funding and design scheme have been approved (300/4 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 preconstruction efforts? Discuss any risks and/or opportunities in your proposed strategy as it relates to subcontractor availability, early procurement of materials, labor shortages, etc. (1 page)

We envision there will be two primary pricing efforts prior to final construction drawings and subcontractor bidding. If selected, we will attend all meetings as the schematic design develops. It is very helpful to meet weekly to review the design by the week and provide input on the direction as well as cost impacts. Once the SD design has been developed and reviewed by the team, Cove Built will provide our SD pricing. Jason will be going out to subcontractors for all significant scopes of work. Most of the subcontractors will be local to the North Coast. For instance, over many years we have built a trusting relationship with contractors such as Diamond Heating, Inland Electric, and Terry's Plumbing. All of these, among others will be called upon to provide budgets. We will work with these subs to see that they understand the job even if the details are not presented. Cove Built has a full carpentry crew and as such can provide very accurate framing, siding, and finish carpentry budgets. It is our hope that our carpenters will be building the city hall but realize that in the end this will be a biddable scope of work. Once the SD budget has been produced, we anticipate a lengthy review of the budget and scope. Following this effort, the drawings will be adjusted accordingly, and the designers should make progress towards a design development set. Once the design development set has been produced, we would start the pricing effort again using a similar process to the schematic pricing. Following this DD pricing we should be able to set the GMP goals with known contingencies. Upon completion of the Construction Set, Cove Built will facilitate the bid with proper public notices and start a public sub bid process. Once bids are received, the budget will be finalized, and contracts can be executed. In today's procurement world it is very important to recognize long lead items and start the procurement and finalize a construction schedule.

We would strongly consider adding Plumbing, Mechanical, and Electrical to the team. These scopes have many inter-related scopes and the cost variables are highest with these contractors.

It is vital to include local subcontractors in the pricing process. This ensures that they are engaged and planning for the project. At bid time we almost always see these subs provide bids and get excited about the project.



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? (1 Page)

In our experience, the most important part of the process is teamwork and communication. Weekly meetings are key to ensuring the process is tracking along schedule goals. Throughout these meetings, it is helpful to start identifying materials and finishes. Cove Built can provide constructability reviews of proposed finishes such as siding, roofing, and windows. We can help steer the process between the cost and aesthetics of the job. During pricing we can provide alternates to see which direction may make sense. Ultimately the teamwork and decision making that the group puts into the schematic design decisions will play the most important role in achieving a budget.

Describe how you manage price volatility and market conditions when providing cost estimates during the design phase without being unreasonably conservative.

Having trusted subs assisting us through the iterations of pricing is the most important aspect of getting the price correct from the beginning. The second most important part of the process is to contract with subcontractors and release materials as soon as possible. At the Jewell School project, we chose to include both a construction contingency as well as a cost escalation contingency into construction. The escalation contingency is open book and only used when subs and suppliers provide backup showing that the materials indeed increased in cost.

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.

Typical projects carry two contingencies. One contingency is carried by the owner. The other is carried by the contractor. We also suggest including a cost escalation contingency. The owner's contingency is typically for changes to scope as defined by the designer/owner. Contractor's contingency is for minor scope misses during bid as well as unknowns. Cost escalation should only be used to pick up true material increases between the time of bidding and the time of procurement.

What is your company's willingness to put its fee or a portion thereof at risk for not meeting the budget target?

We believe that no one should work without compensation. This includes our subcontractor base. If we set a budget at the end of design development and do not achieve the budget at GMP it is usually because the market forces have played a large factor. It is our job to collectively target and meet a GMP. The success depends on the many months prior to final sub bid.



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. (3 Pages)

Hourly Rates:

Project Manager = 100/Hr – For Meetings, Scheduling, Estimating, and Workshops

Superintendent = \$95/HR – For existing site exploration

Journey Carpenter (Boli Wages) \$70/HR – For destructive demolition/repair during investigation

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 300/o SD construction estimate; drawing and document review; budget reconciliation; other tasks common in the preconstruction phase; and other tasks identified in the CMGC contract.

o Preconstruction fee = \$30,000

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)

Not needed

Liability insurance per section B.3.2.2 of Exhibit B

Liability Insurance = 1%



Performance and Payment Bond per section B.3.4 of Exhibit B

P&P Bond = 1.75%

CM/GC fee

Fee = 7%

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.

Cove Built LLC has zero lawsuits of any form throughout the evolution of the company.

General Conditions:

The General Conditions can be found on the following page. The assumption for these general conditions would be a 12-month construction project that would require forklift during construction. We plan to provide security fencing around the project and have a full time construction office trailer and connex for storage.



PHASE	DESCRIPTION	SUB/SUPPLIER	TOTAL BASE BID	BANK G702/703 \$ 335,050.00
DIVISION I - GENERA	AL CONDITIONS			\$ 335,050.00
			\$ -	
01 30 01	Project Management		\$ -	
01 31 10	Project Manager		\$ 44,000.00	
01 31 15	Superintendent		\$ 132,000.00	
01 32 23	Survey and Layout		\$ - \$ 15,000.00	
01 32 23	Survey and Layout		\$ 15,000.00 \$ -	
	Temporary Facilities		\$ -	
01 51 13	Temporary Electrical	By Owner	\$ -	
01 51 13	Power Bill	By Owner	\$ -	
01 51 13	Generators and Fuel	Needed if no temp power	\$ -	
01 51 13	Misc. Cords and Accessories	Treeded if the territy period	\$ -	
01 51 13	Spider Boxes/Cords/Temp lighting		\$ 3,600.00	
0.0	Spines Boxes/SSines/18mp lighting		\$ -	
01 51 33	Telecommunications		\$ 3,000.00	
			\$ -	
	Temp Utilities		\$ -	
01 51 36	Temp Water		\$ -	
01 51 36	Hookup Fee	By Owner	\$ -	
01 51 36	Fire Hydrant Meter	By Owner	\$ -	
01 51 36	Water Bill	By Owner	\$ -	
		,	\$ -	
01 52 001	Construction Facilities		\$ -	
01 52 001	Conex/Storage		\$ 3,500.00	
01 52 001	Office Trailers		\$ 20,000.00	
			\$ -	
01 52 16	First Aid and Facilities		\$ -	
01 52 16	First Aid Kits/Viistor PPE/Gloves/ Glasses		\$ 2,800.00	
			\$ -	
01 52 19.1	Port O Johns		\$ 7,200.00	
			\$ -	
01 52 25	Field Office Equipment		\$ -	
01 52 25	Computers		\$ -	
01 52 25	Fax/Copier/Printer	In OH&P	\$ -	
01 52 25	Copier Setup	In OH&P	\$ -	
01 52 25	Digital Cameras	In OH&P	\$ -	
01 52 25	Field Office Equipment - Office Supplies		\$ -	
			\$ -	
	Construction Equipment		\$ -	
01 54 01	Trucks/Cars		\$ -	
01 54 02	Project Fuel		\$ 5,000.00	
01 54 04	Fork Lifts		\$ 24,000.00	
01 54 06	Scissor Lift		\$ 5,200.00	
04.50.00	O		\$ -	
01 56 00	Security Fencing		\$ 12,500.00	
	Clooping and Waste Management		\$ -	
01 74 13	Cleaning and Waste Management Progress Clean		\$ -	
01 74 13	Final Clean	Du Ourses	\$ 26,000.00	
01 74 25	Dump Boxes	By Owner	\$ -	
U1 14 ZJ	Pullip Doves		\$ 27,500.00 \$ -	
	Contract Documents		\$ -	
01 85 01	Project Plan Prints		\$ 750.00	
010001	1 Tojout Fiant Times		1.	
01 90 01	Mobilization		\$ - \$ -	
01 90 01	Office/Conex Mob		\$ 3,000.00	
310001	CCOTON MOD		\$ 3,000.00	
01 95 01	Special Inspections	By Owner - Cove Built to coordinate	\$ -	
	Special moportions	Dy Chile Cove Built to coordinate	\$ -	



COUNCIL STAFF REPORT

o: Mayor and City Council Date Written: Updated

November 2,

2022

Reviewed: Leila Aman, City Manager

From: Dan Weitzel, Public Works Director

Leila Aman, City Manager

Subject: Dorcas Lane Reconstruction Project Update

ACTION REQUESTED

Delegate the North Coast Civil Design to release the bid contracts for advertisement.

HISTORY OF PRIOR ACTIONS AND DISCUSSIONS

October 7, 2020 – City Council approved a Contract with OTAK for the design, overview and construction administration for the Dorcas Lane Reconstruction Project.

<u>July 7, 2021</u> – Council reviewed a draft proposal and contract to transfer the design, overview and construction administration of the Dorcas Lane Reconstruction Project from OTAK to North Coast Civil Design. Council instructed staff to revise the proposed contract and have the City Attorney review the final contract for approval.

<u>September 8, 2021</u> – Council approved a contract with North Coast Civil Design (NCCD) to finalize the design, overview, and provide construction administration services for the Dorcus Lane Reconstruction Project.

<u>September 7, 2022</u> – Council Listen to an update from staff on the status of the Dorcas Lane Reconstruction Project.

ANALYSIS

Final design and engineering has been completed for the Dorcas Lane Reconstruction Project. The project will include replacement of an existing 4" asbestos watermain with a new 8 inch water main. All new water mains will be High Density Polyethylene (HDPE). HDPE is a very resilient to seismic movement, leaks, and wear. The project will also include the replacement of 43 water service liens, and 5 new hydrants. A storm line will be installed from the existing storm system on South Third street to the intersection of Dorcas land and Classic Lane. This will also include the reconstruction of the road surface and base.

Bid documents including the project contract have been reviewed by the City Attorney, City Manager and staff. The project will progress as followed:

City Council Meeting	9-Nov-22

1st Advertisement/Release of ITB	10-Nov-22
2nd Advertisement/Prequalification Applications Due	17-Nov-22
Due Date for Written Questions, Protests, Requests for Change, and Requests for Clarification	17-Nov-22
Last Day to Issue Addenda	26-Nov-22
Bid Due Date	29-Nov-22
Bid Opening	2:00 p.m. PST
First-Tier Subcontractor Disclosure Due Date and Time (Must be within two hours after Bid Closing)	4:00 p.m. PST
December Council Meeting Notice of Intent to Award the Contract	7-Dec-22
Deadline for Award Protests	14-Dec-22
Award of Contract	16-Dec-22
Precon	3-Jan-23
NTP	10-Jan-23
Fiscal YE	30-Jun-23
Construction Completion	30-Jun-23
Construction Days	168

Public outreach will include contacting homeowners in the impacted area, outreach through the city's website and social media and email list serve. This will start once the project has started to be advertised. Staff will also place construction information signs throughout the project area updated as needed.

BUDGET IMPACT

Dorcas Ln Reconstruction Project is fully funded in the 2021-2022 budget from the Storm Water Fund (\$194,400), Water Construction Fund (\$751,359), and the Road Fund (\$614,611). Total resources included in the FY 2022-2023 budget is \$1,560,370. The project estimate included in Attachment 2 is within this budgeted amount.

WORKLOAD IMPACT

The Public Works Director will manage the engineer contract and oversee the design and construction of the improvements. The City Manager will, at a minimum provide oversight of the Public Works Director to ensure compliance with all public contracting rules including facilitating legal review and finalizing of all contracts and bid documents; review and approve all project invoices and payments including the review of all change orders and other issues

that arise during construction; participate in project briefings; engage with the Public Works Director to provide updates to City Council; secure and organize support services (including Information Technology) to ensure community outreach and project information is available to the public. The Accounting Manager will be responsible for reviewing and processing all project payments and ensuring compliance with the project contract and public contracting rules.

ATTACHMENTS

- 1. Road Construction Drawings (For Review)
- 2. Dorcas Contract (For Review)

CITY OF MANZANITA

DORCAS LN. AND 4TH ST. RECONSTRUCTION PROJECT

GENERAL NOTES

ATTENTION CONTRACTORS: OREGON LAW REQUIRES YOU TO FOLLOW RULES ADOPTED BY THE OREGON UTILITY NOTIFICATION CENTER. THOSE RULES ARE SET FORTH IN OAR 952-001-0010 THROUGH OAR 952-001-0090. YOU MAY OBTAIN COPIES OF THE RULES BY CALLING THE CENTER. (NOTE: THE TELEPHONE NUMBER FOR THE OREGON UTILITY NOTIFICATION CENTER IS (503) 232-1897 OR 1-800-332-2344). AT LEAST TWO (2) BUSINESS DAYS PRIOR TO CONSTRUCTION, THE CONTRACTOR SHALL NOTIFY THE OREGON UTILITY NOTIFICATION CENTER OF THE DATE AND LOCATION OF THE PROPOSED CONSTRUCTION, AND THE TYPE OF WORK TO BE PERFORMED.

- 2. ALL EXISTING FACILITIES TO BE MAINTAINED IN-PLACE BY THE CONTRACTOR UNLESS OTHERWISE SHOWN OR DIRECTED. CONTRACTOR TO LEAVE EXISTING FACILITIES IN AN EQUAL OR BETTER THAN ORIGINAL CONDITION AND TO THE SATISFACTION OF THE ENGINEER.
- 3. IN ACCORDANCE WITH O.R.S.209.140, IF THE CONTRACTOR FINDS IT NECESSARY TO INTERFERE WITH OR PAVE OVER ANY ESTABLISHED PUBLIC LAND SURVEY CORNER OR ITS ACCESSORIES, WITHIN THE PROJECT LIMITS, THE CONTRACTOR SHALL NOTIFY THE COUNTY SURVEYOR PRIOR TO DOING SO.
- IN ACCORDANCE WITH O.R.S.209.150, CONTRACTOR SHALL BE RESPONSIBLE FOR REPLACING ALL SURVEY MONUMENTS DISTURBED OR DESTROYED DURING CONSTRUCTION. REPLACING THE
- EXISTING UTILITY LOCATIONS SHOWN (PLAN & PROFILE) ARE APPROXIMATE ONLY. NO PREDESIGN POTHOLING WAS DONE TO ESTABLISH THESE LOCATIONS. CONTACT UTILITY COMPANIES FOR PREMARKING. CONTRACTOR TO POTHOLE EXISTING UTILITIES AT CONNECTION & CROSSING LOCATIONS TO VERIFY DEPTH, LOCATION & TYPE OF EXISTING WATER MAIN, SEWER MAIN & STORM MAIN PRIOR TO ORDERING CONNECTION MATERIALS. NOTIFY ENGINEER IMMEDIATELY IF EXISTING CONDITIONS VARY FROM THAT SHOWN. NOTIFY ENGINEER 24 HOURS PRIOR
- CONTRACTOR SHALL VERIFY ALL CONDITIONS ON THE JOB SITE INCLUDING ALL DIMENSIONS, GRADES, ELEVATIONS, EXTENT AND COMPATIBILITY TO THE EXISTING SITE CONDITIONS, AND WITH THE WORK DESCRIBED ON THE CONTRACT DRAWINGS. ANY DISCREPANCIES OR UNEXPLAINED CONDITIONS THAT AFFECT OR CHANGE THE WORK DESCRIBED IN THE CONTRACT DOCUMENTS SHALL BE BROUGHT TO THE ENGINEER'S ATTENTION IMMEDIATELY. CONTRACTOR SHALL NOT PROCEED WITH ANY OF THE WORK IN THE AREA OF DISCREPANCIES UNTIL ALL SUCH DISCREPANCIES ARE RESOLVED. IF THE CONTRACTOR CHOOSES TO DO SO, THEN IT IS UNDERSTOOD THAT HE SHALL BE PROCEEDING AT HIS OWN RISK AND INCUR ALL COST, IF ANY,
- TECHNICAL SPECIFICATIONS FOR CONSTRUCTION ARE TO FOLLOW THE CONTRACT SPECIFICATIONS AND THE MOST CURRENT EDITION OF THE IBC, UPC. OREGON STANDARD SPECIFICATIONS FOR CONSTRUCTION (ODOT/APWA) SHALL BE REFERENCED WHERE CONTRACT SPECIFICATIONS DO NOT ADDRESS A SPECIFIC ITEM. SEE SPECIFICATIONS FOR CONSTRUCTION METHODS AND OTHER NOTES PERTINENT TO THIS PROJECT.
- 3. UPON COMPLETION OF CONSTRUCTION OF THE PROJECT, CONTRACTOR TO SUBMIT RECORD DRAWINGS TO THE ENGINEER OR CITY. THE PROJECT SHALL NOT BE CONSIDERED COMPLETE UNTIL
- CONTRACTOR MAY ENCOUNTER HIGH GROUND-WATER TABLE AT SITE LOCATION. HIGH GROUND-WATER IN COMBINATION WITH BEACH SAND SUBGRADE WILL CAUSE A "QUICK" EFFECT, WHICH WILL RESULT IN THE DESTABILIZATION OF ADJACENT SOILS, UTILITIES AND STRUCTURES. CONTRACTOR SHALL ANTICIPATE AND COORDINATE ANY AND ALL DEWATERING TECHNIQUES NECESSARY AND/OR REQUIRED TO COMPLETE PROJECT AS SPECIFIED IN THE TECHNICAL SPECIFICATIONS. CONTRACTOR SHALL BEAR ALL COSTS PERTAINING TO DEWATERING

ROADWORK/SITEWORK 10. CONTRACTOR SHALL RESTORE ALL SURFACES TO MATCH EXISTING AND ADJACENT GRADES.

- ALL DESIGN ELEVATIONS SHOWN SHALL BE CONSIDERED TO BE FINISH SURFACE ELEVATIONS UNLESS OTHERWISE NOTED. ALL SURFACES SHALL BE GRADED SMOOTH AND FREE OF
- 12. THE CONTRACTOR SHALL HAVE A SUFFICIENT NUMBER OF COMPACTION TESTS PERFORMED TO MEET SPECIFICATION REQUIREMENTS. TESTS SHALL BE PERFORMED BY A QUALIFIED TESTING AGENCY AND WRITTEN RESULTS SHALL BE PROVIDED TO THE APPROPRIATE AGENCY. SHOULD COMPACTION REQUIREMENTS NOT BE MET, CONTRACTOR SHALL RECOMPACT AND PAY ALL
- SIGNAGE

 13. CONTRACTOR SHALL ERECT AND MAINTAIN BARRICADES, WARNING SIGNS, TRAFFIC CONES PER ODOT REQUIREMENTS. ACCESS TO EXISTING DRIVEWAYS AND BUSINESSES TO BE MAINTAINED AT ALL TIMES. CONTRACTOR SHALL REPLACE ALL SIGNS REMOVED DURING CONSTRUCTION. CITY TO APPROVE INSTALLATION.
- 14. INSPECTION BY ENGINEER OR CITY REPRESENTATIVE OF WATER SYSTEMS PRIOR TO BACKFILL SHALL BE REQUIRED.
- 15. CONTRACTOR TO COORDINATE PLACEMENT OF WATER SERVICE METER WITH CITY PUBLIC WORKS.
- 16. WATERLINE FITTINGS MUST BE FULLY RESTRAINED BY THRUST BLOCKS AND APPROVED RESTRAINT SYSTEM UNLESS SPECIFICALLY OTHERWISE INDICATED ON THESE DOCUMENTS.
- CONNECTION OF NEW WATER SERVICE TO EXISTING MAIN SHALL BE COORDINATED WITH CITY STAFF. ALL WATER MAIN VALVES SHALL ONLY BE OPERATED BY CITY PERSONNEL. NO EXCEPTIONS UNLESS AUTHORIZED IN WRITING BY CITY.
- B. POTHOLE EXISTING WATER PIPES FOR CONNECTION OF NEW WATER SYSTEM. ALL INVERT ELEVATIONS, PIPE SIZES AND MATERIALS ARE TO BE MEASURED BY CONTRACTOR PRIOR TO

- STORM & SEWER

 19. POTHOLE EXISTING STORM AND SEWER PIPES FOR CONNECTION OF NEW SYSTEMS. ALL INVERT ELEVATIONS, PIPE SIZES AND MATERIALS ARE TO BE MEASURED BY CONTRACTOR PRIOR TO
- 20. THE CONTRACTOR SHALL BE RESPONSIBLE FOR ADJUSTING ALL CATCH BASINS, CLEANOUTS, MANHOLES, VAULTS, ETC., THAT ARE AFFECTED BY CONSTRUCTION AND/OR FILL TO FINISH GRADE. STORM DRAIN INLET STRUCTURES SHALL BE ADJUSTED SO WATER FLOWS INTO THE STRUCTURE WITHOUT PONDING.
- 21. CONTRACTOR TO DEVELOP A CONSTRUCTION PHASING PLAN AND PROVIDE IT TO THE CITY AND ENGINEER PRIOR TO BEGINNING CONSTRUCTION. PLAN SHALL INDICATE STAGES OF DEMOLITION AND DURATION OF OUTAGES. ALL OUTAGES ARE TO BE KEPT TO A MINIMUM.

IRAFFIC CONTROL 22. THE CONTRACTOR SHALL DEVELOP AND SUBMIT A TRAFFIC CONTROL PLAN FOR REVIEW AND APPROVAL. THE TRAFFIC CONTROL PLAN SHALL DETAIL KEY INTERSECTIONS WITHIN THE PROJECT ZONE, SPECIFICALLY AT 4TH STREET AND DORCAS LANE IN ACCORDANCE WITH SECTION 157 OF THESE SPECIFICATIONS. THE CONTRACTOR SHALL INCLUDE SIGNAGE ALONG 4TH STREET AND DORCAS LANE AS NECESSARY TO INFORM TRAFFIC OF THE 4TH STREET AND DORCAS LANE CLOSURE AND PROPER DETOURING. THE CONTRACTOR SHALL FURNISH AND PLACE

UTILITY PROVIDERS

- TILLAMOOK PEOPLE'S UTILITY DISTRICT ATTN: JAMES AMAN 1115 PACIFIC AVENUE TILLAMOOK, OR 97141 1-800-422-2535
- TELEPHONE
 RTI NEHALEM TELECOM ATTN: BILL DILLARD 35790 7TH STREET NEHALEM, OR 97131 (503) 368-5116
- <u>CABLE TELEVISION</u>
 CHARTER COMMUNICATIONS ATTN: JUSTIN HALL 1344 NE HWY 101 LINCOLN CITY, OR 97367 (541) 921-1859
- ONE CALL CENTER 1-800-332-2344 OR 811
- NEHALEM BAY WASTEWATER AGENCY (NBWA) ATTN: BRUCE HALVERSON, MANAGER NEHALEM, OR 97131 (503) 368-5125
- WATER, STORM, ROADS CITY OF MANZANITA ATTN: DAN WEITZEL, PUBLIC WORKS DIRECTOR PO BOX 129 MANZANITA, OR 97130 (503) 368-5347

PROJECT TEAM

- ENGINEER NORTH COAST CIVIL DESIGN, LLC ATTN: KYLE AYERS, P.E. 35240 TOHL AVE NEHALEM, OR 97131 (503) 812-3732 (C) (503) 440–1088 (0)
- OWNER CITY OF MANZANITA ATTN: LEILA AMAN, CITY MANAGER PO BOX 129 MANZANITA, OR 97130 (503) 368-5343 (503) 368-4145 (FAX)

THE PURPOSE OF THE SURVEY INFORMATION SHOWN IS TO SHOW EXISTING TOPOGRAPHIC INFORMATION FOR THE DORCAS LANE AND 4TH STREET RECONSTRUCTION PROJECT WITHIN THE PROJECT LIMITS SHOWN. THIS MAP DOES NOT CONSTITUTE A BOUNDARY SURVEY.

UTILITY LOCATES SHOWN ON THIS MAP ARE BASED ON ABOVE GROUND STRUCTURES AND SURFACE LOCATES AT THE TIME OF FIELD WORK. THE ABOVE GROUND PAINT MARKS ARE APPROXIMATE LOCATION ONLY AND THE COMPANIES THAT PLACE THE PAINT MARKS DO NOT GUARANTEE THEIR SURFACE LOCATES TO BE FREE OF ERRORS AND OMISSIONS. THEREFORE, NORTH COAST CIVIL RESERVES THE SAME LIMITATIONS.

ELEVATIONS SHOWN HERE ARE REFERENCED TO THE NORTH AMERICAN VERTICAL DATUM OF 1988 (NAVD88). THE PROJECT BENCHMARK IS A BRASS CAP MARKED "INITIAL POINT FIRST ADDITION TO MANZANITA BEACH" WITH AN ELEVATION OF 33.78' (NAVD88).



LOCATION MAP NO SCALE

SHEET INDEX

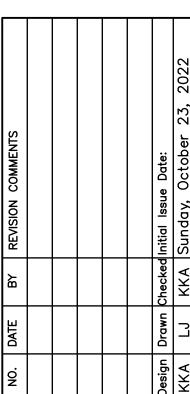
SHEET D3 ROAD CONSTRUCTION DETAILS

SHEET NAME	SHEET DESCRIPTION	STATION RANGE/ADDN'L DESCRIPTION
SHEET GI	COVER SHEET & GENERAL NOTES	
SHEET G2	SEQUENCING INFO AND NOTES	
SHEET ESI	EROSION & SEDIMENTATION CONTROL PLAN	ESCP COVER SHEET
SHEET ES2	EROSION & SEDIMENTATION CONTROL PLAN	4TH ST. STA 0+54 TO 6+24
SHEET ES3	EROSION & SEDIMENTATION CONTROL PLAN	DORCAS LN. STA 0+00 TO 8+00
SHEET ES4	EROSION & SEDIMENTATION CONTROL PLAN	DORCAS LN. STA 8+00 TO 14+60
SHEET ES5	EROSION & SEDIMENTATION CONTROL PLAN	DETAILS
SHEET ES6	EROSION & SEDIMENTATION CONTROL PLAN	NOTES
SHEET EXI	EXISTING CONDITIONS	
SHEET DXI	DEMOLITION PLAN	STA 0+54 TO 6+24
SHEET DX2	DEMOLITION PLAN	STA 0+00 TO 8+00
SHEET DX3	DEMOLITION PLAN	STA 8+00 TO 14+60
SHEET RDI	ROAD CONSTRUCTIONS DRAWINGS	4TH ST. STA: 0+51 TO 3+50 PLAN & PROFILE VIEW
SHEET RD2	ROAD CONSTRUCTIONS DRAWINGS	4TH ST. STA: 3+50 TO 4+26 PLAN & PROFILE VIEW
SHEET RD3	ROAD CONSTRUCTIONS DRAWINGS	DORCAS LN. STA: 0+00 TO 5+40 PLAN & PROFILE VIEW
SHEET RD4	ROAD CONSTRUCTIONS DRAWINGS	DORCAS LN. STA: 5+40 TO 10+80 PLAN & PROFILE VIEW
SHEET RD5	ROAD CONSTRUCTIONS DRAWINGS	DORCAS LN. STA: 10+80 TO 14+60 PLAN & PROFILE VIEW
SHEET RD6	ROAD CONSTRUCTIONS DRAWINGS	INTERSECTING ROAD & GUTTER PROFILES
SHEET UI	STORM & WATER UTILITY CONSTRUCTION DRAWINGS	STA I+00 TO 4+70 - PLAN AND PROFILE VIEW
SHEET U2	STORM & WATER UTILITY CONSTRUCTION DRAWINGS	STA 4+70 TO 10+00 - PLAN AND PROFILE VIEW
SHEET U3	STORM & WATER UTILITY CONSTRUCTION DRAWINGS	STA 9+00 TO 14+00 - PLAN AND PROFILE VIEW
SHEET U4	STORM & WATER UTILITY CONSTRUCTION DRAWINGS	STA 14+00 TO 19+00 - PLAN AND PROFILE VIEW
SHEET U5	STORM & WATER UTILITY CONSTRUCTION DRAWINGS	STA 19+00 TO 22+80 - PLAN AND PROFILE VIEW
SHEET U6	STORM & WATER UTILITY CONSTRUCTION DRAWINGS	STORM LATERAL PROFILES
SHEET DI	STORM WATER CONSTRUCTION DETAILS	
SHEET D2	STORM WATER CONSTRUCTION DETAILS	

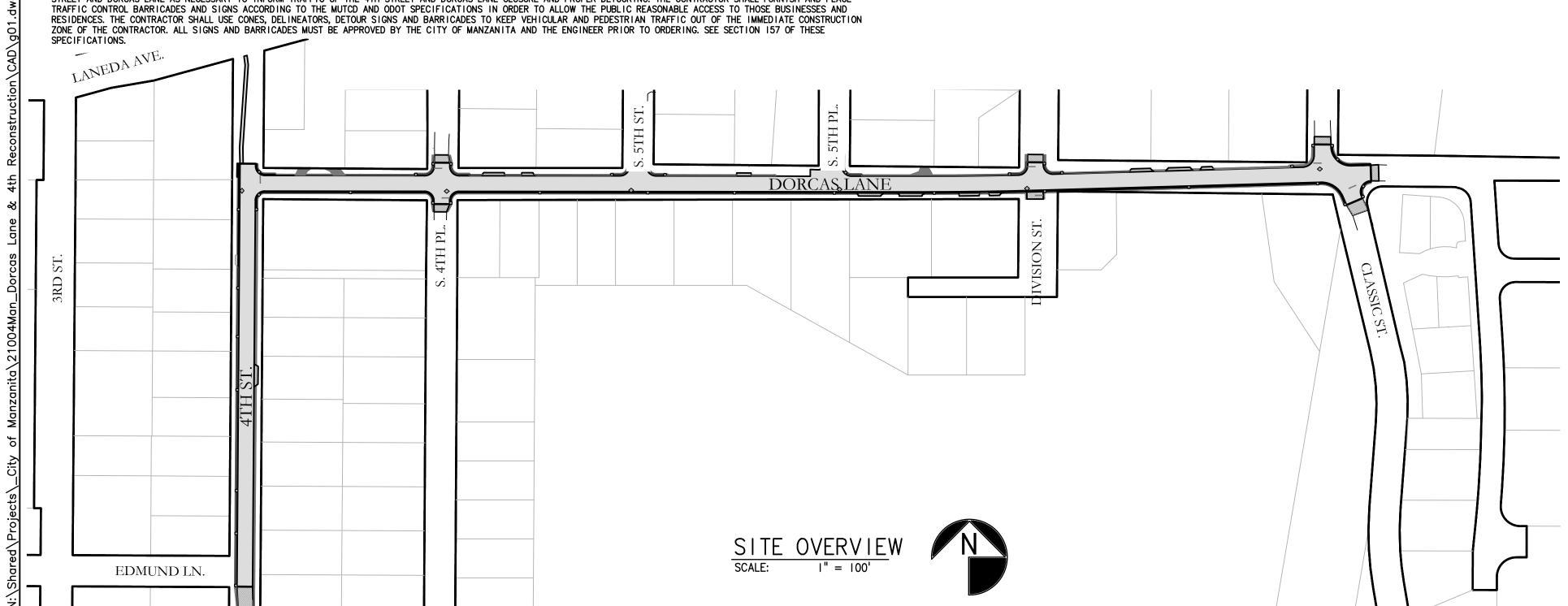








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Pro	ject	. No) .	D	rawi	ng	No
210	004				GO	1.D'	WG
		(3	1			
Sh	eet	No).				



ABBREVIATIONS

EXISTING GRADE

ELEVATION

ELECTRICAL

EG

ELEC

ASPHALT FINISHED GRADE ELEVATION OREGON REVISED STATUTES EOP AMERICAN CONCRETE INSTITUTE EDGE OF PAVEMENT PEDESTAL UNITED STATES ARMY CORPS OF ENGINEERS PUMP STATION EX EXISTING FINISHED FLOOR ELEVATION ADJUSTABLE FFE POUNDS PER SQUARE FOOT AMERICAN PUBLIC WORKS ASSOCIATION FG FINISH GRADE POUNDS PER SQUARE INCH FIP AIR RELEASE VALVE FEMALE IRON PIPE PRESSURE TREATED AMERICAN SOCIETY FOR TESTING AND MATERIALS FLG FLANGE PVC POLY VINYL CHLORIDE FEMALE NATIONAL PIPE THREAD ATTENTION PUBLIC WORKS AVERAGE GALVANIZED AVG POWER CB CDF CATCH BASIN GALLONS PER MINUTE GPM SLOPE CONTROLLED DENSITY FILL GATE VALVE SCH SCHEDULE HORIZONTAL DIRECTIONAL DRILLING STORM DRAIN CITY CITY OF MANZANITA HDD SD CLR HDPE HIGH DENSITY POLYETHYLENE STORM DRAIN MANHOLE CMP CORRUGATED METAL PIPE HOT MIX ASPHALTIC CONCRETE SQUARE FOOT CO CLEANOUT HP SS SANITARY SEWER HORSEPOWER COE UNITED STATES ARMY CORPS OF ENGINEERS SANITARY SEWER MANHOLE CONC CONCRETE FINISHED GRADE IBC STA INTERNATIONAL BUILDING CODE STATION CPP SVC CORRUGATED PLASTIC PIPE I.E. INVERT ELEVATION SERVICE IN TOP OF CURB DEMO'D DEMOLISHED IPS TEL IRON PIPE SIZE TELEPHONE DEPT DEPARTMENT LENGTH DEQ DEPARTMENT OF ENVIRONMENTAL QUALITY TPUD TILLAMOOK PEOPLE'S UTILITY DISTRICT LINEAL FEET DΙ DUCTILE IRON TYP TYPICAL MIN MINIMUM UNIFORM BUILDING CODE DIA DIAMETER MECHANICAL JOINT DIAG DIAGONAL UNDER GROUND MANUAL ON UNIFORM TRAFFIC CONTROL DEVICES UPC DR UNIFORM PLUMBING CODE DIMENSION RATIO NAVD88 NORTH AMERICAN VERTICAL DATUM - 1988 DSL OREGON DEPARTMENT OF STATE LANDS W/ DTCH BOTTOM OF DITCH NTS NOT TO SCALE WATER TIGHT

OREGON ADMINISTRATIVE RULES

OVER HEAD

OREGON DEPARTMENT OF TRANSPORTATION

WELDED WIRE FABRIC

OAR

ODOT

CONSTRUCTION SEQUENCING NOTES

WATER SEQUENCING NOTES:

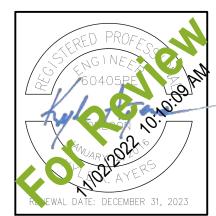
A WATER SEQUENCING PLAN (WSP) SHALL BE SUBMITTED BY THE CONTRACTOR AND APPROVED BY THE CITY AND ENGINEER PRIOR TO THE INSTALLATION OF ANY WATERLINE OR APPURTENANCES. AT A MINIMUM, THE WSP SHALL ADDRESS THE FOLLOWING INFORMATION.

- WSP SHALL BE DRAWN ON 24" X 36". BASE MAP IS AVAILABLE FROM THE ENGINEER UPON REQUEST.
- 2. INDICATE ON THE PLAN THE DURATION OF THE CONSTRUCTION WORK AND SUBSEQUENT DISRUPTIONS AND TIE-INS (INCLUDE TYPE OF WORK AND ESTIMATED START DATE, AS APPROPRIATE).
- 3. CONTRACTOR SHALL SEQUENCE CONSTRUCTION TO ALLOW FOR CONTINUOUS WATER SERVICE TO ALL RESIDENCES THROUGHOUT THE PROJECT AREA, EXCEPT AS REQUIRED FOR MANDATORY SHUT-DOWNS. DUE TO THE LACK OF WATER VALVES ON THE EXISTING SYSTEM WITHIN THE PROJECT REGION, BREAKS, SHUT-DOWNS AND TIE-INS WILL IMPACT LARGE PORTIONS OF THE CITY'S RESIDENTS.
- 4. THE EXISTING ASBESTOS (AC) WATERLINE HAS BEEN REPAIRED NUMEROUS TIMES ALONG THE PROJECT ALIGNMENT AND IS SUSCEPTIBLE TO BREAKAGE. CONTRACTOR SHALL TAKE EVERY PRECAUTION POSSIBLE TO SECURE AND PROTECT THE EXISTING MAIN AND SERVICES.
- 5. CONFLICTS EXIST BETWEEN THE EXISTING WATERLINE AND NEW WATERLINE THROUGHOUT THE PROJECT, PARTICULARLY AT INTERSECTIONS.
- 6. CONTRACTOR SHALL PHASE CONSTRUCTION TO LIMIT THE AMOUNT OF MANDATORY SHUT DOWNS WHEN TYING THE NEW WATERLINES INTO THE EXISTING SYSTEM. THIS MAY REQUIRE THE CONTRACTOR TO CONSTRUCT, TEST AND DISINFECT THE NEW WATERLINE IN SECTIONS, UTILIZING TEMPORARY TIE-INS.
- 7. NEW WATERLINES AND APPURTENANCES CONSTRUCTION SHOULD BEGIN IN THE PROXIMITY OF EXISTING WATERLINES TO FACILITATE FUTURE INSTALLATION OF THE TESTING CORPORATION STOP ASSEMBLY (I.E. JUMPER) AND TIE—IN.
- 8. CONNECTION TO ANY EXISTING WATERLINE IS NOT ALLOWED UNTIL CONTRACTOR IS READY TO TEST NEW WATERLINES PRIOR TO PLACING THEM IN SERVICE. CONTRACTOR SHALL BE RESPONSIBLE FOR ALL LABOR AND EQUIPMENT REQUIRED FOR PRESSURE TESTING, FLUSHING, DECHLORINATION, EROSION PREVENTION, AND REPAIR OF ANY DAMAGE CAUSED BY ANY AND ALL WATERLINE FLUSHING PRIOR TO ISSUANCE OF TENTATIVE ACCEPTANCE BY THE CITY OR ENGINEER.
- 9. CALL CITY AND ENGINEER 24 HOURS PRIOR TO DISINFECTION PROCEDURES. ALL DISINFCETION/TESTING TO BE DONE PER AWWA-651 STANDARD SPECIFICATIONS
- 10. REMOVAL OF THE JUMPER AND FINAL FLUSH ONCE CITY OR ENGINEER APPROVAL HAS BEEN GRANTED, THE CONTRACTOR MAY REMOVE THE JUMPER AND PERFORM NEEDED FLUSHING ON THE NEW WATERLINE TO REMOVE ANY REMAINING AIR AND DEBRIS. CITY PERSONNEL WILL FLUSH EXISTING WATERLINES AS NECESSARY AND VERIFY THAT CONTRACTOR'S FLUSHING OF THE NEW WATERLINE(S) IS ADEQUATE.
- II. CONNECTION TO EXISTING WATER MAIN. CONTRACTOR SHALL POTHOLE EXISTING LINE AND REPORT FINDINGS TO ENGINEER. INSTALL TEE WITH VALVES, ADD PIPES TO BENDS, CONNECT ASSEMBLY TO EXISTING WITH 8" LONG-PATTERN SLEEVE AND GRIP RINGS. ALL TRENCHING, TRACER WIRE, BACKFILL, COMPACTION AND INSPECTION SHALL BE PER DETAIL I, SHEET D2. INSTALLATION OF CONNECTION, TESTING AND DISINFECTION SHALL BE PER APWA C-651 OR CURRENT AND APPROVED BY CITY PUBLIC WORKS DEPARTMENT.

STOCK PILE NOTES

CITY TO ESTABLISH STOCKPILE AREA. IF STOCKPILE AREA IS OFFSITE, IT IS TO BE APPROVED BY THE CITY. CONTRACTOR MUST HAVE COPIES OF LANDOWNER'S APPROVAL IN WRITING AND SUBMIT TO CITY FOR APPROVAL.

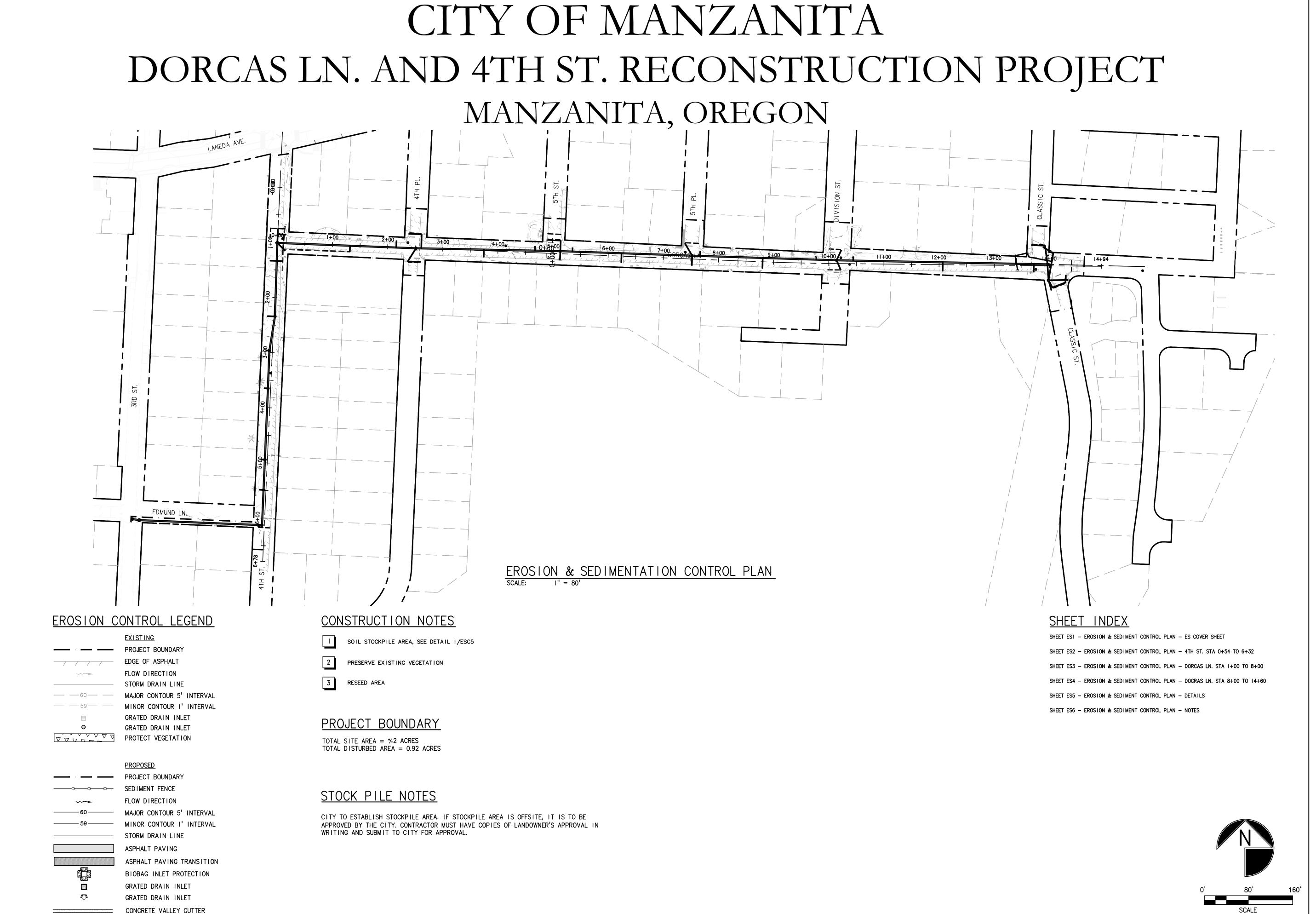




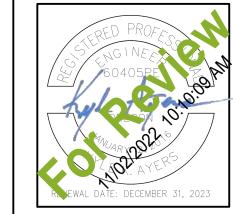
Y OF MANZANITA S LN. AND 4TH ST. CONSTRUCTIO NCING INFO AND NOTES

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STA 0+00 TO 14+60

OF MANZANITA

LN. AND 4TH ST. CONSTRUCTION

& SEDMENTATION CONTROL PLAN

STA 0+54 TO 6+24 & DORCAS STA 0+0

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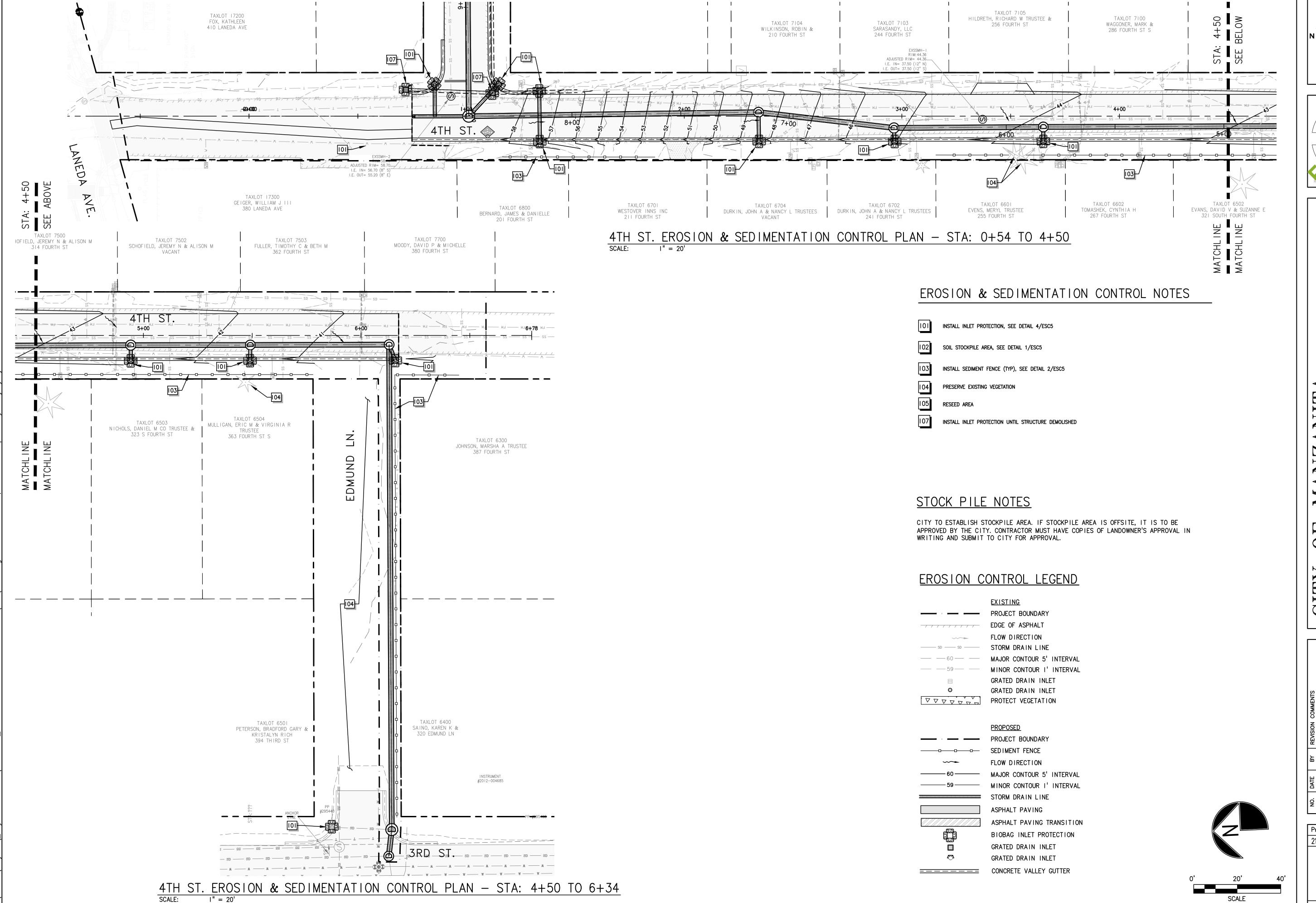
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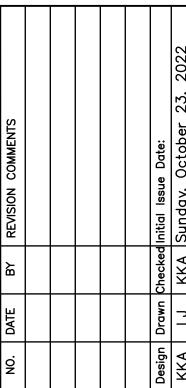
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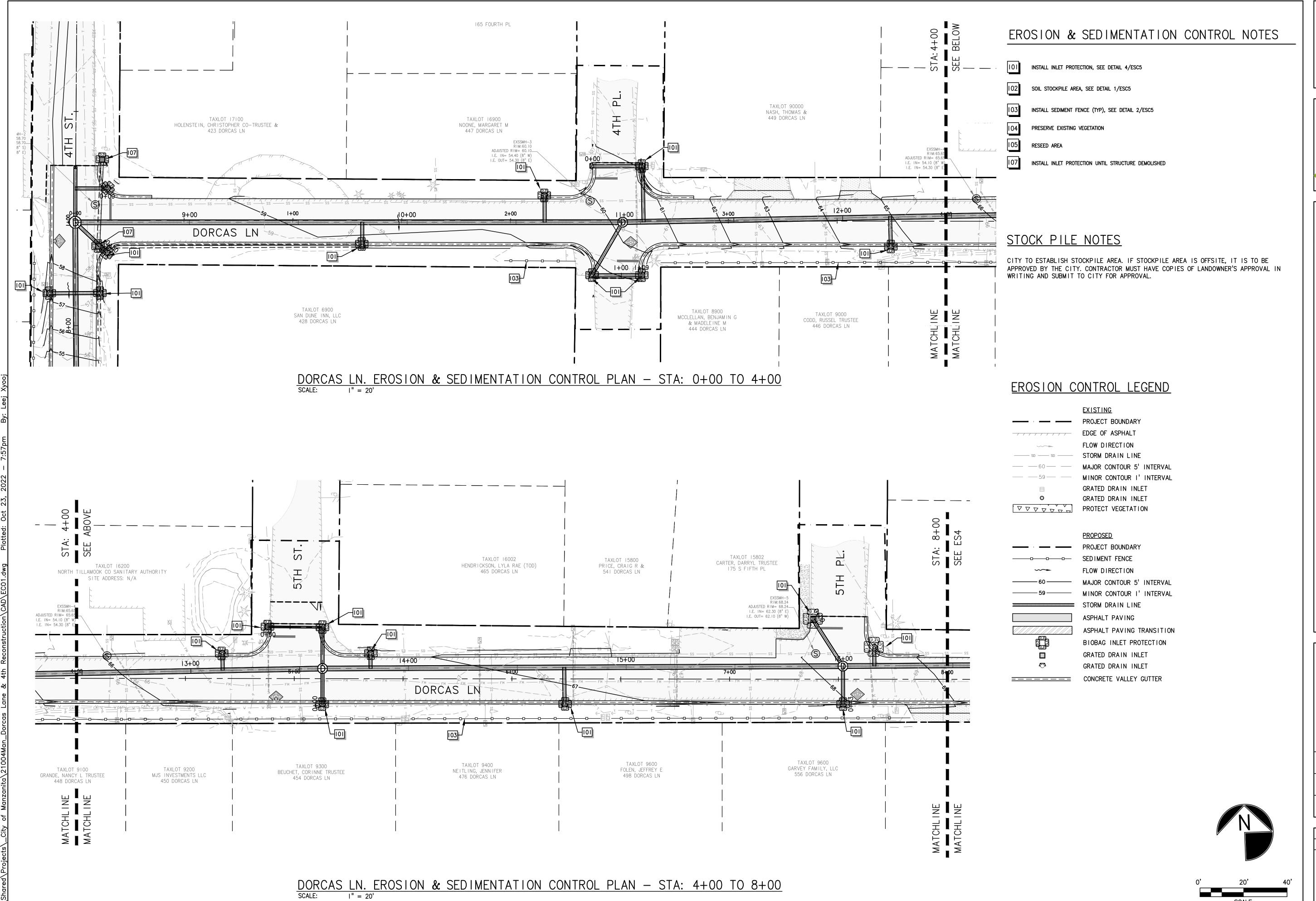








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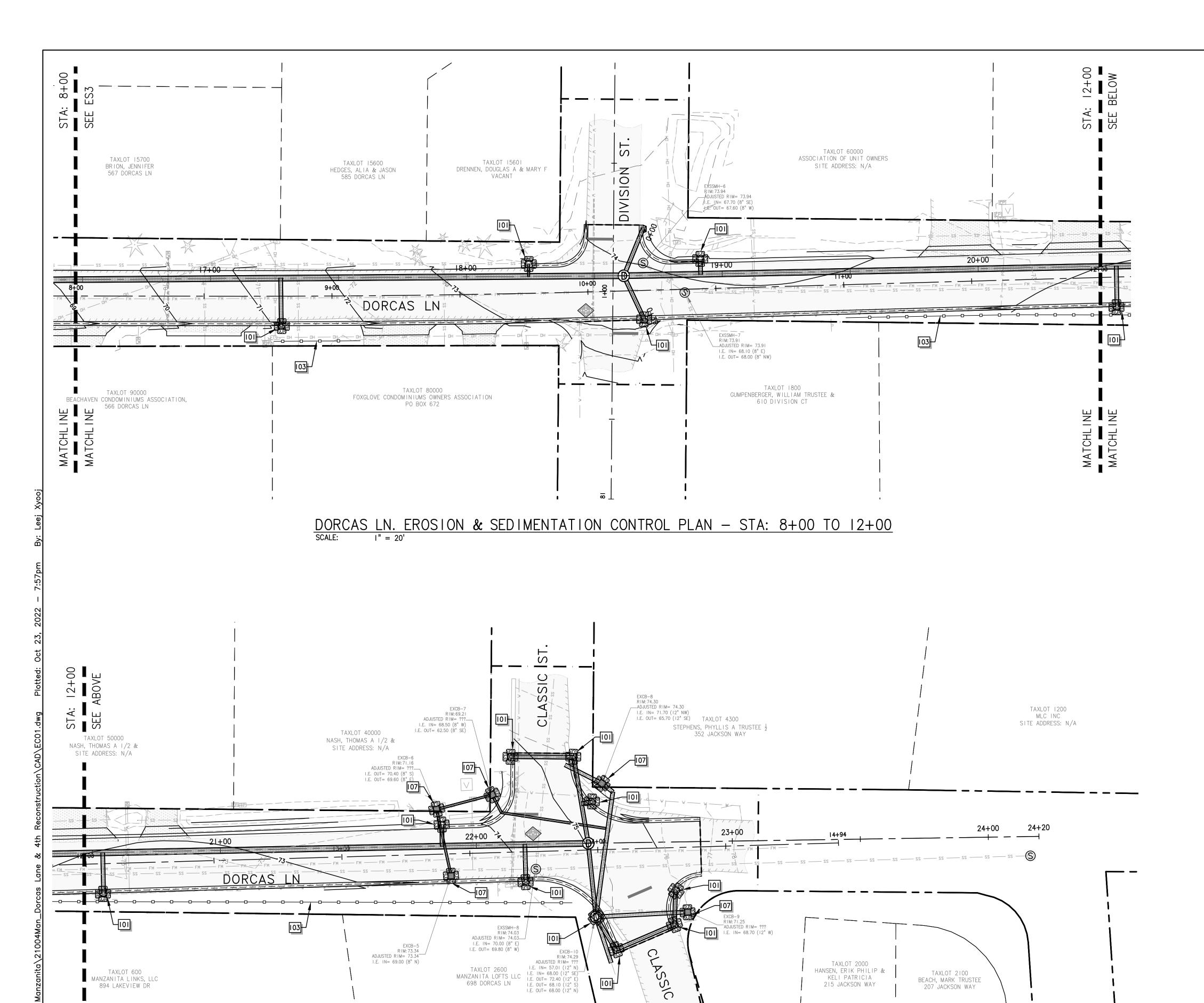


CONSTRUCTION CONTROL PLAN 8+00 CITY Dorcas Erosion Dorcas Tillamoo

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SCALE



DORCAS LN. EROSION & SEDIMENTATION CONTROL PLAN - STA: 12+00 TO 14+60

EROSION & SEDIMENTATION CONTROL NOTES

101 INSTALL INLET PROTECTION, SEE DETAIL 4/ESC5

O2 SOIL STOCKPILE AREA, SEE DETAIL 1/ESC5

INSTALL SEDIMENT FENCE (TYP), SEE DETAIL 2/ESC5

04 PRESERVE EXISTING VEGETATION

D5 RESEED AREA

INSTALL INLET PROTECTION UNTIL STRUCTURE DEMOLISHED

STOCK PILE NOTES

CITY TO ESTABLISH STOCKPILE AREA. IF STOCKPILE AREA IS OFFSITE, IT IS TO BE APPROVED BY THE CITY. CONTRACTOR MUST HAVE COPIES OF LANDOWNER'S APPROVAL IN WRITING AND SUBMIT TO CITY FOR APPROVAL.

EROSION CONTROL LEGEND

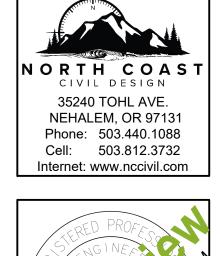
	<u>EXISTING</u>
	PROJECT BOUNDARY
	EDGE OF ASPHALT
~~~ <b>~</b>	FLOW DIRECTION
———— SD ———————————————————————————————	STORM DRAIN LINE
<u> </u>	MAJOR CONTOUR 5' INTERVAL
<u> </u>	MINOR CONTOUR I' INTERVAL
	GRATED DRAIN INLET
0	GRATED DRAIN INLET
$\nabla \nabla \nabla \nabla \nabla \nabla \nabla \nabla$	PROTECT VEGETATION

	<u>PROPOSED</u>
	PROJECT BOUNDARY
	SEDIMENT FENCE
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	ASPHALT PAVING
	ASPHALT PAVING TRANSITIO
	BIOBAG INLET PROTECTION

======= CONCRETE VALLEY GUTTER

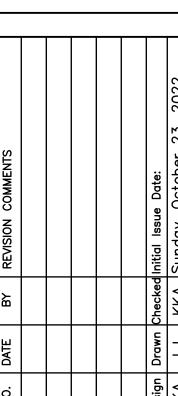
GRATED DRAIN INLET

GRATED DRAIN INLET

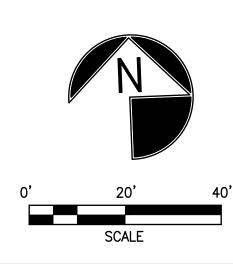




ANZANITA 4 St. construction Ation control plan 3+00 to 14+60



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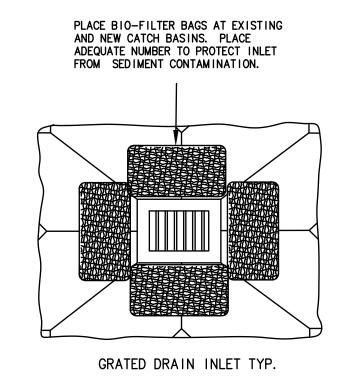


SOIL STOCKPILE PROTECTION DETAIL

USING SANDBAGS OR TIRES ON ROPES WITH A

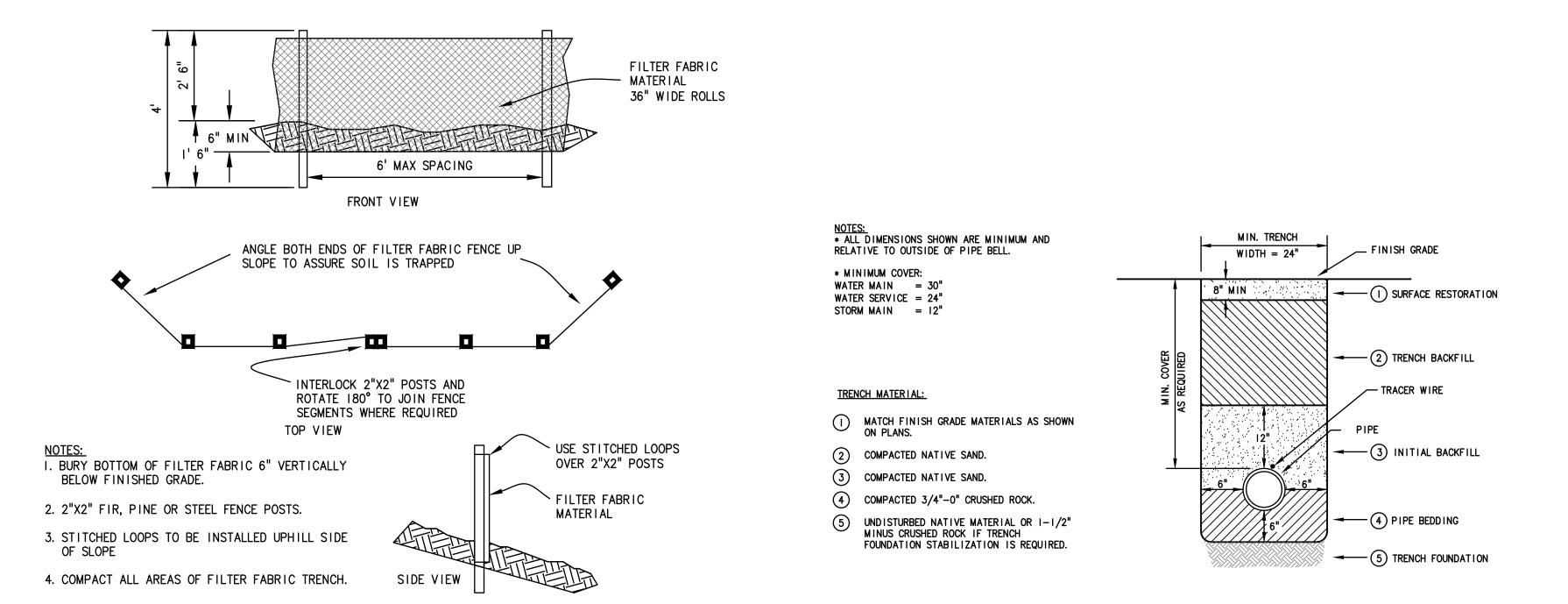
MAXIMUM 10' GRID SPACING IN ALL DIRECTIONS.

NOT TO SCALE



SEDIMENT CONTROL AT CATCH BASIN

NOT TO SCALE



2 SEDIMENT FENCE INSTALLATION

TYP. STORM TRENCH DETAIL

STORM TRENCH DETAIL

STORM TRENCH DETAIL





CITY OF MANZANITA
DORCAS LN. AND 4TH ST. CONSTRUCTION
EROSION & SEDMENTATION CONTROL PLAN

NO. DATE BY REVISION COMMENTS

Design Drawn Checked Initial Issue Date:

Project No. Drawing No. 21004 EC01.DWG

ES5

- I. HOLD A PRE-CONSTRUCTION MEETING OF PROJECT CONSTRUCTION PERSONNEL THAT INCLUDES THE INSPECTOR TO DISCUSS EROSION AND SEDIMENT CONTROL MEASURES AND CONSTRUCTION LIMITS. (SCHEDULE A.8.C.I.(3))
- 2. ALL INSPECTIONS MUST BE MADE IN ACCORDANCE WITH DEQ 1200-C PERMIT REQUIREMENTS. (SCHEDULE A.12.B AND SCHEDULE B.I)
- 3. INSPECTION LOGS MUST BE KEPT IN ACCORDANCE WITH DEQ'S 1200-C PERMIT REQUIREMENTS. (SCHEDULE B.I.C AND B.2)

4. RETAIN A COPY OF THE ESCP AND ALL REVISIONS ON SITE AND MAKE IT AVAILABLE ON REQUEST TO DEQ, AGENT, OR THE LOCAL MUNICIPALITY. DURING INACTIVE PERIODS OF GREATER THAN SEVEN (7) CONSECUTIVE CALENDAR DAYS, THE ABOVE RECORDS MUST BE RETAINED BY THE PERMIT REGISTRANT BUT DO NOT NEED TO BE AT THE CONSTRUCTION SITE. (SCHEDULE

5. ALL PERMIT REGISTRANTS MUST IMPLEMENT THE ESCP. FAILURE TO IMPLEMENT ANY OF THE CONTROL MEASURES OR PRACTICES DESCRIBED IN THE ESCP IS A VIOLATION OF THE PERMIT. (SCHEDULE A 8.A)

- 6. THE ESCP MUST BE ACCURATE AND REFLECT SITE CONDITIONS. (SCHEDULE A.12.C.1)
- 7. SUBMISSION OF ALL ESCP REVISIONS IS NOT REQUIRED. SUBMITTAL OF THE ESCP REVISIONS IS ONLY UNDER SPECIFIC CONDITIONS. SUBMIT ALL NECESSARY REVISION TO DEQ OR AGENT WITHIN 10 DAYS. (SCHEDULE A.12.C.IV. AND V)

8. PHASE CLEARING AND GRADING TO THE MAXIMUM EXTENT PRACTICAL TO PREVENT EXPOSED INACTIVE AREAS FROM BECOMING A SOURCE OF EROSION. (SCHEDULE A.7.A.III)

9. IDENTIFY, MARK, AND PROTECT (BY CONSTRUCTION FENCING OR OTHER MEANS) CRITICAL RIPARIAN AREAS AND VEGETATION INCLUDING IMPORTANT TREES AND ASSOCIATED ROOTING ZONES, AND VEGETATION AREAS TO BE PRESERVED. IDENTIFY VEGETATIVE BUFFER ZONES BETWEEN THE SITE AND SENSITIVE AREAS (E.G., WETLANDS), AND OTHER AREAS TO BE PRESERVED, ESPECIALLY IN PERIMETER AREAS. (SCHEDULE A.8.C.I.(1) AND (2))

10. PRESERVE EXISTING VEGETATION WHEN PRACTICAL AND RE-VEGETATE OPEN AREAS. RE-VEGETATE OPEN AREAS WHEN PRACTICABLE BEFORE AND AFTER GRADING OR CONSTRUCTION. IDENTIFY THE TYPE OF VEGETATIVE SEED MIX USED. (SCHEDULE

II. MAINTAIN AND DELINEATE ANY EXISTING NATURAL BUFFER WITHIN THE 50-FEET OF WATERS OF THE STATE. (SCHEDULE A.7.B.I.AND (2(A)(B))

12. INSTALL PERIMETER SEDIMENT CONTROL, INCLUDING STORM DRAIN INLET PROTECTION AS WELL AS ALL SEDIMENT BASINS, TRAPS, AND BARRIERS PRIOR TO LAND DISTURBANCE. (SCHEDULE A.8.C.I.(5))

13. CONTROL BOTH PEAK FLOW RATES AND TOTAL STORMWATER VOLUME, TO MINIMIZE EROSION AT OUTLETS AND DOWNSTREAM CHANNELS AND STREAMBANKS. (SCHEDULE A.7.C)

14. CONTROL SEDIMENT AS NEEDED ALONG THE SITE PERIMETER AND AT ALL OPERATIONAL INTERNAL STORM DRAIN INLETS AT ALL TIMES DURING CONSTRUCTION, BOTH INTERNALLY AND AT THE SITE BOUNDARY. (SCHEDULE A.7.D.I)

15. ESTABLISH CONCRETE TRUCK AND OTHER CONCRETE EQUIPMENT WASHOUT AREAS BEFORE BEGINNING CONCRETE WORK. (SCHEDULE A.8.C.1.(6))

16. APPLY TEMPORARY AND/OR PERMANENT SOIL STABILIZATION MEASURES IMMEDIATELY ON ALL DISTURBED AREAS AS GRADING PROGRESSES. TEMPORARY OR PERMANENT STABILIZATIONS MEASURES ARE NOT REQUIRED FOR AREAS THAT ARE INTENDED TO BE LEFT UNVEGETATED, SUCH AS DIRT ACCESS ROADS OR UTILITY POLE PADS.(SCHEDULE A.8.C.II.(3))

17. ESTABLISH MATERIAL AND WASTE STORAGE AREAS, AND OTHER NON-STORMWATER CONTROLS. (SCHEDULE A.8.C.I.(7))

18. PREVENT TRACKING OF SEDIMENT ONTO PUBLIC OR PRIVATE ROADS USING BMPS SUCH AS: CONSTRUCTION ENTRANCE. GRAVELED (OR PAVED) EXITS AND PARKING AREAS, GRAVEL ALL UNPAVED ROADS LOCATED ONSITE, OR USE AN EXIT TIRE WASH. THESE BMPS MUST BE IN PLACE PRIOR TO LAND DISTURBING ACTIVITIES. (SCHEDULE A 7.D.II AND A.8.C.I(4))

19. WHEN TRUCKING SATURATED SOILS FROM THE SITE, EITHER USE WATER-TIGHT TRUCKS OR DRAIN LOADS ON SITE. (SCHEDULE A.7.D.11.(5))

20. CONTROL PROHIBITED DISCHARGES FROM LEAVING THE CONSTRUCTION SITE, I.E., CONCRETE WASH-OUT, WASTEWATER FROM CLEANOUT OF STUCCO, PAINT AND CURING COMPOUNDS. (SCHEDULE A.6)

21. USE BMPS TO PREVENT OR MINIMIZE STORMWATER EXPOSURE TO POLLUTANTS FROM SPILLS; VEHICLE AND EQUIPMENT FUELING, MAINTENANCE, AND STORAGE; OTHER CLEANING AND MAINTENANCE ACTIVITIES; AND WASTE HANDLING ACTIVITIES. THESE POLLUTANTS INCLUDE FUEL, HYDRAULIC FLUID, AND OTHER OILS FROM VEHICLES AND MACHINERY, AS WELL AS DEBRIS, FERTILIZER, PESTICIDES AND HERBICIDES, PAINTS, SOLVENTS, CURING COMPOUNDS AND ADHESIVES FROM CONSTRUCTION OPERATIONS. (SCHEDULE A.7.E.I.(2))

22. IMPLEMENT THE FOLLOWING BMPS WHEN APPLICABLE: WRITTEN SPILL PREVENTION AND RESPONSE PROCEDURES, EMPLOYEE TRAINING ON SPILL PREVENTION AND PROPER DISPOSAL PROCEDURES, SPILL KITS IN ALL VEHICLES, REGULAR MAINTENANCE SCHEDULE FOR VEHICLES AND MACHINERY, MATERIAL DELIVERY AND STORAGE CONTROLS, TRAINING AND SIGNAGE, AND COVERED STORAGE AREAS FOR WASTE AND SUPPLIES. (SCHEDULE A. 7.E.III.)

23. USE WATER, SOIL-BINDING AGENT OR OTHER DUST CONTROL TECHNIQUE AS NEEDED TO AVOID WIND-BLOWN SOIL. (SCHEDULE A 7.A.IV)

24. THE APPLICATION RATE OF FERTILIZERS USED TO REESTABLISH VEGETATION MUST FOLLOW MANUFACTURER'S RECOMMENDATIONS TO MINIMIZE NUTRIENT RELEASES TO SURFACE WATERS. EXERCISE CAUTION WHEN USING TIME-RELEASE FERTILIZERS WITHIN ANY WATERWAY RIPARIAN ZONE. (SCHEDULE A.9.B.III)

25. IF AN ACTIVE TREATMENT SYSTEM (FOR EXAMPLE, ELECTRO-COAGULATION, FLOCCULATION, FILTRATION, ETC.) FOR SEDIMENT OR OTHER POLLUTANT REMOVAL IS EMPLOYED, SUBMIT AN OPERATION AND MAINTENANCE PLAN (INCLUDING SYSTEM SCHEMATIC, LOCATION OF SYSTEM, LOCATION OF INLET, LOCATION OF DISCHARGE, DISCHARGE DISPERSION DEVICE DESIGN, AND A SAMPLING PLAN AND FREQUENCY) BEFORE OPERATING THE TREATMENT SYSTEM. OBTAIN PLAN APPROVAL BEFORE OPERATING THE TREATMENT SYSTEM. OPERATE AND MAINTAIN THE TREATMENT SYSTEM ACCORDING TO MANUFACTURER'S SPECIFICATIONS. (SCHEDULE A.9.D)

26. TEMPORARILY STABILIZE SOILS AT THE END OF THE SHIFT BEFORE HOLIDAYS AND WEEKENDS, IF NEEDED. THE REGISTRANT IS RESPONSIBLE FOR ENSURING THAT SOILS ARE STABLE DURING RAIN EVENTS AT ALL TIMES OF THE YEAR. (SCHEDULE A 7.B)

27. AS NEEDED BASED ON WEATHER CONDITIONS, AT THE END OF EACH WORKDAY SOIL STOCKPILES MUST BE STABILIZED OR COVERED, OR OTHER BMPS MUST BE IMPLEMENTED TO PREVENT DISCHARGES TO SURFACE WATERS OR CONVEYANCE SYSTEMS LEADING TO SURFACE WATERS. (SCHEDULE A 7.E.II.(2))

28. CONSTRUCTION ACTIVITIES MUST AVOID OR MINIMIZE EXCAVATION AND BARE GROUND ACTIVITIES DURING WET WEATHER. (SCHEDULE A.7.A.1)

29. SEDIMENT FENCE: REMOVE TRAPPED SEDIMENT BEFORE IT REACHES ONE THIRD OF THE ABOVE GROUND FENCE HEIGHT AND BEFORE FENCE REMOVAL. (SCHEDULE A.9.C.1)

30. OTHER SEDIMENT BARRIERS (SUCH AS BIOBAGS): REMOVE SEDIMENT BEFORE IT REACHES TWO INCHES DEPTH ABOVE GROUND HEIGHT AND BEFORE BMP REMOVAL. (SCHEDULE A.9.C.I)

31. CATCH BASINS: CLEAN BEFORE RETENTION CAPACITY HAS BEEN REDUCED BY FIFTY PERCENT. SEDIMENT BASINS AND SEDIMENT TRAPS: REMOVE TRAPPED SEDIMENTS BEFORE DESIGN CAPACITY HAS BEEN REDUCED BY FIFTY PERCENT AND AT COMPLETION OF PROJECT. (SCHEDULE A.9.C.III & IV)

32. WITHIN 24 HOURS, SIGNIFICANT SEDIMENT THAT HAS LEFT THE CONSTRUCTION SITE, MUST BE REMEDIATED. INVESTIGATE THE CAUSE OF THE SEDIMENT RELEASE AND IMPLEMENT STEPS TO PREVENT A RECURRENCE OF THE DISCHARGE WITHIN THE SAME 24 HOURS. ANY IN-STREAM CLEAN-UP OF SEDIMENT SHALL BE PERFORMED ACCORDING TO THE OREGON DIVISION OF STATE LANDS REQUIRED TIMEFRAME. (SCHEDULE A.9.B.1)

33. THE INTENTIONAL WASHING OF SEDIMENT INTO STORM SEWERS OR DRAINAGE WAYS MUST NOT OCCUR. VACUUMING OR DRY SWEEPING AND MATERIAL PICKUP MUST BE USED TO CLEANUP RELEASED SEDIMENTS. (SCHEDULE A.9.B.II)

34. THE ENTIRE SITE MUST BE TEMPORARILY STABILIZED USING VEGETATION OR A HEAVY MULCH LAYER, TEMPORARY SEEDING, OR OTHER METHOD SHOULD ALL CONSTRUCTION ACTIVITIES CEASE FOR 30 DAYS OR MORE. (SCHEDULE A.7.F.I)

35. PROVIDE TEMPORARY STABILIZATION FOR THAT PORTION OF THE SITE WHERE CONSTRUCTION ACTIVITIES CEASE FOR 14 DAYS OR MORE WITH A COVERING OF BLOWN STRAW AND A TACKIFIER, LOOSE STRAW, OR AN ADEQUATE COVERING OF COMPOST MULCH UNTIL WORK RESUMES ON THAT PORTION OF THE SITE. (SCHEDULE A.7.F.II)

36. DO NOT REMOVE TEMPORARY SEDIMENT CONTROL PRACTICES UNTIL PERMANENT VEGETATION OR OTHER COVER OF EXPOSED AREAS IS ESTABLISHED. ONCE CONSTRUCTION IS COMPLETE AND THE SITE IS STABILIZED, ALL TEMPORARY EROSION CONTROLS AND RETAINED SOILS MUST BE REMOVED AND DISPOSED OF PROPERLY, UNLESS DOING SO CONFLICTS WITH LOCAL REQUIREMENTS. (SCHEDULE A.8.C.III(I) AND D.3.C.II AND III)

ADDITIONAL NOTES

I. ALL EROSION AND SEDIMENT CONTROL MEASURES SHOWN ON THE PLAN MUST BE INSTALLED IN SUCH A MANNER TO ENSURE THAT SEDIMENT OR SEDIMENT LADEN WATER THAT ENTERS OR IS LIKELY TO ENTER SURFACE WATERS OR CONVEYANCE SYSTEMS LEADING TO SURFACE WATER, ROADWAY, OR OTHER PROPERTIES DOES NOT OCCUR.

2. THE IMPLEMENTATION OF THE ESCP AND CONSTRUCTION, MAINTENANCE, REPLACEMENT, AND UPGRADING OF THE EROSION AND SEDIMENT CONTROL MEASURES IS THE RESPONSIBILITY OF THE PERMIT REGISTRANT UNTIL ALL CONSTRUCTION IS COMPLETED AND APPROVED BY THE LOCAL DEVELOPMENT AGENCY AND VEGETATION/LANDSCAPING IS ESTABLISHED. THE PERMIT REGISTRANT SHALL BE RESPONSIBLE FOR MAINTENANCE AFTER THE LOTS ARE APPROVED.

3. THE PERMIT REGISTRANT MUST BE RESPONSIBLE FOR PROPER INSTALLATION AND MAINTENANCE OF ALL EROSION AND SEDIMENT CONTROL MEASURES, IN ACCORDANCE WITH LOCAL, STATE, OR FEDERAL REGULATIONS.

4. EROSION AND SEDIMENT CONTROL MEASURES INCLUDING PERIMETER SEDIMENT CONTROL MUST BE IN PLACE BEFORE VEGETATION IS DISTURBED AND MUST REMAIN IN PLACE AND BE MAINTAINED, REPAIRED, AND PROMPTLY IMPLEMENTED FOLLOWING PROCEDURES ESTABLISHED FOR THE DURATION OF CONSTRUCTION, INCLUDING PROTECTION FOR ACTIVE STORM DRAIN INLETS AND CATCH BASINS AND APPROPRIATE NON-STORM WATER POLLUTION CONTROLS.

5. BEGIN LAND CLEARING, EXCAVATION, TRENCHING, CUTTING OR GRADING AND EARTHWORK-SURFACE ROUGHING AFTER INSTALLING APPLICABLE SEDIMENT, EROSION PREVENTION AND RUNOFF CONTROL MEASURES NOT IN THE DIRECT PATH OF

6. WET WEATHER BMPS: CONSTRUCTION ACTIVITIES MUST AVOID OR MINIMIZE EXCAVATION AND CREATION OF BARE GROUND ON SLOPES GREATER THAN FIVE (5) PERCENT FROM OCTOBER I THROUGH MAY 31 EACH YEAR.

7. WET WEATHER BMPS: TEMPORARY STABILIZATION OF THE SITE MUST BE INSTALLED AT THE END OF THE SHIFT BEFORE A HOLIDAY OR WEEKEND OR AT THE END OF EACH WORKDAY IF RAINFALL IS FORECAST IN THE NEXT 24 HOURS AND EACH WEEKEND AND HOLIDAY.

8. ANY USE OF TOXIC OR OTHER HAZARDOUS MATERIALS MUST INCLUDE PROPER STORAGE, APPLICATION, AND DISPOSAL

9. THE PERMITTEE MUST PROPERLY MANAGE HAZARDOUS WASTES, USED OILS, CONTAMINATED SOILS, CONCRETE WASTE, SANITARY WASTE, LIQUID WASTE, OR OTHER TOXIC SUBSTANCES DISCOVERED OR GENERATED DURING CONSTRUCTION AND MEET ALL STATE AND FEDERAL REGULATIONS AND APPROVALS.

10. THE ESCP MEASURES SHOWN ON THIS PLAN ARE MINIMUM REQUIREMENTS FOR ANTICIPATED SITE CONDITIONS. DURING THE CONSTRUCTION PERIOD, THESE MEASURES MUST BE UPGRADED AS NEEDED TO COMPLY WITH ALL APPLICABLE LOCAL, STATE, AND FEDERAL EROSION AND SEDIMENT CONTROL REGULATIONS. CHANGES TO THE ESCP MUST ALSO BE SUBMITTED IN THE FORM OF AN ACTION PLAN TO DEQ OR ITS AGENT FOR APPROVAL.

II. DEQ MUST APPROVE OF ANY TREATMENT SYSTEM AND OPERATIONAL PLAN THAT MAY BE NECESSARY TO TREAT CONTAMINATED CONSTRUCTION DEWATERING OR SEDIMENT AND TURBIDITY IN STORM WATER RUNOFF.

12. BMPS MUST BE INSPECTED BEFORE, DURING, AND AFTER A SIGNIFICANT STORM EVENT OF I INCH OF RAIN IN A 24 HOUR

13. ALL ESCP CONTROLS AND PRACTICES MUST BE INSPECTED VISUALLY ONCE TO ENSURE THAT BMPS ARE IN WORKING ORDER PRIOR TO THE SITE BECOMING INACTIVE OR IN ANTICIPATION OF SITE INACCESSIBILITY AND MUST BE INSPECTED VISUALLY ONCE EVERY TWO (2) WEEKS DURING INACTIVE PERIODS GREATER THAN SEVEN (7) CONSECUTIVE CALENDAR DAYS.

14. IF PRACTICAL, INSPECTIONS MUST OCCUR DAILY AT A RELEVANT AND ACCESSIBLE DISCHARGE POINT OR DOWNSTREAM LOCATION DURING PERIODS WHICH THE SITE IS INACCESSIBLE DUE TO INCLEMENT WEATHER.

15. INSTALL CONSTRUCTION ENTRANCE

16. IF THE CONSTRUCTION ENTRANCE IS NOT PREVENTING SEDIMENT FROM BEING TRACKED ONTO PAVEMENT, ALTERNATIVE MEASURES TO KEEP STREETS FREE OF SEDIMENT MUST BE USED. THESE INCLUDE STREET VACUUM SWEEPING AND PLACING SEDIMENT IN DESIGNATED STOCKPILE, INCREASING THE DIMENSIONS OF THE ENTRANCE AND/OR INSTALLATION OF A WHEEL

17. THE CONTRACTOR SHALL MAINTAIN ALL EROSION, SEDIMENT AND POLLUTANT CONTROL MEASURES, TEMPORARY AND PERMANENT, IN PROPER FUNCTIONING ORDER. WITHIN 24 HOURS FOLLOWING A STORM OR HIGH WIND EVENT, THE CONTRACTOR MUST ADJUST, REPAIR AND REPLACE EROSION, SEDIMENT AND POLLUTANT CONTROL MEASURES TO ENSURE THAT THE MEASURES ARE FUNCTIONING PROPERLY.

18. ALL STOCKPILED MATERIALS SHALL BE PROTECTED WITH TEMPORARY SOIL STABILIZATION MEASURES SUCH AS PLASTIC SHEETING SECURED WITH TIE DOWNS AND SAND BAGS.

STORM WATER MANAGEMENT PLAN

PRIOR TO ANY SIGNIFICANT EXCAVATION

- I. INSTALL BEST MANAGEMENT PRACTICE (BMP) FOR EROSION PREVENTION
- 2. MAINTAIN AS MUCH EXISTING VEGETATION AS POSSIBLE

DURING CONSTRUCTION

- 3. REMOVE ANY SOIL THAT LEAVES THE SITES AND ENTERS DOWNSTREAM DRAINAGE SYSTEM
- THE CONTRACTOR SHALL MAINTAIN ALL EROSION, SEDIMENT AND POLLUTANT CONTROL MEASURES, TEMPORARY AND PERMANENT, IN PROPER FUNCTIONING ORDER. WITHIN 24 HOURS FOLLOWING A STORM OR HIGH WIND EVENT. THE CONTRACTOR MUST ADJUST. REPAIR AND REPLACE EROSION. SEDIMENT AND POLLUTANT CONTROL MEASURES TO ENSURE THAT THE MEASURES ARE FUNCTIONING PROPERLY.
- 5. ALL STOCKPILED MATERIALS SHALL BE PROTECTED WITH TEMPORARY SOIL STABILIZATION MEASURES SUCH AS PLASTIC SHEETING

UPON COMPLETION OF EXCAVATION

RE-SEED ALL DISTURBED SOILS. SEED SHALL BE FROM BLUE TAG STOCK AND FROM THE LATEST CROP AVAILABLE. THE FOLLOWING MIXTURES ARE APPROPRIATE FOR THE OREGON NORTH COAST:

SOIL CONSERVATION MIX: HYBRID RYE

3 LBS/ACRE 95 TALL FESCUE 18 LBS/ACRE 52% CREEPING RED FESCUE 8 LBS/ACRE 24% BENT GRASS I LBS/ACRE 3% BIG TREFOIL 4 LBS/ACRE 12%

WETLAND/ SWALE SEED MIX: AMERICAN SLOUGH GRASS

0.6 LBS/ACRE 2% 3.6 LBS/ACRE 12% TUFTED HAIRGRASS BLUE WILD RYE 13.8 LBS/ACRE 46% RED FESCUE II.4 LBS/ACRE 38% WESTERN MANNAGRASS 0.6 LBS/ACRE 2%

| SERVICE WEBSITE: http://websoilsurvey.nrcs.usda.gov/app/.

SOIL TYPES						
SCS ID	CLASSIFICATION	WIND ERODIBILITY RATING	WATER ERODIBILTY RATING			
9D	WALDPORT FINE SANDS	ı	0.02			
I OB	WALDPORT FINE SAND, THIN SURFACE	I	0.02			
TABLE SOURCE: UNITED STATES DEPARTMENT OF AGRICULTURE, NATURAL RESOURCES CONSERVATION						

PART II: BMPS WITH ESCP IMPLEMENTATION SCHEDULE FORM

The following controls and practices (BMPs), if appropriate for the site, are required in the ESCP. Submission of all ESCP revisions to DEQ are not required. ESCP revisions must be submitted in 10 days for specific conditions. See 1200-C permit (Schedule A.12.c.iv).

	YEAR				2023		-			1		1		_				
BMPs	Mon	10	11	12	1	2	3	4	5									
Biobags																		
Bioswales		7																
Check Dams																		
Compost Berm																		
Compost Blankets																		T
Compost Socks																		T
Concrete Truck Washout																		
Construction Entrance																		Т
Dewatering (treatment location, schematic, & sampling	g plan																	T
required)																		
Drainage Swales																		T
Earth Dikes (Stabilized)																		T
Energy Dissipaters																		T
Erosion Control Blankets & Mats (Specify type)																		\top
Hydroseeding																		\top
Inlet Protection		Х	Х	Х	Х	Х	Х	Х	Х									\top
Mulches (Specify Type)																		\top
Mycorrhizae/ Biofertilizers																		\top
Natural Buffer Zone																		\top
Orange fencing (protecting sensitive/preserved areas)																		\top
Outlet Protection																		\top
Permanent Seeding and Planting							Х	Х	Х									\top
Pipe Slope Drains																		+
Plastic Sheeting																		\top
Preserve Existing Vegetation		х	Х	X	Х	Х	Х	Х	Х									\top
Sediment Fencing		Х	Х	Х	Х	Х	Х	Х	Х									\top
Sediment Barrier																		\top
Sediment Trap																		T
Sodding																		+
Soil Tackifiers																		\top
Storm Drain Inlet Protection		х	Х	Х	Х	Х	Х	Х	X									\top
Straw Wattles (or other materials)				<u> </u>														$^{+}$
Temporary Diversion Dikes		1																\top
Temporary or Permanent Sedimentation Basins																		+
Temporary Seeding and Planting		1																+
Treatment System (O & M plan required)		1																+
Unpaved roads graveled or other BMP on the road														+				+
Vegetative Buffer Strips		1																+
D		1		+										+	+		_	+
		1	1	1	-	-			-	_	+	_	 -	_	_	 -	1	+-

Rev. 12/15/15 By: Krista Ratliff p. 4 of 7 NORTH COAS 35240 TOHL AVE. NEHALEM, OR 97131 Phone: 503.440.1088 Cell: 503.812.3732 Internet: www.nccivil.com



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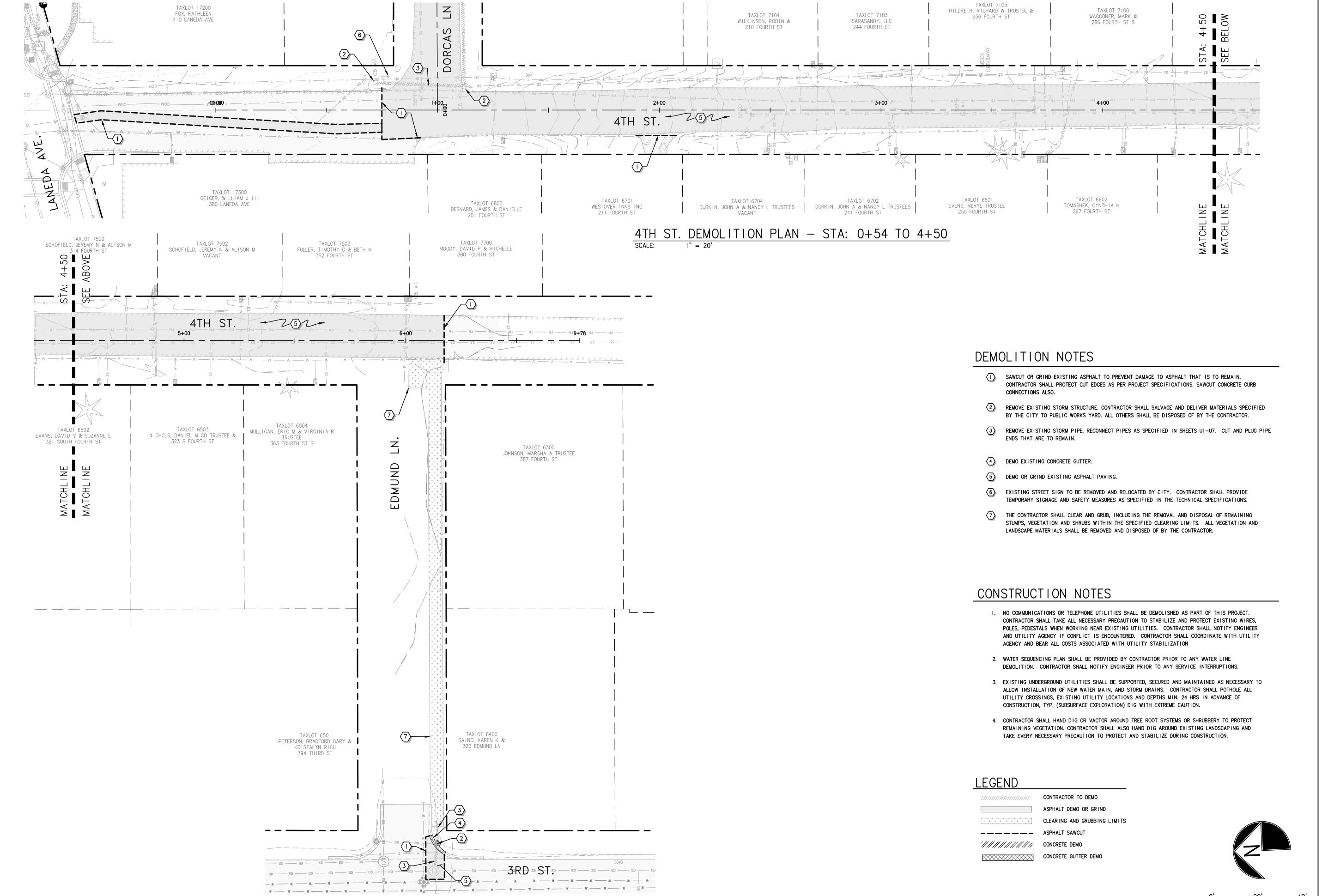
REVISION COMMENTS			Design Drawn Checked Initial Issue Date:
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NO. DATE			Drawn
NO.			Design

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4TH ST. DEMOLITION PLAN - STA: 4+50 TO 6+24

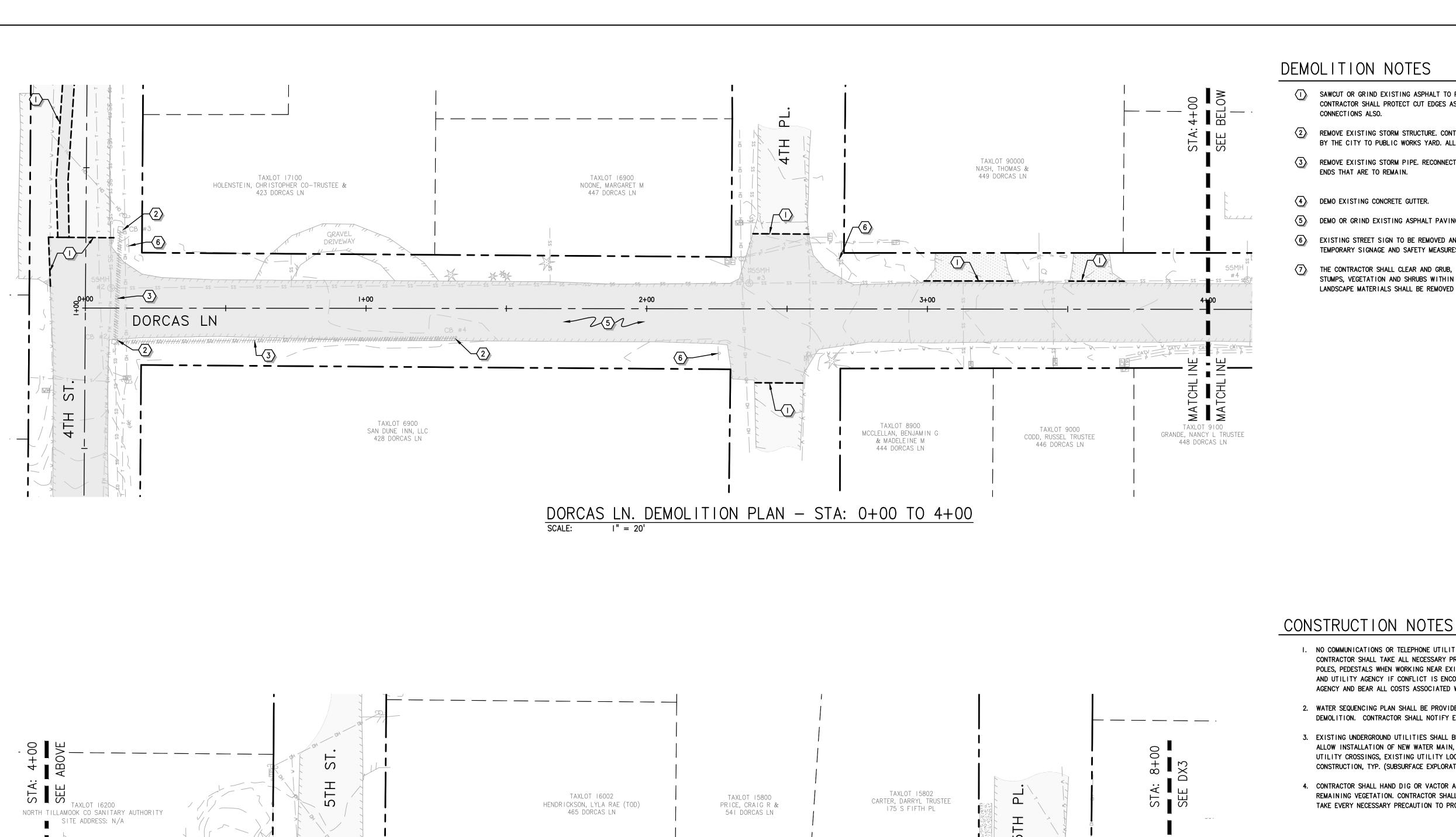
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CITY Dorcas Ln Demoliton 4th St. -Tillamook

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REVISION COMMENTS			Design Drawn Checked Initial Issue Date:	LJ KKA Sunday, October 23, 2022
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NO. DATE			Drawn	۲٦
NO.			Design	KKA

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Project No.	Drawing No.
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DX	(1
Sheet No.	



TAXLOT 9400

NEITLING, JENNIFER

476 DORCAS LN

TAXLOT 9300

BEUCHET, CORINNE TRUSTEE

454 DORCAS LN

MATCH MATCH

TAXLOT 9200

MJS INVESTMENTS LLC

450 DORCAS LN

DEMOLITION NOTES

- SAWCUT OR GRIND EXISTING ASPHALT TO PREVENT DAMAGE TO ASPHALT THAT IS TO REMAIN. CONTRACTOR SHALL PROTECT CUT EDGES AS PER PROJECT SPECIFICATIONS. SAWCUT CONCRETE CURB CONNECTIONS ALSO.
- REMOVE EXISTING STORM STRUCTURE. CONTRACTOR SHALL SALVAGE AND DELIVER MATERIALS SPECIFIED BY THE CITY TO PUBLIC WORKS YARD. ALL OTHERS SHALL BE DISPOSED OF BY THE CONTRACTOR.
- REMOVE EXISTING STORM PIPE. RECONNECT PIPES AS SPECIFIED IN SHEETS UI-U7. CUT AND PLUG PIPE ENDS THAT ARE TO REMAIN.
- DEMO EXISTING CONCRETE GUTTER.
- 5 DEMO OR GRIND EXISTING ASPHALT PAVING.
- 6 EXISTING STREET SIGN TO BE REMOVED AND RELOCATED BY CITY. CONTRACTOR SHALL PROVIDE TEMPORARY SIGNAGE AND SAFETY MEASURES AS SPECIFIED IN THE TECHNICAL SPECIFICATIONS.
- THE CONTRACTOR SHALL CLEAR AND GRUB, INCLUDING THE REMOVAL AND DISPOSAL OF REMAINING STUMPS, VEGETATION AND SHRUBS WITHIN THE SPECIFIED CLEARING LIMITS. ALL VEGETATION AND LANDSCAPE MATERIALS SHALL BE REMOVED AND DISPOSED OF BY THE CONTRACTOR.

- I. NO COMMUNICATIONS OR TELEPHONE UTILITIES SHALL BE DEMOLISHED AS PART OF THIS PROJECT. CONTRACTOR SHALL TAKE ALL NECESSARY PRECAUTION TO STABILIZE AND PROTECT EXISTING WIRES, POLES, PEDESTALS WHEN WORKING NEAR EXISTING UTILITIES. CONTRACTOR SHALL NOTIFY ENGINEER AND UTILITY AGENCY IF CONFLICT IS ENCOUNTERED. CONTRACTOR SHALL COORDINATE WITH UTILITY AGENCY AND BEAR ALL COSTS ASSOCIATED WITH UTILITY STABILIZATION
- 2. WATER SEQUENCING PLAN SHALL BE PROVIDED BY CONTRACTOR PRIOR TO ANY WATER LINE DEMOLITION. CONTRACTOR SHALL NOTIFY ENGINEER PRIOR TO ANY SERVICE INTERRUPTIONS.
- 3. EXISTING UNDERGROUND UTILITIES SHALL BE SUPPORTED, SECURED AND MAINTAINED AS NECESSARY TO ALLOW INSTALLATION OF NEW WATER MAIN, AND STORM DRAINS. CONTRACTOR SHALL POTHOLE ALL UTILITY CROSSINGS, EXISTING UTILITY LOCATIONS AND DEPTHS MIN. 24 HRS IN ADVANCE OF CONSTRUCTION, TYP. (SUBSURFACE EXPLORATION) DIG WITH EXTREME CAUTION.
- 4. CONTRACTOR SHALL HAND DIG OR VACTOR AROUND TREE ROOT SYSTEMS OR SHRUBBERY TO PROTECT REMAINING VEGETATION. CONTRACTOR SHALL ALSO HAND DIG AROUND EXISTING LANDSCAPING AND TAKE EVERY NECESSARY PRECAUTION TO PROTECT AND STABILIZE DURING CONSTRUCTION.

LEGEND

TAXLOT 9600

GARVEY FAMILY, LLC 556 DORCAS LN

TAXLOT 9600

FOLEN, JEFFREY E

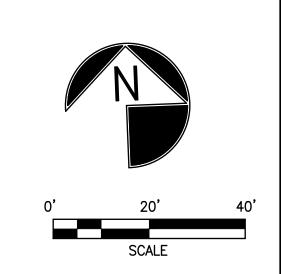
498 DORCAS LN

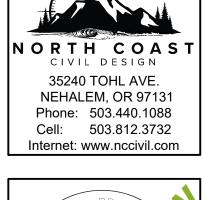
DORCAS LN. DEMOLITION PLAN - STA: 4+00 TO 8+00SCALE: 1'' = 20'

CONTRACTOR TO DEMO ASPHALT DEMO OR GRIND

CLEARING AND GRUBBING LIMITS ---- ASPHALT SAWCUT

'//////// CONCRETE DEMO CONCRETE GUTTER DEMO

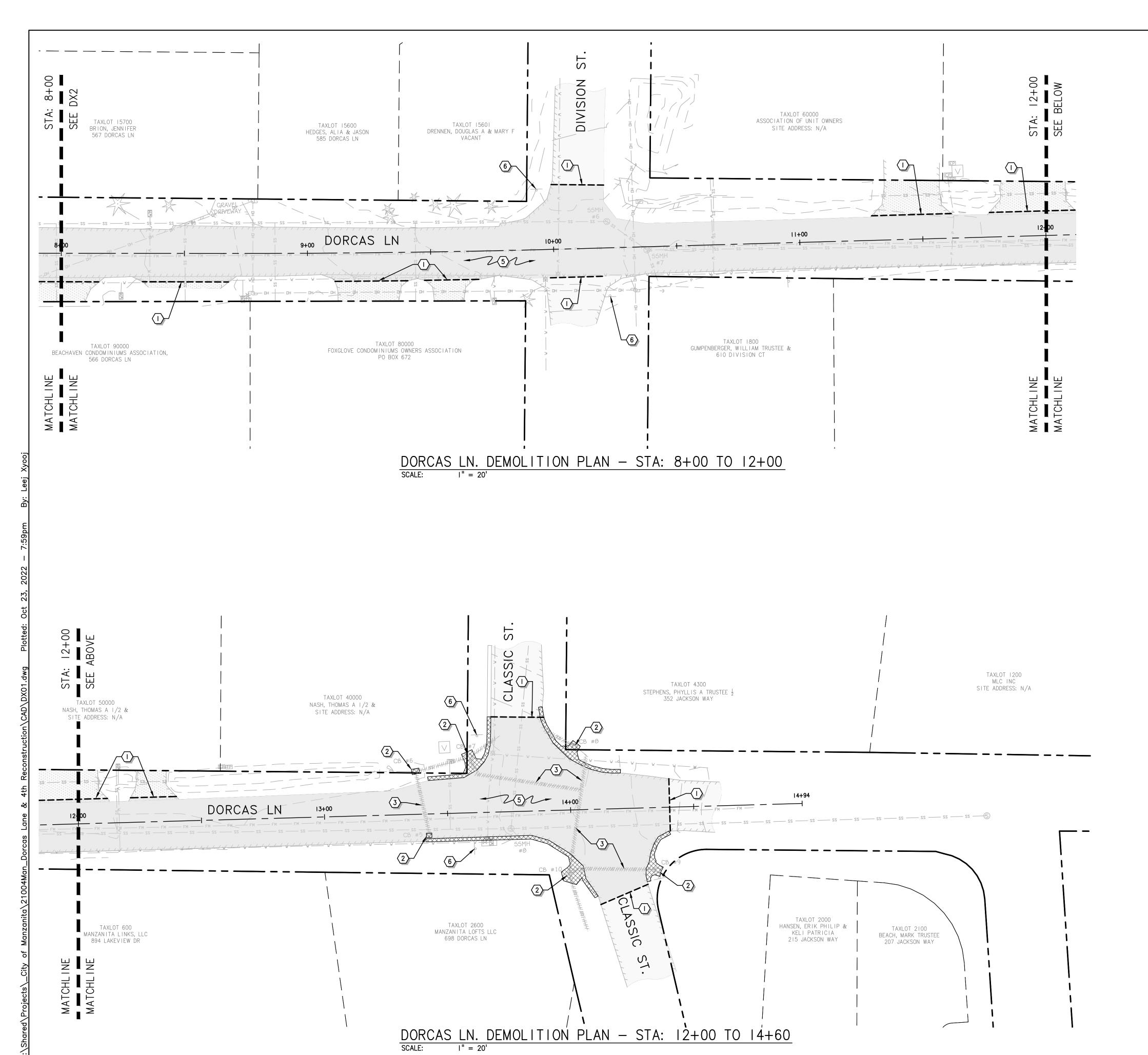






00 0R \circ LN. AND ON PLAN LN. STA LN. STA OK COUNT CITY ODORCAS LN. ADEMOLITON PLORCAS LN. STILLAMOOK CC

Drawing No. Project No. 21004 DX01.DWG DX2 Sheet No.



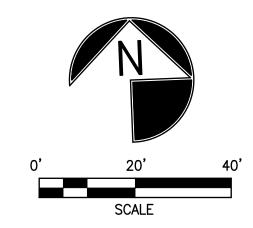
DEMOLITION NOTES

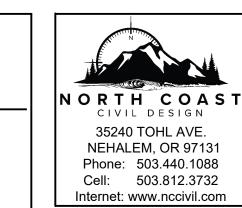
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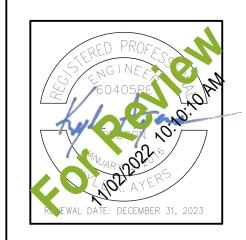
CONSTRUCTION NOTES

- I. NO COMMUNICATIONS OR TELEPHONE UTILITIES SHALL BE DEMOLISHED AS PART OF THIS PROJECT.
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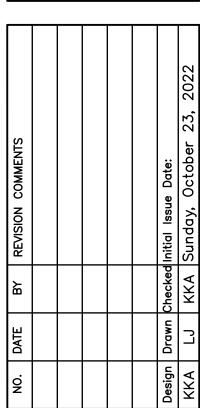
LEGEND







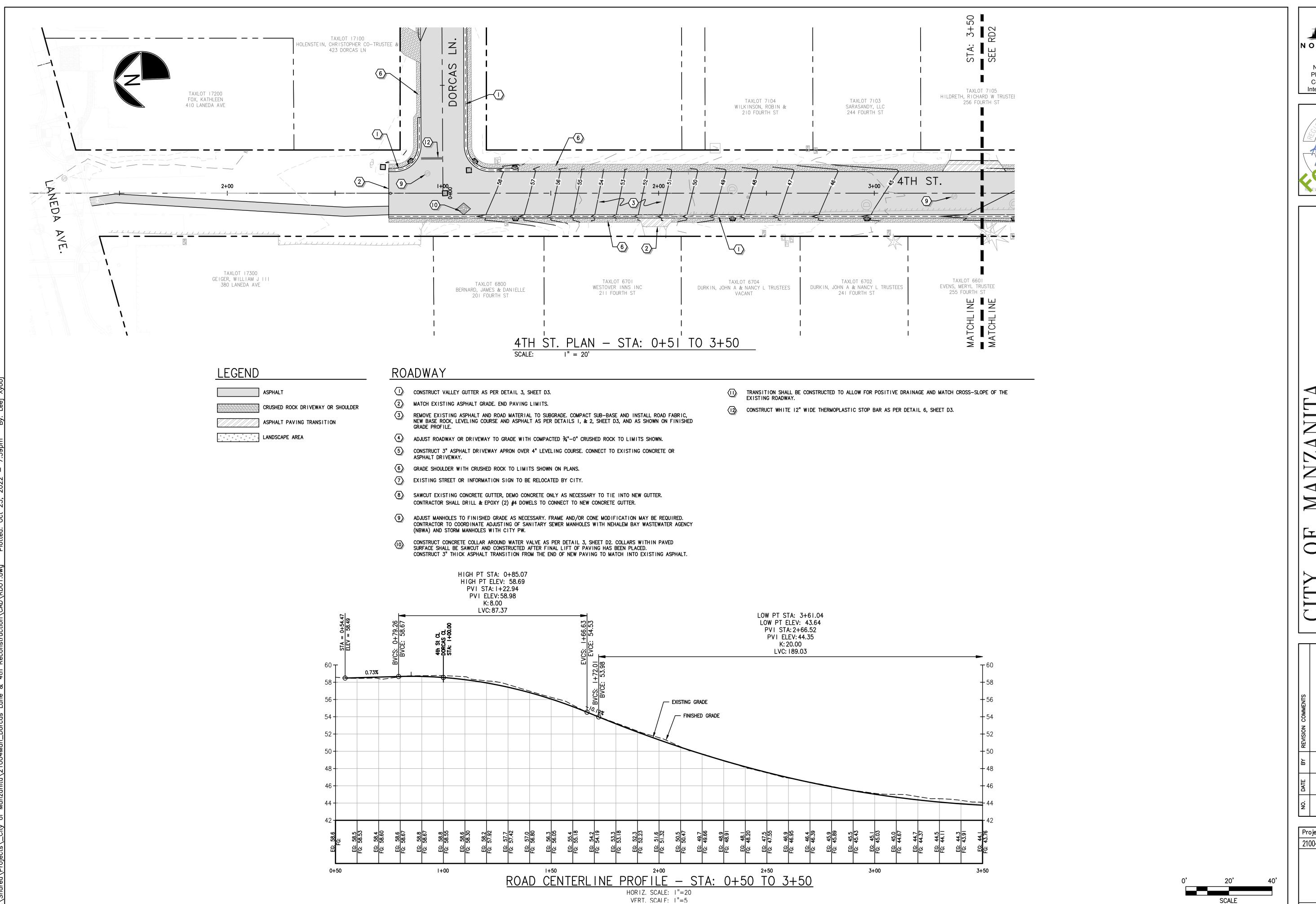
CITY OF MANZANITA
DORCAS LN. AND 4TH ST. CONSTRUCTION
DEMOLITON PLAN
DORCAS LN. - STA 8+00 TO 14+60
TILLAMOOK COUNTY, OR



Project No. Drawing No. 21004 DX01.DWG

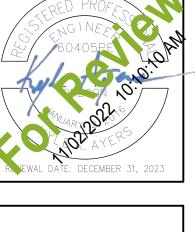
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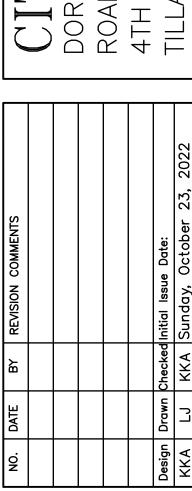




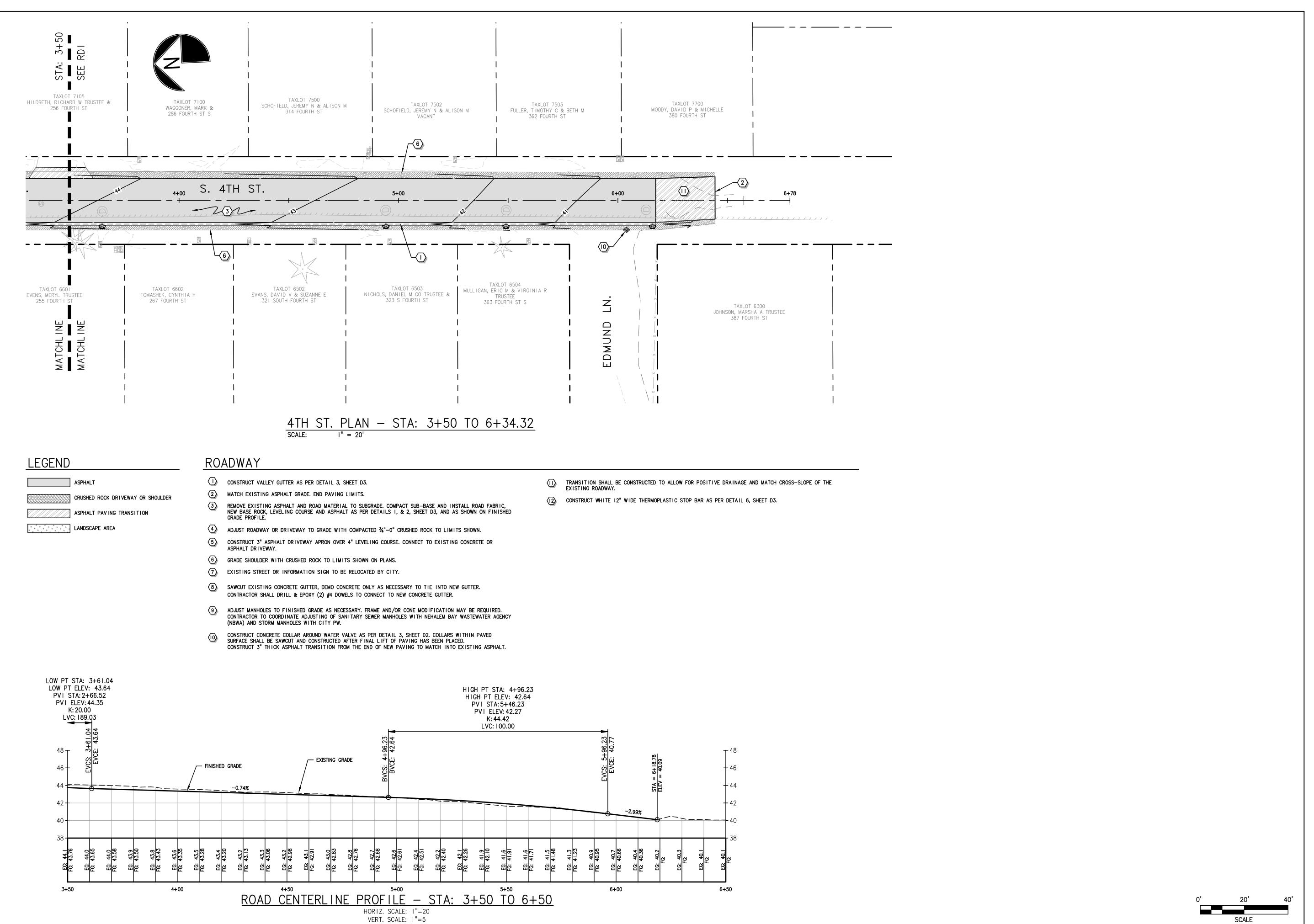
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Project No. Drawing No. 21004 RD01.DWG RD1 Sheet No.

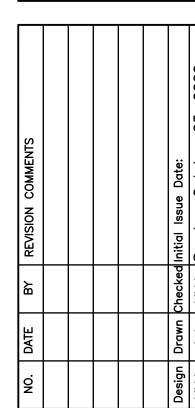


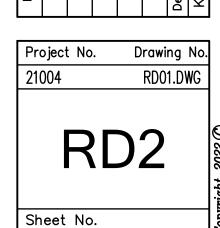
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PROFILE \approx

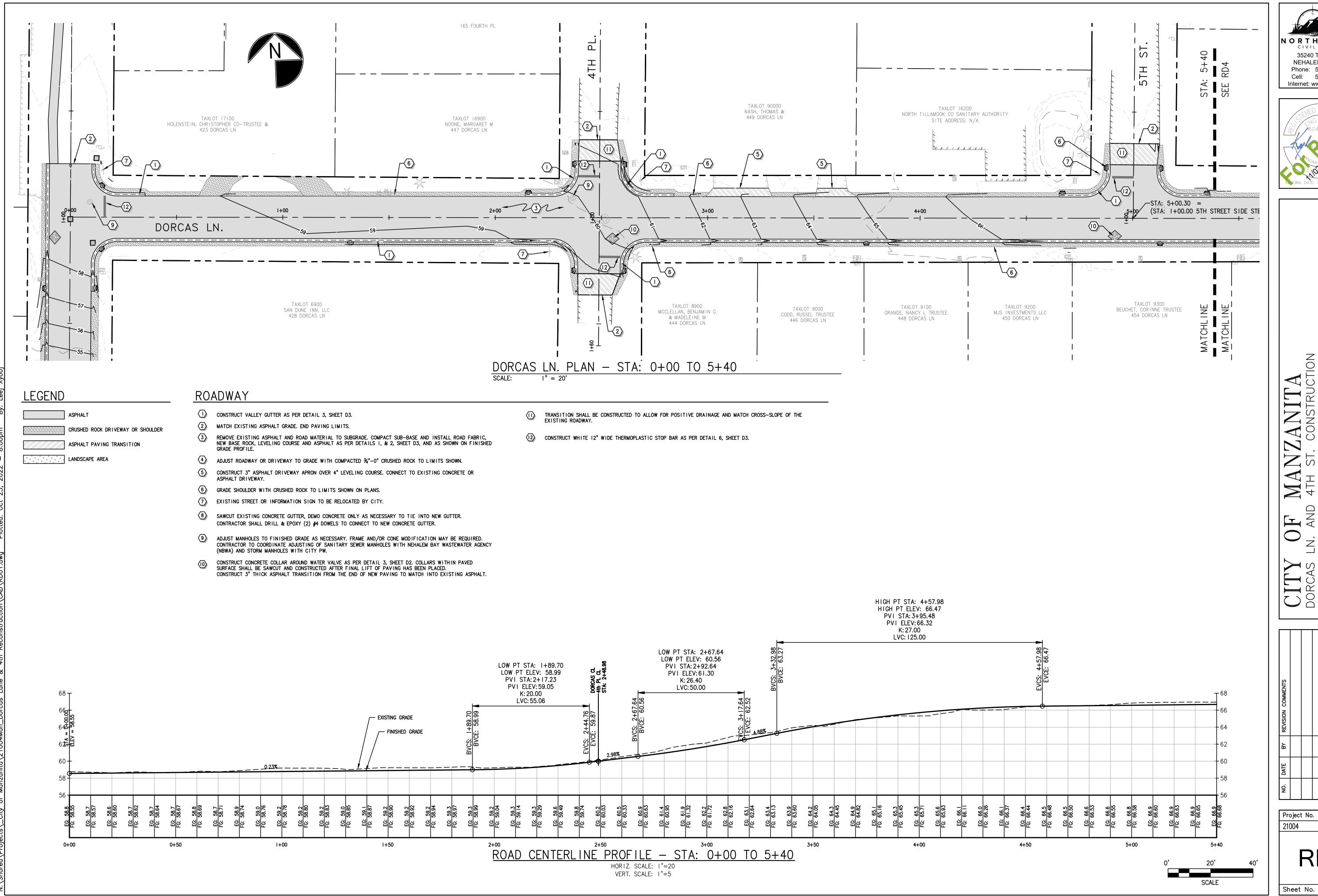
Y OF MANZANITA S LN. AND 4TH ST. CONSTRUCTION CONSTRUCTION DRAWINGS T. - STA: 3+50 TO 6+34.32 PLAN OOK COUNTY, OR CI DOR ROA 4TH



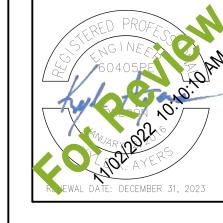


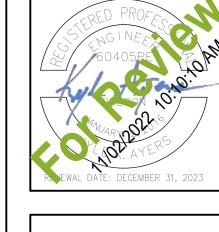
BID SET

SCALE



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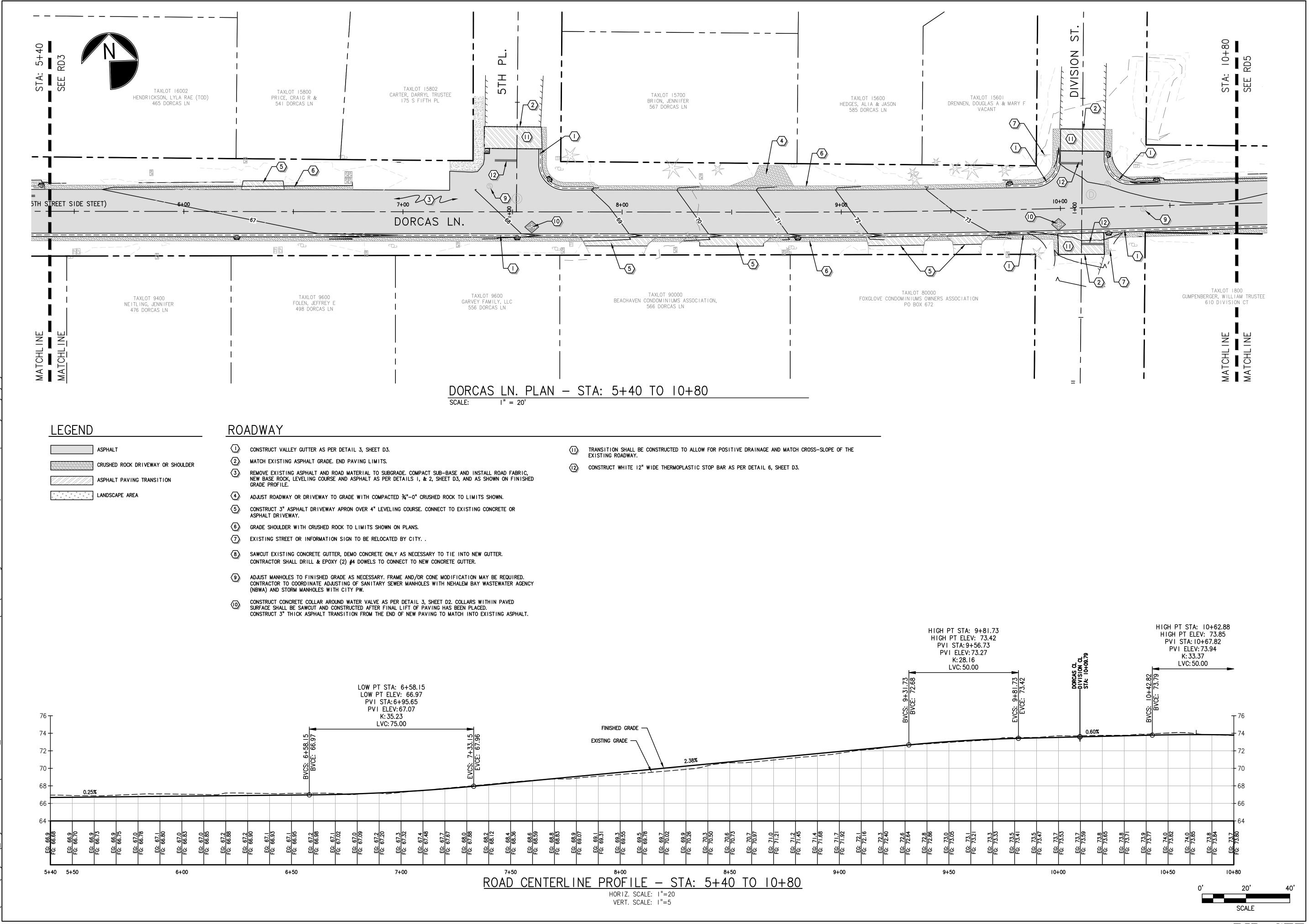


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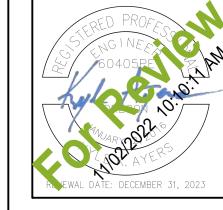
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ZANITA
T. CONSTRUCTION MAN S LN. AND 4TH S CONSTRUCTION DR S LN. STA 0+00 DOK COUNTY, OR CITY DORCAS ROAD CC DORCAS TILLAMOC

Project No. Drawing No. 21004 RD01.DWG RD3



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PROFILE

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ZANITA
T. CONSTRUCTION OF MA S LN. AND 4TH CONSTRUCTION D S LN. STA 5+40 SOK COUNTY, OF CITY DORCAS ROAD CO DORCAS TILLAMOO

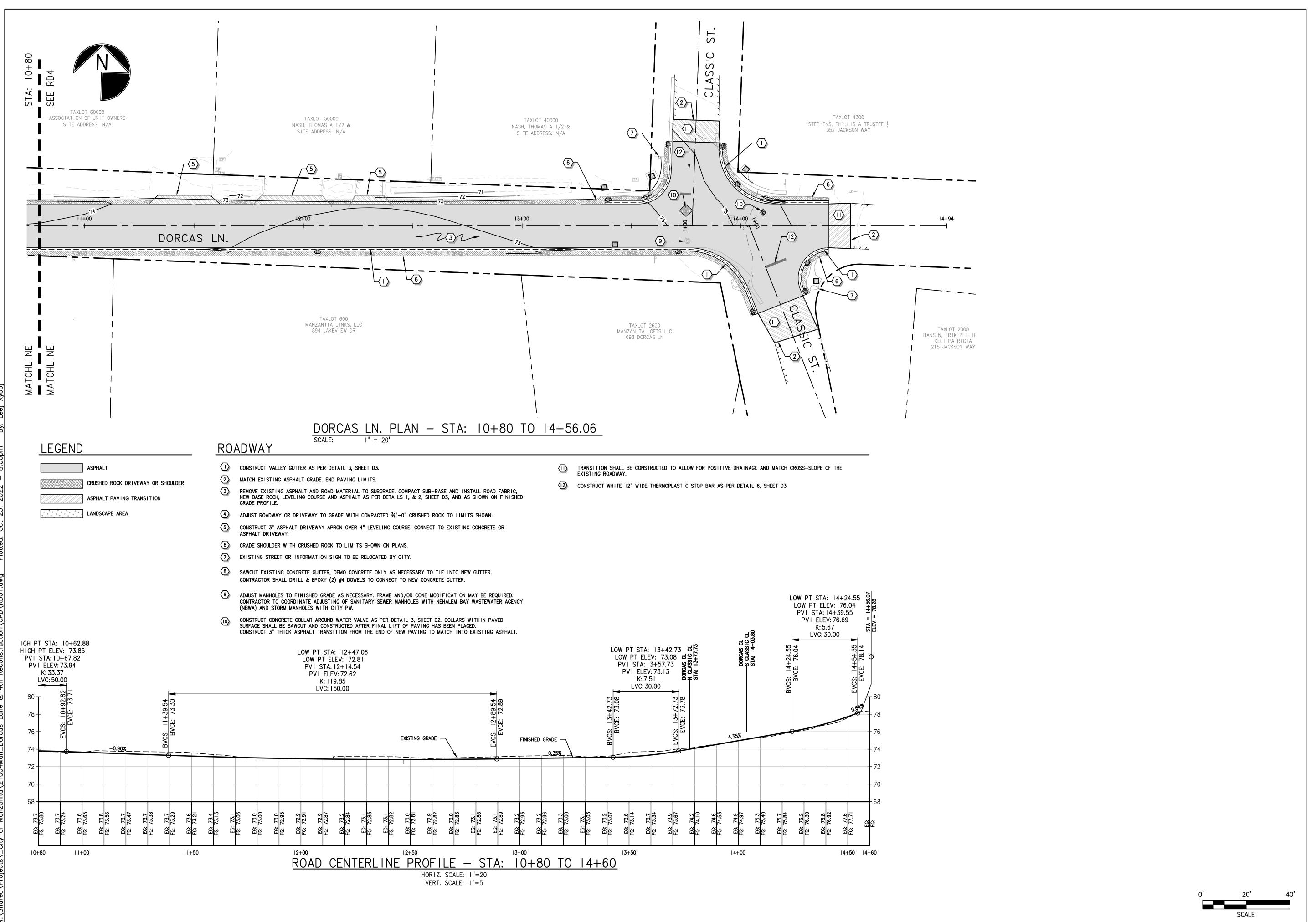
RD4 Sheet No. BID SET

Project No.

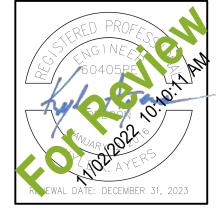
21004

Drawing No.

RD01.DWG



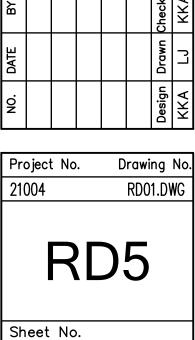


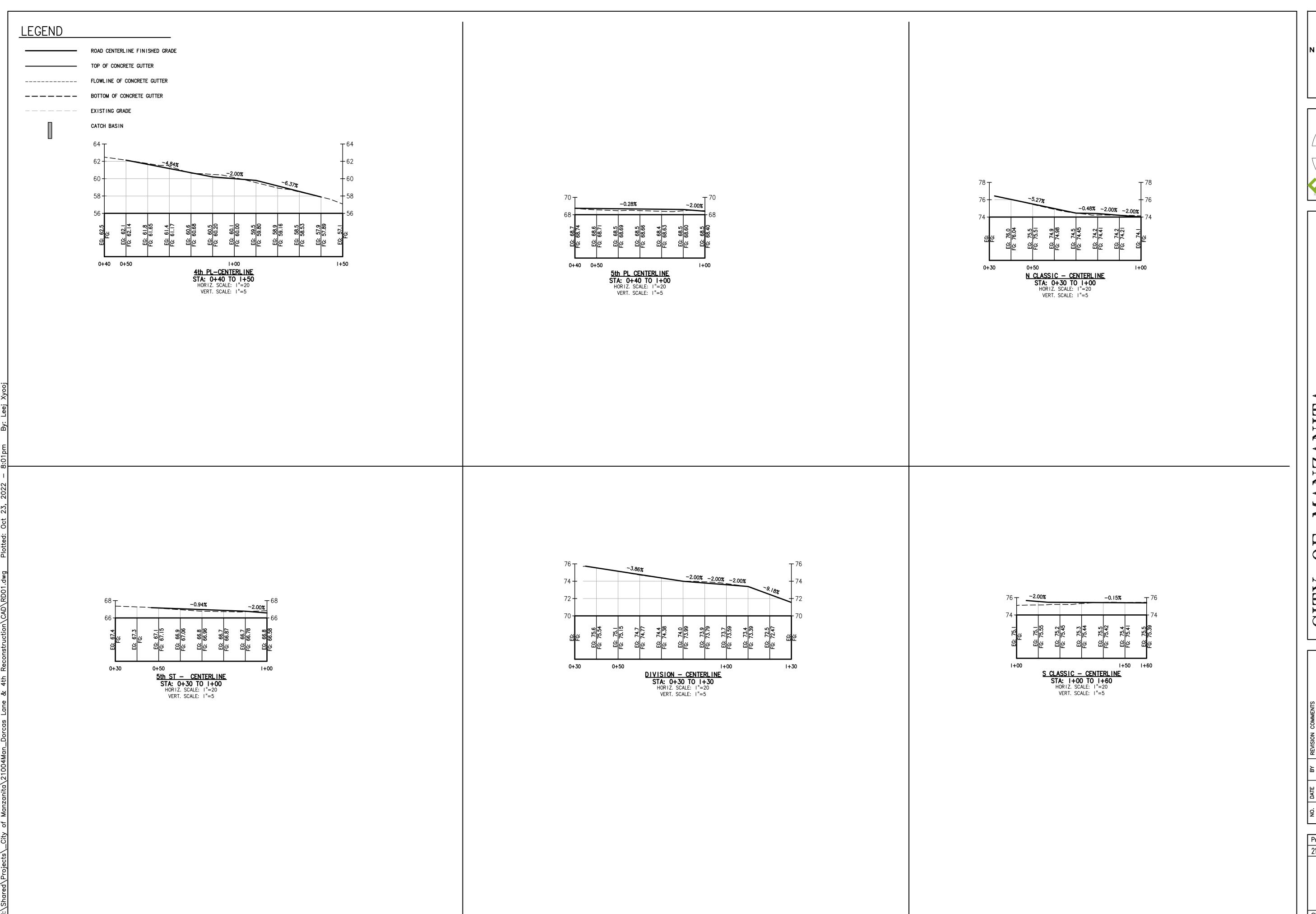


PROFILE

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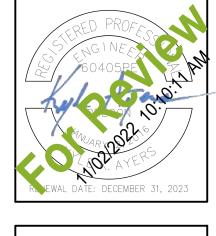
NZANITA St. construction drawings \circ S LN. AND 4TH CONSTRUCTION D S LN. - STA 10 CITY DORCAS ROAD CO DORCAS TILLAMOO



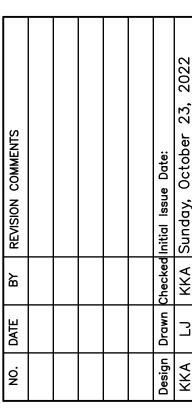




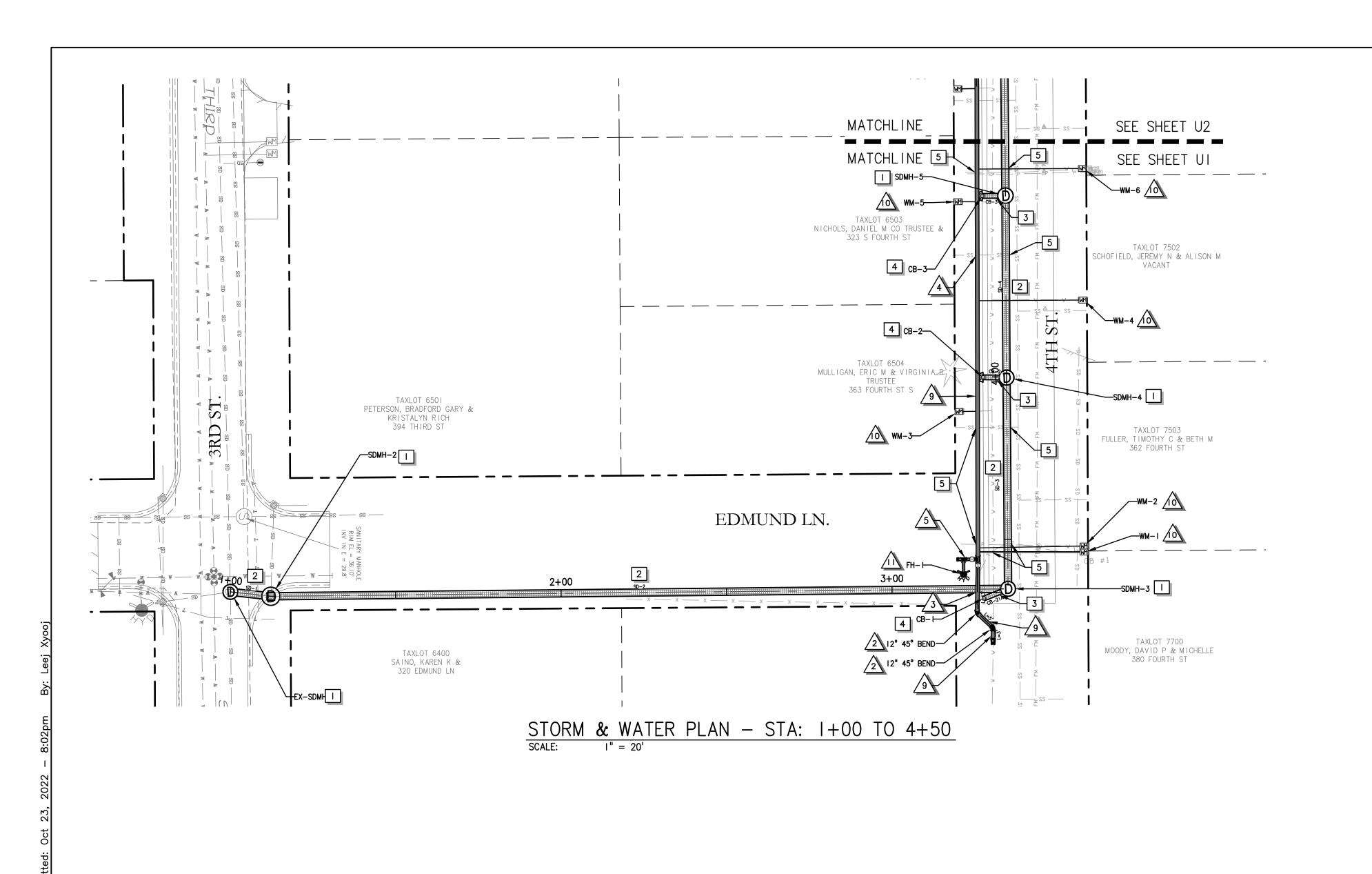




MANZANITA	RCAS LN. AND 4TH ST. CONSTRUCTION	AD CONSTRUCTION DRAWINGS	ERSECTING ROAD & GUTTER PROFILES	
MAI	4TH 9	IO NOI.	4D &	
	N. AND	NSTRUCT	'ING RO,	
ITY OF	RCAS L	AD CON	ERSECT	



Project No. Drawing No. 21004 RD01.DWG RD6 Sheet No.



SD-2: 222.76' of 18" HDPE @ 0.33%

2+00

STORM & WATER - STA: 1+00 TO 4+70

HORIZ. SCALE: I"=20 VERT. SCALE: I"=5

42 —

L=12.29' 18" HDPE ——\$=1.26%

1+50

STORM

SD-3: 63.80' of 18" HDPE @ 2.46%

EX-SEWER —

4+00

- CONSTRUCT 48" O CONCRETE STORM DRAIN MANHOLE AS PER DETAIL 2, SHEET DI AND STORM STRUCTURE TABLE THIS SHEET.
- 2 CONSTRUCT 18"Ø HDPE STORM PIPE AS PER TRENCH DETAIL I SHEET DI. SEE PIPE TABLE ON THIS SHEET.
- 3 CONSTRUCT 12"Ø HDPE STORM PIPE AS PER TRENCH DETAIL I SHEET DI. SEE PIPE TABLE ON THIS SHEET.
- CONSTRUCT NYLOPLAST CATCH BASIN WITH H20 GRATE AS PER DETAIL 4, SHEET DI. SEE STORM STRUCTURE AND STORM PIPE TABLE THIS SHEET. RECONNECT PIPES WHERE SHOWN.
- UTILITY ELEVATION UNKNOWN. CONTRACTOR SHALL POTHOLE UTILITY TO DETERMINE IF CONFLICT EXISTS AND REPORT ALL FINDINGS TO ENGINEER. UTILITY SHALL BE RELOCATED BY THE CONTRACTOR DURING CONSTRUCTION WITH THE ASSISTANCE OF THE UTILITY AGENCY IF UTILITY CONFLICTS OCCUR. THE CONTRACTOR SHALL COORDINATE WITH UTILITY AGENCY AND SHALL ANTICIPATE ALL COSTS FOR UTILITY CROSSING DURING CONSTRUCTION.

WATER NOTES

CONSTRUCT 8" WATER MAIN AS PER TRENCH DETAIL I, SHEET D2.

CONSTRUCT D.I. RESTRAINED BEND AS SPECIFIED IN PLAN VIEW. THRUST BLOCKS SHALL BE CONSTRUCTED AS PER DETAIL 5, SHEET D2.

WATER/STORM CROSSING. WATER SHALL PASS OVER NEW STORM LINE WITH 6" OPTIMAL, 2" MIN. CLEARANCE.

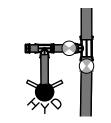
VERIFY 18" SEPARATION BETWEEN WATER AND SEWER. IF ADEQUATE SEPARATION NOT POSSIBLE, ENCAPSULATE SEWER MAIN WITH CDF AS PER DETAILS 6, SHEET D2.

CONSTRUCT 2 VALVE CLUSTER AS PER DETAIL I, SHEET UI AND PER CLUSTER-I PARTS THIS SHEET.

9 CONSTRUCT 12" WATER MAIN AS PER TRENCH DETAIL I, SHEET D2.

CONSTRUCT WATER SERVICE ASSEMBLY PER WATER TABLE THIS SHEET AND DETAIL 2, SHEET D2.

CONSTRUCT FIRE HYDRANT ASSEMBLY PER WATER TABLE THIS SHEET AND DETAIL 4, SHEET D2.



- I TEE, DI, I2" X 8" FLG X FLG I - EBBA IRON 2100 SERIES MEGA-FLANGE, 12" I - GATE VALVE, 12" FLG X MJ, W/ GRIP RING (S) I – GATE VALVE, 8" FLG X FLG
- I TEE, DI, 8" X 6" FLG X FLG (HYD), W/ 8" BLIND FLG CAP I - GATE VALVE, 6", FLG X MJ (HYD), W/ GRIP RINGS I - HYDRANT ASSEMBLY, PER PLANS I - LONG-PATTERN SLEEVE, DI, 12", MJ X MJ, W/ GRIP RINGS
- 2 BENDS, DI, 12", 45°, MJ X MJ, W/ GRIP RINGS 6 - THRUST BLOCKS, PER PLANS

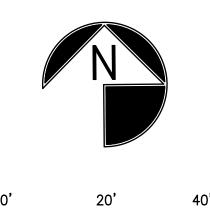
4TH ST./EDMOND ST. CLUSTER-I PARTS UI NO SCALE

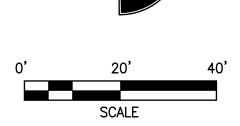
Pipe Name	Size	Length	Slope					
CB-3	12"	7.01'	1.01%					
SD-I	18"	12.29'	1.26%					
SD-2	18"	222.76'	0.33%					
SD-3	18"	63.80'	2.46%					
SD-4	18"	54.93'	0.93%					
STORM PIPE TABLE								
Pipe Name	Size	Length	Slope					
CB-2	12"	7.12'	1.12%					

STORM PIPE TABLE

	STOR	M-NEW STRU	ICTURE TABLE	
Structure Name	Street Location	Structure Details	I.E. IN	I.E. OUT
CB-I	3+27.76 2.83' R	RIM: 40.23' SUMP: 36.08'		37.08' CB-2
CB-2	3+98.98 7.11' L	RIM: 41.48' SUMP: 36.00'		37.00' CB-2
CB-3	4+53.74 7.01' L	RIM: 42.46' SUMP: 36.49'		37.49' CB-
EX-SDMH-I	1+00.00 0.00'	RIM: 39.26' SUMP: 33.45'	34.45' SD-1	
SDMH-2	1+12.29 0.00'	RIM: 39.41' SUMP: 33.60'	34.60' SD-2	34.60' SD-
SDMH-3	3+35.05 0.00'	RIM: 40.39' SUMP: 34.84'	35.34' SD-3 37.00' CB-21A	35.34' SD-
SDMH-4	3+98.85 0.00'	RIM: 41.59' SUMP: 36.42'	36.92' SD-4 36.92' CB-2	36.92' SD-
SDMH-5	4+53.79 0.00'	RIM: 42.57' SUMP: 36.92'	37.42' SD-5 37.42' CB-3	37.42' SD-

WA	WATER APPURTENANCE TABLE							
Appurtenance Name	Fitting or Svc Size	Street Location						
FH-I	6"ø	STA: 3+21.65 OFF: 4.51 L						
WM-I	3"ø	STA: 3+45.97 OFF: 23.04 R						
WM-2	3"ø	STA: 3+47.82 OFF: 23.05 R						
WM-3	3"ø	STA: 3+88.71 OFF: 14.42 L						
WM-4	<u>3</u> "ø	STA: 4+22.11 OFF: 23.21 R						
WM-5	<u>3</u> ″ø	STA: 4+52.04 OFF: 14.33 L						
WM-6	3"ø	STA: 4+61.80 OFF: 23.31 R						





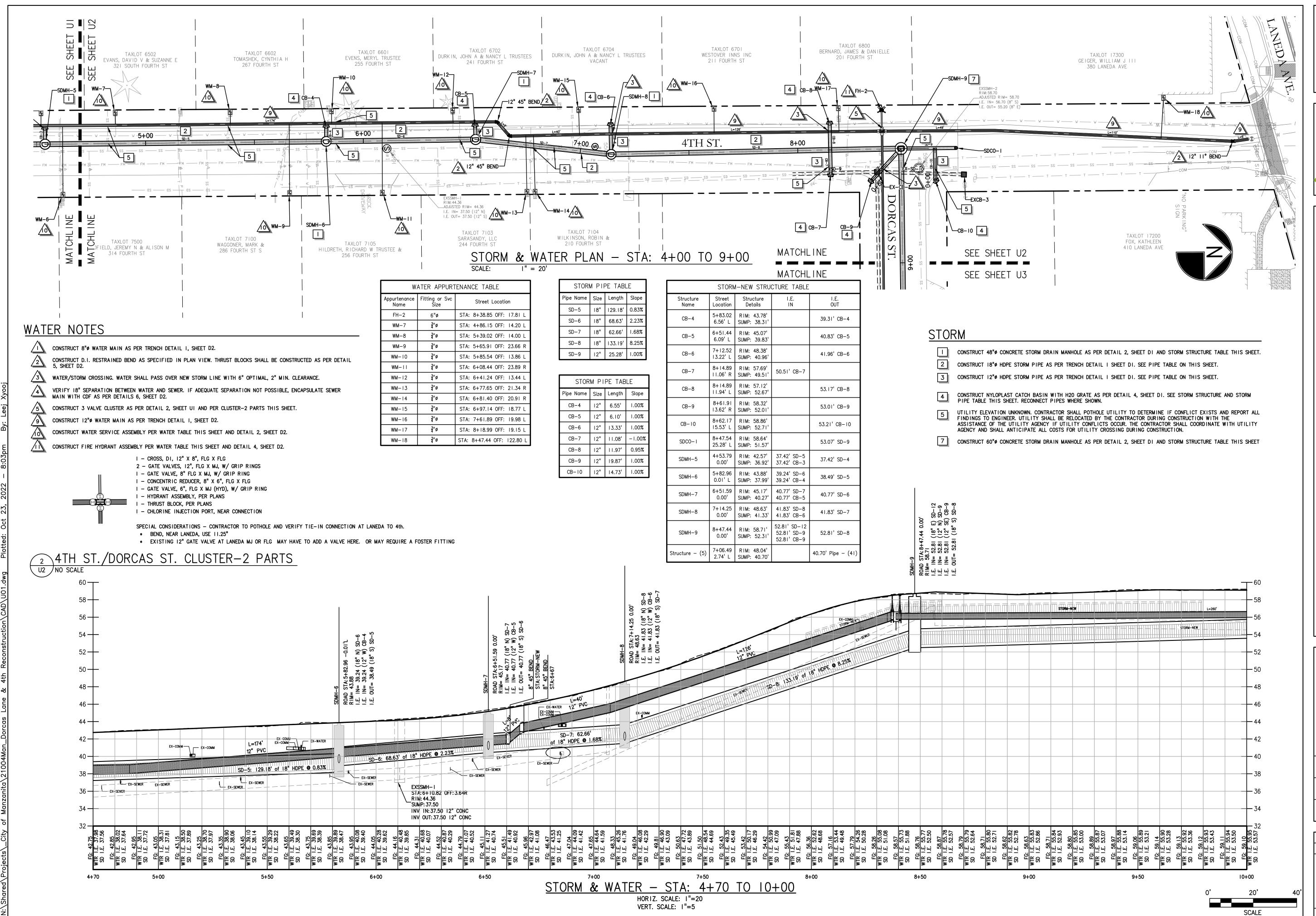
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CTION DRAWINGS PROFILE VIEW NOIL

Project No. Drawing No. U01.DWG 21004

Sheet No.



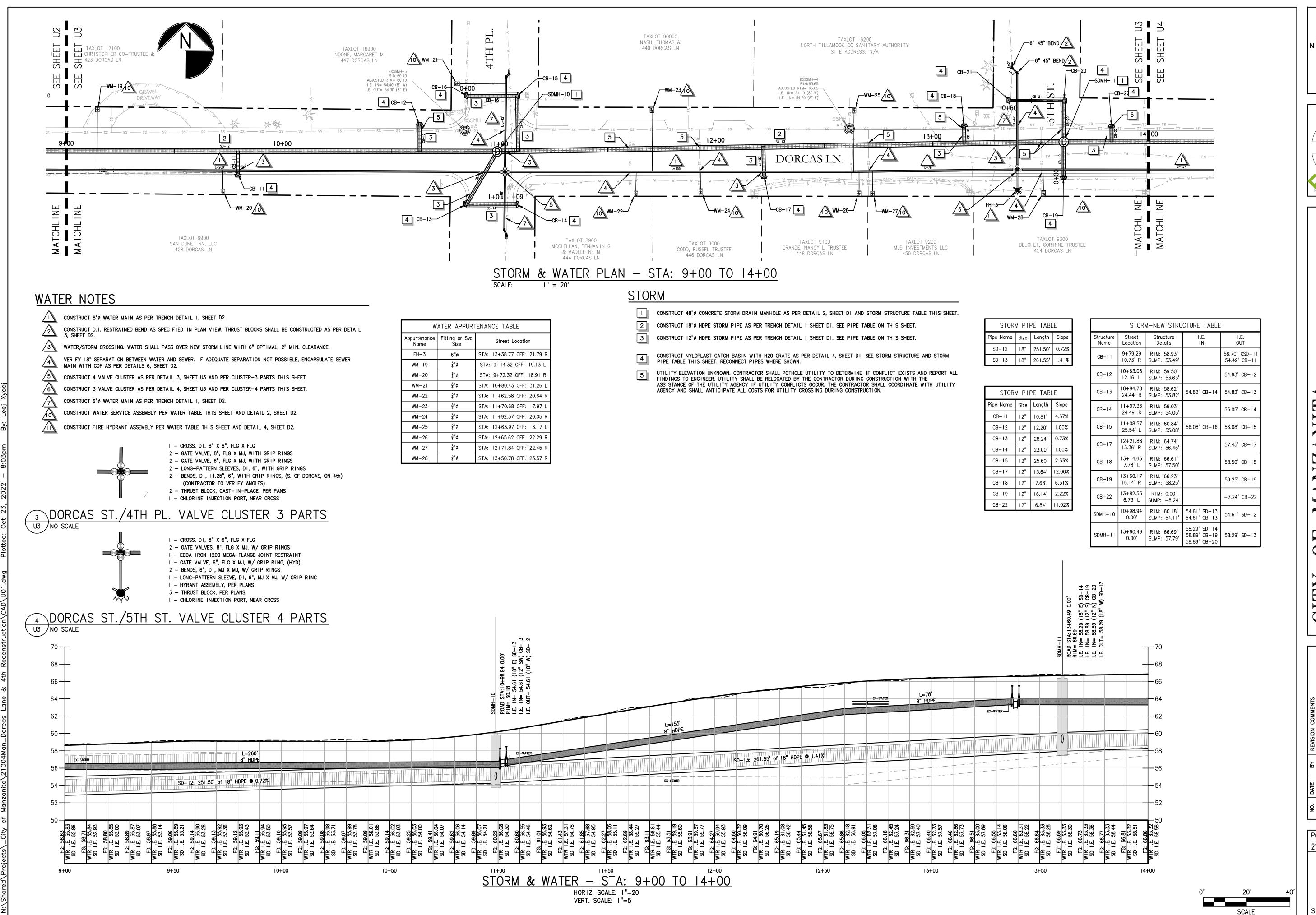
ZANITA construction construction drawings plan and profile view LN. AND & WATER 0 $\stackrel{>}{\times}$

CITY DORCAS STORM STA 4+7 TILLAMO(

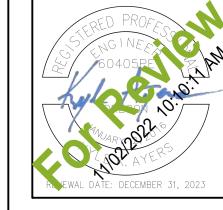
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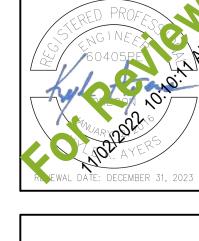


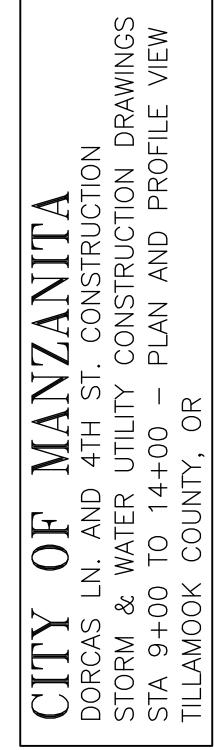
Project No. Drawing No. 21004 U01.DWG Sheet No.

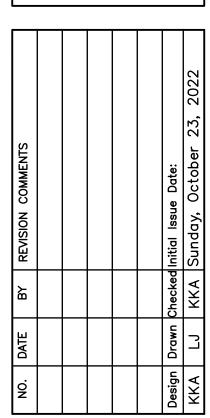


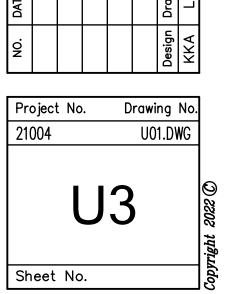
NORTH COAS 35240 TOHL AVE. NEHALEM, OR 97131 Phone: 503.440.1088 Cell: 503.812.3732 Internet: www.nccivil.com

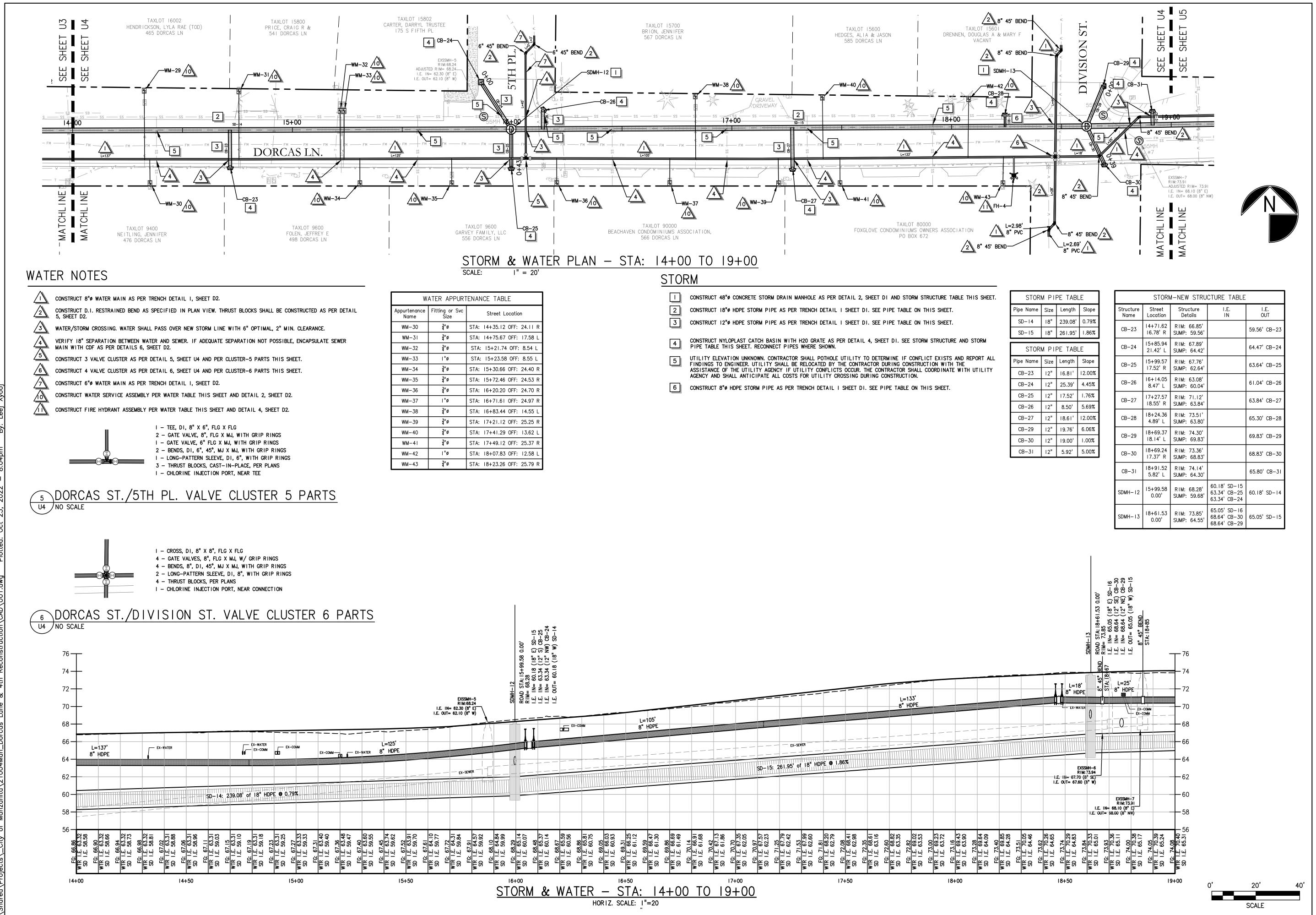












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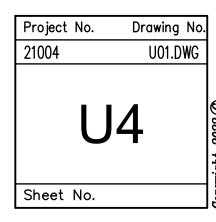
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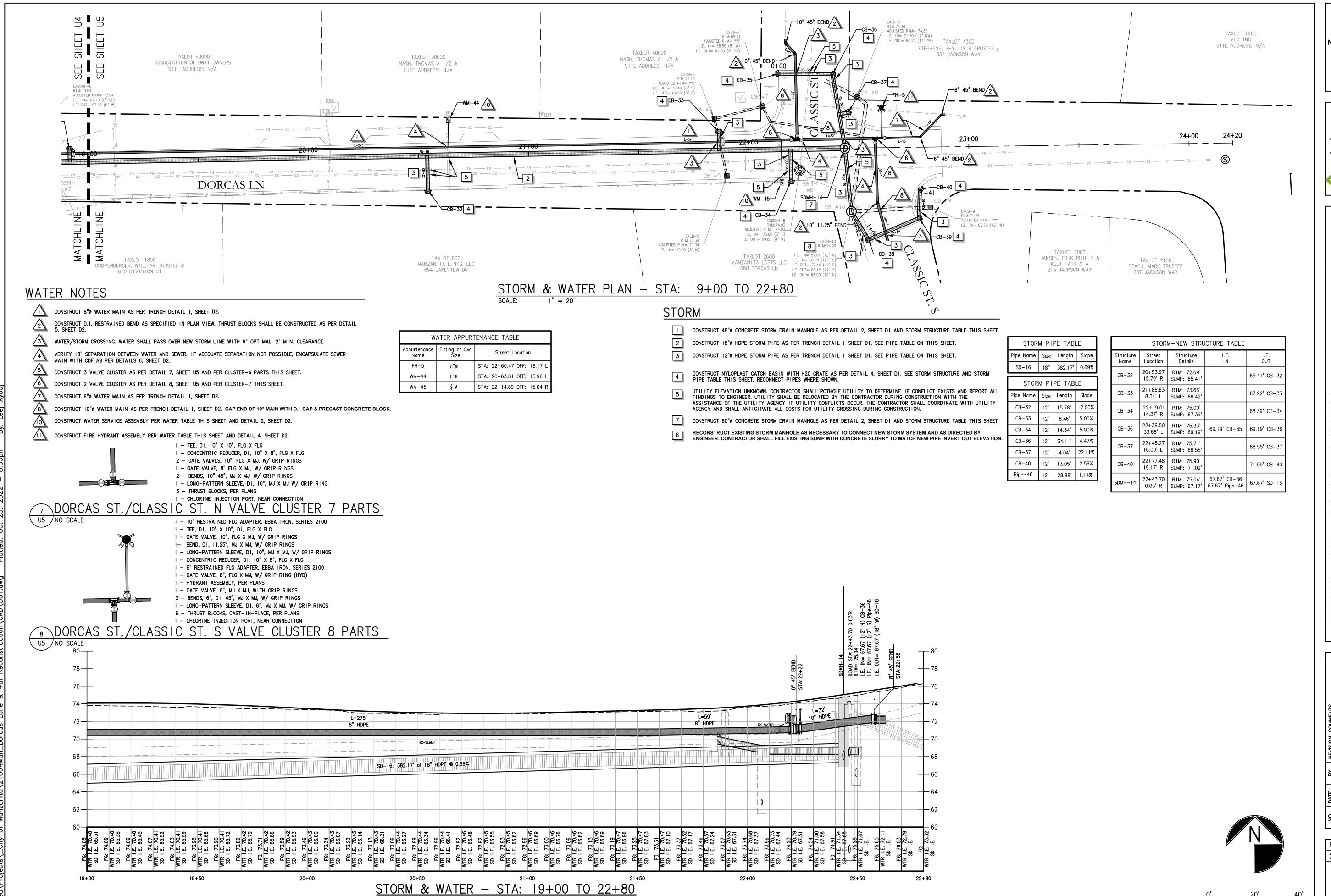
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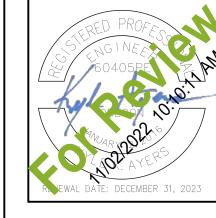
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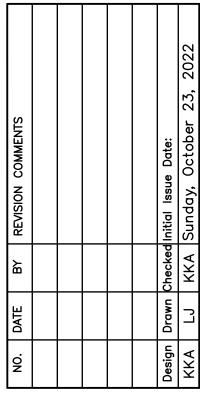
REWAL DATE: DECEMBER 31,

CITY OF MANZANITA

DORCAS LN. AND 4TH ST. CONSTRUCTION

STORM & WATER UTILITY

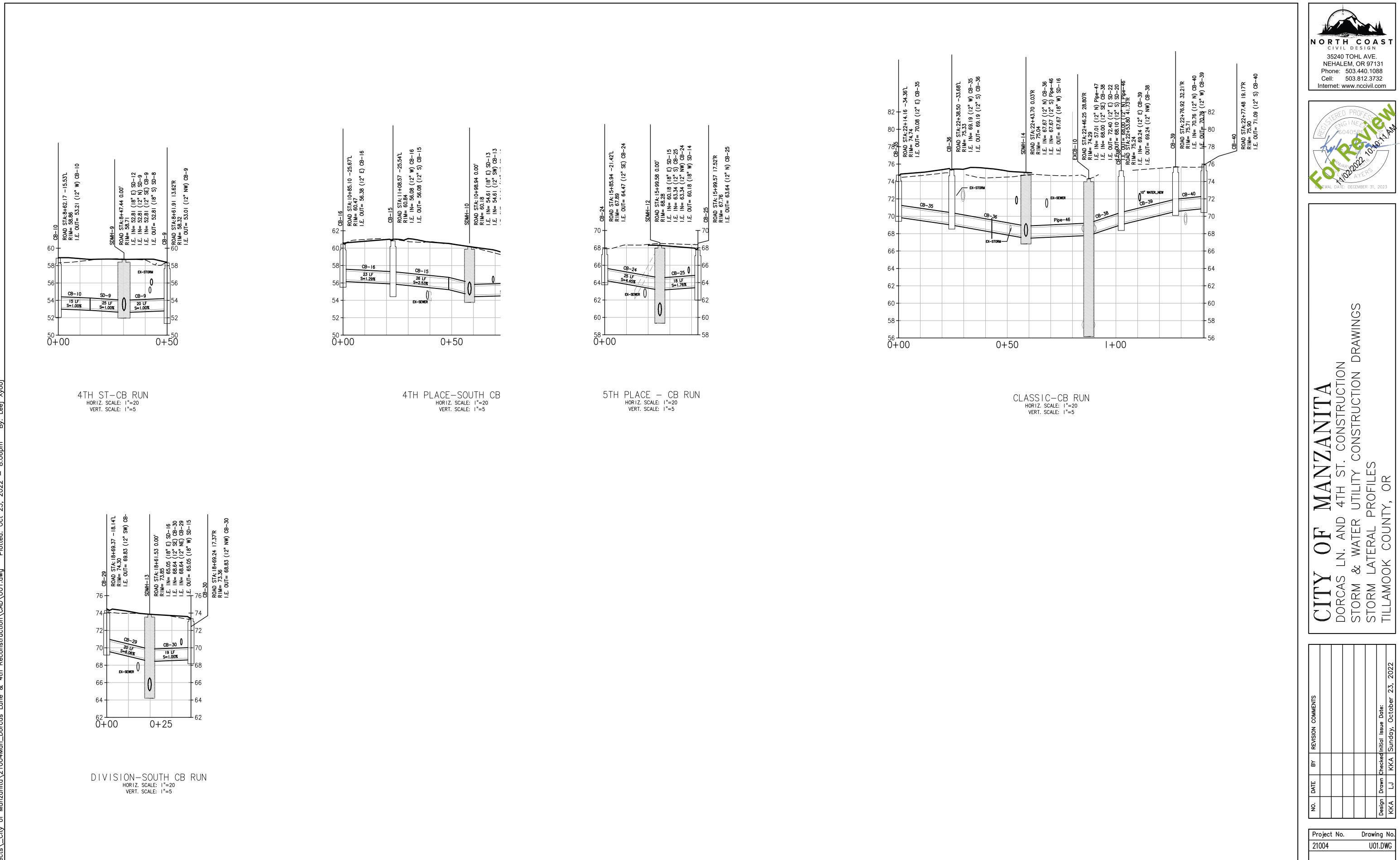
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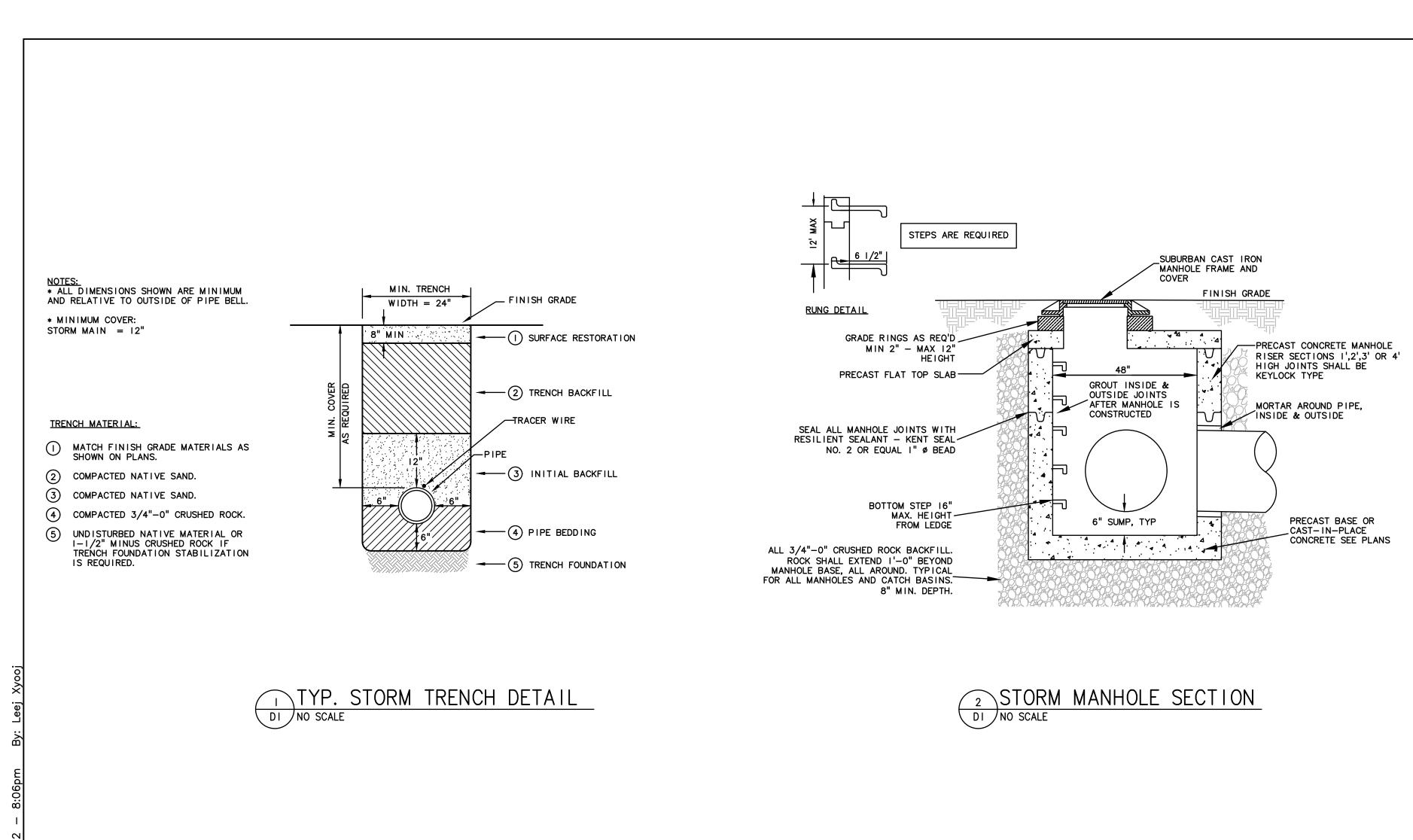
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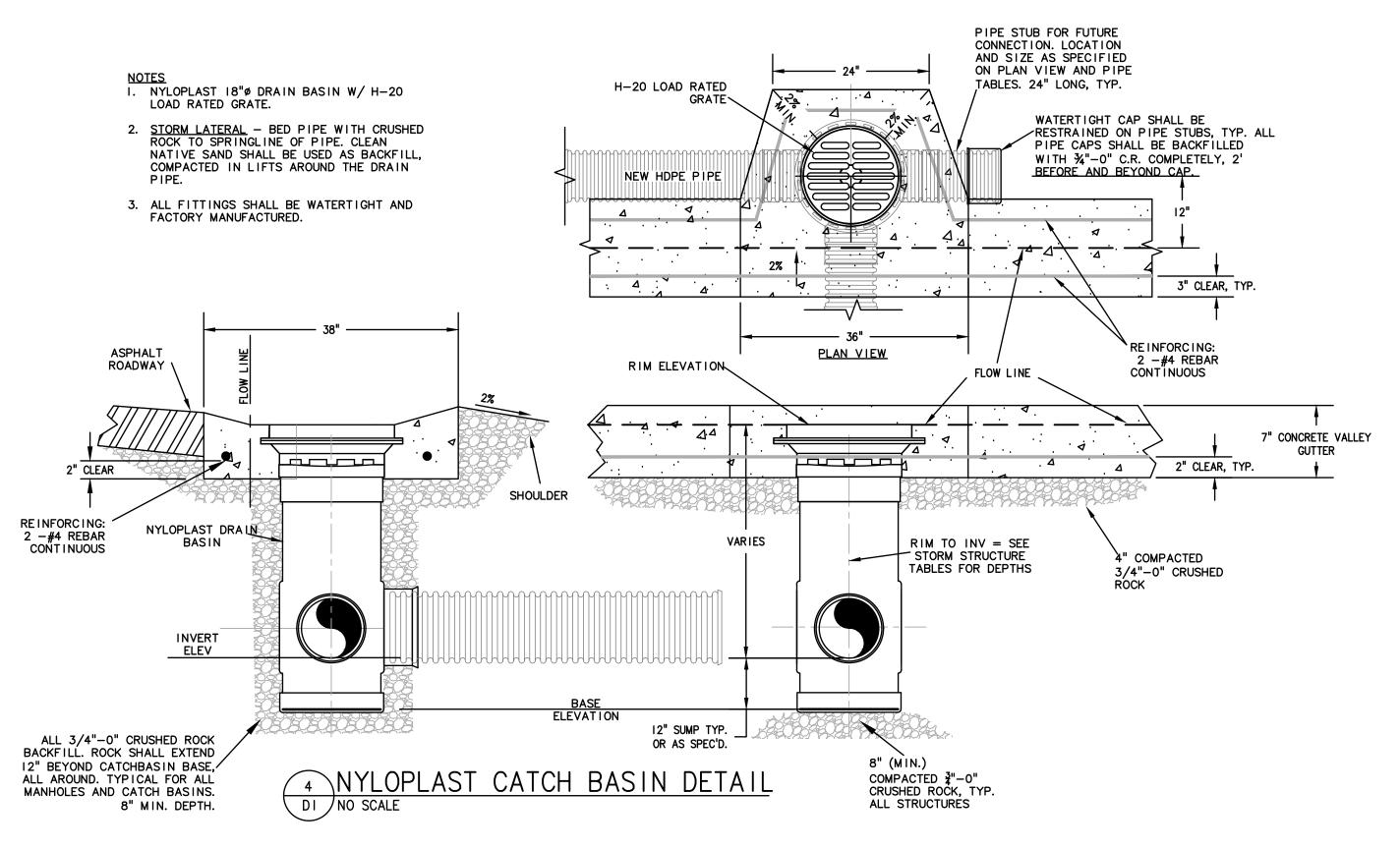
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SCALE



Project No. Drawing No. 21004 U01.DWG **U6** Sheet No.



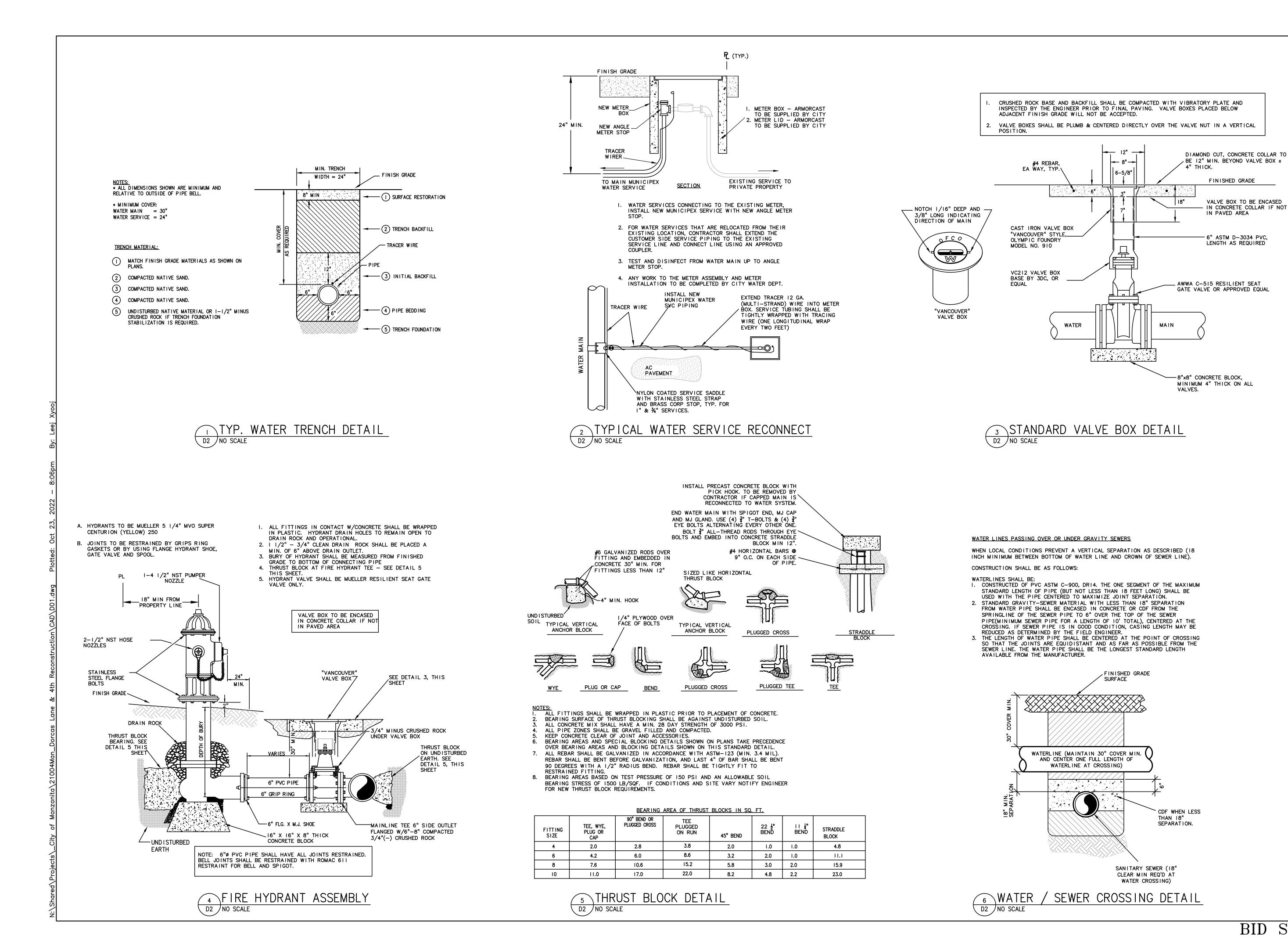






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DATE Drawn					
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DATE L	BY			Checked	KKA
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NO.	NO.			Design	KKA



NORTH COAS 35240 TOHL AVE. NEHALEM, OR 97131 Phone: 503.440.1088 Cell: 503.812.3732 Internet: www.nccivil.com



FINISHED GRADE

IN PAVED AREA

-6" ASTM D-3034 PVC.

LENGTH AS REQUIRED

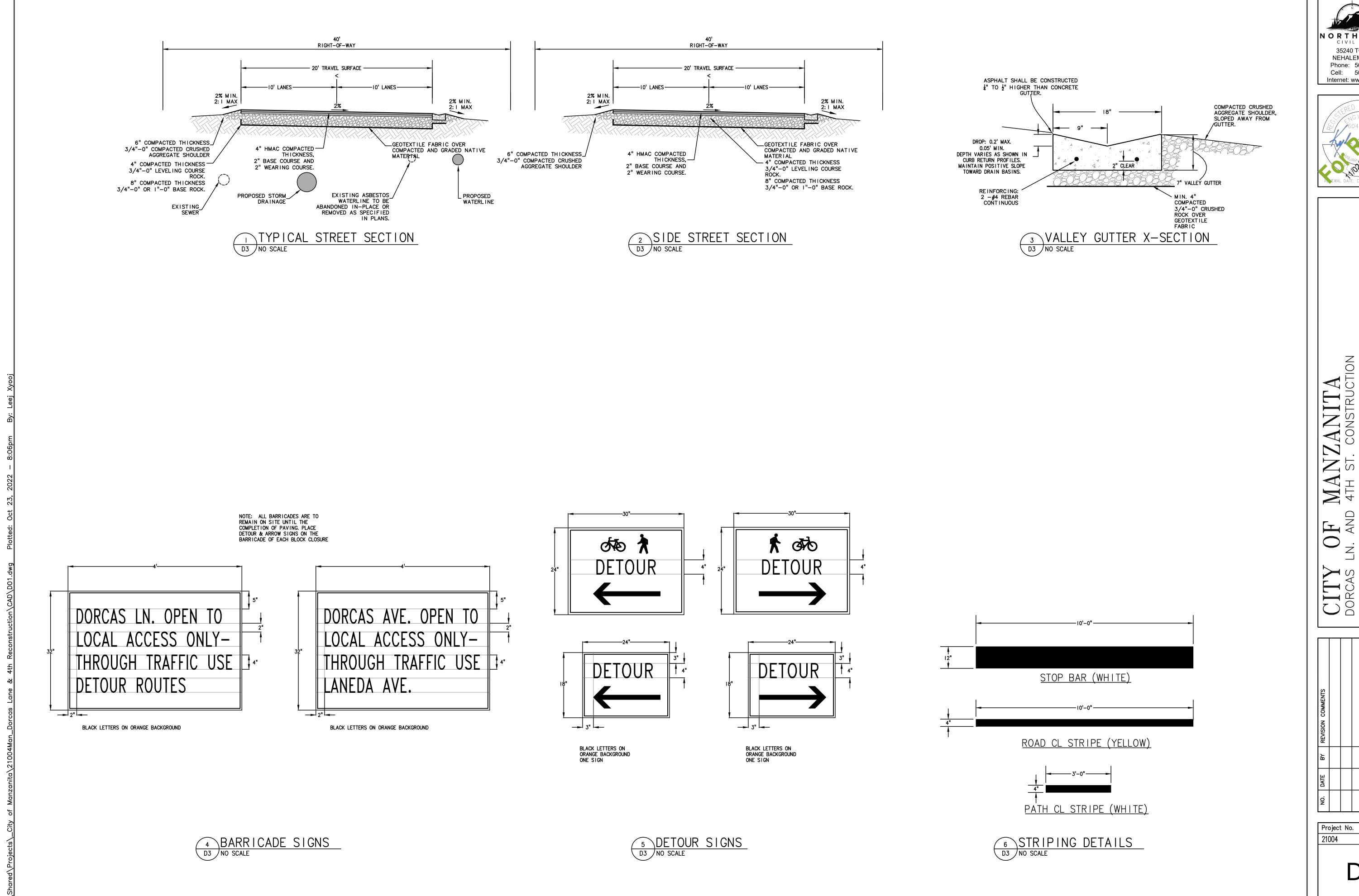
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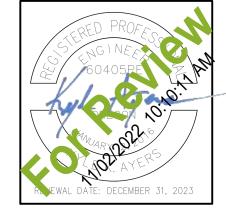
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Project No. Drawing No. 21004 D01.DWG Sheet No.







Drawing No.

D3

Sheet No.

D01.DWG





Dorcas Lane & 4th Street Reconstruction Project

CONTRACT DOCUMENTS and TECHNICAL SPECIFICATIONS



Submitted to: City of Manzanita Attention: Dan Weitzel Public Works Director PO Box 129 Manzanita, OR 97130 Prepared By:
North Coast Civil Design, LLC
Attention: Kyle Ayers, PE
Project Manager
35240 Tohl Ave
Nehalem, Oregon
Phone: 503.440.1088

NC Civil Project No. 21004Man



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CONTRACT DOCUMENTS



Sealed bids for the **Dorcas Lane and 4th St. Reconstruction Project** will be received and accepted via the online electronic bid services through QuestCDN vBid (www.questcdn.com) until 2:00 P.M., Pacific Standard Time, on November 29, 2022 for the Owner, City of Manzanita, at 1090 Oak St, Manzanita, Oregon 97130, at which time and place they will be publicly opened and read aloud. No bids will be accepted after this time, regardless of the cause of a delay in (a) submission or (b) the City's receipt of the bid. For this reason, early submission is encouraged. All bidders shall submit, electronically, separately, within two working hours of the bid opening time, on the bid date, a completed First-Tier Subcontractor Disclosure Form in compliance with ORS 279C.370.

A prequalification application shall be submitted by each bidder via the online electronic bid services through QuestCDN vBid (www.questcdn.com) until 4:00 P.M., Pacific Standard Time, on November 21, 2022 for the Owner, City of Manzanita.

The work for this project consists of approximately 2,500 LF of street and utility reconstruction work. The work will be accomplished in the Winter of 2022 – June of 2023.

In general, the elements of work include, but are not limited to:

- 1. Installation of water main and appurtenances.
- 2. Installation of storm drainage including storm pipe, manholes and catch basins.
- 3. Construction of concrete valley curb.
- 4. Roadway reconstruction and paving.

IMPORTANT: Complete digital project bidding documents are available at www.questcdn.com. You may download the digital plan documents for \$75 by inputting Quest project #8087967 on the website's Project Search page. Please contact QuestCDN.com at 952-233-1632 or info@questcdn.com for assistance in free membership registration, downloading, and working with this digital project information. Bidding Documents can be viewed at the City of Manzanita Public Works Office, at 1090 Oak St, Manzanita, Oregon 97130. Please contact Kyle Ayers, P.E., at (503) 440-1088 if you have any questions. https://www.questcdn.com. Please contact Kyle Ayers, P.E., at (503) 440-1088 if you have any questions.

All bidders shall comply with the provisions of ORS 279C.800-870 [workers on public works to be paid not less than prevailing rate of wage for projects over \$50,000.00]. Contractors submitting bids are required to be registered with the Construction Contractor's Board.

A pre-bid conference will not be held.

Bid security in the amount of not less than 10% of the bid must accompany each bid in accordance with the Instructions to Bidders. The online bid must be completed and submitted, all addenda acknowledged, and acknowledgement uploaded to the site, and a copy of the bid bond uploaded to the site. If a copy of the bid bond is uploaded, the original must be provided to the City after the bid opening but before the end of business on Friday, November 30, 2022. The Owner reserves the right to reject any bid not in compliance with all prescribed public bidding procedures and requirements, and may reject, for good cause, any or all bids upon a finding of the Owner that is in the public interest to do so in accordance with ORS 279C.395. The Owner reserves the right to waive any bid irregularities or informalities.

No bidder may withdraw or modify the bidder's bid after the hour set for the opening thereof, until after the lapse of 30 days from the bid opening.

By Order of the

City of Manzanita

INVITATION TO BID CD - 1

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INVITATION TO BID ("ITB") SCHEDULE

Advertisement/Release of ITB	November 29, 2022
Pre-bid Conference (if any)	None
Prequalification Applications	November 22, 2022
Due Date for Written Questions, Protests,	November 22, 2022
Requests for Change, and Requests for	
Clarification	
Last Day to Issue Addenda	November 26, 2022
Bid Due Date and Time (the "Bid Closing")	November 29, 2022 - 2:00 p.m. PST
Bid Opening	November 29, 2022 - 2:00 p.m. PST
First-Tier Subcontractor Disclosure Due Date and	November 29, 2022 - 4:00 p.m. PST
Time (Must be within two hours after Bid Closing)	
Notice of Intent to Award the Contract	December 7, 2022
Deadline for Award Protests	December 14, 2022 - 5:00 p.m. PST
Award of Contract	December 16, 2022

1. THE PROJECT:

The work for this project consists of approximately 2,500 LF of street and utility reconstruction work. The work will be accomplished in the Winter of $\frac{202}{2}$ 2 – June of 2023.

In general, the elements of work include, but are not limited to:

- 1. Installation of water main and appurtenances.
- 2. Installation of storm drainage including storm pipe, manholes and catch basins.
- 3. Construction of concrete valley curb.
- 4. Roadway reconstruction and paving.

2. CONTRACT DOCUMENTS:

The Contract Documents are as defined in the Agreement, which is included in this Invitation to Bid.

3. ADDENDA AND INTERPRETATIONS:

No interpretation of the meaning of the plans, specifications, or other pre-bid documents will be made to any bidder orally.

Every request for such interpretation or clarification should be emailed to Kyle Ayers, P.E., the Engineer for North Coast Civil Design, LLC, email: kyle@nccivil.com and to be given consideration must be received at least seven days prior to the date fixed for the opening of bids. The City will have no obligation to consider a request for interpretation or clarification unless the City has received it by the applicable due date set forth in this Section 3. All issues relating to clarification or objection to any term of this ITB must be raised under this Section 3. Any issue that could have been raised under this Section 3, but is not, cannot be a ground for protest of award. Any and all such interpretations and any supplemental instructions will be in the form of written addenda to the specifications.

Addenda, if issued, will be delivered via email, messenger or facsimile transmission to all prospective bidders not later than 72 hours prior to the bid opening, at the respective addresses furnished for such purposes.

Failure of any bidder to receive an addendum shall not relieve such bidder from any obligation under the bidder's bid as submitted. All issued addenda shall become part of the contract documents.

4. TIME OF COMPLETION:

The work to be performed under this contract shall be completed within 192 calendar days after the date of written Notice to Proceed by the Owner to the Contractor with such extensions of time as provided for in the General Conditions.

5. QUALIFICATIONS OF BIDDER AND SUBCONTRACTOR:

City, at its sole discretion, shall have the right to reject any bid based upon record of past performance, including but not limited to: price and cost data from previous projects, quality of work, ability to meet schedules (which may result in damages to City), cost control and contract administration, including whether there is evidence of satisfactory performance. The City may reject any bid not in compliance with all prescribed public bid/contracting procedures and requirements, including the requirement to demonstrate the Bidder's responsibility under ORS 279C.375(3)(b), and may reject for good cause all Offers after finding that doing so is in the public interest..

Each bid must contain a statement as to whether the bidder is a resident bidder, as defined in ORS 279A.120. Contractors submitting bids are required to be registered with the Construction Contractor's Board. All Subcontractors performing work described in ORS 701.005(2) (i.e., construction work) are required to be registered with the Construction Contractors Board or licensed by the State Landscape Contractors Board in accordance with ORS 701.026 to 701.035 before the Subcontractors commence work under the contract. Contractors or Subcontractors need not be licensed under ORS 468A.720 [asbestos abatement].

The Contractor and every Subcontractor shall each have a public works bond filed with the Construction Contractors Board before starting work on the project, unless exempt under section 2 (7) or (8) of Enrolled Senate Bill 477 (SB-477B) as enacted by the State Legislature in 2005.

6. CONDITIONS OF WORK:

Each bidder must investigate and be fully informed of the conditions relating to the construction of the project and the employment of labor thereon. Failure to do so will not relieve a successful bidder of the bidder's obligation to furnish all material and labor necessary to carry out the provisions of this contract. Insofar as possible the Contractor, in carrying out the Contractor's work, must employ such methods or means as will not cause any interruption of work.

7. BIDDER'S REPRESENTATION:

Each bidder is responsible for inspecting the site and for reading and being thoroughly familiar with the Contract Documents. The failure or omission of any bidder to do any of the foregoing shall in no way relieve the bidder from any obligation in respect to the bidder's bid. Each bidder, by submitting a bid, represents that:

- a. The bidder has read and understands the Bidding Documents and the bidder's bid is made in accordance therewith.
- b. The bidder has inspected the site(s), has become familiarized with the site conditions under which the work is to be performed, and has correlated the bidder's observations with the requirements of the proposed Contract Documents.
- c. The bidder's bid is based upon the products, systems, and equipment described in the bidding documents without exception.

8. PRE-BID MEETING:

A pre-bid conference will not be held.

9. <u>DISCLOSURE OF FIRST-TIER SUBCONTRACTORS</u>:

In accordance with ORS 279C.370, each bidder must submit a completed First-Tier Subcontractor Disclosure Form within two working hours after the date and time of the bid opening through www.QuestCDN.com. The list shall identify any first-tier subcontractors that will be furnishing labor or furnishing labor and materials meeting the minimum amount specified in ORS 279C.370. A bidder shall submit the required disclosure form either with its bid submission or within two working hours after the date and time of the bid closing deadline.

Failure to submit a completed disclosure form by the disclosure deadline of two working hours after the bid opening time will result in a nonresponsive bid. A nonresponsive bid will not be considered by the Owner for award. The Owner will consider for contract award only those bids for which the required disclosure form has been submitted.

The bidder is specifically advised that any person, firm or party to whom it is proposed to award a subcontract under this contract must be acceptable to the Owner. Substitution of affected first-tier subcontractors shall be made only in accordance with ORS 279C.585. The Contractor shall notify the Owner in writing of all proposed changes in subcontractors prior to making any changes in subcontractors. No subcontractor with a contract value in excess of 5% of the total amount of the bid, but at least \$15,000, or with a contract value equal or greater to \$350,000, regardless of the percentage of the total bid, and who is not listed on the disclosure form shall be used without the written approval of the Owner.

Instructions for First-Tier Subcontractor Disclosure Form

Bidders are required to disclose information about certain first-tier subcontractors when the contract value for a Public Improvement project is greater than \$100,000 (see ORS 279C.370). When the contract amount of a first-tier subcontractor furnishing labor or furnishing labor and materials on the contract, if awarded, whose subcontract value would be greater than or equal to:

- (i) 5% of the total project bid, but at least \$15,000; or
- (ii) \$350,000 regardless of the percentage of the total project bid;

the bidder must disclose on the disclosure form and submit the following information about the first-tier subcontractors either with the bid submission or within two working hours after bid closing:

- 1) the subcontractor's name,
- 2) the dollar value of the subcontract, and
- 3) the category of work that the subcontractor would be performing.

If the bidder will not be using any subcontractors that are subject to the above disclosure requirements, the bidder is required to indicate "NONE" on the disclosure form.

10. PREPARATION OF BIDS:

Bids shall be submitted on the attached Bid Form. All blanks must be appropriately filled in. Where so indicated by the make up of the Bid Form, sums shall be expressed in both words and figures, and in case of discrepancy between the two, the amount in words shall govern. Bidders shall make no additional

stipulations on the Bid Form nor qualify any bid in any manner. Only one copy of the Bid Form is required.

11. BID SECURITY:

Each bid must be accompanied by cash, a cashier's check, a certified check of the bidder, an irrevocable letter of credit issued by an insured institution as defined in ORS 706.008, or a bid bond prepared on the form of the bid bond attached hereto, duly executed by the bidder as principal and having as surety thereon a surety company approved by the Owner, in the amount of 10% of the bid. Such bid security will be returned to all except the three lowest bidders within seven days after the opening of bids. The remaining bid security will be returned promptly after the Owner and the accepted bidder has executed the contract. If no award has been made within 30 days after the date of the opening of bids, upon demand of the bidder at any time thereafter, so long as the bidder has not been notified of the acceptance of the bidder's bid, the bid shall be returned. The bid security of the successful bidder will be retained until the Performance Bond and Payment Bond have been executed and approved, after which it will be returned.

12. LIQUIDATED DAMAGES FOR FAILURE TO ENTER INTO CONTRACT:

The successful bidder, upon the bidder's failure or refusal to execute and deliver the contract and bonds required within 10 days after the bidder has received notice of the acceptance of the bidder's bid, shall forfeit to the Owner, as liquidated damages for such failure or refusal, the security deposited with the bidder's bid.

13. SUBMISSION OF BIDS:

Bids shall be submitted as specified prior to the time and date for receipt of bids indicated in the Advertisement for Bids or any extension thereof made by Addendum. Bids received after the time and date for receipt of bids (the bid closing deadline) will be returned unopened. Oral, paper, telephonic, faxed, or telegraphic submissions of bids are invalid and will not receive consideration.

14. MODIFICATION OR WITHDRAWAL OF BID:

A bidder may withdraw or modify a bid as set forth in OAR 137-049-0320. Bid Security shall be in an amount sufficient for the bid as modified or resubmitted. A bid may not be withdrawn, modified or canceled by the bidder for 30 days following the time and date designated for the receipt of bids. Should there be reasons why the contract cannot be awarded within the specified period, the time may be extended by mutual agreement between the Owner and the Bidder in accordance with OAR 137-049-0410.

15. UNBALANCED BIDS:

A materially unbalanced bid is defined as, "a bid which generates a reasonable doubt that award to the bidder submitting a mathematically unbalanced bid will result in the lowest ultimate cost to the Owner."

A bid will be considered irregular and may be rejected if the Owner determines that any of the unit prices are significantly or materially unbalanced to the potential detriment of the Owner. The Owner will place specific emphasis on its review of bids that appear to be unbalanced, as it may be to the detriment of the Owner, and other bidders who choose not to unbalance their bids. If the Owner finds that a bid is a detriment to the Owner or not in the best interest of the public, the Owner will act by rejecting all such unbalanced bids.

16. CONSIDERATION OF BIDS:

The Owner shall have the right to reject any or all bids and to reject a bid not accompanied by the required Bid Security or data required by the Bidding Documents, or to reject a bid, which is in any way incomplete or irregular. The Owner shall have the right to waive, or permit a bidder to correct any minor informality or irregularity in any bid received and to accept the bid which. All work of this project will be awarded as a single general contract to one Contractor. Award will be made to the lowest responsible bidder. In determining the lowest responsible bidder, the Owner will, for the purpose of awarding the contract, add a percent increase on the bid of a nonresident bidder equal to the percent, if any of the preference given to that bidder in the state in which the bidder resides. The Owner shall consider all bids immediately after the bid opening

17. SECURITY FOR FAITHFUL PERFORMANCE:

Simultaneously with delivery of the executed contract, the Contractor shall furnish a surety bond or bonds as security for faithful performance of this contract and for the payment of all persons performing labor on the project under this contract and furnishing materials in connection with this contract, as specified in the General Conditions included herein. The surety on such bond or bonds shall be a duly authorized surety company satisfactory to the Owner.

18. POWER OF ATTORNEY:

Attorneys-in-fact who sign bid bonds or contract bonds must file with each bond a certified and effective dated copy of their power of attorney.

19. LAWS AND REGULATIONS:

The bidder's attention is directed to the fact that all federal, state and local laws, ordinances, rules and regulations of all authorities having jurisdiction over construction of the project shall apply to the contract throughout, and they will be deemed to be included in the same as though herein written out in full. All bidders shall comply with the provisions of ORS 279C.840 (Prevailing Wage Rates).

On federally funded projects, all bidders shall comply with the provisions of the Davis-Bacon Act (40 U.S.C. 276a). No bid will be considered by the Owner unless the bid contains a statement by the bidder that the provisions of ORS 279C.838, 279C.840 or 40 U.S.C. 3141 to 3148 are to be complied with.

20. PROTESTS OF BID DOCUMENTS:

Any bidder that believes that the terms of the ITB (including the Contract terms or specifications) are unnecessarily restrictive, limit competition, or otherwise do not comply with applicable law or any contracting rule of the City, may submit a protest or request for change in writing to Dan Weitzel, Public works Director, at 1090 Oak St, Manzanita, Oregon 97130

- The protest must include a detailed statement of the legal and factual grounds for the protest; a
 description of the resulting prejudice to the bidder; and a statement of the desired changes to the
 contract terms, including any specifications.
- The protest must be marked "Bid Document Protest" and identify the solicitation document that the request is associated with.
- The City will promptly respond in writing to each written protest and when appropriate issue any revisions or clarifications by written addendum to all interested bidders. All changes or clarifications must be by written addendum to be valid and binding on the City.
- No protest will be considered unless the City has received it by the applicable due date set forth
 in this ITB. All issues relating to clarification or objection to any term of this ITB must be raised

under this Section 20. Any issue that could have been raised under this Section 20, but is not, cannot be a ground for protest of award.

21. PROTEST OF AWARD

Any bidder who is adversely affected by the City's Notice of Intent to Award the Contract may file a written protest of award. A bidder is "adversely affected" only if the bidder meets the criteria for an adversely affected or aggrieved bidder set forth in OAR137-049-0450(4)(c).

- A protest of award must be submitted in writing to Dan Weitzel, Public works Director, at 1090 Oak St, Manzanita, Oregon 97130, by the applicable due date set forth in this ITB. The City will not consider a protest submitted after 5:00 p.m. on the applicable due date set forth in this ITB.
- The written protest must specify the grounds on which the protest is based. An issue that could have been but was not raised as a request for clarification or protest of the bid documents is not grounds for a protest of award.
- The City will resolve all the written protests in writing.

22. EXECUTION OF CONTRACT:

The party to whom the contract is awarded will be required to execute the Agreement and obtain the performance bond, payment bond, and required insurance within 10 calendar days from the date when Notice of Intent to Award is delivered to the bidder. The Notice of Intent to Award shall be accompanied by the necessary Agreement and bond forms. In case of failure of the bidder to execute the Agreement, the Owner may at the Owner's option consider the bidder in default, in which case the Bid Security accompanying the bid shall become the property of the Owner.

BID FORM

BID OF	F (hereinafter called "Bidder"), organized and
existin	g under the laws of the State of, doing business as
(Insert	"a joint venture", "a corporation", "a partnership" or "an individual" as applicable.)
	To City of Manzanita
	[hereinafter called "Owner"]:
1.	The undersigned Bidder, in compliance with your invitation for bids, including the ADVERTISEMENT FOR BIDS and the INSTRUCTIONS TO BIDDERS, for
	Dorcas Lane and 4th St. Reconstruction Project
	having examined the plans and specifications with related documents and having examined the site of the project work, and being familiar with all the conditions pertaining to the construction of the project, hereby offers to furnish all labor, materials, equipment and supplies necessary to construct the project in accordance with the contract documents within the time set forth therein, and at the unit prices stated below. The prices are to cover all the costs connected with performing the work required under the contract documents, of which this bid is a part.
2.	The Bidder submits the unit prices set forth herein as those at which the Bidder will perform the work involved. The extensions in the column headed "Total" are made for the sole purpose of facilitating comparison of bids and if there are any discrepancies between the unit prices and the total amounts shown, the unit prices shall govern.
3.	The Bidder certifies, under penalty of perjury, by the submission of this bid, that all requirements of ORS 279C.838-840 (Prevailing Wage Rate Laws) will be complied with throughout the course of this contact. The Bidder further certifies, under penalty of perjury, that the Bidder is a resident bidder, as defined by ORS 279A.120 (1)(b), of the State of The Bidder further certifies, under penalty of perjury, that the Bidder is, to the best of the Bidder's knowledge, not in violation of any tax laws described in ORS 305.380 (4).
4.	The Bidder acknowledges receipt of the Addenda numbered through The Bidder accepts all of the terms and conditions of the Instructions to Bidders, including without limitation those dealing with the disposition of bid security. The Bidder agrees that this bid shall be good and may not be withdrawn for a period of 30 calendar days after the scheduled closing date for receiving bids.
5.	The Bidder agrees to comply with all the Federal, State and Local laws, ordinances, rules and regulations that are pertinent to construction contracts of this character even though such laws may not have been quoted or referred to in the contract documents.
6.	Upon receipt of written Notice of Intent to Award, Bidder will execute the Agreement attached within 10 calendar days and deliver a Surety Bond or Bonds as required by the contract documents. The Bid Security accompanying this bid is to become the property of the Owner in the event the contract and bonds are not executed within the time above set forth, as liquidated damages for the delay and additional expense to the Owner caused thereby.
7.	The Bidder agrees to commence work under this contract within 10 calendar days after issuance to the Bidder of written Notice to Proceed by the Engineer. The Bidder agrees to substantially complete the project on or before the dates or within the number of calendar days indicated in Article II of the Agreement, with such extensions of time as are provided in the General Conditions. The Bidder accepts the provisions of the Agreement regarding liquidated damages (Article III of the Agreement) in the event of failure to complete the work of the project on or before the dates or within the number of calendar days indicated in Article II of the Agreement, with such extensions of time as are provided in the General Conditions.

The Bidder declares that the only persons or parties interested in this bid are those named herein, that this bid is in all respects fair and without fraud, and that it is made without collusion with any

other bidder and without collusion with any representatives of the Owner. The Bidder hereby represents that no employee of the Owner, or any partnership or corporation in which an employee of the Owner has an interest, has or will receive any remuneration of any description from the Bidder, either directly or indirectly, in connection, except as specifically declared in writing.

- 8. The Bidder certifies that the Bidder has not discriminated and will not discriminate, in violation of subsection (1) of ORS 279A.110(1), against 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.
- 9. The Bidder will complete the work for the following prices in accordance with the Schedule of Contract Prices found in Bid online documents.

The following documents are attached to and made a condition of this bid:

- a. The required Bid Security submitted on-line with the Bid Form.
- b. The First-Tier Subcontractor Disclosure Form submitted on-line within two hours after the date and time of the bid opening.
- c. The on-line vBid Schedule of Unit Prices as filled out and submitted by the Contractor.

Respectfully Submitted,			
Name of Firm			
Address			
Federal Employer I.D. No			
State Employer I.D. No			
State C.C.B. Registration No			
Telephone ()			
FAX No. ()			
Ву			
(Sig	gnature)		
	ease Print)		
Title			
	If Corporation, A	ttest(Secretary of Corp	
	Dated this	day of	, 2022

BID BOND

We,	, as "Principal,"				
(Name of Principal)					
and(Name of Surety)	, an		Corporati	on,	
authorized to transact Surety business in Ore our respective heirs, executors, administrator ("Obligee") the sum of (\$	s, successors ar	nd assigns to pay			
			dollars	5.	
WHEREAS, the condition of the obligation of of the Obligee in response to Obligee's proj		-	ubmitted its bid	d to an agency	
Dorcas Lane and 4th St. Reconstruction Proje Principal is required to furnish bid security in of the bid pursuant to ORS 279C.365 (5) an	an amount eq	ual to ten (10%)		•	
NOW, THEREFORE, if the bid submitted by Fawarded to Principal, and if Principal enters the procurement document and executes and payment bonds required by Obligee within otherwise, it shall remain in force and effect.	into and exect delivers to Ol the time fixed	utes such contrac oligee its good a	t within the time and sufficient pe	e specified in erformance and	
IN WITNESS WHEREOF, we have caused this authorized legal representatives this2022.					
PRINCIPAL:	SURETY	':			
By BY ATTORNEY-IN-FACT: Signature			IN-FACT:		
0.9.1.0.10					
Official Capacity	_	Name			
Attest:	_	<u> </u>			
Corporation Secretary		Signature			
		Address			
		City	State	Zip	
		Phone	 Fax		

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FIRST-TIER SUBCONTRACTOR DISCLOSURE FORM

(OAR 137-049-0360)

Bids which are submitted by Bid Closing, but for which a required disclosure submittal has not been made by the specified Disclosure Deadline, are not responsive and shall not be considered for Contract award

AGENCY SUPPLIED INFORMATION:

PROJECT I	NAME: Dorcas Lane and	<u>l 4th St. Reconst</u>	<u>truction Proje</u>	<u>ect</u>			
BID #:	BID CLOSIN	VG: <mark>Dat</mark> e:	November 2	29, 2022	Time: <u>2:0</u>	<u>0</u> □am	⊠PM
REQUIRED	DISCLOSURE DEADLINE:	<mark>Dat</mark> e:	November 2	29, 2022	Time: <u>4:0</u>	<u>0</u>	⊠PM
Designate	d Recipient (Person):	ty of Manzanita					
Agency's A		led bids will OI service through			-	the online	electronic
INSTRUCT		J					
\$100,000	acting agency will insert " D. Otherwise this form mu advertised bid closing da	st be submitted	either with the	e bid or w	vithin two (2)	working h	ours
Responsibi	erwise stated in the solicition in the solicition of bidders to submit of Name clearly marked, as to Bidders".	this disclosure fo	rm and any c	additional	sheets, with	the bid nu	mber
furnishing	the Name, Category of V labor, or labor and mate st-tier subcontractors subje	erial, for which d	isclosure is re	quired. E	nter the wor	d "NONE"	if there
BIDDER D	ISCLOSURE:						
SU	BCONTRACTOR NAME	CATEGORY	OF WORK		DOLLAR VA	LUE	
1							
2.							
3.							
4							
_	e listed first-tier subcontro or greater than:	actor(s) are provi	iding labor, o	or labor a	nd material,	with a Dol	lar Value
a)	5% of the total Contrac do not list the subcontra or		ast \$1 <i>5,</i> 000.	[If the D	ollar Value i	s less than	\$15,000
b)	\$350,000 regardless o	f the percentage	of the total	Contract	Price.		
Form Subn	mitted By (Bidder Name):						<u> </u>
Contact N	ame:		Phone	: #:			
	ON TO BID						CD - 13

Dorcas Lane and 4th St. Reconstruction Project

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AGREEMENT

THIS AGREEMENT, made this	_ day of	, 2022 by and between
	CITY OF MANZANITA	
hereinafter called the Owner, and "Contractor."		, hereinafter called the
WITNESSETH, that the Contractor and the follows:	ne Owner, for the considerations he	ereinafter named, agree as
Al	RTICLE I - Scope of the Work	
The Contractor hereby agrees to furnish construction and completion of the projection		nd supplies necessary for the
Dorcas La	ne and 4th St. Reconstruction Proj	ect
all in accordance with the requirements Documents" means and includes the follo		uments. The term "Contract
No,	cution of this Agreement d dated Novem <mark>ber</mark> 2022	, 2022. , 2022.

All the above form the Contract, and all are as fully a part of the Contract as if attached to this Agreement or repeated herein.

ARTICLE II - Time of Completion

The Work to be performed under this Contract shall be commenced within $\underline{10}$ calendar days after the date of written notice by the Owner to the Contractor to proceed. The written Notice to Proceed shall be issued within $\underline{10}$ days following receipt of the acceptable Performance Bond, Payment Bond, and Agreement signed by the party to whom the Agreement was awarded. Substantial Completion shall be

achieved not later than <u>168</u> calendar days following the date of the written Notice to Proceed with such extensions of time as are provided for in the General Conditions. The time allotted to reach Substantial Completion is the "Contract Time."

ARTICLE III - Liquidated Damages

The Owner and Contractor recognize that time is of the essence of this Agreement and that the Owner will suffer financial loss if the Work is not substantially complete within the time specified in Article II above, plus any extensions of time allowed in accordance with the General Conditions. The Owner and the Contractor also recognize that it would be impractical and extremely difficult to estimate, ascertain, or determine the actual damages suffered by the Owner if the Work is not substantially complete on time. Accordingly, the Owner and the Contractor agree that as liquidated damaged for delay (but not as penalty), the Contractor shall pay the Owner for each day that expires after the time specified in Article II until the Work is substantially complete as set forth in the General Conditions, an amount of \$600.00 per day.

The total amount of liquidated damages may, at the Owner's sole option, be offset against and retained from any payment or payments otherwise owed to the Contractor by the Owner, and any deficiency will be paid to the Owner by the Contractor within 30 calendar days of invoice therefor.

Nothing in this Article III precludes the Owner's recovery of actual damages claimed or incurred by third parties for which the Owner is or may be alleged to be responsible. Claims and damages described in this Article III remain subject to indemnification under Section 5.4 of the General Conditions, and the Owner may claim them in addition to liquidated damages.

If this liquidated damages provision is deemed unenforceable, the Owner may recover its actual damages for delay, including but not limited to any consequential damages related to the delay.

ARTICLE IV - Contract Sum

The Owner will pay the Contractor for the performance of the Contract the amounts determined for the total number of each of the units of Work in the Bid schedule completed at the unit price stated. The number of units contained in this schedule is approximate only, and the final payment will be made for the actual number of units that are incorporated in, or made necessary by, the Work covered by the Contract.

ARTICLE V - Progress Payments

- 1. On no later than the fourth calendar day of every month the Contractor shall prepare and submit to the Engineer a progress payment estimate filled out and signed by the Contractor. The estimate shall cover the total quantities under each item of Work that have been completed from the start of the job up to and including the last day of the preceding month. The estimate shall include the value of the Work so completed determined in accordance with such supporting evidence as may be required by the Owner and/or the Engineer. The estimate shall also include an allowance for the cost of such materials and equipment required in the permanent Work as has been delivered to the site and suitably protected but not as yet incorporated in the Work.
- 2. The Engineer will, within 5 days after receipt of each progress payment estimate, either indicate in writing the Engineer's approval of payment and present the progress payment estimate to the Owner, or return the progress payment estimate to the Contractor indicating in writing the Engineer's reasons for refusing to approve payment. In the latter case, the Contractor may make the necessary corrections and resubmit the progress payment estimate.

3. The Owner will, after deducting previous payments made, promptly pay to the Contractor 95% of the amount of the estimate as approved by the Engineer within 30 days of the Contractor's application for payment or within 14 days after the Owner approves the Contractor's application for payment, whichever occurs first. The 5% retainage will be held by the Owner until the final completion of all Work under the Contract. Money retained by the Owner under ORS 279C.570 (7) or OAR 137-049-0820 shall be:

Retained in a fund by the Owner and paid to the Contractor in accordance with ORS 279C.570;

- 4. In accordance with ORS 279C.515, if the 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 public improvement Contract as the 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 the Contract.
- 5. The Owner will, after deducting previous payments made, any payments made under ORS 279C.515 and the above-described retainage, promptly pay to the Contractor the amount of the estimate as approved by the Engineer. Progress payments shall not be considered acceptance or approval of any Work or waiver of any defects therein. In accordance with ORS 279C.570, the Owner will pay to the Contractor interest on the progress payment, not including retainage, due the Contractor. The interest shall be charged and paid in accordance with ORS 279C.570.
- 6. Notwithstanding ORS 279C.555 or 279C.570 (7), if a Contractor is required to file certified payroll statements under ORS 279C.845 the Owner shall retain 25% of any amount earned by the Contractor on the public works until the Contractor has filed with the Owner certified payroll statements as required by ORS 279C.845. The Owner shall pay the Contractor the amount retained under this subsection within 14 days after the Contractor files the certified payroll statements as required by ORS 279C.845, regardless of whether a Subcontractor has failed to file certified payroll statements as required by ORS 279C.845.
- 7. Such progress payments shall be made in accordance with Section 9.8 of the General Conditions and under the terms and conditions governing final payment, except that progress payments shall not constitute a waiver of claims.

ARTICLE VI - Acceptance and Final Payment

- 1. Upon receipt of written notice that the Work is ready for final inspection and acceptance, the Engineer shall within four days make such inspection. When the Engineer finds the Work acceptable under the Contract and Contract fully performed, the Engineer will promptly issue a final certificate stating that the Work required by this Contract has been completed and is accepted by the Engineer and all regulatory approval agencies under the terms and conditions thereof. The entire balance found to be due the Contractor including the retained percentage, will be paid to the Contractor by the Owner within 30 days after the date of said final certificate.
- 2. Before final payment is due, the Contractor shall submit evidence satisfactory to the Engineer in accordance with Section 9.11 of the General Conditions that all payrolls, material bills, and other indebtedness connected with the Work have been paid. In the case of disputed indebtedness or liens, the Contractor may submit in lieu of evidence of payment a surety bond satisfactory to the Owner guaranteeing payment of all such disputed amounts when adjudicated, in cases where such payment has not already been guaranteed by surety bond.

- 3. The making and acceptance of the final payment shall constitute a waiver of all claims by the Owner, except those arising from: (a) liens, claims security interests, or encumbrances arising out of the Contract and unsettled; (b) failure of the Work to conform with the requirements of the Contract Documents; (c) terms of special warranties required by the Contract Documents; or (d) audits performed by the Owner if permitted by the Contract Documents, after final payment. It shall also constitute a waiver of all claims by the Contractor, except those previously made and still unsettled.
- 4. If after the Work has been substantially completed, full completion thereof is materially delayed through no fault of the Contractor, and the Engineer so certifies, the Owner shall upon certificate of the Engineer, and without terminating the Contract, make payment of the balance due for the portion of the Work fully completed and accepted.

ARTICLE VII - General Conditions

GC-1 DEFINITIONS AND ABBREVIATIONS

1.1 DEFINITIONS:

In these Specifications and the Contract, the following words or expressions shall be understood to have the meanings given below:



- "Addenda" Written or graphic instruments issued by the Engineer prior to the execution of the Agreement which modify or interpret the Contract Documents.
- "<u>Bidder</u>" Any individual, firm or corporation formally submitting a Bid for the Work contemplated, or any portion thereof, acting directly or through an authorized representative.
- "<u>Bid</u>" The written offer of the Bidder on the Bid Form furnished in the Contract Documents, that is required to be signed by the Bidder, for the Work contemplated.
- "<u>Bid Security</u>" The security to be furnished by the Bidder as a guarantee of good faith to enter into a contract for the Work contemplated if it be awarded to the Bidder.
- "<u>Change Order</u>" A written order to the Contractor authorizing an addition, deletion or revision in the Work within the general scope of the Contract Documents, or an adjustment in the Contract Price or the Contract Time.
- "Contract Price" The total amount payable to the Contractor under the terms and provisions of the Contract Documents.
- "Contract Time" The number of calendar days stated in the Contract Documents allowed the Contractor to reach Substantial Completion.
- "Engineer" The firm of NC Civil, LLC, or authorized personnel acting for the firm, the Engineer being the agent of the Owner.
- "<u>Field Order</u>" A written order effecting a change in the Work but not involving an adjustment in the Contract Price or an extension of the Contract Time.
- "Inspector" The authorized representative of the Engineer or the Owner assigned to observe the Work or materials therefore.
- "Notice of Intent to Award" The written notice from the Owner to the successful Bidder that the Owner intends to award the Contract to the Bidder.
- "Notice to Proceed" The written notice given by the Owner to the Contractor authorizing the Contractor to proceed with the Work and establishing the date of commencement of the Work.

- "Payment Bond" The form of security approved by the Owner, furnished by the Contractor and the Contractor's Surety guaranteeing the Owner that Subcontractors and suppliers will be paid the monies that they are due from the principal Contractor.
- "<u>Performance Bond</u>" The form of security approved by the Owner, furnished by the Contractor and the Contractor's Surety guaranteeing the complete and faithful performance of all of the obligations and conditions placed upon the Contractor by the Contract.
- "Plans" The maps, plans and drawings as listed and referred to in the "Contract Documents" together with any additional maps, plans, or drawings furnished by the Contractor if and when they are approved by the Engineer. This also includes any supplemental drawings furnished by the Engineer to the Contractor and also all approved shop drawings submitted by the Contractor and approved by the Engineer, all as provided elsewhere in these Specifications or other Contract Documents.
- "Public Works Bond" The public works bond as required by Enrolled Senate Bill 477 (SB 477B) as enacted by the State Legislature in 2005, which shall be in addition to any other bond the Contractor or Subcontractor is required to obtain.
- "Specifications" The directions, requirements, explanations, terms and provisions pertaining to the various features of the Work to be done, the manner and method of performance, and the manner and method of measurement and payment. The Specifications include such directions, requirements and explanations as appear on the Plans.
- "Subcontractor" Any individual, firm or corporation acting for or in behalf of the Contractor in the execution of all or any part of the Contract. This does not include those working for hire or suppliers of material or equipment except that production of materials or supplies at the project site shall be deemed as being produced by a Subcontractor where such is not produced by the Contractor's own forces and equipment.
- "<u>Substantial Completion</u>" The date as certified by the Engineer when the Work, or a specified part thereof, is sufficiently completed in accordance with the Contract, so that the Work or specified part can be utilized for the purposes for which it is intended.
- "Supplemental Agreement" Any written agreement or understanding entered into between the Contractor and the Owner to supplement or clarify, or alter the Plans, Specifications, or Contract, or to otherwise provide for unforeseen Work, contingencies, alterations in Plans, and other matters not contemplated by or adequately provided for in the Plans and Specifications.
- "Surety" The company or association which is bound with and for the Contractor for the acceptable performance of the Contract and for the Contractor's payment of all obligations arising out of the Contract. Where applying to the "Bid Security," it refers to the company or association that engages to be responsible for the Bidder's execution of a satisfactory Contract when and if the Contractor's Bid is accepted by the Owner.
- "<u>Work</u>" Work shall be understood to mean the furnishing of all labor, materials, equipment and other incidentals necessary or convenient to the successful completion of the project or the portion of the project involved and the carrying out of all the duties and obligations imposed by the Contract.
- "<u>Work Area</u>" The area provided by the Owner for use in constructing the Work covered by the Contract, including the appurtenances thereto. The Work Area so designated may be either temporary or permanent.
- "<u>Written Notice</u>" A written communication delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended, or if delivered or sent by mail to the last business address known to the one who gives the notice. It shall be the duty of each party to advise the other parties to the Contract as to any change in business address until completion of the Contract.

1.2 ABBREVIATIONS:

Whenever the following abbreviations are used in these Contract Documents, they are to be construed the same as follows:

AASHTO - American Association of State Highway and Transportation Officials

ACI - American Concrete Institute

AGC - Associated General Contractors of America

AISC - American Institute of Steel Construction

AISI - American Iron and Steel Institute

ANSI - American National Standards Institute

APWA - American Public Works Association

ASCE - American Society of Civil Engineers

ASME - American Society of Mechanical Engineers

ASTM - American Society for Testing and Materials

AWPA - American Wood Preservers Association

AWS - American Welding Society

AWWA - American Water Works Association

CRSI - Concrete Reinforcing Steel Institute

DEQ - Department of Environmental Quality

DFPA - Division for Product Approval of American Plywood Assoc.

EPA - Environmental Protection Agency

FHWA - Federal Highway Administration

ITE - Institute of Traffic Engineers

NEC - National Electrical Code

NEMA - National Electrical Manufacturer's Association

NLMA - National Lumber Manufacturer's Association

ORS - Oregon Revised Statutes

OSHA - Occupational Safety and Health Administration

ODOT - Oregon State Department of Transportation

PCA - Portland Cement Association

UBC - Uniform Building Code

UL – Underwriter's Laboratories, Inc.

WWPA - Western Wood Products Association

GC-2 BID REQUIREMENTS



GC-3 AWARD AND EXECUTION OF CONTRACT

3.1 TIME RESERVED FOR AWARD OF CONTRACT AND PREPARATION OF CONTRACT DOCUMENTS:

time of completion of the Work contemplated by this Contract shall not be vitiated by the fact that there will, of necessity, be a certain period of elapsed time between the date of receiving Bids and the signing of the written instruments by all parties thereto. In specifying the dates for Substantial Completion, it has been assumed that a period of not more than 30 days will elapse between the receiving of the Bids and the submission to the Contractor of the written Contract for the Contractor's execution. If the above period exceeds this amount, the Bidder will be released from the Contractor's Bid Security unless by Written Notice to the Owner the Contractor has granted the Owner an extension of time for the official award of the Contract.

3.2 EXAMINATION OF PLANS, SPECIFICATIONS, AND SITE OF WORK:

It is understood that the Contractor, before signing the Contract, has made a careful examination of the Plans, Specifications, and Contract; that the Contractor has become fully informed as to the quality and quantity of materials and the character of the Work required; and that the Contractor has made a careful examination of the location and condition of the Work and the sources of supply for any and all materials. The Owner will in no case be responsible for any loss or for unanticipated costs that may be suffered by the Contractor as a result of the Contractor's failure to carry out the provisions of this Section 3.2.

3.3 AMOUNT OF CONTRACT:

The Contract Price shall be understood to be the total sum of the amounts computed from the prices of the items included in the Contract or the lump sum as given in the Bid Form. Where prices are given on alternate items, only the amounts of the alternates accepted by the Owner will be included in the total.

3.4 ESTIMATES OF QUANTITIES APPROXIMATE ONLY:

It is expressly agreed that the quantities shown in the Bid Form whether for a "Unit Price Contract" or in connection with a "Lump Sum Contract," given under the heading "Schedule of Contract Prices" are approximate only and are not to be taken to be either representations or warranties. The Owner does not expressly nor by implication agree that the actual amount of Work will correspond therewith, and reserves the right to increase or decrease the amount of any class or portion of the Work as may be deemed necessary or expedient by the Engineer, without extra or special compensation to the Contractor except as provided in Section 4.5.

3.5 PERFORMANCE BOND, PAYMENT BOND AND GUARANTEE:

Bonds

The Contractor shall within 10 days from the date of notification by the Owner that the Contract is ready for signature and before commencing Work thereunder, furnish to the Owner and maintain in force during the continuance of this Contract a Performance Bond and a separate Payment Bond that meet the requirements of ORS 279C.380 and are satisfactory to the Owner and with such Surety or Sureties as the Owner may approve. The bonds shall be in the full amount of the Contract Price and shall be for the faithful performance of this Contract in all respects, including but not limited to payments for materials, labor, etc., and no Contract shall be binding until the said bonds are furnished and approved by the Owner. The Payment Bond shall be solely for the protection of claimants under ORS 279C.600. If said bonds are not so furnished within the 10 days herein specified, the Contract may be immediately terminated by the Owner without any notice to the Contractor. No Work may be commenced until the bonds have been approved by the Owner.

In accordance with ORS 279C.600, a person claiming to have supplied labor or materials for the prosecution of the Work of this Contract, including any person having direct contractual relationship with the Contractor furnishing the bond or direct contractual relationship with any Subcontractor, or an assignee of such person, or a person claiming moneys due the State Accident Insurance Fund Corporation, the State Department of Employment Trust Fund or the Department of Revenue in connection with the performance of the Contract, has a right of action on the Contractor's Payment Bond as provided for in ORS 279C.380 and 279C.400, only if (a) the person or the assignee of the person has not been paid in full; and (b) the person gives Written Notice of claim, as prescribed in ORS 279C.605, to the Contractor and to the contacting agency (the Owner).

In addition to the above requirements, the Contractor shall make the Contractor's own determinations as to the amount of the bond which will be required by any corporation or agency granting a permit for Work to be done under these Plans and Specifications. Such bonds shall be in addition to that required by the Owner as indicated above.

Guarantees

The Contractor guarantees to the Owner and the Engineer 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 guarantees 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. Such guarantees shall include care of backfilling of ditches or of structures should the fill settle to such extent as to require refilling or resurfacing roadway surfaces to restore the original or intended condition or grade. This guarantee shall be understood to imply prompt attention to any remedy of such defects as those mentioned above if and as they occur after the Contractor shall have Written Notice of their existence. The Contractor's guarantee 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 the Engineer, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

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 on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion. The obligations under this Section 3.5 shall not relieve the Contractor of its warranty obligations to the Owner under these General Conditions and other Contract Documents.

Correction of the Work

Provided that Substantial Completion has not yet been reached, if after 10 days' notice, the Contractor fails to proceed to cure any breach of its guarantee, 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 Engineer and the Owner, 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 are not exclusive, but are cumulative of any other Owner remedies.

In addition to the Contractor's obligations under this Section 3.5 if, within one year after the date of Completion of the Work or designated portion thereof, 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 the Engineer, the Owner may correct it in accordance with Section 8.10. 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.

Establishment of the one-year period for correction of Work as described in the paragraph above 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.

to support the Contractor's obligations with respect to the one-year period for correction of the Work, the Contractor's Performance Bond shall remain in full force and effect for one year following the acceptance of the project by the Owner. The bond shall be executed by a Surety company authorized to do business within the State of Oregon and it shall be subject to the approval of the attorney for the Owner.

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.

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.

All documents, warranties, record drawings, and other deliverables shall be furnished as required by the Contract Documents.

The Contractor shall deliver to the Owner via the Engineer three bound volumes of all 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.

Until Substantial Completion, the Contractor shall perform and document all required maintenance of equipment and systems and maintain in force all warranties.

Assignment of Warranties

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

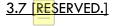
3.6 SUBCONTRACTING OR ASSIGNMENT OF CONTRACT:

The Contractor agrees not to assign, sell, convey, dispose of, or transfer rights, nor delegate duties under this Contract, or otherwise dispose of the Contract or the Contractor's right, title, or interest therein, or the Contractor's power to execute such Contract, either in whole or in part, to any other person, firm, or corporation, or to subcontract any part of the Work without the previous written consent of the Owner. this connection, it is to be understood that the Owner will not approve of the subcontracting of more than 75% of the Work to be done under the Contract.

It is understood and agreed that, if any part of the Work to be done under the Contract is subcontracted, the subcontracting shall be done in accordance ORS 279C.580. In addition, the Contractor shall be bound by the following provisions:

The Contractor shall submit a list of all First-Tier Subcontractors to the Owner in accordance with the Instructions to Bidders. Substitution of affected first-tier Subcontractors shall be made only in accordance with ORS 279C.585. The Contractor shall notify the Owner of all proposed changes in Subcontractors prior to making any changes in Subcontractors.

- All subcontracts shall be in writing and shall provide that all Work to be performed thereunder shall be conducted and performed in accordance with the terms of the main Contract. All subcontracts shall include a provision requiring the Subcontractor to have a Public Works Bond filed with the Construction Contractors Board before starting work on the project, unless exempt under section 2 (7) or (8) of Enrolled Senate Bill 477 (SB-477B) as enacted by the State Legislature in 2005. Upon request, certified copies of any or all subcontracts shall be furnished to the Engineer.
- Notwithstanding ORS 279C.555 or 279C.570 (7), the Contractor shall retain 25% of any amount earned by a first-tier Subcontractor on the public works until the Subcontractor has filed with the Owner certified payroll statements as required by ORS 279C.845. The Contractor shall pay the first-tier Subcontractor the amount retained under this subsection within 14 days after the Subcontractor files the certified payroll statements as required by ORS 279C.845.
- In case the Work being done or to be done under any subcontract is not conducted in a manner satisfactory to the Engineer, the Contractor shall, upon Written Notice to this effect, cause such subcontract to be terminated and the Subcontractor and the Subcontractor's employees to be removed from the Work. Any loss or damage that may be suffered on account of such action shall be borne by the Contractor. The Contractor agrees that the Contractor is as fully responsible to the Owner for the acts and omissions of the Contractor's Subcontractors and of persons either directly or indirectly employed by them, as the Contractor is for the acts and omissions of the Contractor's own employees. Nothing contained in the Contract Documents shall create any contractual relation between any Subcontractor and the Owner.
- Insofar as is practicable, the Contractor shall make payment for subcontract Work in the same units and on the same basis of measurement as apply under the main Contract. The Owner will not be responsible for loss resulting from the Contractor's failure to do so. In making payments to Subcontractors, the Contractor shall protect against the possibility of overpayment, and the Contractor shall assume such losses as may result from overpayment.
- The subcontracting of any or all of the Work to be done will in no way relieve the Contractor of any part of the Contractor's responsibility under the Contract. The Contractor shall have on the Work at all times a qualified and capable superintendent whose duty shall be to direct and coordinate the operations of the Subcontractors and to see that the orders of the Engineer are carried out promptly and intelligently. Failure of the Contractor to control the Work of the Subcontractors to the satisfaction of the Engineer will result in the issuance of orders requiring the cancellation of the Subcontractors and the removal of the Subcontractors from the Work.
- All Subcontractors performing Work described in ORS 701.005(2) (i.e., construction work) are required to be registered with the Construction Contractors Board or licensed by the State Landscape Contractors Board in accordance with ORS 701.035 to 701.055 before the Subcontractors commence work under the Contract.
- 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 10 days out of such amounts as are paid to the Contractor by the Owner. The 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). The 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.



GC-4 SCOPE OF WORK

4.1 INTENT OF THE PLANS AND SPECIFICATIONS AND CONTRACT:

The true intent of the Plans and Specifications and Contract is to provide for the execution and completion in every detail of the project or Work. Except as otherwise specifically provided, the Contractor shall furnish all labor, tools, implements, machinery, supplies, materials, and incidentals, and shall do all things necessary to perform and to complete, according to the Specifications and Plans, the Work to be done under the Contract.

4.2 DEVIATION FROM THE PLANS:

No deviation from the Plans or the approved working and/or shop drawings is permissible except on written order of the Engineer.

4.3 INTERPRETATION OF CONTRACT, SPECIFICATIONS AND PLANS:

In cases of conflict in the terms, requirements and provisions as set out by the contract, the Specifications or the Plans, such conflict shall be reconciled by the acceptance of the following order of precedence for the various Contract Documents; (1) Amendments to the Contract, including Change Orders, with the more recent amendment taking precedence over an earlier amendment; (2) The Agreement; (3) Special Provisions; (4) these General Provisions; (5) Exhibits to the Agreement, including the Payment Bond and Performance Bond; (6) Plans (including Drawings), Specifications, and Addenda issued before the execution of the Contract, subject to the two paragraphs immediately below; (7) the Notice of Proceed; (8) the Notice of Intent to Award; (9) the Advertisement to Bid and Instructions to Bidders (10) Contractor's Bid, including the Contractor's completed Bid Form, First-Subcontractor Disclosure, and Bid Bond.

The apparent silence of the Specifications and Plans as to any detail or the apparent omission from them of a detailed description concerning any point, shall be regarded as meaning that only the best general practice is to prevail and that only approved material and workmanship of first quality are to be used.

The Contractor shall take no advantage of any errors or omissions in the Specifications and Plans or of any discrepancies in or between same; but where such errors, omissions or discrepancies occur, the Contractor will be governed by the apparent intent of the Specifications and Plans and by orders of the Engineer. Work performed by the Contractor as a result of an error or omission in the Plans and Specifications when such error or omission is not called to the attention of the Engineer shall be at the Contractor's risk.

4.4 PLANS, SHOP AND SUPPLEMENTAL DRAWINGS:

The Contractor will be supplied with four sets of Specifications and prints of the Plans prepared by the Engineer showing the project in detail. The Contractor may obtain any additional prints required from the Engineer by compensating the Engineer for the cost of printing involved.

Figured dimensions on the drawings shall be used in preference to scaling the drawings. Where the Work of the Contractor is affected by finish dimension, these shall be determined by the Contractor at the site, and the Contractor shall assume responsibility therefore.

General drawings showing such details as are necessary to give a comprehensive idea of the construction contemplated will be included in the Plans; but the Contractor shall submit to the Engineer for review and approval such additional shop details, settings, schedules and such other supplemental drawings as may

be required for the construction of any part of the Work, and prior to the review and approval of such Plans any Work done or material ordered shall be at the Contractor's risk. All shop and supplemental drawings shall be made in such a manner that clear and legible reproductions can be made from them. Any drawings submitted for review which are, in the Engineer's opinion, carelessly prepared, erroneous or unchecked, will be returned to the Contractor for redrawing and checking; and after such redrawing and checking shall be resubmitted to the Engineer.

Shop drawings for mechanical equipment and other structures or equipment shall consist of such detailed Plans as may be reasonably required for the successful prosecution of the Work and which are not included in the Plans furnished by the Engineer. These may include Plans for false work, bracing, centering and form work, masonry layout diagrams, bending diagrams for metal reinforcement, shop details for precast concrete items, and installation drawings or instructions.

It is expressly understood that the review by the Engineer of supplemental drawings or shop drawings submitted by the Contractor or the Contractor's agents will not relieve the Contractor from responsibility for errors in details, dimensions, or quantity or strength of such materials. Material improperly fabricated shall be replaced or modified at the Contractor's expense.

The Contractor shall submit, with such promptness as to cause no delay in the Contractor's own Work or in that of any other Contractor, 3 copies of each shop drawing or setting drawing and schedule required for the Work of the various trades. The Engineer will check and return 2 copies of such drawings and schedules only for conformance with the design concept of the project and compliance with the information given in the Contract Documents. The Contractor shall make such corrections to the drawings as have been indicated and shall furnish the Engineer with 2 corrected copies. If requested by the Engineer, the Contractor shall furnish additional copies as requested. Regardless of corrections made in or approval given to the drawings by the Engineer, the Contractor shall be responsible for the accuracy of such drawings and for their conformity to the Plans and Specifications, unless the Contractor notifies the Engineer in writing of any deviations at the time the Contractor furnishes such drawings.

The Contract Bid prices shall include the cost of furnishing all shop and installation drawings and the Contractor will be allowed no extra compensation for such drawings.

The Contractor shall keep one copy of all drawings (including shop drawings) and Specifications on the Work, in good order, available to the Engineer and to the Engineer's representatives at the construction site

4.5 INCREASED OR DECREASED QUANTITIES:

The right is reserved by the Owner, without impairing the contract, to make such increases and decreases in the quantities of the Work as may be considered necessary to complete fully and satisfactorily the Work included in the Contract. The Contractor shall have no claim for damages or for anticipated profits on account of any portion of the Work that may be reduced or deleted. Deletion of entire items generally shall be made when the Contract is executed but in case the Contractor shall have performed some Work on account of any item which is subsequently deleted, the Contractor shall be paid therefore on the basis of extra Work.

4.6 CHANGES IN WORK:

<u>4.6.01 Changes Requested by the Contractor</u> – Changes in specified methods of construction may be made at the Contractor's request when approved in writing by the Engineer. Changes in the Plans and Specifications, requested in writing by the Contractor, which do not materially affect the Work and which are not detrimental to the Work or to the interests of the Owner, may be granted by the

Engineer.

Payment will be made per Section GC-9 MEASUREMENT AND PAYMENT, of this Contract.

<u>4.6.02 Changes Initiated by the Owner</u> – The Owner may change the Plans, Specifications, character of the Work, or quantity of Work. Change Orders shall be in writing and state the dollar value of the change or establish method of payment, any adjustments in Contract Time and, when negotiated prices are involved, shall provide for the Contractor's signature indicating acceptance. Payment for all Work will be made per Section GC-9 MEASUREMENT AND PAYMENT, of this Contract.

4.7 CHANGED CONDITIONS:

The Contractor shall notify the Engineer in writing of the following Work site conditions, hereinafter called changed conditions, promptly upon their discovery and before they are disturbed:

- a. Subsurface or latent physical conditions differing materially from those represented in the contract; and
- b. Unknown physical conditions of an unusual nature differing materially from those ordinarily encountered and generally recognized as inherent in Work of the character being performed.

The Engineer will promptly investigate conditions of which notified or any conditions discovered by the Engineer which appear to be changed conditions. If it is determined that the conditions are changed conditions and that they will materially increase or decrease the costs of any portion of the Work, a written Change Order will be issued by the Engineer adjusting the compensation for such portion of the Work. If the Engineer determines that conditions of which notified by the Contractor do not justify an adjustment in compensation, the Contractor will be so advised in writing. Should the Contractor disagree with such determination, a notice of potential claim may be submitted to the Engineer.

4.8 EXTRA WORK:

Upon the written Extra Work (as defined in Section 5.3) order of the Engineer, the Contractor shall perform such additional or Extra Work that may or may not be included under or covered by Contract Prices, as may be necessary for the satisfactory completion of the project. If the Work is of a kind for which a Specification is given herein, it shall be performed in accordance with that specification subject to such supplemental or additional Specifications, Plans, and instructions as the Engineer may issue. If the Work is of a kind not covered by a Specification given herein, it shall be performed in accordance with accepted practice for the class of Work intended and in accordance with such Plans as may be issued by the Engineer. The Owner shall have the option of paying for additional or Extra Work at the stipulated unit prices or stipulated lump sum prices given in the Bid Form or on a force account or cost plus basis described in Section 9.5 of these Specifications. Payment for Extra Work will be made only when the Work involved has been authorized by the Engineer, in writing prior to performance of the Work.

Change Order pricing, provided by the Contractor, shall be commensurate with the Bid, Schedule of Unit Prices. If requested by the Engineer, the Contractor shall supply a Schedule of Unit Values detailing the component breakdown of the provided unit prices within the Bid. The Schedule of Unit Values shall detail all labor, equipment, materials, profit and overhead associated with each component of the unit price, as requested or directed by the Engineer. These supplied values will be the used to verify pricing for Extra Work when the scope of the Extra Work does not fall under an established Bid item. Pricing for Extra Work provided by the Contractor which is not commensurate to the Schedule of Unit Values will be rejected.

4.9 CLAIMS FOR EXTRA COMPENSATION:

In any case where the Contractor deems extra compensation is due the Contractor for Work or materials not clearly covered in the Contract or not ordered by the Engineer as an extra as defined herein, the Contractor shall in writing notify the Engineer and the Owner of the Contractor's intention to make claim for such compensation in accordance with Section 8.12 before the Contractor begins the Work on which the Contractor bases the claim. If such notification is not given or the Owner and Engineer are not afforded proper records and reports by the Contractor for keeping strict account of actual cost, then the Contractor hereby agrees to waive the claim for extra compensation. Such notice by the Contractor and the fact that the Engineer has kept account of the cost as aforesaid, shall not in any way be construed as proving the validity of the claim. In case the claim is found to be just, it shall be allowed and paid for under a Supplemental Agreement to be entered into between the parties to the Contract.

4.10 RECORDS:

The Contractor shall furnish the Engineer every reasonable record and report necessary for obtaining such information as the Engineer may desire respecting the nature and quality of the materials used or to be used and the progress and manner of the Work.

The Contractor shall maintain records in such a manner as to provide a clear distinction between the direct cost of Extra Work paid for on the force account basis and the costs of other operations performed in connection with the Contract. The Contractor shall furnish to the Engineer daily reports in duplicate of the Extra Work to be paid for on a force account basis. The reports shall itemize the materials used and shall set forth the direct cost of labor and the charges for equipment rental whether furnished by the Contractor, or Subcontractor. The reports shall provide names or identifications and classifications of workers, the hourly rate of pay and hours worked together with the size, type and identification number of equipment and hours of equipment operation.

Material charges shall be submitted by vendors' invoices. Such invoices shall be submitted with the reports; or, if not available, they shall be submitted with subsequent reports. In the event said vendors' invoices are not submitted within 15 days after acceptance of the Work, the Owner reserves the right to establish the cost of such materials at the lowest current price at which said materials are available in the appropriate quantities delivered to the location of the Work.

All reports shall be signed by the Contractor or an authorized representative.

The Engineer will compare records with the reports furnished by the Contractor, make any necessary adjustments and then compile the costs of Extra Work paid for on a force account basis on forms furnished by the Owner. When these Extra Work reports are agreed upon and signed by both parties, they shall become the basis of payment for the Work performed.

4.11 NO COMPENSATION:

Subject to Section 4.12, Compensation for Standby, the Contractor shall not have any claim for compensation or damages against the Owner or the Engineer for any suspension, stoppage, hindrance or delay from any cause whatsoever.

4.12 COMPENSATION FOR STANDBY:

When the Work or any part of it is suspended by order of the Engineer for a reason which is not related to the Contractor's performance of the Work, the Owner may consider a claim for payment of standby costs which may be incurred by the Contractor. When such costs are claimed they shall be legitimate, reasonable, and supported by proper documentation as required by the Engineer.

The Owner will not pay for standby costs related to any of the following:

- Weather or other natural conditions;
- Failure by the Contractor to carry out orders given by the Engineer;
- Any failure by the Contractor to comply with a requirement or provision of the Contract;
- Any failure by the Contractor to appropriately schedule the sequence of Work;
- Any failure by the Contractor to appropriately explore underground conditions and report findings to the Engineer in a timely manner and well in advance of critical path items such as crossings, tie-ins, special order parts or equipment, etc.;
- Any failure by the Contractor to provide for the safety of the public or his, the Owner's or the Engineer's work force;
- Any failure by the Contractor to protect the property of the Owner or others;
- Any delay occurring while defects or failures in the Work are being remedied;
- Any change in the quantity of any item of Work from the estimated quantity shown in the Contract Unit Price Schedule;
- Any equipment or work force which was not actually present and actively working on the Work immediately prior to the suspension of the Work;
- Any haul trucks or their drivers used on the Work;
- Any suspension of the Work that is less than 4 hours in duration; and
- Testing of Material or Work for compliance with Specifications and Plans.

When the Owner fails to provide right-of-way necessary for access to the Work, and has not so notified the Contractor in the special provisions of the Contract, and in the Engineer's opinion alternate Work Areas are not available or practical to allow continued prosecution of the Work, the Owner may consider the payment of a claim for standby, which shall not in any case exceed 10 days.

When a claim for standby is considered by the Owner, direct costs which, in the opinion of the Engineer, could not have been avoided by the judicious handling of forces, equipment or plant, will be paid to the Contractor in an amount that the Owner finds to be fair and reasonable. No item of cost other than idle time rate of equipment and necessary payments for idle time of workers will be considered.

Compensation for standby time of workers and equipment will be determined by the Owner, and in accordance with the following:

- (i) The time paid for will not exceed 8 hours in any one day;
- (ii) Saturdays, Sundays and statutory holidays will be excluded;
- (iii) Overhead and profit will be excluded; and
- (iv) The idle time equipment rates will be determined by the Owner.

Upon termination of the suspension by the Engineer or the Owner, the Contractor shall resume operations at once.

GC-5 CONTROL OF THE WORK

5.1 AUTHORITY OF THE ENGINEER:

To prevent misunderstandings, disputes and litigation it is expressly understood and hereby agreed to by all of the parties to the contract, including the Surety, that the Engineer will, in all cases, determine any and all questions which may arise concerning the quality, quantity and acceptability of materials furnished and Work performed; the manner and rate of progress of the performance of all Work; the interpretation of Plans and Specifications; and the amounts and classifications of the several kinds of Work and materials; and the Engineer's estimates and decisions in these matters will be final, binding,

and conclusive upon all parties to the Contract.

The Engineer will be the Owner's representative during the construction period and will observe the Work in progress on behalf of the Owner; that said Work will not be considered completed until approved by the Engineer and accepted by the Owner; that the Contractor shall at all times carry out and fulfill the instructions and directions of the Engineer insofar as the Work to be performed under the Contract is concerned; and that in the event the Contractor fails to carry out and fulfill such instructions and directions, the Owner may refuse to make any partial or final payments to the Contractor so long as such instructions and directions are not complied with. All communication between the Owner and the Contractor shall be through the Engineer. In case of the termination of the employment of the Engineer, the Owner shall appoint a capable and reputable Professional Engineer whose status under the Contract shall be that of the former Engineer.

5.2 AUTHORITY AND DUTIES OF INSPECTORS:

Inspectors shall be authorized to inspect all Work done and all materials furnished. Such inspection may extend to all or any part of the Work and to the preparation, fabrication or manufacture of the materials to be used. It is the duty of the Inspector to report to the Engineer as to the progress of the Work and the manner in which it is being performed, also to report whenever it appears that the material furnished or the Work performed by the Contractor fails to fulfill the requirements of the Plans and Specifications, and to call to the attention of the Contractor any such failure.

In case of any dispute arising between the Contractor and the Inspector as to materials furnished or manner of performing the Work, the Inspector shall have authority to reject materials or suspend the Work until the question at issue can be referred to and decided by the Engineer. The Inspector is not authorized to revoke, alter, enlarge, relax or release any requirements of the Plans and Specifications, nor to approve or accept any portion of the Work, nor to issue instructions contrary to the Plans and Specifications.

The Contractor's responsibility for Work performed under this Contract shall in no way be relieved because of the presence or absence of an Inspector. No Work shall be deemed acceptable by reason of the presence of an Inspector.

5.3 INSPECTION:

The Engineer or the Engineer's representatives shall be always allowed access to all parts of the Work and shall be furnished with every reasonable facility for ascertaining whether or not the Work as performed is in accordance with the requirements and intent of the Plans and Specifications. The Contractor shall cut and replace with new materials, at the Contractor's own expense, such samples as are customarily required for testing purposes. If the Engineer requests it, the Contractor shall, at any time before acceptance of the Work, remove or uncover such portions of the finished Work as may be directed. After examination, the Contractor shall restore said portions of the Work to the standard required by the Specifications. Should the Work thus exposed or examined prove acceptable, the uncovering or removing, and the replacing of the covering or the making good of the parts removed shall be paid for as "Extra Work," but should the Work so exposed or examined prove unacceptable, the uncovering or removing, and replacing of the covering and the making good of the parts removed, shall be at the Contractor's expense.

5.4 RESPONSIBILITY OF THE CONTRACTOR:

The Contractor shall do all the Work and furnish all labor, materials, equipment, tools and machines necessary for the performance and completion of the project in accordance with the Contract Documents within the specified time.

Material and construction details of plants, forms, shoring, false work and other structures built by the Contractor but not a part of the permanent project shall meet the approval of the Engineer, but such approval shall not relieve the Contractor from responsibility for their safety and sufficiency.

The Contractor shall be responsible for all expense involved in making any required changes in the Plans or Specifications to accommodate a substitution approved by the Engineer for the convenience of the Contractor or to circumvent an unforeseen difficulty in obtaining a specified article.

The Contractor shall assume all responsibility for the Work. As between the Contractor and the Owner, the Contractor shall bear all losses and damages directly or indirectly resulting to the Contractor, to the Owner or to others on account of the character of performance of the Work, unforeseen difficulties, accidents or any other cause whatsoever.

To the fullest extent permitted by law, the Contractor shall indemnify, defend, and hold harmless the Owner, the Engineer, and the consultants, agents, and employees of any of them 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:

- 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 5.4.

In claims against any person or entity indemnified under this Section 5.4 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 this Section 5.4 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.

Notwithstanding anything to the contrary in this Section 5.4, the Contractor is not required to indemnify the Owner, the Engineer, or the consultants, agents, or employees of any of them 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, the Engineer, or the consultants, agents, or employees of any of them, but the Contractor is required to indemnify the Owner, the Engineer, and the consultants, agents, and employees of any of them 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.

5.5 NOTICE TO CONTRACTORS:

Any Written Notice to the Contractor which may be required by law or by the provisions of the Specifications may be served on said Contractor or the Contractor's representative, either personally or by mailing to the address given in the Contract or by leaving the same at said address.

5.6 NOTICE BY CONTRACTORS:

Wherever in the Specifications the Contractor is required to notify the Engineer concerning the progress of the Work, or concerning any complaint which the Contractor may have to make, or for any other reason, it shall be understood that such notification is to be made in writing, delivered to the Engineer or the Engineer's representative in person, or mailed to the office of the Engineer at the address given in the official "Advertisement for Bids."

5.7 UTILITIES AND EXISTING IMPROVEMENTS:

In accordance with ORS 757.557, the Contractor shall, prior to performing any excavation, notify appropriate utility organization and comply with provisions stated in referenced statute.

Any information shown as to the location of existing water courses, drains, sewer lines or utility lines which cross or are adjacent to the project, has been compiled from the best available sources, but is not guaranteed to be accurate.

The Contractor shall provide for the flow of sewers, drains or water courses interrupted during the progress of the Work, and shall restore such drains or water courses as approved by the Engineer. The Contractor shall make excavations and borings ahead of Work as necessary, to determine the exact location of utilities or underground structures. Ordinarily, utility companies responsible for facilities located within the Work Area will be required to complete any installation, relocation, repair, or replacement prior to the commencement of Work by the Contractor. However, when this is not feasible or practicable or the need for such Work was not foreseen, such utility owners or the Owner shall have the right to enter upon the Work Area and upon any structure therein for the purpose of making new installations, changes or repairs. The Contractor shall conduct operations so as to provide the time needed for such Work to be accomplished during the progress of the improvement.

The Contractor shall be responsible for all costs for the repair of damage to the Contract Work or to any utility, previously known or disclosed during the Work, as may be caused by operations. The Contractor shall maintain in place utilities now shown on the drawing to be relocated or altered by others and shall maintain utilities which are relocated by others in their relocated positions in order to avoid interference with structures which cross the project Work. All costs for such Work shall be included in the prices Bid for the various items of Work.

5.8 SURVEY SERVICE:

Construction stakes will be provided to the Contractor for accurate construction of the project. The Contractor shall provide 5 days advanced Written Notice of staking needs.

<u>5.8.01</u> Construction Survey Staking – Onion Peak (Surveyor) will provide survey staking of the new road, gutter, storm drainage and water line as designed by NC Civil, LLC. The Surveyor will provide two offset stakes each to following: storm catch basins, manholes and fire hydrants. Said stakes will be wood hub. The Surveyor will stake the concrete curb with cuts/fills to top face of curb (additional stakes at curves and grade breaks as needed). The Surveyor will stake the storm drainage lines at +/-50' intervals with cuts to invert of drainage pipe. Said stakes will be a nail or wood hub. The Surveyor will stake the water line at +/-50' intervals. Grades will not be provided on water stakes,

except for fire hydrant stakes which will have cuts/fills to finish grade. Said stakes will be nail or wood hub. Finished grade Blue-Tops will be provided at 25' intervals. The Surveyor estimates 8-10 site visits to complete the above described Work. Copies of the field notes will be provided to the Contractor upon request.

All additional staking or restaking requests required by the Contractor shall be at the Contractor's sole expense. The Contractor shall contract directly with the project Surveyor.

5.9 PROTECTION OF SURVEY MARKERS:

<u>5.9.01 Permanent Survey Markers</u> – The Contractor shall not disturb permanent survey monuments, stakes, or bench marks without the consent of the Engineer, and shall notify the Engineer and bear the expense of replacing any that may be disturbed without permission. Replacement shall be done by a registered land surveyor at no expense to the Owner.

When a change is made in the finished elevation of the pavement of any roadway in which a permanent survey monument is located, the monument cover shall be adjusted to the new grade.

5.9.02 Lines and Grades – The Contractor shall preserve construction survey stakes and marks for the duration of their usefulness during construction. If any construction survey stakes are lost or disturbed, and in the judgment of the Engineer need to be replaced, such replacement shall be by the Engineer at no expense to the Owner. The cost of replacement shall be charged against, and shall be deducted from, the payment for the Work.

5.10 USE OF LIGHT, POWER AND WATER:

The Contractor shall furnish temporary light, power and water complete with connecting piping, wiring, lamps and similar equipment necessary for the Work as approved. The Contractor shall install, maintain and remove temporary lines upon completion of Work. The Contractor shall obtain all permits and bear all costs in connection with temporary services and facilities at no expense to the Owner.

5.11 VERBAL AGREEMENTS:

No verbal agreement or conversation with any officer, agent or employee of the Owner, either before or after execution of the contract, shall affect or modify any of the terms or obligations contained in any of the documents comprising the Contract. Any such verbal agreement or conversation shall be considered as unofficial information and in no way binding upon the Owner.

5.12 UNAUTHORIZED WORK:

Work done contrary to or regardless of the instructions of the Engineer, Work done beyond the lines shown on the Plans or as given, except as herein provided or any Extra Work done without written authorization, will be considered as unauthorized and will not be paid for by the Owner. Work so done may be ordered removed or replaced at the Contractor's expense.

5.13 CLEANUP:

From time to time as the Work progresses and immediately after completion of the Work, the Contractor shall clean up and remove all refuse and unused materials of any kind resulting from the Work. Upon failure to do so within 24 hours after directed, the cleanup may be done by the Owner and the cost thereof be deducted from any payment due to the Contractor.

After all other Work required under the Contract is completed and before final acceptance of the

project, the entire Work Area and easement area including the roadbed, planting, sidewalk, shoulders, driveways, alley and side street approaches, slopes, ditches, utility trenches, and construction areas shall be neatly finished to the lines, grades and cross Sections shown and as specified.

As a condition precedent to final acceptance of the project, the Contractor shall remove all equipment and temporary structures, and all rubbish, waste and generally clean up the Work Area and premises to conform substantially to conditions as they existed before the commencement of Work.

5.14 FINAL TRIMMING OF WORK:

The Work to be done under the Contract shall include such repair Work as may be necessary to overcome such deterioration as may occur on some portions of the Work while other portions of the Work are being performed. The project shall be in a neatly trimmed and well finished condition throughout at the time of completion and acceptance.

5.15 FINAL CLEAN UP:

Upon completion of the Work and before acceptance and final payment shall be made, the Contractor shall clean up the Work Area and all properties on which the Contractor has operated in the construction of the project, including removing or burning all discarded materials, rubbish and debris. The Contractor shall tear down, remove or burn all construction plant structures erected by or for the Contractor, or by or for the Contractor's Subcontractors or employees on the Work Area or on property controlled by the Owner. The Contractor shall do all things necessary to put the whole of the Work Area and such other property controlled by the Owner as the Contractor may occupy in a neat clean and orderly condition.

5.16 FINAL INSPECTION:

At such time as all Work on the project is complete and all Extra Work bills, forms, and documents required under the Contract are submitted, the Contractor shall so notify the Engineer in writing. The Engineer will make an inspection of the project and project records within 15 days of receiving said notice. If, at such inspection, all construction provided for and ordered under the Contract is found completed and satisfactory and all certificates, bills, forms and documents have been properly submitted, such inspection shall constitute the final inspection.

If any Work in whole or in part is found unsatisfactory, or it is found that all certificates, bills, forms, and documents have not been properly submitted, the Engineer will give the Contractor the necessary instructions as to replacement of material and performance or reperformance of Work necessary and prerequisite to satisfactory final completion of Work and will give the Contractor the necessary instructions for submission of bills, forms and documents, and the Contractor forthwith shall comply with and execute such instructions. At such time as such instructions are complied with and executed, the Contractor shall so notify the Engineer in writing. The Engineer will make another inspection within 15 days after such notice and this inspection shall constitute the final inspection, if all requirements of the instructions have been met to the satisfaction of the Engineer.

If the instructions are not completed to the satisfaction of the Engineer, additional instructions will be issued by the Engineer and the process will be repeated until the Engineer is satisfied all requirements are complied with. The inspection, when the Engineer is satisfied all requirements have been met, will be considered the final inspection.

GC-6 CONTROL OF MATERIALS AND EQUIPMENT

6.1 TRADE NAMES, APPROVED EQUALS OR SUBSTITUTIONS:

In order to establish standards of quality, the Engineer may have, in the technical Specifications referred to certain products by name and catalog number. This procedure is not to be construed as eliminating from competition other products of equal or better quality by other manufacturers. The words "approved equal" shall be considered following all such listings regardless of whether or not they so appear. The Contractor shall furnish to the Engineer the complete list of proposed desired substitution in sufficient time prior to their use to give the Engineer adequate time for the Engineer's review, together with such Engineering and catalog data as the Engineer may require.

Failure on the part of the Contractor to supply data to the Engineer prior to ordering or using such alternate material or equipment shall not relieve the Contractor of furnishing acceptable material or equipment as required by the Engineer.

The Contractor shall abide by the Engineer's judgment when proposed substitute materials or items of equipment are judged to be unacceptable and shall furnish the specified material or item of equipment in such case. All proposals for substitutions shall be submitted in writing by the Contractor and not by individual trades or material suppliers. The Engineer will approve or disapprove proposed substitutions in writing within a reasonable time. No substitute materials shall be used unless approved in writing.

Only materials conforming with the specified requirements and approved by the Engineer shall be used in the Work. Before the delivery of any material to be used in the Work is commenced, the Contractor shall have advised the Engineer as to the source from which the material is to be obtained, shall have furnished such samples as may be required for testing purposes, and shall have received the Engineer's approval of the use of that particular material. The approval of any source of supply by the Engineer will not imply that all material from that source will be approved, and should material from an approved source fail to maintain a quality meeting the requirements of the Specifications, use of material from that source shall be discontinued, and the Contractor shall furnish approved material from other sources. Regardless of the source, any material delivered upon the project which fails to meet the requirements will be rejected, and only material meeting all requirements will be allowed to be incorporated in the Work. Any material or item incorporated in the Work which does not meet requirements of the Contract Documents, even though it be installed with the consent and/or in the presence of an Inspector, shall be removed and approved material shall be used in its place and all costs for removal and installation of approved material shall be at the Contractor's expense.

Material which after approval has, for any reason, become unsuitable for use, shall be rejected and not used.

6.2 TESTS OF MATERIALS:

All tests of materials shall be made in accordance with approved methods as described and designated in the Specifications. When tests of materials are required, such tests shall be made by a testing laboratory approved by the Engineer and at the expense of the Owner. The Contractor shall afford such facilities as may be required for collecting and forwarding samples and shall hold the materials represented by the samples until tests have been made and the materials found equal to the requirements of the Specifications or to approved samples. The Contractor in all cases shall furnish the required samples without charge.

In the absence of any definite Specification or reference to a Specification in the technical Specifications or in the special provisions for the particular project involved, it shall be understood that such materials and tests shall meet the specifications and requirements of ASTM. Unless otherwise specified, all tests of

materials shall be made in accordance with the methods prescribed by ASTM. Wherever in the Specifications a particular specification of ASTM is referred to by number, it shall be understood that such reference shall include all amendments and additions thereto adopted by ASTM prior to the award of the Contract.

Upon completion of laboratory testing of materials as specified above, the results of the tests made therein shall be used as a basis for acceptance or rejection, in accordance with the Specifications for the particular material.

6.3 STORAGE OF MATERIALS:

Materials shall be stored in such manner as to insure the preservation of their quality and fitness for use. When considered necessary to protect materials against dampness, or to keep them clean and free from dust, dirt or other detrimental matter, suitable sheds, platforms and covers shall be provided. Materials shall be stored in such a manner as to facilitate inspection.

6.4 [RESERVED.]

6.5 ORDERING MATERIALS:

The Contractor is cautioned against placing orders for full quantities of materials until the Work has advanced to a state permitting the determination of the exact quantities required. Estimates of quantities of materials furnished by the Engineer are understood to be approximate only, and, unless otherwise specified, the Owner will in no way be responsible for any materials in excess of actual requirements. Neither will the Owner be responsible for any increased costs of extra expense the Contractor may have to bear on account of materials or Work not being ordered at some earlier date.

6.6 MATERIALS FURNISHED BY THE OWNER:

Materials specifically indicated shall be furnished by the Owner. The fact that the Owner is to furnish material is conclusive evidence of its acceptability for the purpose intended and the Contractor may continue to use it until otherwise directed. If the Contractor discovers any defect in material furnished by the Owner, the Contractor shall notify the Engineer. Unless otherwise noted or specifically stated, materials furnished by the Owner, which are not of local occurrence, are considered to be f.o.b. the nearest freight station. The Contractor shall be prepared to unload and properly protect all such material from damage or loss. The Contractor shall be responsible for material loss damage after receipt of material at the point of delivery.

6.7 MANUFACTURER'S DIRECTIONS:

Manufactured articles, material and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned as directed by the manufacturer.

6.8 EQUIPMENT APPROVAL DATA:

The Contractor shall furnish 3 copies of complete catalog data for the manufactured items of equipment and all components to be used in the Work, including specific performance data, material description, rating, capacity, working pressure, material gauge or thickness, brand name, catalog number and general type as requested by the Engineer.

This submission shall be compiled by the Contractor and approved by the Engineer before any of the equipment is ordered. Each data sheet or catalog in the submission shall be indexed according to Specifications section and paragraph for easy reference.

After written approval, this submission shall become a part of the contract, and may not be deviated from except upon written approval of the Engineer.

Catalog data for equipment approved by the Engineer shall not in any case supersede the Contract Documents. The approval of the Engineer shall not relieve the Contractor from responsibility for deviations from drawings or Specifications, unless the Contractor has in writing called the Engineer's attention to such deviations at the time of submission and secured the Engineer's written approval, nor shall it relieve the Contractor from responsibility for errors of any sort in the items submitted. The Contractor shall check and approve the Work described by the catalog data with the Contract Documents for deviations and errors prior to submission to the Engineer for approval. It shall be the responsibility of the Contractor to insure that items to be furnished fit the space available. The Contractor shall make necessary field measurements, including those for connections, and shall order such sizes and shapes of equipment that the final installation shall suit the true intent and meaning of the drawings and Specifications. Where equipment requiring different arrangement of connections from those shown is approved, it shall be the responsibility of the Contractor to install the equipment to operate properly, and in harmony with the Work required by the different arrangement of connections.

Upon approval of the equipment by the Engineer, the Contractor shall furnish 6 copies of catalog data of all process equipment or components thereof together with operating and maintenance instructions.

GC-7 LEGAL RELATIONS AND RESPONSIBILITIES

7.1 LAWS AND REGULATIONS:

The Contractor at all times shall observe and comply with all applicable federal, state, and local laws, ordinances, and regulations, and all such orders or decrees as exist at present and those which may be enacted later, of bodies or tribunals having any jurisdiction or authority over the Work. All provisions of ORS 279C.500 – 279C.530 (construction contracts) are incorporated herein.

7.1.01 Working Conditions – Except as otherwise provided in an applicable collective bargaining agreement with a labor organization, the Contractor shall not employ and shall require that its Contractors not employ any person to perform construction work for more than 10 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:

- For all overtime in excess of 8 hours a day or 40 hours in any one week when the Work week is 5 consecutive days, Monday through Friday; and
- For all overtime in excess of 10 hours a day or 40 hours in any one week when the Work week is four consecutive days, Monday through Friday; and
- 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.

The 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.

7.1.02 Environmental and Natural Resources Laws – 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:

- 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.

<u>7.1.03 Sanitary Provisions</u> – The Contractor shall observe all rules and regulations of the State of Oregon and local health officials, and shall take such precautions as are necessary to avoid creating conditions which are not sanitary. The Contractor shall provide and maintain in a neat and sanitary condition such accommodations for use of the Contractor's employees as may be necessary to comply with the requirements of public health_officials. The Contractor shall permit no public nuisance at any place over which the Contractor has control.

7.1.04 Prevailing Wage Rate Law – This Contract is subject to payment of prevailing wages under ORS 279C.800 to 279C.870. Each worker that the 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 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.

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, the 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.

The 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.

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.

If the 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.

The Contractor and every Subcontractor shall file certified statements with the 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 the 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 the Contractor or the Contractor's Surety or Subcontractor or Subcontractor's Surety that the Contractor and any Subcontractor has read such statement and certificate and knows the contents thereof, and that the same is true to the 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.

The certified statement shall be delivered or mailed by the Contractor or Subcontractor to the 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.

The Contractor and each Subcontractor shall preserve the certified statements for a period of three years from the date of completion of the Contract.

7.1.05 Public Works Bond – The Contractor shall 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). Additionally, the Contractor shall 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).

7.1.06 Medical Care Payment Law – In accordance with ORS 279C.530, the Contractor shall promptly, as due, make payment to any person, copartnership, 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 monies and sums which the Contractor collected or deducted from the wages of the Contractor's employees pursuant to any law, contract or agreement for the purpose of providing or paying for such service.

- 7.1.07 <u>Drug Testing Program</u> In accordance with ORS 279C.505 (2), the Contractor shall demonstrate to the satisfaction of the Owner, that an employee drug-testing program is in place. The Contractor may attach hereto a written description of the Contractor's drug testing program, or a copy of the adopted drug-testing program, to comply with this condition.
- 7.1.08 Salvage or Recycle of Construction and Demolition Debris In accordance with ORS 279C.510 (1), the Contractor shall salvage or recycle construction and demolition debris, if feasible or 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.
- 7.1.09 Compliance with Pay Equity Provisions; Employee Pay Discussion 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. 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.
- 7.1.10 <u>Time Limitations on Claims for Overtime</u> 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:
 - 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
 - Maintained such circular continuously posted from the inception to the completion of the Contract on which workers are or have been employed.

7.2 PERMITS AND LICENSES:

The Contractor shall procure all permits and licenses, pay all charges and fees, and give all notices necessary and incident to the due and lawful prosecution of the Work. Such fees shall be included in the Contract Price.

7.3 PATENTED DEVICES, MATERIALS, AND PROCESSES:

The Contractor assumes the responsibility of defending any and all suits or actions brought for the infringement of any patent claimed to be infringed by any material, device, plan, method or process to be incorporated in the Work and/or required to be used in connection with the Work to be done under the contract, including all attorney's fees and court costs, and the Contractor shall indemnify and save harmless the Owner, its officers, employees, and agents (including the Engineer) from all claims of and suits or Sections for infringements of patents.

7.4 USE OF PREMISES:

The Contractor shall confine the Contractor's apparatus, the storage of materials and the operations of the Contractor's workers to limits indicated by the Contract Documents, ordinances, permits, or directions of the Engineer and shall not unreasonably encumber the premises with the Contractor's materials.

The Contractor shall not load or permit any part of a structure which the Contractor is constructing under this Contract to be loaded with a weight that will endanger its safety, nor shall the Contractor use any such structure for any purpose without the approval of the Engineer.

7.5 COOPERATION WITH OTHER CONTRACTORS:

The Contractor shall conduct the Contractor's operations so as to interfere as little as possible with those of other contractors on or near the Work. It is expressly understood that the Owner has the right and may award other contracts in connection with the Work so long as it does not interfere with the work under this Contract.

Where one Contractor's operations are within the limits or adjoin the operations of another contractor, each shall be responsible to the other for any damage, injury, loss, or expense which may be suffered on account of interference of operations, neglect or failure to finish Work at the proper time, or of any other cause.

7.6 LABOR AND EQUIPMENT:

The Contractor shall employ only competent and efficient laborers, mechanics, or artisans; and whenever, in the opinion of the Engineer, any employee is or becomes unsatisfactory for the Work assigned to the employee the Contractor shall, upon request of the Engineer, remove that employee from performing Work under this Contract.

The methods, equipment and appliances used and the quantity and quality of the personnel employed on the Work shall be such as will produce a satisfactory quality of Work and shall be adequate to complete the Contract within the time limit specified.

Only efficient and competent laborers and foremen shall be employed on force account Work, and only tools and equipment in good condition and suitable for the Work shall be used. The Engineer shall have authority to dismiss from force account Work any laborer or foreman whose efficiency is, in the opinion of the Engineer, below that of the average of the Contractor's forces, and to refuse to allow the use of tools and equipment which, in the opinion of the Engineer, are not suitable for the Work. Laborers and foremen dismissed and/or tools and equipment rejected shall be replaced by the Contractor to the satisfaction of the Engineer.

The Contractor acknowledges that for all purposes, the Contractor is and shall be deemed to be an independent contractor and not an employee of the Owner, shall not be entitled to benefits of any kind to which an employee of the Owner is entitled and shall be solely responsible for all payments and taxes required by law; and furthermore in the event that the Contractor is found by a court of law or an administrative agency to be an entitled employee of the Owner for any purposes, the Owner shall be entitled to repayment of any amounts from the Contractor under the terms of the Contract; to the full extent of any benefits or other remuneration the Contractor receives (from the Owner or third party) as a result of said finding and to the full extent of any payments that the Owner is required to make (to the Contractor or to the third party) as a result of said finding.

7.7 PUBLIC SAFETY AND CONVENIENCE:

The Contractor shall conduct the project with proper regard for the safety and convenience of the public. When the project involves use of public ways, the Contractor shall provide Flaggers when directed and install and maintain means of free access to all fire hydrants, warehouses, and other property. Private roadways shall be closed only with approval of the Engineer or specific permission of the tenant. The Contractor shall not interfere with normal operation of vehicles unless otherwise authorized.

The Contractor shall not obstruct or interfere with travel over any public street without approval. Where detours are necessary, they shall be maintained with good surface and shall be clearly marked. The Contractor shall provide open trenches and excavations with adequate barricades of an approved type which can be seen from a reasonable distance. At night, the Contractor shall mark all open Work and obstructions by lights. The Contractor shall install and maintain all necessary signs, lights, flares, barricades, railings, runways, stairs, bridges and facilities. The Contractor shall observe all safety instructions received from the Engineer or governmental authorities, but following of such instructions shall not relieve the Contractor from the responsibility or liability for accidents to workers or damage or injury to person or property. The Contractor shall not work before 7:00 a.m. or after 6:00 p.m. without written permission of the Engineer.

Emergency traffic such as police, fire and disaster units shall be provided reasonable access to the Work Area at all times. The Contractor shall be liable for any damages which may result from failure to provide such reasonable access or failure to notify the appropriate authority.

7.8 BARRICADES, WARNING SIGNS, AND FLAGGERS:

The Contractor shall at the Contractor's expense and without further or other order provide, erect and maintain at all times during the progress or temporary suspension of the Work suitable barricades, fences, signs, or other adequate warnings or protection, and shall provide, keep and maintain such danger lights, signals, and Flaggers as may be necessary or as may be ordered by the Engineer to insure the safety of the public as well as those engaged in connection with the Work. All barricades and obstructions shall be protected at night by signal lights which shall be suitably distributed across the roadway and which shall be kept burning from sunset to sunrise. Barricades shall be of substantial construction and shall be suitably painted to increase their visibility at night.

Failure of the Engineer to notify the Contractor to maintain barriers, lights, signals, or Flaggers shall not relieve the Contractor from this responsibility.

If Flaggers are necessary for the purpose of protection and safety to traffic, such Flaggers shall be furnished at the Contractor's expense.

The signs to be furnished and used by the Contractor in directing, controlling and safeguarding traffic shall conform with the standard sign designs in use by the ODOT.

The Contractor's responsibility for the safeguarding of traffic as specified above shall cease when the Work included in the Contract is accepted as complete.

7.9 SAFEGUARDING OF EXCAVATIONS:

The Contractor shall provide such safeguards and protections around and in the vicinity of the excavations the Contractor makes as may be necessary to prevent and avoid the occurrence of damage, loss, injury and death to property and persons because of such excavations. Liability for any such damage, loss, injury or death shall rest with the Contractor. The Contractor's responsibility for

safeguarding and protecting and the Contractor's liability for damage, loss, injury or death shall cease when all Work to be done under the Contract is completed and accepted by the Owner.

7.10 USE OF EXPLOSIVES:

In the use and storage of explosives, the Contractor shall use every precaution to prevent injury to persons and damage to property. Secure storage places shall be provided and all such places shall be clearly marked with warning signs. Only persons experienced in the handling of explosives shall be allowed to use them on the Work, and no shot shall be put off until warning has been sounded and all persons within the radius of danger removed. In the handling and storage of explosives, the Owner and the Engineer will in no way be responsible for any noncompliance therewith or for damages to property or injury to persons resulting from accidental or premature explosions.

When explosives are used, particularly in proximity to buildings or other structures, care shall be taken to protect the surroundings from injury by the explosion, the resultant concussion or by flying rocks or debris. The quantities of explosives and the manner of their use shall be such that adjacent property shall not be damaged. In case the vicinity of the Work is accessible to the general public, the Contractor shall, before any shots are fired, post workers about the Work in various directions to warn all persons of the danger existing and to prevent the public from approaching closer than safety will permit.

7.11 PERSONAL SAFETY:

The Contractor shall be responsible for conditions of the job site, including safety of all persons and property during performance of the Work. This requirement will apply continuously and not be limited to normal working hours. Safety provisions shall conform to the applicable federal, state, county and local laws, ordinances and codes. Where any of these are in conflict, the more stringent requirement shall be followed.

The Contractor shall maintain at the office or other well-known place at the job site, all articles necessary for giving first aid to the injured and establish the procedure for the immediate removal to a hospital or a doctor's care of employees and other persons who may be injured on the job site.

The duty of the Engineer to conduct construction reviews of the Contractor's performance is not intended to include a review of the adequacy of the Contractor's safety measures in, on or near the construction site.

All accidents causing death or serious injuries or damages shall be reported immediately by telephone or messenger to both the Engineer and the Owner. In addition, the Contractor shall promptly report in writing to the Engineer all accidents whatsoever arising out of, or in connection with, the performance of the Work, whether on or adjacent to the site, giving full details and statements of witnesses.

If any claim is made by anyone against the Contractor or any Subcontractor on account of any accident, the Contractor shall promptly report the facts in writing to the Engineer, giving full details of the claim.

7.12 PROTECTION OF WORK AND PROPERTIES:

The Contractor shall continuously maintain adequate protection of all the Contractor's Work from damage and shall protect the Owner's property from injury or loss arising in connection with this Contract. The Contractor shall make good any such damage, injury or loss, except such as may be directly due to errors in the Contract Documents or caused by agents or employees of the Owner. The Contractor shall adequately protect adjacent property as provided by law and these Contract Documents.

At points where the Contractor's operations are adjacent to properties of railway, telegraph, telephone, water, gas, other pipeline and power companies, or are adjacent to other property, damage to which might result in material expense, loss, or inconvenience, Work shall not be commenced until all arrangements necessary for the protection of the interests of the Owner, as well as any interest that a third party may have therein, have been made.

In an emergency affecting the safety of life or of the Work or of adjoining property the Contractor, without special instruction or authorization from the Engineer or the Owner, is hereby permitted to act, at the Contractor's discretion, to prevent such threatened loss or injury, and the Contractor shall so act, without appeal, if so instructed and authorized. Any compensation, claimed by the Contractor on account of emergency Work, shall be determined by agreement.

7.13 RESTORATION OF DAMAGED PROPERTY:

All damage and injury to property that may be caused by or that may result from the carrying out of the Work to be done under the contract, or from any act, omission or neglect of the Contractor, the Contractor's Subcontractors, or their employees, shall promptly be made good by the Contractor either by the repairing, rebuilding, or replacing of the property damaged, or in some other manner satisfactory to the Owner of such property. In case of failure on the part of the Contractor to promptly and satisfactorily make good such damage or injury, the Owner may, without notice to the Contractor, proceed to repair, rebuild, or replace such property as may be deemed necessary, and the cost thereof will be deducted from any monies due or which may become due the Contractor under the Contract.

In applying the provisions above stated, the repairing, rebuilding or replacing of damaged property shall be understood to include the providing of any temporary facilities that may be needed to maintain normal service until the required repairing, rebuilding or replacing is accomplished.

7.14 RESPONSIBILITY FOR DAMAGES:

The Contractor shall be responsible for all damages to property, injury to persons, and loss, expense, inconvenience, and delay that may be caused by or that may result from any act, omission, or neglect of the Contractor, the Contractor's Subcontractors, or their employees in the performance of the Work to be done under this Contract.

7.15 TRESPASS:

The Contractor will be solely responsible for any trespass upon adjacent property or injury thereto, resulting from or in connection with the Contractor's operations. The Contractor will be liable for any claims that may be made on account of trespass or the deposit of debris of any kind upon private property.

7.16 CONTRACTOR'S RESPONSIBILITY FOR WORK:

Until final acceptance of the contract, the Contractor shall be held responsible for any injury or damage to the Work or to any part thereof by the action of the elements, or from any cause whatsoever, and the Contractor shall make good at the Contractor's own expense all injuries or damages to any portion of the Work before its completion and final acceptance.

7.17 NO WAIVER OF LEGAL RIGHTS:

The Owner shall not be precluded or estopped by any measurement, estimate, or certificate made either before or after the completion and acceptance of the Work and payment therefore from showing the true amount and character of the Work performed and materials furnished by the Contractor, or from

showing that any such measurement, estimate, or certificate is untrue or incorrectly made, or that the Work or materials do not conform in fact to the Contract. The Owner shall not be precluded or estopped, notwithstanding any such measurement, estimate or certificate, and payment in accordance therewith, from recovering from the Contractor and the Contractor's Sureties such damages as the Owner may sustain by reason of the Contractor's failure to comply with the terms of the Contract. Neither the acceptance by the Owner, or by any representative or agent of the Owner, nor any payment for nor acceptance of the whole of any part of the Work, nor any extension of time, nor any possession taken by the Owner shall operate as a waiver of any portion of the Contract or of any power herein reserved, or any right to damages herein provided. A waiver of any breach of the Contract shall not be held to be waiver of any other subsequent breach.

7.18 INSURANCE:

7.18.01 General – The Contractor shall purchase and maintain the types and limits of insurance described in this Section 7.18 from an insurance company or companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. All of the Contractor's insurance carriers shall be rated A- or better by Best's Insurance Rating. The Contractor shall not commence Work until the Contractor has obtained all insurance required under this Section or until the Contractor has satisfied the Owner in this respect; nor shall the Contractor allow any Subcontractor to commence Work until the Subcontractor also has obtained similar insurance which is applicable to the Subcontractor's Work. The Contractor shall maintain such insurance throughout the life of this Contract and for at least 6 years after Substantial Completion.

7.18.02 Commercial General Liability – The Contractor 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:

- a. damages because of bodily injury, sickness or disease, including occupational sickness or disease, and death of any person;
- b. personal injury and advertising injury;
- c. damages because of physical damage to or destruction of tangible property, including the loss of use of such property;
- d. bodily injury or property damage arising out of completed operations; and
- e. the Contractor's indemnity obligations under these General Conditions.

The Contractor's CGL policy shall not contain an exclusion or restriction of coverage for the following:

- a. 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.
- b. Claims for property damage to the Contractor'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.
- c. Claims for bodily injury other than to employees of the insured.
- d. Claims for indemnity under these General Conditions arising out of injury to employees of the insured.
- e. Claims or loss excluded under a prior work endorsement or other similar exclusionary language.

- f. Claims or loss due to physical damage under a prior injury endorsement or similar exclusionary language.
- g. Claims related to earth subsidence or movement, where the Work involves such hazards.
- h. Claims related to explosion, collapse and underground hazards, where the Work involves such hazards.
- <u>7.18.03</u> Automobile Liability The Contractor shall purchase and maintain Automobile Liability insurance covering vehicles owned, and non-owned vehicles used, by the Contractor, 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. Contractor must provide coverage using ISO Form CA 00 01 or an equivalent form approved in advance by the Owner.
- 7.18.04 Umbrella/Excess The Contractor shall purchase and 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.
- 7.18.05 Workers' Compensation and Employers Liability The Contractor shall purchase and maintain Workers' Compensation coverage in compliance with ORS 656.017. The Contractor shall purchase and maintain 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 7.18.05 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 7.18.05, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy.
- 7.18.06 Pollution Liability If the Work involves the transport, dissemination, use, or release of pollutants, the Contractor 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.
- 7.18.07 Property Insurance The Contractor shall purchase "All Risk" type Builder's Risk Insurance for Work to be performed sufficient to cover the total value of the entire Project on a replacement cost basis. Unless specifically authorized by the Owner, the amount of such insurance shall not be less than the Contract Price totaled in the Bid, plus the value of subsequent modifications and labor performed and materials or equipment supplied by others. The policy shall cover not less than the losses due to fire and extended coverage, earthquake, flood, explosion, hail, lightening, vandalism, malicious mischief, wind, collapse, riot, aircraft, smoke the results of faulty workmanship, during the Contract Time, and until the Work is accepted by the Owner. The policy shall name as the insured the Contractor and the Owner. The property insurance shall be maintained until Substantial Completion
- 7.18.08 Certificates of Insurance The Contractor shall provide certificates of insurance acceptable to the Owner evidencing compliance with the requirements in this Section 7.18 at the following times: (1) prior to commencement of the Work (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 Contractor from entering the Work Area until the certificates of insurance and all required attachments have been received and approved by the Owner. The Contractor may not enter the

Work Area or commence the Work until the Contractor places for the Work all coverages required under this Section 7.18. 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 Sections 7.18.01 and 7.18.07. The certificates will show the Owner as an additional insured on the Contractor's Commercial General Liability and excess or umbrella liability policy or policies.

7.18.09 Additional Insured Obligations – To the fullest extent permitted by the law, the Contractor shall cause the commercial general liability coverage to include (1) the Owner, the Engineer, and their respective consultants, officers, employees, agents, and contractors as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations; and (2) the Owner, the Engineer, and their respective consultants, officers, employees, agents, and contractors as an additional insureds for claims caused in whole or in part by the Contractor'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 Engineer and the Engineer's consultants, CG 20 32 07 04.

<u>7.18.10 Deductibles and Self-Insured Retentions</u> – Satisfaction of all self-insured retentions or deductibles is the sole responsibility of the Contractor.

7.19 PAYMENT OF OBLIGATIONS:

The Contractor shall promptly make full payment for labor, material, supplies and provisions, at such times as they become due and payable, to all persons supplying said Contractor or the Contractor's Subcontractor with labor, services, materials, supplies or provisions for the prosecution of the Work provided for in the Contract. The Contractor shall not permit any lien or claim to be filed or prosecuted against the Owner for or on account of any labor, services, material, supplies or provisions furnished.

The Contractor and Subcontractor shall pay all contributions or amounts due the Industrial Accident Fund from the Contractor or any Subcontractors incurred in the performance of the Contract. The Contractor shall pay to the Department of Revenue all sums withheld from employees under ORS 316.167.

In accordance with ORS 279C.515 (1), in the event that said 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 the 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 the 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. The rate of interest on the amount due is 9% per annum. The amount of interest may not be waived.

GC-8 PROSECUTION AND PROGRESS

8.1 PROSECUTION OF WORK:

Performance of the Work to be done under the Contract shall be commenced within the stipulated time limit, unless later commencement of the Work is authorized by the Engineer. From the time of commencement of the Work to the time of completion, the Work shall be prosecuted vigorously and always in accordance with a schedule which will insure completion within the specified time limit. The Contractor is responsible for ensuring that the schedule includes due allowances for possible unfavorable conditions, interference, breakdowns, and other causes of delay. There shall be no voluntary shutdown or slowing of operations without prior approval of the Engineer.

If it appears to the Engineer that the rate of progress being made is not such as it will insure the Substantial Completion of the Work within the Contract Time, it shall be within the authority of the Owner, upon notification by the Engineer, to require the Contractor to provide additional equipment and labor and to take such other steps as may be necessary to insure completion as specified.

8.2 LIMITATIONS OF OPERATIONS:

Operations on the various units or portions of the Work shall be begun at the times and locations approved by the Engineer and shall be prosecuted between such limits as the Engineer may establish. No part of the Work shall be undertaken without the approval of the Engineer, and no Work shall be carried on contrary to the Engineer's instructions.

In case of a dispute arising between two or more Contractors engaged on the same Work as to the respective rights of each under the Specifications, the Engineer shall determine the matters at issue and shall define the respective rights of the various interests involved, in order to secure the completion of all parts of the Work in general harmony and with satisfactory results, and the Engineer's decision shall be final and binding on all parties concerned.

8.3 CONTRACTOR TO HAVE REPRESENTATIVE ON WORK:

The Contractor shall designate in writing before starting Work an authorized representative, who shall have complete authority to represent and to act for the Contractor in the Contractor's absence from the Work site, in all directions given to the authorized representative by the Engineer. The Contractor or the authorized representative shall give efficient supervision to the Work, using the best skill and personal attention to the prosecution of the Work, and shall be present on the site continually during its progress. The authorized representative shall have full authority to execute the orders or directions of the Engineer without delay and to supply promptly such materials, tools, plant, equipment, and labor as may be required, regardless of whether or not the Work is to be performed by the Contractor's own forces or those of a Subcontractor. The fact that an approved Subcontractor is performing any portion of the Work shall not relieve the Contractor of this requirement.

8.4 TEMPORARY SUSPENSION OF THE WORK:

The Engineer shall have authority to suspend the Work wholly or in part for such period or periods as the Engineer may deem necessary, due to unsuitable weather or such other conditions as are considered unfavorable for the prosecution of the Work, or for such time as is necessary due to the failure on the part of the Contractor to carry out orders given or to perform any or all provisions of the Contract.

If it should become necessary to stop Work for an indefinite period, the Contractor shall store all materials in such a manner that they will not obstruct or impede the traveling public unnecessarily nor

become damaged in any way, and the Contractor shall take every precaution to prevent damage or deterioration of the Work performed, provide suitable drainage, et cetera, and erect temporary structures where necessary. The Contractor shall not suspend the Work without written approval from the Engineer. In all cases of suspension of construction operations, the Work shall not again be resumed until permitted by order of the Engineer.

The Contractor will be responsible for all damage to the Work that may occur during suspensions of Work the same as though the damage had occurred while the Work was in progress.

8.5 PROTECTION OF WORK DURING SUSPENSION:

If it should become necessary, because of the lateness of the season or any other reason, to stop the Work, then the Contractor shall open proper drainage ditches, erect temporary structures where necessary; prepare the Work so there will be minimum interference with traffic, if the Work is on a public right-of-way; and take every precaution to prevent any damage or unreasonable deterioration of the Work during the time the Work is closed. If upon reopening the Work, it is found that any such damages or deterioration has occurred, due to the lack of said precautions, then, and in that event, the Contractor shall correct all such conditions at the Contractor's own expense in a manner acceptable to the Engineer.

8.6 TIME OF COMPLETION OF WORK AND EXTENSION OF TIME LIMIT:

Time is of the essence of the Contract. Except as otherwise provided in the Contract Documents, 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, the Owner's employees, a separate contractor retained by the Owner, or the Engineer; (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 this Section and Section 8.12, 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 Engineer may determine. 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 Contractor's project schedule. No extension of Contract Time may exceed the actual amount of delay directly caused by the unforeseen occurrence identified in this paragraph. The Contractor must comply with Section 8.12 of these General Conditions to receive any extension in Contract Time, regardless of whether the requirements of this paragraph are satisfied. 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. Except as expressly provided under this paragraph, 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.

In naming the prices for completion of the Work within the time specified it shall be understood and agreed the Work shall be completed within the Contract Time. If, however, said Work is not completed within the Contract Time, as extended to cover the total days delay allowed in the paragraphs above, the Owner may deduct and retain out of any sum then due or that may become due the Contractor at time of such delinquency, or later, the sum specified in the Contract for each and every calendar day that the date of Substantial Completion is delayed. In submitting a Bid and signing the contract, the Contractor thereby shall have agreed to these provisions and, furthermore, that the sum deducted and retained is

not a penalty but a reimbursement to the Owner for damages which the Owner will have sustained by reason of such delayed completion.

Amounts due the Owner from the Contractor under the foregoing provisions shall be deducted from any monies then due or to become due said Contractor under the contract, and such deductions shall not in any degree release the Contractor from further obligations in respect to the fulfillment of the entire contract, nor any right which the Owner may have to claim, sue for, and recover compensation and damages for no performance or breach of the Contract.

8.7 TERMINATION FOR CONVENIENCE:

The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause. Upon receipt of notice from the Owner of such termination for the Owner's convenience, the Contractor shall: cease operations as directed in the notice; take actions necessary, or that the Owner or the Engineer may direct, for the preservation and protection of the Work; and 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. 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 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.

8.8 TERMINATION FOR CAUSE:

The Owner may terminate the Contract if the Contractor: refuses or fails to supply enough properly skilled workers or proper materials; fails to make payment to Subcontractors or suppliers in accordance with the respective agreements between the Contractor and the Subcontractors or suppliers; disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; fails to observe the training, safety, and other precautions required by the Contract or the Contractor's own safety policies for the Project; or substantially breaches a provision of the Contract Documents. When any reasons for termination under this Section 8.8 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 7 days' notice, terminate the Contract and may, subject to any prior rights of the Surety: exclude the Contractor from the Work Area and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor; accept assignment of subcontracts; and 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. When the Owner terminates the Contract for one of the reasons stated in this Section 8.8, the Contractor shall not be entitled to receive further payment until the Work is finished. If the unpaid balance of the Contract Price exceeds costs of finishing the Work, including compensation for the Owner's and the Engineer'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.

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.

It is understood and agreed that the Owner may, at its discretion, avail itself of any or all of the above rights or remedies and that the invoking of any one of the above rights or remedies will not prejudice or preclude the Owner from subsequently invoking any other right or remedy set forth above or elsewhere in the Contract.

8.9 USE OF COMPLETED OR UNCOMPLETED PORTIONS:

The Owner shall have the right to take possession of and use any completed or partially completed portions of the Work, notwithstanding that the time for completing the entire Work or such portions may not have expired, but such taking possession and use shall not be deemed as acceptance of any Work not completed in accordance with the Contract Documents. If such prior use increases the cost of or delays the completion of uncompleted Work or causes refinishing of completed Work, the Contractor shall be entitled to such extra compensation; or extension of time or both, as the Engineer may determine.

8.10 RIGHT OF OWNER TO DO WORK:

If the Contractor should default or neglect to prosecute the Work properly or fail to perform any provision of the contract, the Owner after 3 days' Written Notice to the Contractor, may, without prejudice to any other remedy it may have, commence and continue to carry out the Work, including without limitation the correction of any deficiencies. The Owner may deduct the cost thereof from the payment then or thereafter due the Contractor, including the Owner's expenses, attorney fees, and compensation for the Engineer'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.

The Owner's right to commence and carry out the Work in this Section 8.10 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.

8.11 CONTRACTOR'S RIGHT TO STOP WORK OR TERMINATE CONTRACT:

If the Work should be stopped under an order of any court, or other public authority, for a period of three consecutive months, through no act or fault of the Contractor or of anyone employed by the Contractor, or if the Engineer should fail to issue any certificate for payment within ten days after it is due, or if the Owner should fail to pay to the Contractor within 30 days of its presentation, any sum certified by the Engineer and approved by the Owner, then the Contractor may, upon 7 days' Written Notice to the Owner and the Engineer, stop Work or terminate this Contract and recover from the Owner payment for all Work executed.

8.12 LEGAL ACTIONS CONCERNING THE WORK:

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 set forth below 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.

Claims by the Contractor (including but not limited to claims for an increase in the Contract Time or the Contract Price), 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 3.5, shall be initiated by notice to the Owner and the Engineer. Additionally, claims by the Contractor shall be initiated within 21 days after occurrence of the event giving rise to such claim or within 21 days after the Contractor first recognizes the condition giving rise to the Claim, whichever is later. The Contractor must identify known bases for each claim and the nature and amount of relief sought. Failure to provide timely notice in accordance with this Section constitutes waiver of the Claim.

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 3.5, shall be initiated by notice to the other party.

Any dispute under this Contract or related to this Contract will be governed by Oregon law, and any litigation arising out of this Contract will be conducted in Tillamook County Circuit Court. If a 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.

8.13 CERTIFICATE OF COMPLIANCE:

After completion of all items of Work specified in the contract, and completion of the final inspection as set forth in Section 5.16, the Contractor shall submit to the Owner a Certificate of Compliance in form substantially as follows: "I (we) hereby certify that:

- 1. All Work has been performed and materials supplied in accordance with the Plans, Specifications, and Contract Documents for the above Work;
- 2. There have been no unauthorized substitutions of Subcontractors; nor have any subcontracts been entered into without the names of the Subcontractors having been submitted to the Owner prior to the start of such subcontracted Work;
- 3. No subcontract was assigned or transferred or performed by any Subcontractor other than the original Subcontractor, without prior notice having been submitted to the Owner together with the names of all Subcontractors;
- 4. All Subcontractors performing Work described in ORS 701.005(2) (i.e., construction work) were registered with the Construction Contractors Board or licensed by the State Landscape Contractors Board in accordance with ORS 701.026 to 701.035 before the Subcontractors commenced Work under the contract;
- 5. All claims for material and labor and other service performed in connection with these Specifications have been paid;
- 6. All monies due the State Industrial Accident Fund, the State Unemployment Compensation Trust Fund, the State Tax Commission (in accordance with ORS 305.385 and ORS 279C.530), hospital associations and/or others have been paid."

8.14 COMPLETION AND ACCEPTANCE:

After completion of all items of Work specified in the contract, and completion of the final inspection as set forth in Section 5.16, and acceptance of all public portions of utility construction by the respective public utility regulatory agency, and completion of the Certificate of Compliance as set forth in Section 8.13, the Engineer will recommend to the Owner that the Work be accepted and payment made as provided for in Section 9.11.

It is mutually agreed between the parties to the Contract that a certificate of completion of the project, submitted by the Engineer or other agent of the Owner and approved by the governing body of the Owner, shall constitute final acceptance of the Work and materials included in the Contract on the date of such approval. It is provided further that such approval shall not constitute an acceptance of any authorized Work, that no payment made under the Contract except the final payment shall be evidence of the performance of the contract, either wholly or in part, and that no payment shall constitute an acceptance of unauthorized or defective Work or improper material.

The acceptance of the Contract Work shall not prevent the Owner from making claim against the Contractor for any defective Work.

GC-9 MEASUREMENT AND PAYMENT

9.1 MEASUREMENT OF QUANTITIES:

All Work completed under the Contract shall be measured by the Engineer according to United States standard measure. The methods of measurement and computation to be used in the determination of the quantities of materials furnished and the quantities of Work performed under the Contract shall be the methods outlined in these Specifications or by those methods generally recognized as good engineering practice, which, in the opinion of the Engineer, give the greatest accuracy consistent with practicable application.

9.2 SCOPE OF PAYMENT:

The Contractor shall accept the compensation as herein provided, in full payment for furnishing all materials, labor, tools and equipment, and for performing all Work under the contract, also for all loss, damage, or liability arising from the nature of the Work, or from the action of the elements, or from any unforeseen difficulties which may be encountered delaying the prosecution of the Work until its final acceptance by the Owner.

9.3 ALTERATION IN DETAILS OF CONSTRUCTION:

The Owner reserves the right to make, at any time during the progress of the Work, such increases or decreases in quantities and such alterations in the details of construction as may be found to be necessary or desirable.

Such increases and alterations shall not invalidate the Contract nor release the Surety, and the Contractor agrees to accept the Work as altered, the same as if it had been a part of the original Contract.

Unless such alterations and increases or decreases materially change the character of the Work to be performed or the cost thereof, the altered Work shall be paid for at the same unit prices as other parts of the Work. If, however, the character of the Work or the unit costs thereof are materially changed, an allowance shall be made on such basis as may have been agreed to in advance of the performance of the work, or in case no such basis has been previously agreed upon, then an allowance shall be made, either for or against the Contractor, in such amount as the Engineer may determine to be fair and equitable.

9.4 QUANTITIES AND LUMP SUM PRICES:

9.4.01 Lump Sum – The Contractor shall include in the Contract sum all allowances named in the Contract Documents for items (or for the entire Work) which are to be paid for under a lump sum price(s) and shall cause the Work so covered to be done for such sums. Should the Engineer direct that additional Work be required or Work deleted under a lump sum price(s) item, the Contract sum will be adjusted therewith by negotiation or by deletion or addition of other Work of equivalent value at the option of the Owner. The Contractor declares that the lump sum price(s) includes such sums for all expenses and profit as the Contractor deems proper. No demand for expense or profit other than those included in the lump sum price(s) will be allowed.

9.5 PAYMENT FOR FORCE ACCOUNT (EXTRA) WORK:

When Extra Work is ordered by the Engineer to be done on a force account basis (either by the Contractor or an approved Subcontractor), such Work will be paid for on the basis of the actual cost to the Contractor or Subcontractor for labor cost, material cost and equipment cost plus an allowance of 15% thereof. This allowance is to cover the costs of administration, general superintendence, other

overhead, bonds, anticipated profit, and the use of small tools and equipment for which no rental is allowed. Where said Work is performed by an approved Subcontractor, an additional 5% will be allowed the Contractor for administration and supervision of the Subcontractor's Work.

The items of cost to which the above percentage will be added and to which reimbursement will be made are as follows:

9.5.01 Labor – The wages of supervisors, equipment operators, and skilled, semiskilled and common laborers assigned to the specific operation will be reimbursed at Contract or actual payroll rate of wages per hour and actual fringe benefits paid, for each hour that the employees are actually engaged in the performance of the force account Work. Reimbursement for hourly wage rates and benefits shall not exceed prevailing wage rates and benefits for the class or classes of Work performed under force account.

In addition to wages and fringe benefits, reimbursement will be allowed for indirect labor costs as follows:

- a) Social Security Tax and Unemployment Tax at the percentage legally required;
- b) Industrial Accident or Worker's Compensation Insurance at the policy percentage rate; and
- c) Contractor's Public Liability Insurance and Contractor's Property Damage Liability Insurance at the policy percentage rate.

<u>9.5.02 Materials</u> – Purchased materials and supplies used on force account Work will be reimbursed at the prices billed to the Contractor or Subcontractor by the supplier, less all discounts. It will be assumed that the Contractor or the Contractor's Subcontractor has taken advantage of all possible discounts on bills for materials and supplies, and such discounts will be subtracted from the total amounts of bills regardless of any failure of the Contractor to take advantage of same. Freight and express on material and supplies will be considered to be a part of the cost and will be reimbursed as materials and supplies.

9.5.03 Equipment – Equipment, either owned or rented by the Contractor, that is mutually considered necessary, will be reimbursed at equipment rental rates. The hourly rental rate will be determined using the monthly rental rates taken from the current edition of the Rental Rate Blue Book for Construction Equipment and dividing by 176. The daily rental rate for equipment used on a 24-hour basis will be determined by dividing the monthly rate by 22. To the above rates, add the predominant area adjustment percentage for the state as shown on the area adjustment map in the Rental Rate Blue Book. In the case of equipment not listed in the Rental Rate Blue Book, a monthly rate will be computed on the basis of 6% of the manufacturer's list price for sale of new equipment. The hourly rate in this case will be determined by dividing the monthly rate by 176. For equipment used on a 24-hour basis and having no rate listed in the Rental Rate Blue Book, the daily rate will be 6% of the manufacturer's list price for the sale of new equipment, divided by 22.

The rental rates reimbursed for equipment will in all cases be understood to cover all fuel, supplies, maintenance, repairs and renewals, and no further allowances will be made for those items unless specific agreement to that effect is made in writing before the Work is commenced. Individual pieces of equipment having a value of \$100.00 dollars or less will be considered to be tools or small equipment, and no rental will be reimbursed on such.

The percentage allowances made to the Contractor in accordance with the terms outlined above will be understood to be reimbursement and compensation for all superintendence, use of tools and small equipment, overhead expenses, bond cost, insurance premiums, profits, indirect costs and losses of all kinds, and all other items of cost not specifically designated herein as items involved are furnished or

incurred by the Contractor or by the Subcontractor. No other reimbursement, compensation or payment will be made for any such services, costs or other items.

Should any percentage allowance or other corresponding allowance be made by the Contractor to a Subcontractor (other than specified herein), in connection with force account Work, such allowance shall be at the sole expense of the Contractor and the Contractor will not be reimbursed or otherwise compensated for the same by the Owner.

9.6 FORCE ACCOUNT BILLS:

The Contractor and the Engineer will review the record of Extra Work quantities done on a force account basis at the end of each day.

Bills for force account Work shall show in payroll form the dates, names, hours worked each day, rates of pay, and amounts paid to each individual employed on such Work, and shall give in detail the nature of the Work done by each. Bills for materials shall be fully itemized, showing dates of delivery, quantities, unit prices, amounts, and discounts, and shall be accompanied by receipted invoices covering every item.

All bills, payrolls, and other forms of claims for payment on force account Work shall be submitted in triplicate, shall state the number of force account Work or Change Order applicable and the name or number of the Contract under which the Work was performed, and must be approved by the Engineer. Failure to present claims in proper form within 30 days after the close of the month in which the Work covered was performed shall constitute a waiver on the part of the Contractor of the Contractor's right to present such claim thereafter or to receive payment therefore.

9.7 ELIMINATED ITEMS:

The Owner shall have the right to cancel the portions of the Contract relating to the construction of any item therein by payment to the Contractor of a fair and equitable amount covering all items of cost incurred prior to the date of cancellation or suspension of the Work by order of the Engineer. Where practical, the Work completed before cancellation shall be paid for at unit prices, otherwise the Contractor shall be allowed a profit percentage as provided under Section 9.5, but no allowance will be made for anticipated profits. Acceptable materials ordered by the Contractor or delivered on the Work prior to the date of cancellation or suspension of the Work by order of the Owner shall be purchased from the Contractor by the Owner at actual cost and thereupon becomes the property of the Owner.

9.8 PROGRESS PAYMENTS:

At a regular period each month the Engineer shall make an estimate of the amount of Work completed and of the value of such completed Work. The Contractor shall also make an estimate of the amount and value of acceptable material to be incorporated in the completed Work which has been delivered and properly stored at or near the site or at a location acceptable to the Engineer. With these estimates as a base, a progress payment shall be made to the Contractor, which progress payment shall be equal to the value of completed Work as computed from the Engineer's estimate, plus the value of accepted materials which are in condition or state of fabrication ready to be incorporated in the completed structure and which are held in storage on or near the Work, the value of such materials computed in accordance with Section 9.9 of these Specifications, less such amounts as may have been previously paid, less such other amounts as may be deductible or as may be owing and due to the Owner for any cause, and less an amount to be retained in protection of the Owner's interests.

The Engineer may withhold or, on account of subsequently discovered evidence, nullify the whole or a part of any payment certificate to such extent as may be deemed necessary to protect the Owner from loss on account of:

- a. Defective Work not remedied.
- b. Claims filed or reasonable evidence indicating probable filing of claims.
- c. Failure of the Contractor to make payments properly to Subcontractors or for material or labor.
- d. A reasonable doubt in the opinion of the Engineer that the Contract can be completed for the balance then unpaid.
- e. Damage to another Contractor.
- f. Reasonable indication that the Work will not be completed within Contract Time.
- g. Unsatisfactory prosecution of the Work by the Contractor.

Should the amount due the Contractor under the estimate for any given month be less than \$500.00 dollars, at the option of the Engineer, no payment shall be made for that month.

Progress payments shall not be construed as an acceptance or approval of any part of the Work covered thereby, and they shall in no manner relieve the Contractor of responsibility for defective workmanship or material.

The estimates upon which progress payments are based are not represented to be accurate estimates, and all quantities shown therein are subject to correction in the final estimate. If the Contractor uses such estimates as a basis for making payment to Subcontractors, the Contractor does so at the Contractor's own risk, and the Contractor shall bear all loss that may result.

The making of progress payments under the contract, either before or after the date set for completion of the Work, shall not operate to invalidate any of the provisions of the Contract or to release the Surety.

At the time payment is made for any materials which have been stored at or near the site, the Ownership of such materials shall be vested in the Owner, and they shall remain in storage until used on the Work. Such materials shall not be used on other Work.

9.9 ADVANCES ON MATERIALS:

For materials delivered and held in storage upon the Work (or near the site of the Work if approved by the Engineer), allowances will be made in the progress payments to the Contractor. These allowances shall be in amounts not exceeding 90% of the net cost to the Contractor of the material f.o.b. the Work, and from such allowances there shall be retained the percentage regularly provided for in connection with progress payments. In cases where there is a Bid price on a given material in place the allowance shall be further limited not to exceed 90% of the difference between the Bid price and the cost of placing as estimated by the Engineer.

At the option of the Engineer, no allowance for materials shall be made on any progress estimate unless the total allowable value for all materials on hand is at least \$1,000.00 and no allowance shall be made upon any single class of material the value of which is not at least \$500.00. The inventory of materials for which advances are requested shall be kept to a reasonable size as approved by the Engineer. No allowance shall be made upon fuels, supplies, form lumber, falsework, or other materials, or on temporary structures of any kind, which will not become an integral part of the finished construction. As a basis for determining the amount of advances on material, the Contractor shall make available to the Engineer such invoices, freight bills, and other information concerning the materials in question, as the Engineer may request. Should there be reasonable evidence, in the opinion of the Engineer, that the Contractor is not making prompt payments for material on hand, allowances for material on hand will be omitted from progress payment.

9.10 ALLOWANCE FOR MATERIALS LEFT ON HAND:

Materials delivered to the Work site or acceptably stored at approved sites at the order of the Engineer but left unused due to changes in Plans or variations in quantities will, if the materials are not practically returned for credit, be purchased from the Contractor by the Owner at actual cost (without percentage allowance for profit) and shall thereupon become the property of the Owner.

9.11 FINAL PAYMENT:

The Engineer will make a final estimate and recommend acceptance of the Work as of a certain date. Upon approval and acceptance by the Owner, the Contractor will be paid a total payment equal to the amount due under the Contract including all retainage.

Prior to final payment, the Contractor shall deliver to the Owner, a receipt for all amounts paid or payable to the Contractor and a release and waiver of all claims against the Owner arising from or connected with the Contract and shall furnish satisfactory evidence that all amounts due for labor, materials and all other obligations have been fully and finally settled, or are fully covered by insurance.

9.12 SUSPENSION OF PAYMENTS:

No partial or final payment shall be made as long as any order made by the Engineer to the Contractor in accordance with the Specifications remains uncomplied with. Neither shall any progress or final payment be made as long as any claim or lien filed or prosecuted against the Owner, the Owner's officers or employees contrary to the provisions of the Contract remains unsatisfied.

9.13 PAYMENTS:

Payments under the Contract shall be paid in cash by the Owner unless otherwise provided by the Special Provisions of these Specifications.

IN WITNESS WHEREOF the parties hereto have executed this Agreement the day and year first written above.

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PERFORMANCE BOND

Bond No.		-		
Solicitation <u>N/A</u>				
Project Name Dorcas Lane ar	nd 4th St. Recor	nstruction Project		
(Surety	#1) Bon	d Amount No. 1:	\$	_
* If using multiple sureties	#2)* Bon	d Amount No. 2:*	\$	_
	Total Pe	enal Sum of Bond:	\$	_
We,	sact surety busir , executors, adn	ness in Oregon, as S ministrators, successor	urety, hereby jointly rs and assigns firmly	and severally bind
that we the Sureties bind ours purpose of allowing a joint ac Surety binds itself, jointly and opposite the name of such Sur	elves in such sun ction or actions of severally with t	n "jointly and severa against any or all of	ally" as well as "sever us, and for all other	purposes each

WHEREAS, the Principal has entered into a contract with the City of Manzanita the plans, specifications, terms and conditions of which are contained in the above-referenced Project;

WHEREAS, the terms and conditions of the contract, together with applicable plans, standard specifications, special provisions, schedule of performance, and schedule of contract prices, are made a part of this Performance Bond by reference, whether or not attached to the contract (all hereafter called "Contract"); and

WHEREAS, the Principal has agreed to perform the Contract in accordance with the terms, conditions, requirements, plans and specifications, and all authorized modifications of the Contract which increase the amount of the work, the amount of the Contract, or constitute an authorized extension of the time for performance, notice of any such modifications hereby being waived by the Surety:

NOW, THEREFORE, THE CONDITION OF THIS BOND IS SUCH that if the Principal herein shall faithfully and truly observe and comply with the terms, conditions and provisions of the Contract, in all respects, and shall well and truly and fully do and perform all matters and things undertaken by Contractor to be performed under the Contract, upon the terms set forth therein, and within the time prescribed therein, or as extended as provided in the Contract, with or without notice to the Sureties, and shall indemnify and save harmless the City of Manzanita and members thereof, its officers, employees and agents, against any direct or indirect damages or claim of every kind and description that shall be suffered or claimed to be suffered in connection with or arising out of the performance of the Contract by the Principal or its subcontractors, and shall in all respects perform said contract according to law, then this obligation is to be void; otherwise, it shall remain in full force and effect.

Nonpayment of the bond premium will not invalidate this bond nor shall the City of Manzanita be obligated for the payment of any premiums.

This bond is given and received under authority of ORS 279C.380, the provisions of which hereby are incorporated into this bond and made a part hereof.

IN WITNESS WHEREOF, WE HAVE CAUSED THIS INSTRUMENT TO BE EXECUTED AND SEALED BY OUR DULY AUTHORIZED LEGAL REPRESENTATIVES.

Dated this	day	of	, 2022
PRINCIPAL:			
Ву:			
Signature			
Official Capacit	у		
Attest:			
Corporation Sec	retary		
	for each surety if using	multiple bonds]	
BY ATTORNEY-II [Power-of-Attorn	N-FACT: ney must accompany ec	ach surety bond]	
Name			
Signature			
 Address			
City	State	Zip	
Phone			

PAYMENT BOND

Bond No			
Solicitation	N/A		
Project Name	Dorcas Lane and 4th S	t. Reconstruction Project	
	(Surety #1)	Bond Amount No. 1:	\$
* If using mult		Bond Amount No. 2:*	\$
		Total Penal Sum of Bond:	\$
Surety(ies), aut ourselves, our r	horized to transact suret respective heirs, executor	y business in Oregon, as Sur	•
purpose of allo Surety binds its	owing a joint action or a	ctions against any or all of u with the Principal, for the p	(Provided, y" as well as "severally" only for the is, and for all other purposes each eayment of such sum only as is set forth

WHEREAS, the Principal has entered into a contract with the City of Manzanita the plans, specifications, terms and conditions of which are contained in above-referenced Project;

WHEREAS, the terms and conditions of the contract, together with applicable plans, standard specifications, special provisions, schedule of performance, and schedule of contract prices, are made a part of this Payment Bond by reference, whether or not attached to the contract (all hereafter called "Contract"); and

WHEREAS, the Principal has agreed to perform the Contract in accordance with the terms, conditions, requirements, plans and specifications, and schedule of contract prices which are set forth in the Contract and any attachments, and all authorized modifications of the Contract which increase the amount of the work, or the cost of the Contract, or constitute authorized extensions of time for performance of the Contract, notice of any such modifications hereby being waived by the Surety:

NOW, THEREFORE, THE CONDITION OF THIS BOND IS SUCH that if the Principal shall faithfully and truly observe and comply with the terms, conditions and provisions of the Contract, in all respects, and shall well and truly and fully do and perform all matters and things by it undertaken to be performed under said Contract and any duly authorized modifications that are made, upon the terms set forth therein, and within the time prescribed therein, or as extended therein as provided in the Contract, with or without notice to the Sureties, and shall indemnify and save harmless the City of Manzanita and members thereof, its officers, employees and agents, against any claim for direct or indirect damages of every kind and description that shall be suffered or claimed to be suffered in connection with or arising out of the performance of the Contract by the Contractor or its subcontractors, and shall promptly pay all persons supplying labor, materials or both to the Principal or its subcontractors for prosecution of the work provided in the Contract; and shall promptly pay all contributions due the State Industrial Accident

Fund and the State Unemployment Compensation Fund from the Principal or its subcontractors in connection with the performance of the Contract; and shall pay over to the Oregon Department of Revenue all sums required to be deducted and retained from the wages of employees of the Principal and its subcontractors pursuant to ORS 316.167, and shall permit no lien nor claim to be filed or prosecuted against the State on account of any labor or materials furnished; and shall do all things required of the Principal by the laws of this State then this obligation shall be void; otherwise, it shall remain in full force and effect.

Nonpayment of the bond premium will not invalidate this bond nor shall the City of Manzanita be obligated for the payment of any premiums.

This bond is given and received under authority of ORS 279C.380, the provisions of which hereby are incorporated into this bond and made a part hereof.

IN WITNESS WHEREOF, WE HAVE CAUSED THIS INSTRUMENT TO BE EXECUTED AND SEALED BY OUR DULY AUTHORIZED LEGAL REPRESENTATIVES:

Dated this		day of	, 2022
PRINCIPAL:			
Ву			
Signature			
Official Capacity			
Attest:			
Corporation Secre	etary		
SURETY:			
[Add signatures fo	or each surety if u	using multiple bonds]	
BY ATTORNEY-IN	-FACT:		
[Power-of-Attorne	y must accompar	ny each surety bond]	
Name			
Signature			
Address			
City	State	Zip	

INVITATION TO BID CD - 62

Fax

Phone

CERTIFICATE OF COMPLIANCE

City of Manzanita PO Box 129 P.O. Box 250 Manzanita, OR 97130

ATTN: Dan Weitzel

PROJECT NAME: Dorcas Lane and 4th St. Reconstruction Project

PROJECT LOCATION: Manzanita, Oregon

I hereby certify that:

- A. All Work on the above referenced Contract has been performed and materials supplied in accordance with the Plans, Specifications, and Contract Documents for the above Work;
- B. There have been no unauthorized substitutions of Subcontractors; nor have any subcontracts been entered into without the names of the Subcontractors having been submitted to and approved by the Owner prior to the start of such subcontracted Work;
- C. No subcontract was assigned or transferred or performed by any Subcontractor other than the original Subcontractor, without prior notice having been submitted to and approved by the Owner together with the names of all Subcontractors;
- D. All Subcontractors performing Work described in ORS 701.005(2) (i.e., construction Work) were registered with the Construction Contractors Board or licensed by the State Landscape Contractors Board in accordance with ORS 701.026 to 701.035 before the Subcontractors commenced Work under the contract;
- E. All claims for material and labor and other services performed in connection with these Specifications have been paid; and
- F. All money due the State Industrial Accident Fund, the State Unemployment Compensation Trust Fund, the State Tax Commission (in accordance with ORS 305.385 and ORS 279C.530), hospital associations and/or others have been paid.

Authorized Signature		
_	[Contractor]	[Date]

END OF CONTRACT DOCUMENTS

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TECHNICAL SPECIFICATIONS

DIVISION ONE – GENERAL REQUIREMENTS

SECTION 101 – SUMMARY OF WORK

<u>101.1 THE PROJECT</u>:

The work for this project consists of approximately 2,500 LF of street and utility reconstruction work. The work will be accomplished in the 2022 - 2023. Final Paving for all roads must occur prior to June 30, 2023.

In general, the elements of work include, but are not limited to:

- 1. Installation of water main and appurtenances.
- 2. Installation of storm drainage including storm pipe, manholes and catch basins.
- 3. Construction of concrete valley curb.
- 4. Roadway reconstruction and paving.

These specifications, in conjunction with applicable provisions or other parts of the specifications and the plans shall govern the character and quality of equipment, material, construction procedures and workmanship for work under this contract. References within these Specifications also include the Oregon Standard Specifications for Construction. In the event of a conflict or where there appears to be a conflict in Specifications or the Construction Plans, the most stringent shall apply. In the event that these Specifications are silent, the most current edition of the Oregon Standard Specifications for Construction shall be used.

101.2 WORK SEQUENCE:

The Contractor shall schedule work to maintain the public's continuous access to those properties having driveways and main access routes within the limits of the project. The Contractor shall include in the contract sum sufficient funds as may be required for delays and interruptions of work caused by the public's continuous use and access to those businesses and properties abutting and adjacent to the limits of the project. No additional payment to the Contractor will be allowed on account of the Contractor's failure to anticipate such costs.

101.2.01 Public Access - The Contractor shall schedule work on this project such that it be excavated and constructed in an orderly manner according to the following sequencing requirements.

- All removed concrete sidewalks shall be available for use by the public with crushed rock sidewalk leveling course as a temporary sidewalk surface not later than 3:00 p.m. of each workday preceding each weekend throughout the duration of the project.
- All existing concrete sidewalk areas shall be available for continuous public access every weekend and holiday throughout the duration of the project with either:
 - a) the existing concrete surface,
 - b) the temporary crushed rock surface, or
 - c) the new concrete surface.
- The Contractor shall coordinate the placement of new concrete valley gutters in order to minimize the inconvenience to the public in gaining access to adjoining properties. During concrete placing operations, provide temporary wooden bridges over wet concrete for all properties where the primary pedestrian access is located, or where the wet concrete construction otherwise restricts access to the full width of abutting properties. In general, the Contractor shall stagger the construction of wet concrete valley gutters in order to not deny complete access to abutting properties.

101.2.02 Driveway Access - The Contractor shall coordinate with each property owner and provide a minimum 1 week notice prior to disruption of existing driveway and construction of new driveway. The Contractor shall schedule all concrete valley gutter and driveway work in order to provide the abutting property owner and driveway users with the maximum amount of access over existing and new driveways, in accordance with the following requirements:

- Temporary crushed rock ramps to provide vehicular access over the driveway shall be provided by the Contractor as needed.
- Once the existing driveway is removed in front of <u>any one abutting property</u> within the project limits, the Contractor shall place, fine-grade and compact the crushed rock driveway leveling course within 1 calendar day after the removal of such driveway. Temporary crushed rock ramps to provide vehicular access over the driveway shall be provided by the Contractor as needed. The contractor shall allow for minimum 3 days curing time of new concrete prior to installation of temporary vehicular bridge including the use of protective fabric, clean sand, crushed rock and steel plates in order to protect new concrete.
- The Contractor shall notify, in writing, each affected business, property owner or resident at least 7 Calendar Days before beginning excavation, removal or reconstruction of the driveway or access.

101.2.03 Removal of Asphalt Pavement - Remove all existing asphalt pavement surfaces designated to be removed as necessary to construct new utilities, concrete gutter, sidewalk, and roadway. The Contractor shall schedule all pavement demolition work in order to provide the public with the maximum amount of access along existing pavement surfaces and/or new base rock surfaces in accordance with the following requirements:

- Remove only as much pavement as needed to construct all underground trenching operations.
 Leave all other asphalt pavement areas in place during trenching for underground utilities,
 specifically at existing driveways and delivery areas.
- Finally, remove all pavement and prepare subgrade for base rock.
- The maximum length of time that <u>any one block</u> within the project limits is without an asphalt or base rock surface shall not exceed 15 calendar days. This maximum time period of 15 calendar days shall begin with the removal of the remaining asphalt pavement within any one block and shall end with the complete installation of new base rock within that same block, including compaction of the new base rock. Temporary crushed rock ramps to provide vehicular access over the new concrete valley gutters and driveways shall be provided by the Contractor as needed.

101.2.04 Traffic Control - The Contractor shall develop and submit a Traffic Control Plan (TCP) for review and approval as specified in Section 130.4. The traffic control plan shall detail key intersections within the project zone in accordance with Section 157 of these specifications. The Contractor shall include signage along side streets as necessary to inform traffic of the Manzanita Avenue & 3rd Street route closure and proper rerouting. The Contractor shall furnish and place traffic control barricades and signs according to the MUTCD and ODOT specifications in order to allow the public reasonable access to those businesses and residences within the project's limits. The Contractor shall use cones, delineators, detour signs and barricades to keep vehicular and pedestrian traffic out of the immediate construction zone of the Contractor. All signs and barricades must be approved by the City of Manzanita and the Engineer prior to ordering.

101.2.05 General sequence of work - The Contractor shall begin work on the project within 10 days from the date the Notice to Proceed is issued.

101.2.06 Contractor's construction equipment - All construction equipment shall be so parked so as not to disrupt normal two-way traffic along side streets and so as not to block any vehicular or pedestrian access to adjoining properties. Any damage to the existing roadway, utilities, drainage system or shoulders shall be repaired to the City's satisfaction at the Contractor's expense.

Steel tracked equipment shall not be used on paved surfaces that are not to be replaced. If steel tracked equipment cannot avoid moving across these asphalt surfaces, protection measures shall be used such as steel plates, plywood or other means to protect the remaining surface. Any surface damaged by steel tracked equipment shall be repaired or replaced to the satisfaction of the Owner at the Contractor's expense.

101.2.07 Removal of existing water mains within project limits - The Contractor is responsible for cutting, capping and installing temporary valving as necessary to make clean, straight connections to the existing water system with as few fittings as possible or as directed by the Engineer. The Contractor shall demolish the existing water mains within the work area as necessary to create the necessary room for the proposed utilities. The Contractor shall develop and submit a Water Sequencing Plan (WSP) for review and approval as specified in Section 130.6.

101.2.08 Interference between existing utilities and new utilities - Conflicts exist between existing franchise utilities and proposed utility and road improvements. The Contractor shall make all necessary provisions to perform necessary relocations as specified in the plans to allow for the new construction of the water and storm system.

101.2.09 Project Dewatering - The Contractor is responsible for installing a dewatering system as specified in Section 222. The Contractor shall have the dewatering system designed and in place and operational prior to beginning installation of any new utilities or performing any compaction efforts as determined necessary by the Engineer.

101.3 OWNER'S RIGHTS UPON THE PREMISES:

The Owner, on behalf of both the public and the City of Manzanita, reserves the right to enter upon the premises, to use same, or to use parts of the work before substantial or final completion of the work, it being understood that such use by the Owner and the public in no way relieves the Contractor from full responsibility for the entire work until final completion of the contract.

END OF SECTION 101

SECTION 104 – COORDINATION

104.1 PROJECT COORDINATION:

ATTENTION: Oregon law requires you to follow rules adopted by the Oregon Utility Notification Center. Those rules are set forth in OAR 952-001-0010 through OAR 952-001-0090. You may obtain copies of the rules by calling the center. (Note: The telephone number for the Oregon Utility Notification Center is (503) 232-1987.)

The work of this project involves underground and overhead utilities, and public rights-of-way. The Contractor shall coordinate all work with the following agencies prior to beginning the project.

104.1.01 - City Street Right-of-Way, Storm Drainage System and Water System; City of Manzanita Public Works Department, Dan Weitzel, Public Works Director, (503) 368-5347.

- 104.1.02 Sanitary Sewer System; Nehalem Bay Wastewater Agency (NBWA); Bruce Halverson, (503) 368-5125.
- <u>104.1.03</u> CATV; Charter Communications, Justin Hall, **(541) 921-1859**.
- 104.1.04 Telephone Facilities; RTI Nehalem Telecom, Bill Dillard, (503) 368-5116.
- <u>104.1.05</u> Electric Facilities; Tillamook People's Utility District (TPUD), Engineering Dept., James Aman, **(503) 842-2535**.

104.2 CUTTING AND PATCHING:

- <u>104.2.01 Notification</u> The Contractor shall notify the Engineer at least 3 days prior to any cutting which affects:
 - a. the structural integrity of any completed or existing work, or
 - b. the weatherproof integrity of any weather-exposed or moisture-resistant work.
- <u>104.2.02 Preparation</u> Prior to any cutting, the Contractor shall provide and maintain adequate temporary support and protection necessary to assure the structural and weatherproof integrity of the affected work. The Contractor shall protect from damage all portions of the exposed work and other portions of the project.
- <u>104.2.03 Existing Conditions</u> After uncovering work, the Contractor shall inspect the existing conditions and report to the Engineer any unsatisfactory or questionable conditions to the Engineer. The Contractor shall not proceed with further work until the Engineer provides further instructions.

104.3 MEASUREMENTS:

Before ordering any materials or doing any work, the Contractor shall verify all measurements on the project and shall be responsible for the correctness of the same. No additional payment to the Contractor will be allowed on account of difference between actual dimensions and measurements indicated on the plans.

END OF SECTION 104

SECTION 106 – REGULATORY REQUIREMENTS

106.1 PERMITS AND FEES:

The Contractor shall procure all construction permits, performance bonds and licenses required by all approving agencies. The work of this project falls under the jurisdiction of the City of Manzanita. The Contractor shall conform to all jurisdiction requirements of the governing agencies when working within the public right-of-way.

Work hours are to be between 7am and 7pm, Monday through Friday. Any deviation from this schedule must be requested by the Contractor in writing and receive approval from the City.

END OF SECTION 106

SECTION 120 – PROJECT MEETINGS

120.1 PRECONSTRUCTION CONFERENCE:

Immediately after signing the Agreement and prior to the start of any work, the Contractor, the Engineer and the Owner shall meet together to review procedures for ensuring the smooth progress of the work and to discuss any other items requiring clarification.

120.2 WEEKLY PROGRESS MEETINGS:

Periodic project meetings between the Contractor and the Engineer shall be scheduled by the Engineer throughout the construction process on a weekly basis to discuss coordination and scheduling of construction activities. In general, such meetings shall be held each Monday morning on the project site. The Contractor shall inform the Engineer of the project schedule and construction activities planned for the coming week and shall provide a verbal update to the Engineer on the project schedule for the actual work completed through the end of each week.

Residents adjacent to the project will be allowed to be present at these weekly meeting in order to be informed about road closures, access to their properties and proposed work for the week.

END OF SECTION 120

SECTION 130 – SUBMITTALS

130.1 GENERAL:

The Contractor shall be required to submit the following submittals.

- 1) Construction Schedule
- 2) Shop Drawings, Product Data, and Samples
- 3) Traffic Control Plan & Sequencing Plan
- 4) Demolition Plan
- 5) Water Shut-Down & Sequencing Plan
- 6) Record Drawings at completion of project
- 7) Dewatering Plan
- 8) Aggregate, Asphalt Mix & Concrete Mix Design, including grout
- 9) TV Inspection on electronic media at completion of project

130.2 CONSTRUCTION SCHEDULE:

130.2.01 Project Schedule - The anticipated construction schedule is set forth in the Instructions to Bidders prior to commencing work on the project, the Contractor shall submit to the Engineer for review, a complete construction schedule detailing the order in which the work will proceed together with an estimated time schedule. An updated project schedule shall be submitted on a monthly basis along with every monthly progress payment request. If Contractor's submitted schedule and the prosecution of work vary by 2 weeks or more, Contractor shall re-submit a new schedule, and a work plan to complete project on time.

130.2.02 Work during Spring Break 2023 - The Contractor is advised that the population of Manzanita significantly increases during the Spring Break weeks for Oregon and Washington. Pedestrian and vehicular traffic throughout Manzanita will increase significantly. The Contractor shall take all reasonable measures to not impede both pedestrian and vehicular traffic through the work area.

Productivity of the Contractor's work crews during those dates will significantly decrease. The Contractor shall take all such delays into account when planning for work during those weeks of Spring Break.

130.2.03 Final Paving Completion & July 4th Site Conditions - The Contractor shall complete final lift paving of the entire project no later than June 30, 2023. The Contractor shall also make the entire project site accessible, free of materials and equipment no later than July 2, 2023 in preparation for the City of Manzanita 4th of July Parade. The Contractor shall take all necessary costs, preparations and such delays into account when planning for work during these specified times.

130.3 SHOP DRAWINGS, PRODUCT DATA, AND SAMPLES:

<u>130.3.01</u> Identification - Shop drawings, product data, and samples shall be dated and contain: Name of project; description or names of equipment, materials and items; identification of locations at which the equipment, materials or items are to be installed.

<u>130.3.02 Transmittals</u> - Submission of shop drawings, product data, and samples shall be accompanied by transmittal letter, in duplicate, containing project name, Contractor's name, number of drawings, data and samples, and titles.

<u>130.3.03 Quantity</u> - Unless otherwise specified, the number of shop drawings, product data, and samples which the Contractor shall submit and, if necessary, resubmit shall be the number of copies that the Contractor requires to be retained plus two copies which will be retained by the Engineer.

130.4 TRAFFIC CONTROL PLAN & SEQUENCING PLAN:

130.4.01 Traffic Control Plan (TCP) Guidelines:

- 1. TCP shall be drawn on 24" x 36". Base Map is available from the Engineer upon request.
- 2. TCP must use legible lettering and clear, contrasting, symbols for viewing or printing.
- 3. Include name and telephone number of the 24-hour contact person representing the Contractor.
- 4. Show all nearby streets with street names to assure proper orientation.
- 5. Show existing sidewalks, driveways and intersections in the construction work zone including areas affected by taper transition.
- 6. Show location and dimensions of the construction work zone.
- 7. Show staging area and materials storage area, as appropriate.
- 8. Indicate location of construction signs, barricades, and delineators.
- 9. Use a legend to define all signs and symbols and designate them with MUTCD nomenclature.
- 10. Show existing and proposed temporary parking restriction zones and signs, as needed, within the work area.
- 11. Road closures will require approval from the Director of Public Works, Police, Fire Department and Emergency Services.
- 12. Signs and barricades will be required to direct pedestrians and bicyclists through or around the construction work zone and shall be shown on the TCP.
- 13. Indicate on the plan the duration of the construction work and subsequent traffic control (include type of work and estimated start date, as appropriate).

130.5 DEMOLITION PLAN:

<u>130.5.01 Demolition Plan</u> - Contractor shall detail the different stages of the demolition plan, located within the Construction Drawings. Details of these stages may be incorporated into the Construction Schedule.

130.6 WATER SHUT-DOWN & SEQUENCING PLAN:

<u>130.6.01</u> - A Water Sequencing Plan (WSP) shall be submitted by the Contractor and approved by the City and Engineer prior to the installation of any water main or appurtenances. At a minimum, the WSP shall address the following information:

- 1. WSP shall be drawn on 24" x 36". Base Map is available from the Engineer upon request.
- 2. Indicate on the plan the duration of the construction work and subsequent disruptions and tieins (include type of work and estimated start date, as appropriate).
- 3. Contractor shall sequence construction to allow for continuous water service to all residences throughout the project area, except as required for mandatory shut-downs. Due to the lack of water valves on the existing system within the project region, breaks, shut-downs and tie-ins will impact large portions of the City's residence.
- 4. The existing asbestos (AC) water main has been repaired numerous times along the project alignment and is susceptible to breakage. Contractor shall take every precaution possible to secure and protect the existing main and services.
- 5. Conflicts exist between the existing water main and new water main throughout the project, particularly at intersections. The Contractor shall install temporary thrust blocking and temporary valving as necessary to allow the demo of conflicting water pipes.
- 6. Contractor shall phase construction to limit the amount of mandatory shut downs when tying the new water mains into the existing system. This may require the Contractor to construct, test and disinfect the new water main in sections, utilizing temporary tie-ins.
- 7. New water mains and appurtenances construction should begin in the proximity of existing mains to facilitate future installation of the testing corporation stop assembly (i.e. jumper) and tie-in.
- 8. Connection to any existing waterline is not allowed until Contractor is ready to test new water mains prior to placing them in service. Contractor shall be responsible for all labor and equipment required for pressure testing flushing, dechlorination, erosion prevention, and repair of any damage caused by any and all water main flushing prior to issuance of tentative acceptance by the city or engineer.
- 9. Initial flush initial flushing of new water main(s), including all hydrants and dead-end water main(s), may commence after jumper has been installed and connection to the existing water main is complete. City personnel may verify that initial flushing is properly performed and all air and debris have been removed from the new water main. All water mains shall be initially flushed at a minimum rate of 2.5 feet per second (fps) and for the duration necessary to provide a minimum of 2 complete water turn-overs within the new water main(s).
- 10. Removal of the jumper and final flush Once City or Engineer approval has been granted, the Contractor may remove the jumper and perform needed flushing on the new water main to remove any remaining air and debris. City personnel may flush existing water mains as necessary and verify that Contractor's flushing of the new water main(s) is adequate.

130.7 DEWATERING PLAN:

130.7.01 Dewatering Plan - Contractor shall submit a dewatering plan meeting the requirements of Section 222 of these technical specifications as required by the Engineer.

130.8 RECORD DRAWINGS AT COMPLETION OF PROJECT:

130.8.01 Record Drawings - Contractor shall submit Record Drawings to the Engineer or City upon completion of construction. Record Drawings shall be submitted in both paper and digital (PDF) form. Any associated warranty information, manuals, cut sheets, etc. pertinent to the construction shall also be submitted.

END OF SECTION 130

SECTION 151 – TEMPORARY FACILITIES AND CONTROLS

151.1 TEMPORARY ELECTRICITY:

The Contractor will provide and pay all charges for a source of power. The Contractor shall provide his own extension cords, temporary lighting lamps and wiring for his work. Heavy or special power sources required for welders, etc., shall be provided by the Contractor by the use of generators or making his own arrangements with the Power Company and pay all costs for same.

151.2 TEMPORARY WATER:

151.2.01 Temporary Water for Construction Use - The Owner will designate fire hydrants within or near the project as a source of water for construction use. The Contractor shall operate such hydrants in an approved manner. The Contractor shall provide valves, hoses, extensions, and nozzles as required. Water usage shall be metered with hydrant flow meter as provided by the City with approved backflow device.

151.3 TEMPORARY SANITARY FACILITIES:

<u>151.3.01 Temporary Facilities for Workmen</u> - The Contractor shall furnish, install, and maintain adequate sanitary facilities for the workmen. All such facilities shall comply with governing health regulations.

151.4 TEMPORARY SIGNS:

All signs posted on the job site shall be approved by the Engineer. All signs shall conform to applicable Oregon State Department of Transportation standards.

151.5 MEASUREMENT AND PAYMENT:

All temporary facilities and construction will be paid for as a single lump sum item at the contract price for "Mobilization". Payment shall constitute full compensation for supplying all labor, equipment and materials, constructing, installing, maintaining and removing all temporary facilities and construction specified herein.

END OF SECTION 151

SECTION 157 – TRAFFIC REGULATION

157.1 BARRICADES, WARNING SIGNS, AND FLAGMEN:

Per the approved TCP, the Contractor shall at his expense and without further or other order provide, erect and maintain at all times during the progress or temporary suspension of the work suitable barricades, fences, signs, or other adequate warnings or protection, and shall provide, keep and maintain such danger lights, signals, and flagmen as may be necessary or as may be ordered by the Engineer to insure the safety of the public as well as those engaged in connection with the work. All barricades and obstructions shall be protected at night by signal lights which shall be suitably distributed across the roadway and which shall be kept burning from sunset to sunrise. Barricades shall be of substantial construction and shall be suitably painted to increase their visibility at night. Failure of the Engineer to notify the Contractor to maintain barriers, lights, signals, or flagmen shall not relieve the Contractor from this responsibility.

In conjunction with the required general traffic control work, the Contractor shall furnish and maintain the temporary signs and ODOT Type III barricades as detailed on the Traffic Control Plan.

If flagmen are necessary for the purpose of protection and safety to traffic, such flagmen shall be furnished at the Contractor's expense. The signs to be furnished and used by the Contractor in directing, controlling and safeguarding traffic shall conform to the standard sign designs in use by the ODOT.

157.2 TRAFFIC ON LOCAL STREETS:

The Contractor shall allow minimum one-way traffic along within the project limits to residences and businesses having accesses within the project limits. The Intersections may be temporarily closed to through traffic in accordance with Section 157 of these specifications. The Contractor shall furnish and place traffic control barricades and signs in order to allow the public access to commercial properties and residences on within the project limits. The barricades shall be placed at each end of the project, including all side streets. The Contractor shall use additional cones, delineators and barricades to keep vehicular and pedestrian traffic out of the immediate construction zone of the Contractor. See Section 157 of these specifications.

157.3 PEDESTRIAN ACCESS:

The Contractor shall so conduct his operations as to cause the least possible obstruction and inconvenience to the public and the Owners and occupants of abutting properties and their visitors. The Contractor shall maintain convenient pedestrian access at all times along all walking paths abutting the project.

157.4 MEASUREMENT AND PAYMENT:

The Contractor shall include in the contract bid sum, sufficient funds as may be required for producing the TCP and supplying all labor, equipment and materials necessary for the proper regulation of traffic. This will be paid for under the bid item for "Mobilization".

END OF SECTION 157

SECTION 160 - MATERIALS AND EQUIPMENT

160.1 TRANSPORTATION AND HANDLING:

The Contractor shall arrange for all product and material deliveries in accordance with the project schedule to avoid any unnecessary delays. Products and materials shall be delivered undamaged, in the manufacturer's original packaging, and with legible identifying labels intact. Immediately upon delivery, the Contractor shall inspect all products for compliance with the contract documents.

160.2 STORAGE AND PROTECTION:

The Contractor shall store all products according to manufacturer's instructions. Before and after installation, the Contractor shall protect all products from damage and discoloration.

160.3 PRODUCT SUBSTITUTIONS AND OPTIONS:

<u>160.3.01 Substitutions</u> – No substitutions will be allowed on the proposed water system. Other substitutions will be considered, however, only substitutions approved by the Engineer shall be incorporated in the work. Each request for product substitution shall be made to the Engineer in writing and shall include:

- a. The identification of the specified product.
- b. The identification of the proposed substitution complete with manufacturer's literature and other information necessary for evaluation.
- c. All changes required in other work as a result of the proposed substitution.
- d. All cost increases as a result of the proposed substitution.
- e. Contractor shall provide a purchase order for the Engineer to evaluate proposed substitutions and/or subsequent approval by the City.

The Engineer shall be the sole judge of the acceptability of each proposed substitution.

160.3.02 Contractor's Options:

<u>160.3.02A</u> - For products specified by general standards, such as ASTM, etc., the Contractor shall select any product meeting the specified standard.

<u>160.3.02B</u> - For products specified by naming several manufacturers, the Contractor shall select any product manufactured by a specified manufacturer meeting the specifications.

<u>160.3.02C</u> - For products specified by "or approved equal", the Contractor shall submit requests for substitution as specified above.

160.3.03 Inappropriate Products and Methods - If the Contractor believes that any specified product, method, or system is inappropriate for use he shall so notify the Engineer before performing the work in question. Start of work shall constitute acceptance on the part of the Contractor that the specified products, methods, and systems are appropriate for the specified use.

END OF SECTION 160

SECTION 170 – CONTRACT CLOSEOUT

170.1 FINAL INSPECTION:

When all on-site paving and related work is completed, including site cleanup, the Contractor shall notify the Engineer in writing that the project is ready for final inspection. The Engineer will make an inspection within 15 calendar days of receiving notification. The Engineer will notify the Contractor, in writing, within 10 calendar days thereafter. If all construction work required by the contract is found complete and satisfactory, this inspection will constitute the final inspection.

If any work is found incomplete or unsatisfactory, the Engineer will give written instructions as to what shall be done to satisfactorily complete the work. After complying with the Engineer's instructions, the Contractor shall follow the above procedures of notification, requesting a final inspection.

The Engineer will issue a notice to the Contractor when all the following work is satisfactorily completed:

- a. All work required under the contract;
- b. All Change Order work;
- c. The final trimming and cleanup work; and,
- d. All required certifications, bills, forms, and other documents are received from the Contractor.

170.2 PROJECT SITE CLEAN-UP:

Prior to the release of the retainer, the project site shall be cleared of any debris, trash, construction materials, or any other materials left on the site as a result of paving and striping construction of the project. As the work progresses and immediately after completion of the work, the Contractor shall clean

up and remove all refuse and unused materials of any kind resulting from the work. If the Contractor fails to commence the cleanup within 24 hours after directed by the Engineer, the Engineer may have the work performed by others. The cost shall be borne by the Contractor and may be deducted from payments due or to become due to the Contractor. After work is completed and before final acceptance of the work, all areas affected by the work shall be neatly finished and all equipment, temporary structures, rubbish and waste shall be removed from the work area.

END OF SECTION 170

END OF DIVISION ONE

DIVISION TWO – SITEWORK

SECTION 201 - MOBILIZATION

201.1 DESCRIPTION:

Mobilization shall consist of preparatory work and operations, including but not limited to, those necessary for the movement of personnel, equipment, supplies and incidentals to the project site; for the establishment of offices, buildings and other facilities necessary for work on the project for traffic control; for premiums on bond and insurance for the project, and for other work and operations which the Contractor must perform or costs he must include before beginning work on the project.

201.2 MATERIALS:

The Contractor shall provide all materials required to accomplish the work as specified.

201.3 CONSTRUCTION:

<u>201.3.01 General</u> - The Contractor shall set up construction facilities in a neat and orderly manner within designated or approved work areas.

201.4 MEASUREMENT AND PAYMENT:

<u>201.4.01 Lump Sum Basis</u> - Payment for the performance of the mobilization work as above specified will be made at the contract lump sum amount for the item "Mobilization". The amounts to be allowed for "Mobilization" in the progress payment to be made under the contract will be made as follows:

- 1. When 5% of the total contract amount, as modified by Change Order, is earned from other bid items, not including advances on materials, 50% of the amount bid for mobilization, or 5% of the total original contract amount, whichever is the least, less normal retainage, will be paid.
- 2. When 10% of the total contract amount, as modified by Change Order, is earned from other bid items, not including advances on materials, 100% of the amount bid for mobilization, or 10% of the total original contract amount, whichever is the least, less normal retainage, will be paid.
- 3. Upon completion of all work on the project, payment of any amount bid for mobilization in excess of 10% of the total original contract amount will be paid.

The above schedule of progress payments for mobilization shall not limit or preclude progress payments otherwise provided by the contract.

END OF SECTION 201

SECTION 202 – TEMPORARY PROTECTION AND DIRECTION OF TRAFFIC

202.1 DESCRIPTION:

This work consists of furnishing, installing, moving, operating, and maintaining signs, barricades, and other traffic control devices throughout the area affected by the project.

202.2 MATERIALS:

All materials used in temporary installations under this Section shall be in conformance with ODOT Specifications.

202.3 CONSTRUCTION:

<u>202.3.01 General</u> - Protective and directional devices shall be provided by the Contractor as required, in addition to the specific signs and barricades shown on the Traffic Control Plan. The devices and their placement shall conform to the requirements of the ODOT specifications.

<u>202.3.02 Contractor's Plan and Schedule</u> - Prior to beginning the work, the Contractor shall submit a proposed Traffic Control Plan for protective and directional measures in compliance and approved by the Engineer. During the performance of the work, the Contractor shall submit any proposed revisions to the plan for the Engineer's approval.

No work shall be started on any stage of construction until the Contractor's Traffic Control Plan has been approved and all approved traffic control devices are in place.

During construction, the Contractor shall determine if any protective and directional devices are required in addition to those in place and shall immediately notify the Engineer. The Contractor shall immediately make any changes approved or directed by the Engineer but shall not place or remove devices without prior approval from the Engineer.

<u>202.3.03 Maintenance</u> - The Contractor shall maintain all traffic devices in proper position, clean, and legible at all times. Vegetative growth or other materials shall be trimmed or removed to permit clear vision of the devices. Lights, beacons, and flashers shall be kept clean, visible and operable. The effectiveness of the installations shall be verified at frequent intervals, both in daylight and dark, by actual travel and inspection by the Contractor. Devices damaged or destroyed by any means shall be repaired, replaced, or restored by the Contractor.

The Contractor shall have a person on the job during working hours and on call at all other times, who will maintain all directional and warning devices in proper position and condition. The name and phone number for that person shall be on file with the Engineer and local law enforcement agencies.

<u>202.3.04 Barricades, Signs and Temporary Devices</u> used under these provisions remain the property of the Contractor and shall be moved, removed, or made inoperative as occasion dictates during the life of the contract.

Inappropriate temporary or existing signs shall be covered or turned to preclude visibility to traffic. Flags shall be removed or rolled and completely covered with an opaque, black, nonreflective sheath.

Upon completion of the work, the devices shall be removed from the project and evidence of their existence obliterated.

202.3.05 Flaggers shall have satisfactorily completed approved training courses.

<u>202.3.06 Lane Closures</u> - The Contractor shall obtain the Engineer's approval of proposed methods and timing of lane closures.

<u>202.3.07 Obstruction of Traffic</u> - The Contractor shall conduct work to assure the least possible obstruction to traffic. Work which would restrict or interrupt traffic movement shall not be performed

on opposite sides of the traveled way at the same time. See also Section 101.2 Construction Sequencing.

202.4 MEASUREMENT AND PAYMENT:

<u>202.4.01 General</u> - Measurement and payment temporary protection and direction of traffic will include, but not necessarily be limited to, the following work items:

- a. Furnishing and installing tubular markers, flashers, and other traffic control devices not covered by other pay items;
- b. Maintaining, moving and removing all devices;
- c. Placing, maintaining, and removing temporary sign covers;
- d. Providing for and furnishing electrical energy;
- e. Cleaning up and removing devices destroyed or damaged by public traffic;
- f. Furnishing, placing, maintaining, and removing temporary crushed rock ramps at driveways and crosswalks for temporary access over concrete curbs and concrete crosswalks;
- g. Maintaining all directional and warning devices; and
- h. Furnishing all other labor, materials, and equipment necessary to perform the temporary protection and direction of traffic.

<u>202.4.02 Lump Sum Basis</u> - Temporary protection and direction of traffic will be paid on a lump sum basis for all required work. The Contractor shall include in the contract Bid sum, sufficient funds as may be required for supplying all labor, equipment and materials necessary for the proper regulation of traffic. This will be paid for under the bid item for "Mobilization".

END OF SECTION 202

SECTION 205 - DEMOLITION

205.1 DESCRIPTION:

This item includes all work necessary for the demolition, removal and disposal of all pavement, curbs, driveways, sidewalks and abandoned pipelines within the designated limits and to preserve from injury or damage such objects and structures as are designated to remain in place.

This item also includes the disposal of unsuitable and excess excavated material within the designated limits.

205.2 MATERIAL:

<u>205.2.01 No disposal site</u> will be provided by the Owner. The Contractor shall dispose of all excess material not required elsewhere on the project, make arrangements for disposal and bear all cost related thereto. All details for the use of such site shall be the responsibility of the Contractor. Written permission to place material on private property shall be obtained by the Contractor from the property owner or other responsible party prior to placing the material thereon, and evidence of such permission shall be furnished the Engineer. The permit shall be in writing and shall be so phrased as to absolve the Owner from any and all responsibility in connection with the placing of material on said property.

<u>205.2.03 Disposal of Removed Materials</u> - The Contractor shall dispose of all removed pipelines, materials, unsuitable and excess material not required elsewhere on the project.

205.3 CONSTRUCTION:

<u>205.3.01 Public streets</u> used by the Contractor between the project site and all disposal sites shall be kept free and clear of any and all debris resulting from the Contractor's demolition activity.

205.3.02 Asphalt surfaces designated to remain, and which will abut new asphalt surfaces shall be sawcut to a neat and straight edge. The Contractor shall pre-cut all existing pavement before commencing excavation. All saw cuts shall be made with a concrete saw. Where the Contractor fails to protect the cut edges during trenching and backfilling, the Contractor shall be required, at the Contractor's expense, to re-cut the edges prior to repairing the pavement.

<u>205.3.03</u> Water Pipeline Demolition - The Contractor is responsible for cutting, capping and installing temporary valving at beginning, end and each side road of the project as necessary to make a clean tie-in to the existing water main. This will allow the Contractor to demolish the existing water mains in order to create the necessary room for the proposed water main. The Contractor shall be responsible for protecting any temporary water services throughout construction and assisting the City if modifications need to be made during construction in order to provide continuous water service to residents.

205.4 MEASUREMENT AND PAYMENT:

<u>205.4.01 Measurement and payment</u> for all demolition activities will be made according to the following items:

<u>205.4.01A Asphalt Pavement Demolition</u> will be measured and paid for on a square yard basis of the gross surface area of pavement designated and actually removed under the bid item "Asphalt Pavement & Concrete Demolition."

<u>205.4.01B Concrete Demolition</u> will be measured and paid for on a square yard basis of the gross surface area of pavement designated and actually removed under the bid item "Asphalt Pavement & Concrete Demolition."

<u>205.4.01C Sawed asphalt and concrete joints</u> will be measured on a linear foot basis for the lengths designated and sawed.

<u>205.4.01D Non-Asbestos Water Pipeline Demolition</u> - There will be no separate payment for water pipeline demolition, except as specified under Section 206 – Asbestos pipe. The cost of pipe demolition is to be included in one or more of the unit prices.

<u>205.4.02 Payment</u> will be made at the appropriate contract price and shall constitute full compensation for all demolition work, loading, hauling, disposal and disposal site activities.

END OF SECTION 205

SECTION 206 – ASBESTOS CONTAINING PIPE DEMOLITION AND DISPOSAL

206.1 DESCRIPTION

This item includes all work necessary for the safe handling, demolition, removal, and disposal of asbestos containing pipe in accordance with Oregon Department of Environmental Quality (DEQ) guidelines.

206.2 MATERIALS:

<u>206.2.01 Nonfriable Asbestos</u> - Nonfriable asbestos material has a solid matrix that holds the asbestos fibers in check and will not allow asbestos fibers to release easily, unless mishandled, damaged, or is in badly weathered condition. In most cases, AC water pipe that is in reasonably good condition is considered to be non-friable. Removal of nonfriable asbestos material in good condition does not require a DEQ licensed asbestos abatement contractor and does not require DEQ certified asbestos workers.

<u>206.2.02 Friable Asbestos</u> - Friable asbestos material will easily release fibers when crushed which can easily be released into the air where it poses a serious threat to health. AC water pipe that has been shattered, crushed, or pulverized will become friable. Removal of friable asbestos requires a DEQ licensed asbestos abatement contractor and is not covered in this specification.

<u>206.2.03 Disposal Site</u> - Any landfill that is permitted by the DEQ to accept demolition waste can also accept non-friable asbestos. Some landfills may have special restrictions on nonfriable asbestos so the Contractor is encouraged to arrange for disposal in advance.

206.3 CONSTRUCTION

<u>206.3.01 DEQ Nonfriable Notification</u> - At least 5 days prior to the removal of AC pipe, the Contractor shall file an ASN-6 NonFriable Asbestos Removal Notification Form with the Oregon DEQ and pay the nonfriable fee as outlined in OAR 340-248-0260.

<u>206.3.02 Excavation</u> - The Contractor shall carefully expose the entire length of pipe to be removed. Pipe shall be exposed to the first joint past the designated work area. The Contractor shall take precautions not to damage the pipe during the excavation. The exposed pipe shall be thoroughly wetted by spraying with a garden hose or other suitable means.

<u>206.3.03 Removal</u> - Pipe shall be removed in whole sections wherever possible. Couplings shall be split using a hammer and chisel to aid in removal of whole sections. All AC pipe that is exposed must be removed. Some breakage will occur, however this should be kept to the absolute minimum. Broken pieces of pipe shall also be removed. All pipe parts shall be kept thoroughly wet during the removal process. Sawing, sanding, grinding, chipping or use of power tools on the pipe is not permitted.

<u>206.3.04 Disposal</u> - Pipe shall be disposed of at an authorized disposal site, as described above. Pipe shall be kept thoroughly wet and covered during transport between the project site and the disposal site.

<u>206.3.05 Friable Asbestos</u> - If the pipe is so badly damaged that it becomes friable, the Contractor shall notify the Project Engineer and stop work immediately. The Contractor shall then file a friable asbestos abatement notification as outlined in OAR 340-248-0260 and retain the services of a DEQ licensed asbestos abatement contractor to remove the friable asbestos.

206.4 MEASUREMENT AND PAYMENT:

<u>206.4.01 Measurement</u> for all asbestos pipeline demolition and disposal activities will be on a linear foot basis along the length of asbestos pipeline removed.

<u>206.4.02 Payment</u> will be made at the appropriate contract price and shall constitute full compensation for all asbestos pipeline demolition work, including trenching, excavation, trench backfill, loading, hauling, disposal of removed pipelines and disposal site activities. A receipt from

the disposal site shall be required and presented to the Engineer prior to payment. No payment shall be made for pipelines abandoned in place.

END OF SECTION 206

SECTION 220 – EARTHWORK

220.1 DESCRIPTION:

This item includes all work necessary for excavating and grading all roadways, driveway areas, parking areas planting areas, cuts, embankments, slopes, fills, roadway ditches, lot grading and all other earth-moving work required in the construction of the project including disposal of all surplus material.

All excavation covered in this item shall be unclassified excavation regardless of the type, nature or condition of the materials encountered. The Contractor shall assume full responsibility to estimate the kind and extent of the various materials to be encountered in order to accomplish the work.

220.2 MATERIALS:

<u>220.2.01 Disposal of Unsuitable and Excess Material</u> - The Contractor shall dispose of all unsuitable and excess material not required elsewhere on the project according to Section 210.3.02.

220.3 CONSTRUCTION:

<u>220.3.01</u> Embankments and fills shall be placed in approximately horizontal layers of a maximum of 8 inches in thickness, each layer being separately and thoroughly compacted.

<u>220.3.02</u> Excavation and grading shall be to the lines and grades as shown on the plans and as staked by the Engineer. The Contractor shall trim all roadbeds, parking areas ditches and other excavations and embankments to the established lines and grades. All surfaces shall be left in a neat and well-finished condition prior to the time the project is completed and accepted. Immediately prior to completion of the earthwork, the Contractor shall clean the entire roadway right-of-way area of debris and foreign matter of all kinds and dispose of as directed.

<u>220.3.03 Roadway subgrade</u> shall be excavated and shaped to line, grade, and cross-section as shown on the plans and as staked by the Engineer. The Contractor shall remove all soft or otherwise unsuitable material as directed and replace with suitable material from the excavation.

220.3.04 Compaction - See Section 223

220.4 MEASUREMENT AND PAYMENT:

<u>220.4.01 - Earthwork</u> will be measured by the cubic yard in-place basis for all general excavation of materials within the designated limits and paid for under the bid item for General Excavation & General Fill, including loading of all materials into trucks and disposal of all excess material. This item will also include contractor coordination with individual property owners in coordinating placement of landscape materials that the property owner wishes to salvage. Payment will be at the contract price per cubic yard and shall constitute full compensation for all work specified herein. Contractor shall supply truck tickets for all disposal work at the end of each work day to the City or Engineer as requested.

END OF SECTION 220

SECTION 221 - TRENCH EXCAVATION, BEDDING AND BACKFILL

221.1 DESCRIPTION:

This item includes all work necessary for trench excavation, trench foundation, pipe bedding, pipe zone, trench backfill, and surface removal and replacement.

- <u>221.1.01 Trench excavation</u> is defined as the removal of all material encountered in the trench to the depths as shown or as directed. Trench excavation shall be classified as unclassified excavation.
- <u>221.1.02 Trench foundation</u> is defined as the bottom of the trench on which the pipe bedding is to lay and is responsible for the support of the pipe.
- <u>221.1.03 Pipe bedding</u> is defined as the furnishing and placing of specified materials on the trench foundation so as to uniformly support the barrel of the pipe. The total bedding depth shall extend from a point 6 inches below the barrel of the pipe to the horizontal centerline of the pipe.
- <u>221.1.04 The initial backfill</u> is defined as the full width of the trench from the top of the bedding to a point 12 inches above the top outside surface of the barrel of the pipe.
- <u>221.1.05 Trench backfill</u> is defined as the furnishing, placing and compacting of material in the trench between the top of the initial backfill material and the bottom of the pavement base rock, ground surface, or surface material as directed.

221.2 MATERIAL:

<u>221.2.01</u> The trench foundation shall be undisturbed native material in all areas except where in the opinion of the Engineer, the native material is such that it cannot support the pipe. In those conditions, excavation shall be included to additional depths as required by the Engineer and backfilled with select trench foundation material which shall be $1\frac{1}{2}$ inch-minus crushed rock.

221.2.02 Pipe bedding material

- 221.2.02A Native Pipe Bedding free of humus, organic matter, vegetative matter, frozen material, clods, sticks and debris and containing no stone having a dimension greater than $1\frac{1}{2}$ inches. The materials shall predominate in the fine sizes and in place, shall present no isolated points or areas or larger stones which would cause fracture or denting of the structure or subject it to undue stress. When, in the opinion of the Engineer, the native material is unsuitable for pipe bedding, an Extra Work order will be issued and select pipe bedding material shall be used which shall be clean pea gravel or crushed rock with a maximum size of $\frac{3}{4}$ inch, uniformly graded from coarse to fine. All pipe bedding materials shall be subject to the Engineer's approval.
- <u>221.2.02B Select Pipe Bedding</u> material shall be crushed rock with a maximum size of $\frac{3}{4}$ inch, uniformly graded from coarse to fine.
- 221.2.03 The initial backfill material shall consist of native sand, free of humus, organic matter, vegetative matter, frozen material, clods, sticks and debris and containing no stone having a dimension greater than 1½ inches. The materials shall predominate in the fine sizes and in place, shall present no isolated points or areas or larger stones which would cause fracture or denting of the structure or subject it to undue stress. When, in the opinion of the Engineer, the native material is unsuitable for initial backfill, an Extra Work order will be issued and select initial backfill material shall be used which shall be select pipe bedding material, as described above. All initial backfill materials shall be subject to the Engineer's approval.

221.2.04 Trench backfill shall be native sand, free of humus, organic matter, vegetative matter, frozen material, clods, sticks and debris and containing no stone having a dimension greater than 1½ inches which, in the opinion of the Engineer, meets the desired characteristic required for the specific surface loading or other criteria of the backfill zone. When, in the opinion of the Engineer, the native material is unsuitable for trench backfill, an extra work order will be issued and select trench backfill material shall be used which shall be pit-run or river-run rock, maximum aggregate size ¾ inches, with sufficient fine material to act as binder but no excess earth.

221.3 CONSTRUCTION:

221.3.01 Trench Excavation:

<u>221.3.01A General</u> - All trench excavation and backfill shall conform to any and all specifications of any controlling regulatory agency under which the work is being performed. Pipelines shall be constructed in continuous open trench except that, in special locations, short tunnels or the cut and tunnel method of excavation may be used under specific instructions of the Engineer. The Engineer may require the use of tunnels to pass obstructions or to minimize traffic interference.

<u>221.3.01B Potholing and Subsurface Investigation</u> – In advance of the trenching operations for waterline and storm construction, the Contractor shall pothole and explore the subsurface conditions, including types of materials and types of fittings of the existing mains and the locations of other utilities, at all locations noted on the plan General and Construction Notes. In general, potholing will occur at locations as directed by the Engineer, such as at all connections to existing mains and at utility crossings. The Contractor shall note all pertinent materials and locations of utilities at each pothole. If subsurface conditions differ from that as shown on the plans, the Contractor shall immediately notify the Engineer. The Contractor shall record all potholes on the as-built plans including location, date, time, depth dug and crossing elevations of found existing utilities.

<u>221.3.01C Open Trench Limit</u> - The length of open trench excavated shall always be kept to a minimum. The Engineer shall be the sole judge of the amount of open trench allowed based upon work conditions of the area. In normal cases, the open trench length shall not exceed 100 feet. Related trench construction such as crushed rock surface restoration, concrete restoration, etc. shall normally be completed within 300 feet of the open trench limit unless otherwise instructed by the Engineer.

221.3.01D Trench Width - It is the intent of these specifications that the trench width at the surface of the ground be kept to a minimum necessary to install the pipe in a safe manner. In all cases, trenches must be of sufficient width to allow for shoring and permit proper joining of the pipe and backfilling of material along the sides of the pipe. The minimum trench width, in the pipe zone shall be the outside diameter of the pipe plus 12 inches. No maximum width of trench at the top of the pipe will be specified herein. When required by design, it will be shown on the plans. If the maximum width shown is exceeded by the Contractor without written authorization, the Contractor will be required, at no expense to the Owner, to provide pipe of a higher strength designation, a higher class of bedding, or both, as approved. Excavation for manholes and other structures shall be wide enough to provide a minimum 12 inches between the structure surface and the sides of the excavation. The Contractor shall confine the top width of the trench to right of ways or easements. Special written agreements to extend the width may be made with the affected property Owner, provided such agreement is first approved by the Engineer. The Contractor shall take all necessary precautions to avoid damage to properties, structures and utilities adjacent to the trench.

221.3.01E Grade - The Contractor shall excavate the trench to the lines and grades as shown or established by the Engineer, with proper allowance for pipe thickness, pipe bedding and foundation stabilization as required. The subgrade upon which the bedding is to be placed shall be firm, undisturbed and true to grade. If the trench is over-excavated, the Contractor shall restore to grade with material of the type specified for select bedding material at no expense to the Owner and place the material over the full width of the trench in compacted layers not exceeding 6 inches deep to the established grade with allowance for the pipe bedding.

<u>221.3.01F Disposal of Excess Material</u> - The Contractor shall dispose of all excess material not required elsewhere on the project, make arrangements for disposal and bear all cost related thereto, in accordance with Section 205.

221.3.01G Shoring - Unless otherwise provided in the special provisions, the Contractor shall provide all materials, labor and equipment necessary to adequately shore trenches to protect the work, existing property, utilities, pavement, etc., and to provide safe working conditions in the trench. The method of shoring shall be according to the Contractor's design. The Contractor may elect to use a combination of shoring and overbreak, tunneling, boring, sliding trench shields or other methods of accomplishing the work, provided the method conforms to all applicable local, state and federal safety codes. Removal of any cribbing and sheeting from the trench shall be accomplished in such a manner as to fulfill the above requirements. Damages resulting from improper cribbing or from failure to crib shall be the sole responsibility of the Contractor. Cribbing will not be a pay item and the cost thereof shall be included in the unit contract price for "Install Water Main", or "Install Storm Drainage Pipe" as applicable. That portion of cribbing or sheeting extending below the crown elevation of flexible pipe shall be left in place unless satisfactory means of reconsolidating bedding or side support, disturbed by cribbing or sheeting removal, can be demonstrated. If a moveable box is used in lieu of cribbing or sheeting and the bottom cannot be kept above the crown elevation of flexible pipe, the bedding or side support shall be carefully reconsolidated behind the movable box prior to placing backfill. The use of horizontal strutting below the barrel of pipe or the use of the pipe as support for trench bracing will not be permitted.

<u>221.3.01H Location of Excavated Material</u> - Excavated material shall be placed at locations and in such a manner that it does not interfere with the function of existing drainage facilities.

221.3.02 Dewatering – The Contractor shall provide and maintain ample means and devices with which to promptly remove and dispose of all water entering the trench excavation during the time the trench is being prepared for the pipe laying, during the laying of the pipe and until the backfill at the pipe zone has been completed. The Contractor shall dispose of the water in a suitable manner without damage to adjacent property. Groundwater shall be controlled such that softening of the bottom of excavations or formation of "quick" conditions or "boils" during excavation shall be prevented. Where the native trench material is sand, the Contractor shall use appropriate trench dewatering methods such that running sand, moving sand and "quick" sand conditions are prevented at the bottom of the excavation. Dewatering systems shall be designed and operated so as to prevent removal of the natural soils and so that the groundwater level outside the excavation is not reduced to the extent that would damage or endanger adjacent structures or property. Dewatering of the trench by conventional trash pumps set in the trench shall be considered as incidental to, and all costs included in, the various contract pay items in the proposal.

<u>221.3.03 Trench Foundation</u> - When, in the judgment of the Engineer, the existing material in the bottom of the trench is unsuitable for supporting the pipe, the Contractor shall excavate below the pipe, as directed by the Engineer. No pipe or structure shall be placed on wet, frozen or muddy subgrade. The Contractor shall backfill the trench to subgrade of the pipe bedding, with select trench foundation material over the full width of the trench and compact in layers not exceeding 6 inches

deep to the required grade. Where the native trench material is sand, no trench foundation materials will be authorized by the Engineer on account of water entering the trench excavation. In such case, the Contractor shall stabilize the native sand trench foundation with adequately designed dewatering systems in accordance with Subsection 221.3.02.

221.3.04 Pipe Bedding consists of leveling the bottom of the trench or the top of the foundation material and placing bedding material to the horizontal centerline of the pipe. Bedding material shall be as specified here in before and placed in at least two lifts. Place the first lift to provide the minimum 6 inch depth of bedding material as shown on the plan before the pipe is installed. The Contractor shall spread the bedding smoothly to proper grade so that the pipe is uniformly supported along the barrel and excavate bell holes at each joint to permit proper assembly and inspection of the entire joint. Bedding under the pipe shall provide a firm, unyielding support along the entire pipe length. The Contractor shall place subsequent lifts of not more than 6 inches in thickness up to the horizontal centerline of the pipe, bring lifts up together on both sides of the pipe and carefully work under the pipe haunches by slicing with a shovel, tamping or other approved procedure. Particular attention must be given to the area from the flow line to the horizontal centerline of the pipe or top of bedding to insure that firm support is obtained to prevent any lateral movement of the pipe during the final backfilling of the pipe zone. Pipe bedding shall be placed the full width of the trench.

<u>221.3.05 Initial Backfill</u> - The Contractor shall place the specified initial backfill material carefully around the pipe in 6 inch layers and thoroughly hand tamp with approved tamping sticks supplemented by "Walking In" and from movement either horizontally or vertically during placement and compaction of initial backfill material. Mechanical compactors shall not be utilized in placement of the initial backfill material.

221.3.06 Trench Backfill - The Engineer will sample excavated material to determine the suitability of the native sand for backfill use. If the native sand backfill is found to be compactable and within the tolerance range of the moisture content, the Contractor will be allowed to use it for trench backfill. The Contractor shall take reasonable precautions to prevent excavated material from becoming saturated beyond the critical moisture limits and replace any saturated native material with other approved native material at no expense to the Owner. When, in the opinion of the Engineer, the excavated material is unsuitable for trench backfill by reason of pre-existing moisture content or other undesirable physical characteristics, the Contractor shall use suitable excess excavated material at the direction of the Engineer. The Contractor shall backfill the trench above the pipe zone to the final surface grade, or subgrade, as shown on the plans, in lifts not to exceed 12-inch loose depth. The Contractor shall compact each lift to a minimum of 95% of the maximum density as determined by AASHTO T99, Method D. Any subsequent settlement of the trench during the warranty period shall be considered to be the result of improper compaction and shall be promptly corrected. The Contractor shall compact and rake the soil to match the ground surface elevation adjacent to the trench and maintain the surface of the backfilled trench level with the existing grade until the entire project is accepted by the Owner.

221.4 MEASUREMENT AND PAYMENT:

<u>221.4.01 Trench excavation</u> will not be a pay item and the cost thereof shall be included in the contract unit price for the appropriate pipe installation, as applicable.

<u>221.4.02 Select Pipe Bedding, Initial Backfill, and Trench Backfill</u> will not be a pay item and the cost thereof shall be included in the contract unit price for the appropriate pipe installation, for the particular depth of installation.

<u>221.4.03 Native sand Pipe Bedding, Initial Backfill, and Trench Backfill</u> will not be a pay item and the cost thereof shall be included in the contract unit price for the appropriate pipe installation, for the particular depth of installation.

<u>221.4.04 Potholing</u> – There will be no separate payment for potholing. The cost of potholing and associated restoration is to be included in one or more of the unit prices.

<u>221.4.05 CDF Backfill Material</u> will be measured and on a cubic yard in-place basis for locations shown on plans or deemed necessary by the Engineer. Measurement will be made of the gross surface area and depth of CDF actually installed, based on truck tickets.

END OF SECTION 221

SECTION 222 – DEWATERING SYSTEM

222.1 DESCRIPTION:

This section provides specifications for dewatering systems and appurtenances which may be required during construction.

The Contractor shall be responsible for payment of any regulatory agency fees associated with its proposed dewatering system.

<u>222.1.01 Quality Control</u> - Before dewatering commences, the Contractor shall submit to the Engineer, plans setting forth the details of the proposed dewatering system. The dewatering system plans shall be in sufficient detail to indicate sizes of pumps, piping, appurtenances, and the ultimate disposal point for water.

The Contractor shall select the particular method of dewatering to be employed.

222.1.02 Submittals - The following shall be submitted in accordance with Section 130.

222.2 METHOD:

<u>222.2.01 General</u> - The Contractor shall furnish, install, operate, maintain and remove all machinery, appliances, and equipment to maintain all excavations free from water during construction, and shall dewater and dispose of the water so as not to cause injury to public or private property, or to cause a nuisance or menace to the public.

The dewatering system shall be installed and operated so that the groundwater level outside the excavation is not reduced to the extent, which would cause damage or endanger adjacent structures or utilities. In addition, the system shall be fully filtered and protected against intake of any sand, which may otherwise cause subsurface voids, caving, and damage to adjacent structures.

The static water level shall be drawn down at least 2 feet below the bottom of the excavation in order to maintain the undisturbed state of the foundation soils and to facilitate the placement of fill or backfill compacted to the required density as specified in accordance to Section 221.3.03.

222.3 EXECUTION:

<u>222.3.01 Installation</u> - The Contractor shall install all equipment necessary for dewatering. He shall have on hand, at all times, sufficient pumping equipment and machinery in good working condition and shall have available, at all times, competent worker for the operation of the pumping equipment.

Adequate standby equipment shall be kept available at all times to ensure efficient dewatering and maintenance of dewatering operations during power failure.

<u>222.3.02 Performance</u> - The control of groundwater shall be such that softening of the bottom of excavations or formation of "quick" conditions or "boils" during excavation shall be prevented. Dewatering systems shall be designed and operated to prevent erosion of, and intake of, any soils. Care shall be taken to prevent disturbance, by the method of dewatering, of pipe bedding already in place in the trench. The Contractor is fully responsible for maintaining the integrity of previously placed pipe and bedding during dewatering and the release of groundwater.

During excavation, construction of structures, installation of pipelines, placement of the structure and trench backfill, and the placing and setting of concrete, excavations shall be kept free of water. The Contractor shall control surface runoff to prevent entry or collection of water in excavations or any adjacent erosion. The static water level shall be drawn down in the vicinity of the excavation to maintain the undisturbed state of the foundation soils and allow the placement of any fill or backfill to the required density. The dewatering system shall be installed and operated so that the groundwater level outside the excavation is not reduced to an extent that would damage or endanger adjacent structures, utilities or property.

All dewatering systems shall be equipped with adequate filtering systems to prevent intake of any soils or soil grains from the ground in and around the excavations.

<u>222.3.03 Discharge Points</u> - Discharge of ground and surface runoff water shall be in accordance with the Contractor's dewatering plan. The Contractor may discharge groundwater to the existing system as long as the rate does not exceed the system's capacity. If, in the opinion of the Engineer or City, the storm system being used for discharge is being overwhelmed, the Contractor shall utilize portable tanks to transport waters to an approved alternate location for discharging. Prior to any discharge, the Contractor shall take all necessary precautions to avoid discharge of oil, grease, and excessive suspended solids.

<u>222.3.04 Release of Groundwater</u> - The release of groundwater to its static level shall be performed in such a manner as to maintain the undisturbed state of the natural foundation soils, prevent disturbance of compacted backfill, and prevent flotation or movement of any structures, pipelines, and sewers.

<u>222.3.05 Damages</u> - The Contractor shall be responsible for and shall repair without cost to the Owner for any damage to existing facilities or utilities, work in place, or other Contractors' equipment, and the excavation, including damage to the bottom due to the heave and including removal of material and pumping out of the excavated area, that may result from the Contactor's dewatering operations, including any damages that may result from any mechanical or electrical failure of the dewatering system.

222.4 MEASUREMENT AND PAYMENT:

<u>222.4.01 Dewatering</u> – Payment will be made at the contract lump sum amount and shall constitute full compensation for all dewatering required throughout the full duration of the project.

END OF SECTION 222

SECTION 223 – SUBGRADE

223.1 DESCRIPTION:

This work consists of the preparation of the subgrade. Subgrade is defined as the area of new or existing roads, streets, alleys, driveways, sidewalks, or other public place upon which additional materials are to be placed as a part of work covered in other Sections or by future work. All subgrade on this project is classified as untreated subgrade.

<u>223.1.01 Untreated Subgrade</u> - The top 1 foot of material placed in embankments or removed from cuts in the normal grading of the roadbed and which is brought to true line and grade, shaped and compacted to provide a foundation for the pavement structure constitutes untreated subgrade.

223.2 MATERIALS:

223.2.01 Soil - The native ground on all streets of this project is native sand.

223.3 CONSTRUCTION:

<u>223.3.01 Preparation</u> - Prior to starting subgrade work, including backfill, all underground work contemplated in the area of the subgrade shall be completed. This requirement includes work by the Contractor, by the Owner, or by others. The Contractor shall drain all depressions or ruts which contain water.

<u>223.3.02 Untreated Subgrade</u> - The Contractor shall remove unsuitable material as directed and replace with approved material. The subgrade shall be excavated and shaped to line, grade, and cross section and then scarified and compacted to the specified density. Compaction shall extend to a line 1 foot beyond the edge of the paving curbs or forms and to a depth of 12 inches below final subgrade.

<u>223.3.03 Moisture Content</u> – Moisture Content at the time of compacting the subgrade materials shall be prepared to within -4% to +2% of optimum moisture content. Material which does not contain sufficient moisture to obtain proper compaction shall be wetted and thoroughly mixed as directed. Subgrade areas which too wet to be compacted to specified density, but which in the judgment of the Engineer otherwise meet the requirements, shall be scarified and aerated to provide -4% to +2% of optimum moisture content. The upper 12 inches of the subgrade shall be scarified and dried by manipulation, aeration, drainage, or other means before being compacted. The Engineer may authorize the removal of excessively wet material and/or the use of additional stabilizing of material as extra work.

<u>223.3.04 Tolerances</u> - The Contractor shall rework areas found to be deficient in thickness by more than 0.04 foot, except that fresh stabilizing material shall be added in an amount equal to one half of the original amount. The Contractor shall accomplish all reworking at no expense to the Owner.

The finished surface of untreated subgrade shall not vary more than 0.04 foot from established grade and cross section at any point. The Finished surface, when tested with a 10 foot straightedge, shall not vary from the testing edge by more than 0.04 foot at any point.

<u>223.3.05</u> Compaction equipment for roadway subgrade shall be standard steel wheeled rollers or vibratory rollers capable of meeting the specified density requirement.

<u>223.3.06 Compaction equipment for curb, gutter, and sidewalk subgrade</u> shall be mechanical vibrators or impact tampers. All compaction equipment shall provide compaction of demonstrated equivalency to that of a standard steel wheeled or vibratory roller.

<u>223.3.07 Compaction</u> - The required density of untreated subgrade materials within the roadway section shall be not less than 95% of maximum density as determined by AASHTO T180 (modified Proctor).

If the specified compaction is not obtained, the Contractor shall notify the Engineer. The Contractor may be required to use a modified compaction procedure or apply additional compaction effort. If approved materials meeting the specifications can be compacted to the required density regardless of compaction effort or method, the Engineer may reduce the required density or direct that alternate materials be used. In no case shall finishing and compaction of the subgrade proceed until the Contractor is able to compact the material to the satisfaction of the Engineer.

223.4 MEASUREMENT AND PAYMENT:

<u>223.4.01 Untreated subgrade</u> will be considered incidental work. Subgrade preparation will not be a separate bid item. All work required to be accomplished under this section shall be included in the pay item for Aggregate Base Course.

<u>223.4.02</u> Incidental Work - When not listed in the Bid schedule, draining water from the subgrade; smoothing the subgrade in preparation for staking; blading, shaping, compacting and wetting the subgrade, including roadbed, excavating, transporting and placing onsite materials, road grade staking, to final line, grade and cross section, and other anticipated items will be considered incidental work.

<u>223.4.03 Compaction Testing</u> – Compaction testing will be performed periodically by the Owner's compaction testing agency. Tests will be performed upon completion of the Contractor's final compaction efforts. The Owner will provide initial compaction tests for the Contractor. All compaction tests which fail to meet specifications and require additional testing shall be provided and paid for by the Contractor, at no additional cost to the Owner.

END OF SECTION 223

SECTION 224 – AGGREGATE BASES

224.1 DESCRIPTION:

This item includes all work necessary to furnish, place and compact one or more courses of aggregate base, sub-base, or leveling courses on a prepared subgrade within the designated limits. This item also includes crushed rock surfacing used for shoulder work and driveways.

224.2 MATERIALS:

<u>224.2.01 Base Course Aggregate</u> shall be of the designated size 1 inch-0 (25 mm-0) and shall meet the requirements of Oregon Standard Specifications subsection 02630. At the option of the Contractor, leveling course aggregate as specified in Section 224.2.02 herein may be substituted for the base course aggregate

<u>224.2.02 Leveling course aggregate, sidewalk rock, driveway rock and shoulder rock</u> shall be of the designated size ³/₄ inch-0 (19 mm-0) and shall meet the requirements of Oregon Standard Specifications subsection 02630.

<u>224.2.03 Acceptance</u> will be based on periodic samples of the material stockpiles and in place prior to compaction. The testing agency will take proctor samples of Contractor's aggregate source (three samples maximum). If the aggregate does not meet the specified requirements, it will be rejected and shall be removed from the project site at the sole expense of the Contractor. Additional proctor samples for new aggregate sources will be paid for by the Contractor. Similarly, if the aggregate changes in size, appearance or consistency throughout the duration of the project, additional proctor samples for the aggregate will be taken by the testing agency and paid for by the Contractor.

224.3 CONSTRUCTION:

- <u>224.3.01 Preparation of Foundation</u> All surfaces on which a base is to be constructed shall be firm at the time aggregate is placed thereon. No materials shall be placed on a soft, muddy, or frozen subgrade.
- <u>224.3.02 Placing</u> The Contractor shall haul, and deposit the material so as to provide a homogeneous mixture of unsegregated and uniformly dispersed materials as placed in position for compacting. The Contractor shall spread and strike off the material to the designated line, grade and transverse slope with surface texture of uniform appearance without segregation or fracture of material.
- <u>224.3.03</u> Compaction equipment for roadway aggregate bases shall be standard steel wheeled rollers or vibratory rollers capable of meeting the specified density requirement. See also Section 223.
- <u>224.3.04</u> Compaction equipment for gutter aggregate bases shall be mechanical vibrators or impact tampers. All compaction equipment shall provide compaction of demonstrated equivalency to that of a standard steel wheeled or vibratory roller.
- <u>224.3.05 Roadway Base Rock Density Requirements</u> The Contractor shall begin compaction of each layer of roadway base rock as soon as practicable after the material is spread and continue until a density of not less than 95% of the maximum density has been achieved. Maximum density will be determined by AASHTO T180.
- <u>224.3.06 Road Base Widening</u> The existing road shoulders shall be excavated to a depth of 16 inches below the new asphalt grade, in order to allow for a minimum of 8 inches of new compacted base course and 4 inches leveling course below the new asphalt
- <u>224.3.07 Thickness of Base Course on Street Shoulders</u> If the existing base is found to be less than 3 inches in depth after excavating to a depth of 3 inches below the existing asphalt grade, new base material shall be installed to a depth of 6 inches below the existing asphalt grade.
- <u>224.3.08 Surface Finish</u> The roadway base rock aggregate base surface shall be within 0.1 foot of the required grade, and when tested with a 10 foot straightedge shall not vary from the testing edge by more than 0.08 foot at any point.

224.4 MEASUREMENT AND PAYMENT:

- <u>224.4.01 Roadway Base Course Rock Aggregate</u> will be measured and paid for on a cubic yard inplace basis to the design grades and limits as staked and as authorized by the Engineer.
- <u>224.4.02 Leveling Course Rock, Shoulder Rock and Driveway Aggregate</u> will be measured and paid for on a cubic yard in-place basis to the design grades and limits as staked and as authorized by the Engineer.

<u>224.4.03 Over-Ex & Base Stabilization</u> will be measured and on a cubic yard in-place basis for locations shown on plans or deemed necessary by the Engineer. Measurement will be made of the gross surface area and depth actually installed. Work shall include excavating and hauling unsuitable material, smoothing & compacting the subgrade; blading, shaping, road fabric, base rock, compacting subgrade and rock, and other required items will be considered incidental work.

<u>224.4.04 Payment</u> will be at the unit contract price for the various types of rock and shall constitute full compensation for supplying, placing, grading, compacting and maintaining the aggregate bases and shoulder rock aggregate.

END OF SECTION 224

SECTION 227 - EROSION CONTROL

227.1 DESCRIPTION:

The Contractor shall construct temporary erosion control structures as shown on the plans and specified herein. The Contractor shall maintain these structures throughout the course of construction as set forth in these specifications.

227.2 SUBMITTALS:

The Contractor shall submit manufacturer's data on the silt fence system and bio-bag materials to the Engineer prior to ordering materials.

227.3 MATERIAL:

<u>227.3.01 Silt fence system</u> shall be the "Envirofence" silt fence system manufactured by Mirafi, Inc., or equal. The height of a silt fence shall not exceed 36 inches (higher fences may impound volumes of water sufficient to cause failure of the structure).

<u>227.3.02 Bio bags</u> shall be 8" inches in diameter, 30 inches long and constructed with $\frac{1}{2}$ inch mesh fiber filled with clean wood chips.

 $\underline{227.3.03}$ Hold down stakes shall be 24 inch long steel rods (1/2 inch diameter), or rebars (#4). Precast concrete blocks, 8" x 8" x 16", shall be used in lieu of stakes on hard surfaces such as asphalt pavement and concrete valley gutters.

227.04 CONSTRUCTION:

- <u>227.4.01</u> All erosion control products and materials will be installed in accordance with the manufacturer's recommendations and as shown on the plans.
- $\underline{227.4.02}$ All erosion control measures shall be left in place until all slope stabilization and/or reseeding efforts are completed and vegetation has taken root, or as directed by the Engineer.
- <u>227.4.03 Bio Bag protection for catch basin inlets</u> Bags shall be placed lengthwise in a single row in a half circle around the catch basin with the ends of adjacent bags pressed together. Each bag shall be securely anchored to the ground and held in place by at least two concrete blocks.
- <u>227.4.04 Silt Fences</u> The filter fabric shall be purchased in a continuous roll cut to the length of the barrier to avoid the use of joints. Where joints are necessary, filter cloth shall be spliced together only at a support post, with a minimum 6 inch overlap, and securely sealed. Posts shall be spaced a

maximum of 10 feet apart at the barrier location and driven securely into the ground (minimum of 24 inches). A trench shall be excavated approximately 6" (wide) x 6" (deep) along the line of posts and upslope from the barrier. The trench shall be backfilled and the soil compacted over the filter fabric. Silt fences shall be removed when they have served their useful purpose, but not before the upslope area has been permanently seeded and stabilized.

<u>227.4.05 Maintenance of Bio Bags</u> - Bio bags barriers shall be inspected immediately after each rainfall and at least daily during prolonged rainfall by the Contractor. Close attention shall be paid to the repair of damaged bags, end runs and undercutting beneath bags. Necessary repairs to barriers or replacement of bags shall be accomplished promptly by the Contractor. Sediment deposits should be removed after each rainfall. They must be removed when the level of deposition reaches approximately half the height of the barrier. Any sediment deposits remaining in place after the bio bag barrier is no longer required shall be dressed to conform to the existing grade, prepared and seeded.

<u>227.4.06 Maintenance of Silt Fences</u> - Silt fences and filter barriers shall be inspected immediately after each rainfall and at least daily during prolonged rainfall by the Contractor. Any required repairs shall be made immediately by the Contractor. Should the fabric on a silt fence or filter barrier decompose or become ineffective prior to the end of the expected usable life and the barrier still be necessary, the fabric shall be replaced promptly. Sediment deposits should be removed after each storm event. They must be removed when deposits reach approximately one-quarter the height of the barrier.

<u>227.4.07 Removal of Erosion Control Structures</u> - Any material remaining in place after the fence or barrier is no longer required shall be graded to conform to the finished grade and/or reseeded.

227.05 MEASUREMENT AND PAYMENT:

<u>227.5.01</u> - Payment for the work as above specified will be made at the contract lump sum amount for the item "Erosion and Sedimentation Control, Stormwater Management, Surface Restoration & Protection". This work shall constitute full compensation for the purchase, installation, maintenance, removal and disposal of all erosion and sedimentation control activities.

END OF SECTION 227

SECTION 250 – ASPHALT CONCRETE PAVEMENT

250.1 DESCRIPTION:

This item includes all work necessary for the construction of hot mix asphalt concrete pavements upon prepared foundations or base surfaces. The Contractor shall provide submittal information to the Engineer for approval on all materials, methods, equipment and HMAC mix design. Such submittal information shall be submitted a minimum of three (3) weeks prior to construction. Unless otherwise specified, the number of copies of submittal information that the Contractor shall submit shall be the number of copies that the Contractor requires to be returned plus two copies that will be retained by the Engineer.

250.2 MATERIALS:

All materials shall meet the requirements of the ODOT Standard Specifications, 2018 or most current edition, unless specifically noted herein.

<u>250.2.01A Asphalt Cement, Additives and Aggregate treatment</u> shall meet the requirements of Section 00744, Hot Mixed Asphalt Concrete (HMAC), ODOT Standard Specifications, 2018 or most current edition, and the requirements of ODOT, Standard Specifications for Asphalt Materials, 2018 or most current edition. Use PG 64-28 asphalt cement.

<u>250.2.01B 2018 Asphalt Cement and Additives</u> – Asphalt Cement and Additives - Furnish the following asphalt cement and additives:

- (a) Asphalt Cement Provide asphalt cement conforming to the requirement of ODOT's publication "Standard Specifications for Asphalt Materials". Copies of the publication are available from ODOT's website. The applicable Specifications are those contained in the current publication on the date the Project is advertised. Use the grade of asphalt that is specified.
- (b) Asphalt Cement Additives Use standard recognized asphalt cement additive products that are of known value for the intended purpose and approved for use on the basis of laboratory tests and capable of being thoroughly mixed. Do not use asphalt cement additives that have detrimental effects on the asphalt material. Do not use silicones as an additive. Add the following asphalt cement additives when required by the JMF:
- Anti-stripping asphalt cement additives to prevent stripping or separation of asphalt coatings from Aggregates to satisfy the TSR specified in 00744.13.
- Asphalt cement admixtures used to aid in the mixing or use of asphalt mixes.

<u>250.2.02 Mineral filler</u> shall conform to the requirements of AASHTO M17. Collector dust may be used as mineral filler, in whole or in part, provided the dust or the resultant mineral filler mixture conforms to the above requirements.

<u>250.2.03 Level 3 HMAC (class) of Concrete and Proportions of Materials</u> – The asphalt concrete mixture shall be of the level (class) as shown on the plans (Level 3 if not shown elsewhere) and shall conform to the requirements of <u>ODOT</u>, Standard Specifications for Asphalt Materials, 2018 or most current edition. The mix design shall be developed by the Contractor and shall meet Section 00744, Hot Mixed Asphalt Concrete (HMAC), ODOT Standard Specifications, 2018 or most current edition.

<u>250.2.04 Tack coat asphalt</u> shall be emulsified asphalt and meet the requirements of Section 00730, ODOT Standard Specifications, 2018 or most current edition.

250.3 CONSTRUCTION:

<u>250.3.01 Foundation Preparation</u> - All bases and foundations shall be constructed to the condition prescribed under the applicable specification. Broken or ragged edges of existing Portland cement concrete or bituminous surfaces underlying or abutting the new pavement shall be trimmed back to firm material. Contact surfaces of structures in the paving area shall be treated with an asphalt tack coat prior to placing the asphalt concrete. Underlying surfaces of Portland cement concrete and designated areas of asphalt-deficient, fine-cracked or spalled bituminous material shall be treated with an asphalt tack coat prior to placing the asphalt concrete.

<u>250.3.02 Preparation and Acceptance of Foundation</u> – In general, aggregate bases will be constructed, graded and compacted by the Contractor. Following the completion of the base rock on that project, those streets shall be available for use by the public for local vehicular traffic to abutting properties, with traffic operations on the aggregate base course. The paving subcontractor for this project shall inspect the aggregate base immediately prior to paving operations and make recommendations to the Engineer for foundation preparation work to prepare the aggregate base

for the paving work. Such foundation preparation work will not be considered as additional work but will be included in the normal foundation preparation work described above in this section.

<u>250.3.03 Existing Pavement Surfaces</u> – Existing pavement surfaces shall be cleaned of all loose material, dirt and dust by brooming, by flushing with water or by other approved methods. All vegetation on existing asphalt surfaces shall be removed by first burning with a torch followed by careful removal of the burned vegetation by scraping and brooming.

<u>250.3.04 Weather Limitations</u> Asphalt concrete mixtures shall be placed on dry prepared surfaces when the air temperature in the shade and the surface temperature is $55^{\circ}F$ ($15^{\circ}C$) and warmer. However, the Engineer may permit the Contractor to begin paving work if the temperature is $50^{\circ}F$ or above and rising, and in the judgment of the Engineer will be $55^{\circ}F$ in a reasonable period of time. Placing any mixture during rain or other adverse weather conditions will not be permitted, except that mix in transit at the time these adverse conditions occur may be laid if the following conditions are met:

- a. Mix is at proper temperature.
- b. Mix is covered during transit.
- c. Mix is placed on a foundation free of standing or flowing water.

250.3.05 Tack coat asphalt shall be applied to existing bituminous and Portland cement concrete surfaces prior to placing asphalt concrete per ODOT Standard Specifications. A tack coat is not required before placing ACP on Aggregate bases. Apply the Emulsified Asphalt with a pressure distributor conforming to ODOT Standard Specification, 00730.22, unless otherwise allowed. Apply the Emulsified Asphalt to the prepared surface at a rate between 0.05 and 0.20 gallons per square yard as directed and with the Emulsified Asphalt temperature between 140°F and 185°F as recommended by the manufacturer. Application rates for tack coat diluted according to ODOT Standard Specification 00730.11 will be increased as necessary to provide the same amount of residual asphalt as the application rates specified above.

It shall be applied only so far in advance of the asphalt concrete paving operations as is necessary in order to provide a tacky surface upon which to place the asphalt concrete.

Do not place hot mixed asphalt concrete Pavement or Emulsified Asphalt Concrete Pavement on the tack coat until the Emulsified Asphalt separates from the water (breaks), but before it loses its tackiness.

<u>250.3.06 Hot Mix Asphalt Concrete Pavers</u> – The HMAC paving operations shall meet the requirements of Section 00744 of ODOT Standard Specifications, 2018 or most current edition.

250.3.07 Placing — Asphalt concrete shall be at a temperature of between 285°F and 300°F at the time it is placed. (If the submitted Job Mix Formula, temperature-viscosity curve of the asphalt cement supports a lower temperature, it will be allowed by the Engineer.) Asphalt Concrete shall be placed in panels of such width as to hold to a practical minimum the number of longitudinal joints required. The longitudinal joints in any panel shall offset those joints in underneath panels by not less than 6 inches. Special care shall be taken at longitudinal joints to provide the required bond and density. The placing of asphalt concrete shall be a continuous operation as nearly as practicable. If the capacity of the paving machine exceeds the capacity of the hauling vehicles, the paving machine shall be operated at a reduced uniform speed so as to maintain a continuous operation.

<u>250.3.08 Overlay Paving</u> shall be applied in a minimum of two lifts. The first lift shall be a leveling course, followed by a cover course or wearing course.

250.3.09 Compaction and Rolling – Longitudinal joints shall be rolled directly behind the paving machine. The first panel shall have vertical edges, and the abutting panel shall be tightly crowded against its edge. Material from the second panel shall be pushed over the surface of the first panel so as to develop an overlap of from 3 inches to 6 inches. Breakdown rolling shall immediately follow the rolling of the longitudinal joints and edges. Rollers shall be operated as close to the paving machine as necessary to obtain adequate density without causing undue displacement. The breakdown roller shall be operated with the drive roll or wheels nearest the paving machine. Exceptions may be made when working on steep slopes or super-elevated curves. Roller wheels shall be kept moist with only enough water to avoid picking up the material. Rollers shall move at a uniform speed not to exceed 3 mph for steel wheeled rollers. Rollers shall be in good condition and capable of being reversed without backlash. The line of rolling shall not be suddenly changed nor the direction of rolling suddenly reversed. Any pronounced change in direction of the roller shall be made on stable material. If rolling causes displacement of the material, the affected areas shall be loosened and restored to the original grade with loose material before being re-rolled. Heavy equipment, including rollers, shall not be permitted to stand on finished surface before it has thoroughly cooled or set. The finished surface shall be true to line and grade, free of irregularities and roller wheel tracks.

Breakdown and intermediate rolling and the rolling of longitudinal joints shall be performed until the entire surface of each course has been compacted by at least six coverages of the roller(s). Breakdown and intermediate compaction shall be completed before the HMAC temperature drops below 180°F, unless otherwise directed. Steel-wheeled rollers shall have a gross static weight of at least 8 tons. Vibratory rollers shall be equipped with amplitude and frequency controls capable of at least 2000 vibrations per minute, shall be specifically designed to compact HMAC and shall have a gross static weight of at least 8 tons. Finish rolling shall be preformed with additional coverages until all roller marks are eliminated. If steel-wheeled rollers are used for finish rolling, they shall have a gross static weight of at least 6 tons.

250.4 MEASUREMENT AND PAYMENT:

<u>250.4.01 Measurement</u> – of asphalt concrete pavement will be by weighing the mixed materials on a certified scale. The weight of asphalt concrete shall include the asphalt cement in the mixture. Certified plant mix temperatures at loading and weight slips shall be supplied to the Engineer at the point of delivery.

<u>250.4.02 Payment</u> will be at the contract price per ton for each category of the material placed and compacted to the designated depths and limits and/or furnished at the plant site and will be limited to not more than 105% of the calculated tonnage within the designated limits. Payment shall constitute full compensation for all work specified herein, either for furnishing the payement materials only or for furnishing and installing the payement materials as listed in the Bid schedule.

<u>250.4.03 HMAC Level 3 Payment</u> will be measured and paid for on a per ton basis to the limits as shown on the construction drawings at a nominal compacted depth <u>specified by ODOT</u>.

<u>250.4.04 Tack Coat</u> – No separate payment will be made for the asphalt tack coat, the cost of which is to be included in one or more of the unit prices.

<u>250.4.05 Asphalt Cement Price Adjustment</u> – An asphalt cement escalation/de-escalation clause will be in effect during the life of this contract. The price adjustment will use the Monthly Asphalt Cement Material Price (MACMP) established by the Oregon Department of Transportation (ODOT) on the first of each month. The price adjustment will use the MACMP for the month the contract was awarded as the Base Asphalt Cement Material Price "Base." The price adjustment will be determined by multiplying the Adjustment Factor, as established below, by six (6) percent and adding to the unit

price for asphalt concrete pavement and pavement patching. The Monthly Asphalt Cement Adjustment Factor will be determined each month of the contract as follows:

- If the MACMP is within $\pm 10\%$ of the "Base", then there will be no adjustment.
- If the MACMP is more than 110% of the base, then:
 - Adjustment Factor = (MACMP) (1.10 x "Base")
- If the MACMP is less than 90% of the base, then:
 - Adjustment Factor = (MACMP) (.90 x "Base")

The "Base" price established for this contract is the MACMP for the contract date as established by ODOT.

END OF SECTION 250

SECTION 252 – CONCRETE CURBS AND GUTTERS

252.1 DESCRIPTION:

This item includes all work necessary for the construction of concrete valley gutters and combination concrete curb and gutter. Hereinafter, all such curbs, gutters and combination curb and gutter are referred to as "curbs".

252.2 MATERIALS:

<u>252.2.01 Concrete</u> shall conform to the requirements of ASTM C94 and of Section 330. Compressive field strength of Portland cement concrete shall be not less than 3,000 p.s.i. at 28 days.

<u>252.2.02 Preformed expansion joint fillers</u> for concrete shall conform to the requirements of AASHTO M153 or AASHTO M213 except that those furnished under AASHTO M213 shall be tested in conformance to ASTM D1751. Fillers conforming to AASHTO M213, except the binder if other than bituminous material, may also be used provided that they otherwise meet this specification and provided further that they have been demonstrated to be rot and vermin proof for a period of at least 5 years.

<u>252.2.03 Curing materials</u> shall be liquid membrane-forming compounds for curing concrete conforming to the requirements of AASHTO M148.

252.3 CONSTRUCTION:

<u>252.3.01</u> Aggregate Foundation and Bedding - All bases upon which new concrete curbs are to be constructed shall be firm and free of all extraneous matter. Foundation courses and beddings shall be constructed in conformance with the applicable requirements of Section 224. The Contractor shall thoroughly dampen surfaces upon which new concrete is to be placed prior to placement of the concrete.

<u>252.3.02 Line and Grade</u> - The top and face of finished curb shall be true and straight and the top surface of curbs shall be of uniform width, free from humps, sags, honeycombs, or other irregularities. When a straightedge 10 feet long is laid on the top or face of the curb the surface shall not vary more than 0.02 foot from the edge of the straightedge, except at grade changes or vertical curves. The Contractor shall construct all curb within 0.02 foot of true line, within 0.02 foot of established surface grade, cross section and slope, and within 0.02 foot of specified thickness.

<u>252.3.03 Placing</u> - Concrete curbs may be placed either by mechanical extrusion methods or between suitable forms, as the Contractor may elect.

<u>252.3.03A Extrusion Method</u> - If concrete is to be placed by mechanical extrusion methods, the slump shall be between one and two inches. Concrete shall be fed into the extruding machine at a uniform rate and the machine shall be operated under sufficient restraint to forward motion to produce a well compacted mass of concrete. Maximum size of aggregate shall be 1/2 inch.

252.3.03B Forms - If forms are used, the concrete slump shall be between 2 inches to 4 inches. Maximum size of aggregate shall be 3/4 inch. Placing of concrete shall conform to the requirements of Subsection 330.3.01. Forms shall be removed from formed structures after the concrete has taken its initial set and while the concrete is still green.

252.3.04 Curb Finishing - Minor defects shall be repaired with mortar containing one part portland cement and two parts sand. Plastering will not be permitted on exposed surfaces. Honeycombed and other structurally defective concrete shall be removed and replaced at no expense to the Owner. While the concrete is still green, the exposed surfaces shall be finished as required to provide a uniform texture and smooth surface.

252.3.05 Transverse expansion joints shall be constructed opposite abutting expansion joints, at each point of tangency, and at connections to existing curbs, driveways and walks. Additional transverse expansion joints shall be provided at other evenly spaced locations as required to confine the expansion joint spacing to a maximum of 15 feet or as shown on the plans. The width of joints and thickness of filler shall match those of the joints in abutting concrete; elsewhere the filler thickness shall be not less than 1/2 inch. Each expansion joint shall be at right angles to the alignment, vertical to the top surface, and shall provide complete separation of the concrete. The joint in the old concrete which abuts the new concrete shall be made with a saw cut as required in Section 205.

252.3.06 Curing - After the concrete has been placed and finished, it shall be cured by application of a white pigmented liquid membrane-forming compound applied uniformly to the damp concrete by pressure spray methods, or by keeping the concrete protected and moist, by approved methods, for at least 72 hours. The concrete shall be protected from contact, strain, and vehicular traffic for at least 7 days.

252.4 MEASUREMENT AND PAYMENT:

<u>252.4.01 Curbs</u> will be measured on a linear foot basis along the face of the curb, for each type of specified curb, including pedestrian and driveway ramps, catch basins aprons, inlets and other structures. Payment will be made at the contract price per linear foot and shall constitute full compensation for each different curb style in place including excavation and haul, aggregate, construction fabric, concrete, rebar, forming, finishing, jointing, curing, protection, and temporary ramping.

END OF SECTION 252

SECTION 257 – CONSTRUCTION FABRIC

257.1 DESCRIPTION:

This item includes all materials and work necessary for the placement of construction fabric required on a prepared subgrade at the locations shown on the plans.

257.2 MATERIALS:

<u>257.2.01</u> Construction fabric shall be ground stabilization fabric woven from monofilaments of isotactic polypropylene, Mirafi 500X, or approved equal. Fabric shall have the following properties:

Weight.......4 oz./sq.yd
Thickness.......25 mils
Grab Strength.......200 lbs.
Rapid Tear Strength..........25 lbs.
Burst Strength..........325 psi

257.3 CONSTRUCTION:

<u>257.3.01 No standing water</u> shall be present at the excavated subgrade when fabric is placed. Roll fabric onto the subgrade, keeping it as taut and free of wrinkles as possible using 8" min. fabric stakes. Overlap joints a minimum of 24 inches between sections of fabric.

<u>257.3.02</u> Aggregate base and fill should be placed on the fabric without any construction equipment operating on the uncovered fabric.

<u>257.3.03 Proofroll</u> the base or fill to tension the fabric and identify soft spots in the subgrade. If a soft spot is encountered, mound base rock into the subgrade at the soft area.

257.3.04 Construct base per specification Section 224 and contract drawings.

257.4 MEASUREMENT AND PAYMENT:

<u>257.4.01</u> Construction fabric will be measured and paid for on a square yard, in-place basis, for the actual gross area of fabric installed according to the design limits. Overlapping of the fabric will not be counted as additional area for payment. Payment will be at the unit contract price and shall constitute full compensation for supplying and placing the fabric.

END OF SECTION 257

SECTION 258 - PAVEMENT MARKINGS

258.1 DESCRIPTION:

This item includes all work necessary for furnishing, preparing, and installing all forms of striping and pavement markings.

258.2 MATERIALS:

258.2.01 Preformed thermoplastic pavement markings shall be PREMARK PLUS as supplied by Flint Trading Co., (Thomasville, North Carolina, tel. 336-475-6600, www.flinttrading.com) or approved equal. The pavement markings shall contain factory applied surface beads, 30% glass beads by weight, for high retro-reflectivity. The thermoplastic material shall conform to AASHTO designation M249-79 (98), with the exception of the relevant differences due to the material being supplied in a preformed state.

258.2.01A Graded Glass Beads - The material shall contain a minimum of thirty percent (30%) intermixed graded glass beads by weight. The intermixed beads shall be clear and transparent. Not more than twenty percent (20%) consists of irregular fused spheroids, or silica. The index of refraction shall not be less than 1.50. The material shall have factory applied coated surface

beads in addition to the intermixed beads at a rate of 1 lb. (± 10%) per 11 sq. ft. These factory applied coated surface beads shall have the following specifications:

- 1) Minimum 80% rounds
- 3) Minimum SiO2 Content of 70%;
- 2) Minimum refractive index of 1.5 4) Maximum iron content of 0.1%;

Size Gradation	% Retained
1400 μm (14 U.S. mesh)	0-3%
1180 μm (16 U.S. mesh)	2-10%
1000 μm (18 U.S. mesh)	10-30%
850 μm (20 U.S. mesh) 30-60%	
600 μm (30 U.S. mesh)	50-80%
500 μm (35 U.S. mesh)	60-85%
355 μm (45 U.S. mesh)	95-100%
250 μm (60 U.S. mesh)	98-100%

258.2.01B Pigments - White: Sufficient titanium dioxide pigment shall be used to ensure a color similar to Federal Highway White, Color No. 17886, as per federal Standard 595. Yellow: Sufficient yellow pigment shall be used to ensure a color similar to Federal Highway Yellow, Color No. 13655, as per Federal Standard 595. The yellow pigment shall be of an organic nature only and contain no lead chromate.

258.2.01C Heating Indicators - The top surface of the material (same side as the factory applied surface beads) shall have regularly spaced indents. These indents shall act as a visual cue during application that the material has reached a molten state so satisfactory adhesion and proper bead embedment has been achieved and a post-application visual cue that the installation procedures have been followed.

258.2.01D Skid Resistance - The surface, with properly applied and embedded surface beads, shall provide a minimum resistance value of 45 BPN when tested according to ASTM E-303.

258.2.01E Thickness - The material shall be supplied at a minimum thickness of 125 mils (3.15 mm).

258.2.01F Versatility - As an option, turn arrows and combination arrows may come without surface applied glass beads, thus facilitating the use of those arrows as either left or right indicators, thereby reducing inventory requirements.

258.2.01G Environmental Resistance - The material shall be resistant to deterioration due to exposure to sunlight, water, salt or adverse weather conditions and impervious to oil and gasoline.

258.2.01H Retroreflectivity - The material, when applied in accordance with manufacturer's guidelines, shall demonstrate a uniform level of sufficient nighttime retroreflection when tested in accordance to ASTM E1710-97. The applied material shall have an initial minimum intensity reading of 500 mcd·m⁻²·lx⁻¹ for white and 300 mcd·m⁻²·lx⁻¹ for yellow as measured with an LTL-2000 or LTL-X Retroreflectometer.

258.3 CONSTRUCTION:

258.3.01 General - Contractor shall install pavement marking in accordance with applicable requirements of Oregon Standard Specifications Subsection 0850.

<u>258.3.01A Prepare and Prime Pavement</u> - Remove contaminants from new AC surfaces that may adversely affect the installation of the pavement markings by sandblasting, shot-blasting, or sweeping. Air blast the pavement with a high-pressure system to remove extraneous or loose material. Apply materials to new asphalt concrete that is sufficiently cured according to the manufacturer's recommendations. After the pavement surface is clean and dry, apply primer as recommended by the manufacturer to the area receiving the pavement markings. Apply the primer in a continuous, solid film according to the recommendations of the primer manufacturer and the pavement markings manufacturer.

<u>258.3.01B</u> Protection – Protect all applied marking from traffic until sufficiently cured so as not to be damaged or tracked by traffic movements.

<u>258.3.02 Thermoplastic Pavement Markings, General</u> - The Engineer will be responsible for preliminary spotting of the lines and markings to be installed and approval of the Engineer must be obtained before thermoplastic pavement marking may begin. The area to be marked shall be dry, clean and free of loose particles. The Contractor shall ensure that no moisture is present on the surface.

258.3.03 Preformed Thermoplastic Pavement Markings shall be applied on asphalt using the propane torch method recommended by the manufacturer or using a method approved equal by the Engineer. The material shall be able to be applied at ambient and road temperatures down to 32°F without any preheating of the pavement to a specific temperature. The material shall be able to be applied without the use of a thermometer. The pavement shall be clean, dry and free of debris. The material supplier shall enclose application instructions with each box/package of the thermoplastic pavement markings.

258.4 MEASUREMENT AND PAYMENT:

<u>258.4.01 Thermoplastic Pavement Markings</u> – The quantities of stop bars will be measured and paid for a lineal foot basis for the quantity ordered and actually installed. Gaps between stripes will not be measured. Payment will be payment in full for furnishing and placing all materials, and for furnishing all equipment, labor, and incidentals necessary to complete the work as specified.

END OF SECTION 258

SECTION 261 – WATER PIPE AND FITTINGS

261.1 DESCRIPTION:

This item includes all work necessary for the installation of water pipe and fittings as shown on the plans for use in water distribution systems.

261.2 MATERIALS:

<u>261.2.01 General</u> - Materials and strength specifications shall be as hereinafter specified for the particular kind of pipe and fittings as shown on the plans. No pipe and fittings that are not hereinafter specified will be allowed on the project. All water system materials shall be NSF approved for use in domestic water supply systems.

261.2.02 Water Main Pipe:

261.2.02A Polyvinyl Chloride (PVC) pipe shall conform to the requirements of AWWA C900/C905. Pipe shall have integral bell and spigot joints conforming to the requirements of ASTM D3139. The pressure class shall be Class 305, DR14. Ductile iron fittings shall be used with PVC pipe.

<u>261.2.03</u> Water main pipe fittings shall be of a class and rating at least equal to the adjacent pipe unless specified otherwise. Joint materials shall be compatible with the adjacent pipe. All fittings shall be cast or ductile iron. Mechanical joint and push-on joint type coupling shall conform to ANSI A21.10 and A21.11 (AWWA C153), cement lined and seal coated according to ANSI A21.4 (AWWA C104). Other types of joints shall conform to FS WWP-421 b, Type II for push-on joints. Flanged couplings shall be drilled and faced in accordance with ANSI B-16.1 or B-16.2. Rubber gasket type shall be U.S. Pipe, Tyton or approved equal. Cast iron fittings for use with FS Type II and Type III cast iron water pipe shall conform to the same specifications except that joints shall be mechanical type and include cast iron glands, plain rubber gaskets and T-head cast iron bolts and nuts per ANSI A21.11 or an approved compression type with rubber gasket.

261.2.04 Valves:

<u>261.2.04A Gate valves</u>, three inches and larger in diameter, up to 8 inches in diameter, shall conform to the requirements of AWWA C500 as to composition and quality of material and workmanship and shall be NSF approved. Valves shall be iron body, bronze mounted, resilient wedge type, with triple O-ring seals, non-rising stem, and 2-inch square operating nut. Gate valves shall be Clow, Dresser M and H, or Mueller. Valve ends shall be mechanical joint, flanged joint, or push-on joint, or a combination of the foregoing as called for in the plans.

<u>261.2.04B Gate Valves</u> - Two inches and smaller in diameter shall be NRS with operating hand wheel, screw ended, and have a rated working pressure not less than 150 p.s.i. The valves shall conform to the requirements of FS WWB 54B, Class A, Type 1.

<u>261.2.05 Valve Boxes</u> –Cast iron valve boxes shall be furnished with all valves 3 inches and larger, "Vancouver" style, Olympic Foundry Model 910, with notches to indicate water main alignment. Extensions shall be used as required for varying installation conditions and shall be a single piece of PVC sewer pipe, ASTM D-3034. Valve box covers shall be marked "W". All valve boxes shall be equipped with a valve box base Model VC212 by 3DC or approved equal.

261.2.06 Flanged coupling adapters shall be by Uniflange Corp., Series 900-C, or approved equal.

261.2.07 Pipe Restraint fittings shall be "GripRing" by Romac Industries, Inc. or approved equal.

261.2.08 Water Service Assemblies:

<u>261.2.08A Tubing</u> shall be Crosslinked Polyethylene (PEXa) "REHAU-MUNICIPEX" water service tubing conforming to ASTM F876 and NSF/ANSI Standard 14 and 61 (NSF-pw-g), minimum 200 p.s.i. Pipe shall be certified to AWWA C 904 Cross-linked Polyethylene (PEX) Pressure Pipe and certified to standards ASTM F876, CSA B137.5, NSF 14, NSF 61 and PPI TR-4, by approved testing agencies, with a standard materials designation code of 3306. Pipe shall have the minimum markings: PEXa 3306, CSA B137.5, ASTM F876, F2023 and F2080, NSF-pw.

All compression joints shall use stainless steel insert stiffeners.

- <u>261.2.08B Service saddles</u> shall be nylon coated, ductile iron saddles with single stainless steel strap, Romac Style 101NS.
- <u>261.2.08C Corporation stops</u> for waterlines with service saddles or tees shall be type Mueller type B2502810N with AWWA IPT inlet and CTS Mueller 110 Conductive Compression Connection for water service tubing outlet.
- <u>261.2.08D Angle meter stops</u> shall be Mueller type P24258N, CTS 110 x Meter Swivel Nut, for PE water service tubing inlet on services up to 2 inches.
- <u>261.2.08E Meter boxes</u> New meter boxes will be furnished by the City and installed to finished grade by the Contractor.
- <u>261.2.08F Water meters</u> will be supplied and installed by the City.
- <u>261.2.08G Water service fittings</u> on the customer side of the meter will be supplied and installed by the City.
- <u>261.2.08H Casing</u> shall be Schedule 40 PVC, pushed under the existing pavement and shoulders of Sunset Lane, sized to allow for the tubing to be installed inside of the PVC casing.
- <u>261.2.09 Fire hydrants</u> shall: Be suitable for general waterworks service, Have dry barrel, post type with compression main valve closing with the inlet pressure, Have a Replaceable Stem Coupling and a replaceable Traffic Flange at the ground line to prevent or minimize traffic damage, Comply with AWWA Standard C502, Be UL listed and FM approved, and Be Certified to ANSI/NSF 61/372.

Each hydrant shall be equipped with two $2\ 1/2$ inch hose nozzles and one $4\ 1/2$ inch threaded pumper nozzle. Main valve shall be $5\ 1/2$ inch compression type with a 6 inch inlet and counter clockwise opening. Hydrants shall be furnished with factory lubricate, 0-ring sealed bonnet, safety flange construction, allowing for 360° rotation of nozzle section on stem. Hydrant assemblies shall include main line tees and connecting pieces with integrally cast joint restraint, Tyler mechanical joint swivel fittings, or approved equal. Hydrants shall be Mueller Super Centurion 250 Fire Hydrants. Hydrant shall be Shop Coated with high performance 2-part Epoxy.

- 261.2.10 Tracer wire shall be #12 multi stranded copper wire with blue colored insulation.
- <u>261.2.11 Thrust blocks</u> shall be constructed of Portland cement concrete conforming to the requirements of ASTM C94. Compressive field strength shall be not less than 2,000 p.s.i. at 28 days. Maximum size of aggregate shall be $1\frac{1}{2}$ inches.
- 261.2.12 Air Release Valves shall be A.R.I. Model S-50 or approved equal.

261.3 CONSTRUCTION:

<u>261.3.01</u> Alignment and <u>Grade</u> - All pipe shall be laid to the required lines and grades. Fittings and valves shall be at the required locations with joints centered, spigots home, and valve and hydrant stems plumb. Temporary support, adequate protection and maintenance of all underground and surface utility structures, drains, sewers, or other obstructions encountered in the process of the work shall be furnished by the Contractor at no expense to the Owner. Where the grade or alignment of the pipe is obstructed by existing utility structures such as conduits, ducts, pipes, branch connections, the obstructions shall be permanently supported, relocated, removed or reconstructed by the Contractor in full cooperation with the Owners of such utility structures, or the new water pipe shall be

laid to an alignment and/or grade to miss the obstruction. No deviation shall be made from the required line or grade except with the written consent of the Engineer.

<u>261.3.02 Depth of Trench</u> - Water mains shall have a minimum cover of 30" from finish grade to top of pipe. Water service lines shall have a minimum cover of 24 inches below finish grade. The Contractor shall increase the depth of cover on all new water mains as needed with additional trench depth and vertical bends in order to avoid conflicts with the existing water main and with the new storm drainage pipes.

<u>261.3.03 Curvature</u> - PVC pipe may be laid on horizontal and vertical curves so long as the radius is no less than the following values:

```
10" pipe - 500 ft. radius (4-1/2" offset per 20' length)
8" pipe - 400 ft. radius (6" offset per 20' length)
6" pipe - 300 ft. radius (8" offset per 20' length)
4" pipe - 200 ft. radius (12" offset per 20' length)
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Where the design alignment and grade call for greater curvature, appropriate angle fittings shall be used. Water service tubing may be laid on horizontal and vertical curves with a minimum radius of 1 foot.

<u>261.3.04 Pipe Distribution and Handling</u> - The Contractor shall not distribute material on the job faster than it can be used to good advantage. The Contractor shall unload pipe only by approved means. Pipe will not be unloaded by dropping to the ground. The Contractor shall inspect all pipe and fittings prior to lowering into trench to insure no cracked, broken, or otherwise defective materials are used. The Contractor shall clean ends of pipe thoroughly and remove foreign matter and dirt from inside of pipe and keep it clean during laying and joining. The Contractor shall use approved implements, tools, and facilities for the safe and proper protection of the work. The Contractor shall lower pipe into the trench in such a manner as to avoid any physical damage to the pipe. The Contractor shall remove all damaged pipe from the job site. Pipe shall not be dropped or dumped into trenches.

<u>261.3.05 Installation</u> - Trench excavation, bedding and backfill shall be in accordance with Section 221.

<u>261.3.05A Push-on Joints</u> - After a section of pipe has been lowered into the prepared trench, wipe clean the gasket and gasket seat inside the bell with a cloth. Place the gasket in the bell with the large round side of the gasket first. Apply a thin film of lubricant to the inside surface of the gasket. Using a cloth, wipe clean the plain end of the next pipe and insert into the bell just far enough to make contact with the gasket. Force "home" the plain end into the bell end by the use of a bar, fork tool or jack assembly. Align pipe for position and tamp into place.

<u>261.3.05B Mechanical Joints</u> - Before laying all pipe, valves, or fittings, remove all lumps, blisters, and excess coal-tar coating from the bell ends. Wire brush and wipe clean the inside of the bell and the outside of the spigot to remove all loose rust and foreign material just prior to assembly. Swab the cleaned surfaces with soapy water just prior to slipping the gasket over the spigot end. Accurately center the spigot end in the bell before inserting the gasket. After the gasket is in place, assembly the gland and bell end with bolts by alternately tightening the bolts around the bell end maintaining approximately equal tension until the final tension is reached.

<u>261.3.06 Pipe Restraint</u> - The Contractor shall provide restrained joints at all tees, caps, plugs, and bends for the lengths shown on the plans adjoining such fittings. Joint restraint shall be mechanical

joint with retainer glands, or push-on with approved locking gasket, U.S. Pipe Tyt-Lok, or approved equal. All joint restraint method shall be submitted to the Engineer for review prior to such use.

- <u>261.3.07 Pipe cutting</u> shall be accomplished using proper pipe cutting tools designed specifically for that purpose. Cuts shall be made in accordance with the pipe manufacturer's recommendations.
- <u>261.3.08 Tracer wire</u> shall be installed adjacent to PVC pipe and wrapped around service tubing in continuous lengths. Joints or splices in tracer wire shall be waterproof with approved grease nuts. Ends of wire shall be accessible in all valve boxes and meter boxes.
- <u>261.3.09</u> Fire hydrants shall be installed as shown on the plans and in accordance with the hydrant manufacturer's recommendations. Install hydrant with proper depth of bury or use extension for height adjustment such that hydrant traffic flange shall be located above grade as shown on the plans. Hydrants shall be set true and plumb. Hydrants shall be repainted to the satisfaction of the Engineer should the paint be scratched, chipped, faded or discolored.
- <u>261.3.10 New Water Services</u> The Contractor shall furnish and install new water services either to the existing meter box location or to the new meter box location, as shown on the plans and as staked by the Engineer. All water services shall be installed with service saddle, corporation stop, water serviced tubing and angle meter prior to all testing and disinfection. Connections between the new main and the new water services shall be made with approved type fittings. All connections shall be inspected by the inspector prior to covering with backfill.
- <u>261.3.11 Reconnecting Existing Water Services</u> The Contractor shall furnish and install all water services either to the existing meter box location or to the new meter box location, as shown on the plans and staked by the Engineer. All water services shall be installed with service saddle, corporation stop, water serviced tubing and angle meter prior to all testing and disinfection. Connections between the new main and the new water services shall be made with approved type fittings. All connections shall be inspected by the inspector prior to covering with backfill.

Following successful testing and disinfection of all mains and services in each section of the project, the City Water Department Staff will disconnect, replace, and reconnect existing water services between the customer and the new water service angle meter stop.

- <u>261.3.12 Water Service Interruptions</u> The Contractor shall coordinate all service interruptions of the occupants of the affected properties with the City Water Department Staff. Service interruptions shall be for as short a time period as possible and the Contractor shall be responsible for arranging for alternative service of the affected property as required.
- <u>261.3.13 Valve Boxes</u> Install valve boxes with PVC pipe as extensions. The Contractor shall compact all backfill materials and surface restoration layers around all valve boxes with mechanical vibrators or impact tampers. Adjust final grade of all valve boxes to be maximum 1/8-inch above asphalt finish grade, minimum flush with finish grade. Valve boxes set into depressions of finish grade will not be acceptable. Valve boxes shall be installed within diamond shape concrete collars as shown on the construction plans. The Contractor shall remove and reset any valve boxes that are set into depressions of asphalt finish grade.

261.4 TESTING:

<u>261.4.01 General</u> - A pressure test and a leakage test shall be made by the Contractor of every section of water main after the completion of the final trench backfill. All connections to existing mains shall be left uncovered for a period of 4 hours after normal operating pressure is applied,

after which time the inspector shall inspect all such connections and joints, and any leaks which appear shall be repaired.

261.4.02 Pressure Test:

<u>261.4.02A Pre-test</u> - After each valved section of pipe has been laid and partially backfilled, the Contractor shall perform a hydrostatic pressure test as outlined below. The maximum length for testing shall be confined to each block of the project (the project is divided into four blocks). The results shall be given to the Engineer prior to complete backfill of the pipe. If the test indicates materials or workmanship that does not meet design requirements, defective material and/or workmanship shall be corrected and the test re-run until specifications are fulfilled.

261.4.02B Pressure Test of Completed Waterline - All mains, hydrants and fittings shall be subjected to a pressure test in the presence of the inspector after all pre-testing has been completed. All water services shall be installed with service saddle, corporation stop, water serviced tubing and angle meter prior to all testing and disinfection. A separate test shall be made on each section of the project whenever any section of the work is installed in such a manner as to permit its segregation as a unit. The maximum length for testing shall be confined to each block of the project (the project is divided into four blocks). Each section of pipe shall be completely filled with water and care shall be taken to insure that all air is expelled from the pipe line. The specified test pressure shall be applied by means of a pump connected to the main through a corporation stop and service tubing. The test pressure, measured at the point of lowest elevation, shall be 150% of the working pressure at that point. The test pressure shall be held for two hours during which time, all exposed pipe, fittings, valves and couplings will be carefully examined for leaks. The portion of main being tested shall be considered "acceptable" for the purposes of this test if the pressure does not decrease more than 5 p.s.i. in 1 hour. All leaks shall be repaired. The test shall be repeated until satisfactory.

<u>261.4.03 Leakage Test</u> - A leakage test shall be conducted after the pressure test has been satisfactorily completed and shall consist of an examination of all exposed joints for leakage as well as overall leakage test of the completed section of pipe. The pressure to be maintained during the test shall be the same as for the pressure test and shall be measured at the low point of the system. The same procedure for filling the line and expelling air shall be used as for the pressure test. The duration of each leakage test shall be 1 hour. Any joint found where accumulated leakage of the joint exceeds the rate of leakage specified by the manufacturer of the pipe shall be rejected. The overall permissible leakage for the section of pipe tested shall not be greater than the number of gallons per hour as determined by the formula in which:

SD √P	L=	Allowable leakage, in gallons per hour
L = 133,200	S=	Total length of pipe tested, in feet
	D=	Nominal diameter of the pipe, in inches
	P=	Average test pressure during the leakage test, in pounds per square inch (gauge)

Should any test of a section of pipe line disclose joint leakage greater than that permitted, the Contractor shall, at no expense to the Owner, locate and repair the defective joints until the leakage is within the permitted allowance.

<u>261.4.04 Testing of Service Lines</u> - Corporation stops, service lines, and angle meter stops shall be installed prior to the above described tests. Water service reconnections shall be tested up to the angle meter stop. Reconnected portions of water services beyond the last valve will be accomplished by the City Water Department Staff, and shall be approved by the inspector prior to covering, and any leaks which appear beyond the last valve will be repaired by the Owner. Any leaks which appear in front of the last valve shall be repaired by the Contractor. Water service connections for future use shall be tested up to the last valve.

<u>261.4.05 Disinfection and Flushing</u> - Upon completion of the testing, water mains shall be disinfected in accordance with AWWA C651 and the latest Oregon State Health Division regulations. After disinfection, the chlorinated water shall be flushed from the water main until the replacement water tests are equal chemically and bacteriologically to those of the permanent source of supply. The chlorinated water shall be disposed of in a manner approved by the Oregon State Health Division and the Oregon State DEQ. The chlorinated water shall be discharged into the sanitary sewer system only after the written permission of the sewer system Owner is obtained by the Contractor. At the option of the Contractor, and if the chlorinated water is not discharged into the sanitary sewer system, the Contractor shall neutralize the chlorinated water with a chemical neutralizing agent prior to discharging the chlorinated water.

261.5 MEASUREMENT AND PAYMENT:

<u>261.5.01</u> Water Main Pipe - Measurement for pipe will be made on a linear foot basis for the various classes, types, and size of pipe listed and installed. No reduction in length will be made for valves and fittings. Where pipe is laid on a continuous slope greater than 10% for a distance greater than 100 feet, measurement will be made upon the average slope distance between 100 foot stations. Payment will be at the contract price per linear foot and shall constitute full compensation for the pipe in place, including excavation, bedding, mechanical restraints, thrust blocking, anchorage, backfill, testing and disinfection.

<u>261.5.02 Valves</u> - Measurement and payment for water main valves will be made at the contract price for each valve installed. Payment will be made at the contract price and shall constitute full compensation for the valve in place including valves, mechanical restraint, thrust blocking, valve boxes, concrete, reinforcement and lids as specified in the Bid schedule or as shown on the construction drawings. Hydrant valves will be paid for as a part of the fire hydrant assembly contract price. Valves included in the separate item marked "Connections" are not included for payment in this item.

<u>261.5.03</u> Fire Hydrant Assemblies - Measurement and payment for fire hydrant assemblies will be made at the contract price for each hydrant installed. Payment will be made at the contract price and shall constitute full compensation for the entire hydrant assembly in place, including hydrant valve, valve box and lid, pipe connecting the hydrant to the main, anchorage, restraints, blocks, tracer wire, gravel and painting.

<u>261.5.04</u> Water Service Pipe and Assemblies - Measurement and payment for water service pipe and water service assemblies will be made on a per each basis at the contract price for each water service assembly installed. Water service fittings include the service saddle, water service pipe, corporation stop, angle meter stop, tracer wire and City provided meter box. Payment will be at the contract price per each water service assembly and shall constitute full compensation for the water

service pipe and assembly in place including testing, disinfection, excavation, bedding, backfill, connections and fittings to existing water services.

<u>261.5.05</u> Water Main Fittings - Measurement and payment for water main fittings will be made at the contract price for each fitting installed. Payment will be made at the contract price and shall constitute full compensation for the fitting in place, including thrust blocks or other mechanical joint restraint. Water service fittings including service saddle, corporation stop, angle meter stop and meter box and are not included in this payment item. Where individual fittings are not shown on the Bid schedule, those fittings will be considered incidental to the water main pipe construction and no separate payment will be made for incidental fittings. Fittings included in the separate item marked "Connections" are not included for payment in this item.

<u>261.5.06 Connections</u> - Measurement and payment for water main connections will be made at the contract price for the entire connection installed along with any temporary thrust blocking, valving or connections needed to maintain water service and as delineated in the WSP, Demolition and Utility Plans of the contract drawings. Payment will be made at the contract price and shall constitute full compensation for the complete connection in place.

<u>261.5.07 Air Release Assemblies</u> - Measurement and payment for air release assemblies will be made at the contract price for each assembly installed. Payment will be made at the contract unit price and shall constitute full compensation for the entire assembly in place including service saddle, meter box, corporation stop, service tubing, angle meter stop, air release valve, drain pipe and necessary support.

END OF SECTION 261

SECTION 265 – PVC CATCH BASINS

265.1 DESCRIPTION:

This item includes all work necessary for the installation of PVC catch basins.

265.2 MATERIALS:

265.2.01 PVC Catch Basins:

<u>265.2.01A PVC Catch Basins</u> shall be pre-fabricated basins, 18" diameter, manufactured by Nyloplast America Inc., or approved equal. Height of a basin shall be as shown on the plans.

<u>265.2.01B Lids</u> shall be standard cast iron lids supplied by the same company as the basins, designed for the basin size used. Catch basins and grates shall have an H-20 traffic rating and shall be set in concrete as recommended by the manufacturer. Catch basins shall be furnished with bicycle safe slotted grates.

<u>265.2.01C Pipe Connections</u> shall be fabricated in the catch basin at the factory. Any pipe adapters used shall be manufactured by the same company for the specific catch basin and pipe to be used. All connections shall be gasketed and specified as "water-tight".

<u>265.2.01D</u> Future Pipe Stubs shall be furnished and installed as specified on the construction plans.

265.2.01E Concrete shall be as specified in Section 330.

265.3 CONSTRUCTION:

265.3.01 Excavation and backfill shall be in accordance with applicable portions of Section 266.

<u>265.3.02 Pipe connections</u> at catch basins shall be made according to manufacturer's recommendations. Special care shall be taken by the Contractor to see that the pipe connections at catch basins are completely watertight. All pipes entering or leaving the catch basin shall be placed on firmly compacted bedding material.

<u>265.3.03 Catch Basins</u> shall be installed according to the plans. The units shall be placed on a prepared bedding of 8 inches compacted thickness of 3/4 inch-minus crushed rock. Catch basins shall be installed using conventional flexible pipe backfill materials and procedures. The backfill material shall be 3/4 inch-minus crushed rock. Construct an 8" to 10" thick ring of concrete under the frame, grate and hood of the catch basin as recommended by details provided by the manufacturer.

<u>265.3.03 Catch basins, grates, frames and covers</u> shall be installed level and plumb, at the elevation shown on the plans, in accordance with the manufacturer's recommendation. The catch basin body shall be cut at the time of final grade so as to maintain a one piece, leak proof structure. No brick, stone or concrete block shall be used to set the frame, grate and hood to the final grade.

265.4 MEASUREMENT AND PAYMENT:

<u>265.4.01 PVC Catch Basins</u> - Measurement and payment for PVC basins will be made at the contract price for each type of PVC catch basin installed. Payment will be made at the contract price and shall constitute full compensation for the basin in place, including lid, concrete apron, excavation, bedding, fittings, pipe connections and backfill.

END OF SECTION 265

SECTION 266 – STORM DRAINAGE PIPE AND FITTINGS

266.1 DESCRIPTION:

This item includes all work necessary for the construction of surface and subsurface storm drainage piping and facilities including storm drainage piping and culverts.

266.2 MATERIALS:

<u>266.2.01 General</u> - Storm drainage pipe and fittings shall be as hereinafter specified for the particular kind of pipe and fittings required, as designated on the plans. Joints for all fittings shall be the same as the joints used on the pipe. No pipe and fittings that are not hereinafter specified will be allowed on the project, and no substitution of approved pipe materials will be allowed other than the pipe materials shown on the plans.

266.2.02 Storm Drainage Pipe:

266.2.02A Corrugated High Density Polyethylene Smooth Interior (HDPE) pipe and fittings shall be ADS SaniTite HP pipe for use in gravity flow sanitary sewer applications. Dual wall pipe shall conform to the requirements of ASTM F2736. Pipe shall be joined with a gasketed integral bell & spigot joint meeting the requirements of ASTM F2736 and ASTM F2764, for the respective diameters. Pipe shall be watertight according to the requirements of ASTM D3212, with the addition of a 15psi pressure requirement. Spigot shall have two gaskets meeting the requirements of ASTM F477. Gaskets shall be installed by the pipe manufacturer and covered with a

removable, protective wrap to ensure the gaskets are free from debris. A joint lubricant available from the manufacturer shall be used on the gasket and bell during assembly. Pipe shall have a reinforced bell with a polymer composite band installed by the manufacturer.

266.2.02C Joint Materials, Couplings and Fittings shall conform to ASTM F2736, ASTM F2764, and AASHTO M330, for the respective diameters. Bell & spigot connections shall utilize a welded or integral bell and spigot with gaskets meeting ASTM F477. Fittings and connections shall provide a watertight connection according to the requirements of ASTM D3212.

<u>266.2.03 Drain rock</u> for shall be railroad ballast rock which shall consist of uniformly graded 2 inches to 3 inches, rough edged aggregate. At the option of the Contractor, rounded river rock, washed to remove all fines, with a maximum size of 3 inches, may be substituted for railroad ballast rock as drain rock.

266.2.04 Pipe bedding material, select pipe bedding material, initial backfill material, and trench backfill material shall be as specified in Section 221.

266.3 CONSTRUCTION:

<u>266.3.01 Trench excavation, bedding and backfill for storm drainage piping</u> shall be as specified in Subsection 221.1.

266.3.02 Pipe bedding consists of leveling the bottom of the trench and placing bedding material to the depth as specified on the plans. Bedding material shall be as specified hereinbefore. The Contractor shall spread the bedding smoothly to proper grade so that the pipe is uniformly supported along the barrel. Bedding under the pipe shall provide a firm, unyielding support along the entire pipe length. The Contractor shall place subsequent lifts of not more than 6 inches in thickness up to the required depth, bring lifts up together on both sides of the pipe and carefully work under the pipe haunches by slicing with a shovel, tamping or other approved procedure. Particular attention must be given to the area from the flow line to the horizontal centerline of the pipe or top of bedding to insure that firm support is obtained to prevent any lateral movement of the pipe during the final backfilling of the pipe zone. Pipe bedding shall be placed the full width of the trench.

<u>266.3.03 Initial Backfill</u> - The Contractor shall place the specified initial backfill material carefully around the pipe in 6 inch layers and thoroughly hand tamp with approved tamping sticks supplemented by "Walking In" and slicing with a shovel. The Contractor shall prevent pipe from movement either horizontally or vertically during placement and compaction of pipe zone material. Mechanical compactors shall not be utilized in placement of the material. The material shall be placed to a depth of 12 inches above the top of the pipe.

266.3.04 Trench backfill shall be as specified in Subsection 221.3.06.

<u>266.3.05 HDPE</u> and <u>CPE Joint Construction</u> - Joints shall be made with an integral built-in bell and factory installed gasket that requires no extra couplers, grout or other sealants to install. Installation shall be in accordance with ASTM Recommended Practice D2321, or as directed by the Engineer.

<u>266.3.06 Line and Grade</u> - Survey line and grade control hubs will be provided by the Engineer on an offset line at intervals not greater than 100 feet when the Contractor uses a laser beam for pipe alignment, and at intervals not greater than 40 feet for other methods of pipe alignment. The Engineer will furnish the Contractor with the elevation of the hubs and the corresponding storm invert elevation at such hubs. Should the Contractor's operations cause or allow removal of stakes or hubs, their replacement shall be at the expense of the Contractor. Variance from established line and

grade shall not be greater than $\frac{1}{2}$ inch for line and $\frac{1}{4}$ inch for grade, provided that such variation does not result in a level or reverse sloping invert. The Contractor shall establish line and grade for pipe by the use of lasers or by transferring the cut from the offset hubs to the trench at whatever intervals necessary to maintain the line and grade. The method of transferring the cut from the offset hubs to the trench shall be subject to the approval of the Engineer. A transfer method not approved by the Engineer shall not be used. The Contractor shall constantly check both line and grade for each length of pipe laid and in the event they do not meet the limits described, the work shall be immediately stopped, the Engineer notified, and the cause remedied before proceeding with the work. When using laser alignment the Contractor shall check beam alignment at 100 foot intervals.

266.3.07 Pipe Distribution and Handling - The Contractor shall not distribute material on the job faster than it can be used to good advantage. The Contractor shall unload pipe only by approved means. Pipe will not be unloaded by dropping to the ground. The Contractor shall inspect all pipe and fittings prior to lowering into trench to insure no cracked, broken, or otherwise defective materials are used. The Contractor shall clean ends of pipe thoroughly and remove foreign matter and dirt from inside of pipe and keep it clean during laying and joining. The Contractor shall use approved implements, tools, and facilities for the safe and proper protection of the work. The Contractor shall lower pipe into the trench in such a manner as to avoid any physical damage to the pipe. The Contractor shall remove all damaged pipe from the job site. Pipe shall not be dropped or dumped into trenches.

<u>266.3.08 Laying Pipe on Curves</u> - The Contractor shall lay pipe on horizontal or vertical curves only when approved and at the direction of the Engineer.

<u>266.3.09 Installation of Service Tees and Wyes</u> - Fittings shall be placed where indicated on the plans or as staked by the Engineer, or as required by existing services. The Contractor shall provide ends of all inactive service laterals and fittings with approved watertight plugs, caps, or stopper, suitably braced to prevent blow off during internal hydrostatic or air testing. Such plugs or caps shall be removable and their removal shall provide a socket suitable for making a flexible joint lateral connection or extension. If any fitting is placed when the Engineer is not present, the Contractor shall place a stake and see that it is maintained to mark the location of such fitting until the Engineer has recorded the location of the fitting.

<u>266.3.10 Pipe Placing and Laying</u> - Trench excavation, bedding and backfill shall be in accordance with Section 221.

266.3.10A HDPE pipe shall be laid upgrade with spigot ends in the direction of flow. After a section of pipe has been lowered into the prepared trench, the end of the pipe to be joined will be cleaned as will the inside of the joint and the rubber ring, immediately before joining the pipe. The joint will be assembled in accordance with the recommendations of the manufacturer of the type of joint used. All special tools and appurtenances required for the jointing assembly will be provided by the Contractor. The trench bottom shall form a continuous and uniform bearing and support for the pipe at every point between joints. Sufficient pressure will be applied in making the joint to assure that the joint is "home", as defined in the standard installation instructions provided by the pipe manufacturer. Sufficient bedding material will be placed to secure the pipe from movement before the next joint is installed to assure proper pipe alignment and joint make-up. After the joint has been made, the pipe will be checked for alignment and grade. When in correct alignment and grade, the pipe shall be supported by placing the specified initial backfill material as described in Section 221.

When the pipe is laid within a movable trench shield, all necessary precautions will be taken to prevent pipe joints from pulling apart when the shield is moved ahead. The Contractor shall take the necessary precautions required to prevent excavated or other foreign material from getting

into the pipe during the laying operation. At all times, when laying operations are not in progress, at the close of the day's work, or whenever the workers are absent from the job, the open end of the last laid Section of pipe will be closed and blocked to prevent entry of foreign material or creep of the gasketed joints.

The Contractor shall plug or close off pipes which are stubbed off for manhole construction or for connection by others, with temporary plugs. The Contractor shall take all precautions necessary to prevent the uplift or floating of the line prior to the completion of the backfilling operation. When cutting and/or machining of the pipe is necessary, the Contractor shall use only the tools and methods recommended by the pipe manufacturer. The Contractor shall join the pipe in conformance with the manufacturer's recommendations. Joints or pipe will not be deflected more than recommended by the manufacturer.

266.4 TESTING:

266.4.01 Cleaning Prior to Test - Prior to the internal pressure testing and inspection of the system by the Engineer, the Contractor shall flush and clean all parts of the system. The Contractor shall remove all accumulated construction debris, rocks, gravel, sand, silt and other foreign material from the system at or near the closest downstream manhole. If necessary, the Contractor shall use mechanical rodding or bucketing equipment. Upon the Engineer's inspection of the system, if any foreign matter is still present, the Sections and portions of the system shall be reflushed and cleaned as required.

<u>266.4.02 Television Inspection of Storm Sewers</u> - Upon completion of all storm sewer construction, testing and repairs, the Contractor shall conduct a color TV acceptance inspection of all installed lines 8 inches to 72 inches. Unless otherwise directed, the Contractor shall conduct a subsequent warranty TV inspection of all installed lines. Warranty TV inspections shall be in color and shall be conducted during the warranty period in a season of high ground water conditions as defined by the Engineer. The acceptance inspection and the warranty inspection shall be conducted by an approved technical service which is equipped to make audio-visual tape recordings of the televised inspections.

The audio-visual recordings shall be compatible with the Owner's playback equipment. The Contractor shall ensure that recording equipment is functioning properly and that a clear and usable record is made of all possible defects. The equipment used for recording shall be equipped with a footage meter which records a visual record on the tape. A voice accounting of suspected deficiencies shall be made on the sound track.

A written report shall be made at the time of each television inspection. This report shall be made on a form approved by the Engineer. The video record and the written report of the acceptance inspection and the warranty inspection shall be submitted to the Engineer and will become the property of the Owner.

The audio and visual reports of the acceptance inspection and the warranty inspection shall include identification of individual groundwater infiltration sources such as laterals, and construction defects.

266.5 MEASUREMENT AND PAYMENT:

<u>266.5.01 Storm drainage pipe</u> will be measured on a linear foot basis for the various sizes and types of pipe installed as shown on the plans. Measurement will be the pipe length along the centerline from end to end of each pipe. Payment will be made at the contract price per linear foot for the various sizes of pipe installed and shall constitute full compensation for all work and materials specified herein, including trenching, pipe laying, backfill, tracer wire and testing.

266.5.02 Storm drainage tees, bends and fittings will be measured on a per each basis for each of the various fittings installed as shown on the plans, and as listed on the Bid schedule. Where individual fittings are not shown on the Bid schedule, those fittings will be considered incidental to the storm drainage pipe construction and no separate payment will be made for incidental fittings. Payment for tee and bend fittings will be in addition to payment for pipe from end to end of each pipe or from main to catch basin. Where shown on the Bid schedule, payment will be made at the contract price per each tee and bend for the various types and sizes of fittings installed and shall constitute full compensation for all work and materials specified herein, including trenching, installation of the fittings, jointing, backfill and end of main concrete blocks.

<u>266.5.03 Storm Drainage Connections</u> - Measurement and payment for storm pipe connections will be made at the contract price for the entire connection installed along with any temporary connections and pumping needed to maintain storm flow as delineated on the contract drawings. Payment will be made at the contract price and shall constitute full compensation for the complete connection in place, including all materials, piping, tees, inserta-tee or fittings required to make a water-tight connection to the existing storm system.

END OF SECTION 266

SECTION 269 – STORM DRAINAGE MANHOLES

269.1 DESCRIPTION:

This item includes all work necessary for the construction of storm drainage manholes and storm drainage vaults.

<u>269.1.01 Related Technical Specifications</u> - The Oregon Standard Specifications, current edition, is incorporated into this specification by reference. It shall be understood that in any matter addressed by both the text of this technical specification and the referenced specification, be it in construction method, material, or quality control, the more stringent specification is intended and shall be enforced.

269.2 MATERIALS:

269.2.01 Cast-in-Place Storm Drainage Manholes:

 $\underline{269.2.01A}$ Aggregates shall be of the designated size 3/4 inch-0 and shall meet the requirements of Oregon Standard Specifications Subsection 2630.

<u>269.2.01B Portland Cement and Portland Cement Concrete (PCC)</u> shall conform to the requirements of ASTM C94. Compressive field strength shall be not less than 3,000 p.s.i. at 28 days. Maximum size of aggregate shall be 3/4 inch. Slump shall be between 2 inches to 4 inches.

<u>269.2.01C Metal Reinforcement</u> shall conform to the requirements of ASTM A 615, Grade 60, deformed bars.

<u>269.2.01D Forms</u> - Exterior surfaces shall be formed with steel or plywood. Other surfaces shall be formed with matched boards, plywood, or other approved material. Trench walls, rock, or earth will not be acceptable form material.

269.2.02 Metal Castings:

<u>269.2.02A General</u> - Manhole covers shall be designed so they may be secured to the frames. Matching surfaces of covers and frames shall be flat to prevent any movement of covers within frames. Covers and frames shall be interchangeable.

<u>269.2.02B Cast Iron Materials</u> shall conform to the requirements of ASTM A 48. Class 30B. The foundry shall certify as to the tensile and transverse properties and Brinell Hardness. The Owner reserves the right to require a rough transverse bar, size of bar 1.2" (diameter) x 20" (long), and/or a tensile bar as per ASTM A 48 for each 20 castings or heat when less than 20 castings are made.

<u>269.2.02C Storm Drainage Manhole Frames and Covers</u> shall be of heavy duty design with minimum weight of 295 pounds. Frames and covers shall be machine finished or ground on seating surfaces to assure a non-rocking fit in any position and interchangeability. Covers shall be marked with "STORM" or "S" in minimum 2 inch raised or indented letters, and shall have 1 or 2 vent holes only. Frames shall provide for a minimum 23 inch diameter clear opening.

269.2.02D Clean out frames and covers shall have a minimum weight of 80 pounds.

<u>269.2.03 Cap Screws and Washers</u> for watertight manhole covers shall be stainless steel with 60,000 p.s.i. minimum tensile strength conforming to the requirements of ASTM A453.

269.2.04 Precast Concrete Storm Drainage Manholes:

269.2.04A Precast Concrete Manhole Sections and appurtenances shall conform to the requirements of ASTM C478. Minimum wall thickness shall be 4 inches. Cones shall have the same wall thickness and reinforcement as riser sections. Cones shall be eccentric. Joints shall be tongue-and-groove or keylock type. Prior to delivery of precast manhole sections to the job site, yard permeability tests may be required at the point of manufacture. The precast sections to be tested will be selected at random from the stockpiled material which is to be supplied to the project. All test specimens will be mat tested, and shall meet the permeability test requirements of ASTM C 14. Precast manhole sections shall consist of circular sections in standard nominal inside diameters of 42, 48, 54, 60, 72, 84, or 96 inches. Heights of sections shall be multiples of 12 inches. Heights of manhole sections 72 inches through 96 inches in diameter shall be as required to fit site conditions. Other sections shall be 24 inch riser and flattop sections.

<u>269.2.04B Precast Concrete Manhole Bases</u> may be used provided all the details of construction are approved prior to construction. Inlet and outlet pipe holes shall be core-drilled at the plant location or in the field. Conical-type flexible neoprene boots shall be installed in the factory core-drilled hole to create a water-tight connection between manhole and storm pipe, Kor-N-Seal or approved equal. Kor-N-Seal Pipe Adapter shall be used to create a water-tight seal with the boot.

269.2.05 Storm Drainage Manhole Joint Materials:

269.2.05A Mortar shall conform to the requirements of ASTM C387, or be proportioned 1 part Portland cement to 2 parts clean, well-graded sand that will pass a 1/8 inch screen. Admixtures may be used not exceeding the following percentages of weight of cement: hydrated lime, 10%; diatomaceous earth or other inert materials, 5%. Consistency of mortar shall be such that it will readily adhere to the precast concrete if using the standard tongue-and-groove type joint. If the keylock type joint is used, the consistency shall be such that excess mortar will be forced out of the

groove and support is not provided for the next precast manhole section to be placed. Mortar mixed for longer than 30 minutes shall not be used.

269.2.05B Non-Shrink Grout shall be Sika 212, Euco N-S, Five-Star, or approved equal non-metallic cementitious commercial grout exhibiting zero shrinkage per ASTM C-827 and CRD-C-621. Grout shall not be amended with cement or sand and shall not be reconditioned with water after initial mixing. Unused grout shall be discarded after 20 minutes and shall not be used. Non-shrink grouts shall be placed or packed only with the use of an approved commercial concrete bonding agent applied to all cured concrete surfaces being grouted. The bonding agent shall be compatible with the brand of grout being used. Water shall not be used as a substitute for the commercial bonding agent.

<u>269.2.05C Preformed Plastic Gaskets</u> shall be used in addition to mortaring all joints. Preformed plastic gaskets shall meet all the requirements of federal specification SS-S-00210.

269.2.05D Rubber Gaskets shall conform to ASTM C 443.

<u>269.2.06 Cleanouts</u> shall be constructed with pipe and fittings conforming to the applicable portions of Sections 266 and shall be of the same material as the pipe in the section of storm main to which the cleanout is constructed. Rubber-gasketed water-tight mechanical plugs shall be furnished at each cleanout.

269.3 CONSTRUCTION:

269.3.01 General:

 $\underline{269.3.01A}$ - Manhole and outfall excavation and foundation stabilization shall be in accordance with applicable portions of Section 221. Manholes and outfalls shall be installed on a prepared surface base of crushed rock as shown on the plans. All backfill around manholes and outfalls shall be 3/4" - 0" crushed rock.

<u>269.3.01B Pipe connections</u> at manholes shall be made according to manufacturer's recommendations. Special care shall be taken by the Contractor to see that the pipe connections at manholes are completely watertight. Manholes shall be placed on firmly compacted bedding material.

<u>269.3.02 Bases</u> shall be placed on a prepared bedding of 8 inches compacted thickness of $\frac{3}{4}$ inchminus crushed rock.

<u>269.3.02A Cast-in-place Bases</u> shall be constructed according to the plans. The concrete shall be consolidated by mechanical vibration, hand spading, rodding, or tamping. The concrete shall be screeded off such that the manhole riser section has a level uniform bearing for the full circumference.

<u>269.3.02B Precast Bases</u> shall be carefully placed on the prepared bedding so as to be fully and uniformly supported in true alignment, making sure that all entering pipes can be inserted on proper grade. HDPE pipe connections to manholes shall be grouted watertight with non-shrink grout conforming to Subsection <u>273.2.05B</u>. Adapters requiring the use of grout for installation shall be anchored and finished using non-shrink grout conforming to Subsection <u>269.2.05B</u>.

No channels shall be constructed in the base of storm drainage manholes. Storm drainage manhole bases shall function as sediment traps. Inverts on storm drainage manholes shall use the unfinished precast manhole base as a catchment basin with no channel.

<u>269.3.03 Precast Concrete Manhole Risers</u> - All lift holes shall be thoroughly wetted, then completely filled with mortar, and smoothed and pointed both inside and out to ensure watertightness. Preformed plastic or rubber gaskets shall be used on all sanitary manholes. Mortar shall be used on 24 inch extension rings above the cones. All mortar joints between precast elements shall be thoroughly wetted, then completely filled mortar. On proposed street grades, a minimum of one 24 inch precast riser will be required between the cone and the manhole cover frame. Watertight seals between the precast concrete manhole section(s) and the precast bases and eccentric cones shall be effected by placing a preformed plastic or rubber gasket between the precast sections, then filling the remaining voids in the joint seam, both inside and outside, with mortar.

<u>269.3.04 Manhole, Grates, Frames and Covers</u> shall be installed in such a manner as to prevent infiltration of surface or ground water between the frame and the concrete of the manhole section. All mortared manhole necks and all riser ring joints made with mortar shall be constructed using an approved commercial concrete bonding agent applied to all cured concrete surfaces being mortared. No joints, necks, or frames on manholes shall be mortared without an approved bonding agent. Rim elevations shall be adjusted with approved precast concrete grade rings and final asphalt paving graded rings.

269.4 MEASUREMENT AND PAYMENT:

<u>269.4.01 Storm Drainage Manholes</u> - Measurement and payment for manholes will be made on a per each basis for each type and size shown for all depths. Payment will be at the contract price per each manhole for each type and size and shall constitute full compensation for all work and materials necessary to construct all water-tight manholes.

END OF SECTION 269

SECTION 271 – GRAVITY SEWER PIPE AND FITTINGS

271.1 DESCRIPTION:

This item includes all work necessary for the installation of sanitary sewer gravity pipe and fittings.

271.2 MATERIALS:

<u>271.2.01 General</u> - Sanitary sewer gravity pipe shall have solvent welded or flexible elastomeric gasket joints. Materials and strength specifications shall be as hereinafter specified for the particular kind of pipe and fittings required. Joints on all fittings shall be the same as the joints used on the pipe. Caps or plugs shall be furnished with each fitting, outlet, or stub as required with the same type gasket and/or joint as the pipe. No pipe and fittings that are not hereinafter specified will be allowed on the project.

271.2.02 Pipe:

<u>271.2.02A Polyvinyl Chloride (PVC) pipe</u> shall conform to the requirements of ASTM D3034 and D2729.

<u>271.2.02B Material Certification</u> - The manufacturer or fabricator shall furnish appropriate certification based on manufacturer's routine quality control tests, that the materials in the pipe meet the requirements specified herein.

271.2.03 Jointing Materials:

271.2.03A PVC pipe gaskets shall conform to the requirements of ASTM D3212.

271.2.04 Fittings:

<u>271.2.04A General</u> - Tee or wye fittings shall be provided in the sewer main for side sewer or inlet connections. All fittings shall be of sufficient strength to withstand all handling and load stresses encountered. All fittings shall be of the same materials as the pipe. Material joining the fittings to the pipe shall be free from cracks and shall adhere tightly to each joining surface. All fittings shall be capped or plugged and gasketed with the same gasket material as the pipe joint, fitted with an approved mechanical stopper, or have an integrally cast knockout plug. The plug shall be able to withstand all test pressures without leaking, and when later removed, shall permit continuation of piping with jointing similar to joints in the installed line.

<u>271.2.04B PVC Pipe</u> - Fittings shall conform to the applicable portions of the following specifications: ASTM D1785, ASTM D2729, ASTM D2466, ASTM 2467, ASTM D3033 and ASTM D3034. Fitting joints shall be the same as the pipe joints.

<u>271.2.04C Flexible couplings and donuts</u> shall be as manufactured by Calder, Fernco, or approved equal, with stainless steel bands, all components properly sized to fit.

<u>271.2.05 Service connection markers</u> shall be new, one piece Douglas Fir or cedar, 2×4 's, utility grade or better, painted white. Attachment to service line stopper shall be by means of 9 gauge minimum galvanized wire or $\frac{1}{4}$ inch minimum polypropylene rope.

271.3 CONSTRUCTION:

271.3.01 Line and Grade - Survey line and grade control hubs will be provided by the Engineer on an offset line at intervals not greater than 100 feet when the Contractor uses a laser beam for pipe alignment, and at intervals not greater than 40 feet for other methods of pipe alignment. The Engineer will furnish the Contractor with the elevation of the hubs and the corresponding sewer invert elevation at such hubs. Should the Contractor's operations cause or allow removal of stakes or hubs, their replacement shall be at the expense of the Contractor. Variance from established line and grade shall not be greater than 1/2 inch for line and 1/4 inch for grade, provided that such variation does not result in a level or reverse sloping invert. The Contractor shall establish line and grade for pipe by the use of lasers or by transferring the cut from the offset hubs to the trench at whatever intervals necessary to maintain the line and grade. The method of transferring the cut from the offset hubs to the trench shall be subject to the approval of the Engineer. A transfer method not approved by the Engineer shall not be used. The Contractor shall constantly check both line and grade for each length of pipe laid and in the event they do not meet the limits described, the work shall be immediately stopped, the Engineer notified, and the cause remedied before proceeding with the work. When using laser alignment the Contractor shall check beam alignment at 100-foot intervals.

271.3.02 Pipe Distribution and Handling - The Contractor shall not distribute material on the job faster than it can be used to good advantage. The Contractor shall unload pipe only by approved means. The Contractor shall not drop pipe to the ground while unloading it. The Contractor shall inspect all pipe and fittings prior to lowering into trench to insure no cracked, broken, or otherwise defective materials are used. The Contractor shall clean ends of pipe thoroughly and remove foreign matter and dirt from inside of pipe and keep it clean during laying and joining. The Contractor shall use approved implements, tools, and facilities for the safe and proper protection of the work. The Contractor shall lower pipe into the trench in such a

manner as to avoid any physical damage to the pipe. The Contractor shall remove all damaged pipe from the job site. Pipe shall not be dropped or dumped into trenches. Dropped pipes will be rejected by the engineer and shall be taken offsite immediately.

<u>271.3.03 Laying Pipe on Curves</u> - The Contractor shall lay pipe on horizontal or vertical curves only when approved and at the direction of the Engineer.

<u>271.3.04</u> Installation of Service Tees and Wyes - Fittings shall be placed where indicated on the plans or as staked by the Engineer, or as required by existing services. The Contractor shall provide ends of all inactive service laterals and fittings with approved watertight plugs, caps, or stopper, suitably braced to prevent blow off during internal hydrostatic or air testing. Such plugs or caps shall be removable and their removal shall provide a socket suitable for making a flexible joint lateral connection or extension. If any fitting is placed when the Engineer is not present, the Contractor shall place a stake and see that it is maintained to mark the location of such fitting until the Engineer has recorded the location of the fitting.

<u>271.3.05 Pipe Placing and Laying</u> - Trench excavation, bedding and backfill shall be in accordance with Section 221.

271.3.05A PVC pipe shall be laid upgrade with spigot ends in the direction of flow. After a section of pipe has been lowered into the prepared trench, the end of the pipe to be joined will be cleaned as will the inside of the joint and the rubber ring, immediately before joining the pipe. The joint will be assembled in accordance with the recommendations of the manufacturer of the type of joint used. All special tools and appurtenances required for the jointing assembly will be provided by the Contractor. The trench bottom shall form a continuous and uniform bearing and support for the pipe at every point between joints. Sufficient pressure will be applied in making the joint to assure that the joint is "home", as defined in the standard installation instructions provided by the pipe manufacturer. Sufficient bedding material will be placed to secure the pipe from movement before the next joint is installed to assure proper pipe alignment and joint make-up. After the joint has been made, the pipe will be checked for alignment and grade. When in correct alignment and grade, the pipe shall be supported by placing the specified initial backfill material as described in Section 221.

When the pipe is laid within a movable trench shield, all necessary precautions will be taken to prevent pipe joints from pulling apart when the shield is moved ahead. The Contractor shall take the necessary precautions required to prevent excavated or other foreign material from getting into the pipe during the laying operation. At all times, when laying operations are not in progress, at the close of the day's work, or whenever the workers are absent from the job, the open end of the last laid section of pipe will be closed and blocked to prevent entry of foreign material or creep of the gasketed joints.

The Contractor shall plug or close off pipes which are stubbed off for manhole construction or for connection by others, with temporary plugs. The Contractor shall take all precautions necessary to prevent the uplift or floating of the line prior to the completion of the backfilling operation. Where pipe is connected to manholes or concrete structures, the connection will be constructed so that the standard pipe joint is located not more than 1.0 feet from the outside edge of the structure. When cutting and/or machining of the pipe is necessary, the Contractor shall use only the tools and methods recommended by the pipe manufacturer. The Contractor shall join the pipe in conformance with the manufacturer's recommendations. Joints or pipe will not be deflected more than recommended by the manufacturer.

271.3.06 New Service Laterals - Pipe and fittings for service lines shall be of one type of material throughout and no interchanging of pipe and fittings will be allowed. Commercial services shall normally be 6 inches in diameter, extending from the main to the connection point. Larger service laterals shall be as shown or specified. The Engineer will stake the location of the terminus of the service line. Either 1/8 vertical bends or other vertical bends are required on service laterals. Other vertical bends may be installed, at the Contractor's option, to reduce the depth of service laterals. The depth of new service lines at the property line shall be a minimum of 4'-6" deep unless otherwise approved by the Engineer or as required to connect to the existing sewer service. The Contractor shall install the sewer main tee or wye so as to locate the service connection pipe within a horizontal distance of one foot either side of the existing sewer service location. The Contractor shall install the pipe on a uniform grade between the tee or wye and the stake at a minimum slope of 1/4 inch per foot unless otherwise permitted by the Engineer. The terminus of the new service lateral shall be sealed with stopper in a manner similar to that required for the tee or wye. The Contractor shall install service connection markers at the terminus of new service laterals so as to extend from the end of the service line to 18 inches above ground. The Contractor shall determine the distance in feet and inches from the ground surface to the top of the service lateral and paint it on the marker. The service connection marker shall be firmly attached to the service lateral stopper by means of a 9 gauge minimum galvanized wire or

271.4 TESTING:

<u>271.4.01 General</u> - An internal or air pressure test shall be made by the Contractor of every section of sewer, including service connections, after the completion of the final trench backfill as follows:

271.4.02 Air Test:

271.4.02A General:

1/4 inch minimum polypropylene rope.

1. Leakage allowance: The portion of line being tested shall be considered "acceptable" if the time required for the pressure to decrease 1.0 p.s.i.g. is not less than the time shown for the given diameters in the following table:

Pipe Diameter <u>In Inches</u>	<u>Minutes</u>
4	2.0
6	3.0
8	4.0
10	5.0
12	5.5

If the section of line being tested includes more than one size of pipe (e.g. sewer main and building connections) the time used for the test, from the above table, shall be that for the largest size pipe.

271.4.02B Procedure

- 1. Clean reach of pipe to be tested including building connections.
- 2. Furnish plugs, air compressors, gauges, etc.
- 3. Plug all openings including building connections.
- 4. Measure the average back pressure in pounds per square inch ground water by one of the following methods:
 - a. Dig test holes to the top of the pipe; measure ground water depth in feet and tenths of feet; divide the water depth by 2.31.
 - b. Insert a pipe probe by boring or jetting into the backfill material adjacent to the center of the pipe; read the pressure in the probe in pounds per square inch, when air passes slowly through it.
- 5. Introduce air into the sealed line until the internal air pressure reaches 4 p.s.i.g. greater than the average back pressure of ground water over the pipe.
- 6. Allow at least two minutes for air pressure to stabilize.
- 7. After the stabilization period, read the pressure gauge; 3.5 p.s.i.g. greater than the average back pressure of ground water over the pipe is the minimum pressure in the pipe under which the test can be started. (For example, if the height of water is 112 feet, the probe gauge pressure will be 5 p.s.i.g. This increases the minimum 3.5 p.s.i.g. starting test pressure to 8.5 p.s.i.g., and, in such case, the 2.5 p.s.i.g. minimum final pressure to 7.5 p.s.i.g. The allowable drop of one pound and the timing remain the same.)
- 8. Disconnect the air hose from the control panel to the air supply.
- 9. Wait 4 minutes and read and record the gauge pressure.

<u>271.4.03 Deflection Test for PVC Pipe</u> - In addition to air testing, sanitary sewer mains constructed of PVC pipe shall be deflection tested after the trench backfill and compaction has been completed. The test shall be conducted by pulling an approved solid pointed "go/no-go" mandrel through the completed pipeline. The diameter of the mandrel shall be 95% of the pipe diameter unless otherwise specified by the Engineer. Testing shall be conducted on a manhole to manhole basis and shall be done after the line has been completely flushed out with water. The Contractor will be required, at the Contractor's expense, to locate and repair any sections failing to pass the test and to retest the section.

<u>271.4.04 Cleaning Prior to Test</u> - Prior to the internal pressure testing and inspection of the system by the Engineer, the Contractor shall flush and clean all parts of the system. The Contractor shall remove all accumulated construction debris, rocks, gravel, sand, silt and other foreign material from the system at or near the closest downstream manhole. If necessary, the Contractor shall use mechanical rodding or bucketing equipment. Upon the Engineer's inspection of the system, if any foreign matter is still present, the Sections and portions of the system shall be reflushed and cleaned as required.

<u>271.4.05 Television Inspection of Sanitary Sewers</u> - Upon completion of all sewer construction, testing and repairs, the Contractor shall conduct a color or black & white TV acceptance inspection of all installed lines 6 inches to 72 inches. Unless otherwise directed, the Contractor shall conduct a subsequent warranty TV inspection of all installed lines. Warranty TV inspections shall be in color and shall be conducted during the warranty period in a season of high ground water conditions as defined by the Engineer. The acceptance inspection and the warranty inspection shall be conducted by an approved technical service that is equipped to make audio-visual tape recordings of the televised inspections.

The audio-visual recordings shall be compatible with the Owner's playback equipment. The Contractor shall ensure that recording equipment is functioning properly and that a clear and usable record is made of all possible defects. The equipment used for recording shall be equipped with a

footage meter that records a visual record on the tape. A voice accounting of suspected deficiencies shall be made on the sound track.

A written report shall be made at the time of each television inspection. This report shall be made on a form approved by the Engineer. The video record and the written report of the acceptance inspection and the warranty inspection shall be submitted to the Engineer and will become the property of the Owner. The audio and visual reports of the acceptance inspection and the warranty inspection shall include identification of individual groundwater infiltration sources such as sewer laterals, building sewer connection and construction defects.

271.4.06 Requirements Prior to Tests:

<u>271.4.06A General</u> - All gravity systems and appurtenances shall successfully pass an air test prior to acceptance and shall be free of visible leakage, using either method of testing. Manholes shall be tested as specified in Subsection 270.4. All details of testing procedure shall be subject to approval of the Engineer.

<u>271.4.06B Plugging of Tees, Wyes, Stubs and Service Connections</u> - The Contractor shall plug all wyes, tees, stubs and service connections with gasketed caps or plugs securely fastened or blocked to withstand the internal test pressure. Such plugs or caps shall be removable, and their removal shall provide a socket suitable for making a flexible jointed lateral connection or extension

<u>271.4.06C Testing Equipment and Procedure</u> - The Contractor shall furnish all necessary testing equipment and perform the tests in a manner satisfactory to the Engineer. Any arrangement of testing equipment which will provide observable and accurate measurements of either air or water leakage under the specified conditions will be permitted. Gauges for air testing shall be calibrated with a standardized test gauge provided by the Engineer at the start of each testing day. The calibration shall be witnessed by the Engineer.

<u>271.4.06D Time of Test</u> - The Contractor shall test the system during the normal work day, scheduling the plugging, capping and other preparatory work so as to conduct the test during daylight hours.

271.5 MEASUREMENT AND PAYMENT:

271.5.01 Service Lateral Reconnections - Measurement and payment for connection between the new sewer service and the existing sewer service lateral or main will be made on a per each basis. Payment shall constitute full compensation for all pipe, tee, fittings, caps, plugs, tracer wire, temporary bypass pumping, excavation, bedding, initial backfill and trench backfill.

END OF SECTION 271

SECTION 274 – MANHOLE REHABILITATION

274.1 DESCRIPTION:

This item includes all of the work necessary for the repair of existing storm manholes.

274.2 MATERIAL:

<u>274.2.01 Patching Material</u> - Grout used for patching holes and voids in the manhole shall conform to the requirements of Section 360 of the Technical Specifications.

<u>274.2.02 Concrete</u> for invert reconstruction shall conform to the requirements of Section 330 of the Technical Specifications.

<u>274.2.03 Infiltration Control Material</u> - The infiltration control material shall be a rapid setting cementitious product specifically formulated for leak control, Strong-Plug manufactured by Strong-Seal Systems Corp. or approved equal. Materials shall be mixed according to the manufacturer's recommendations

274.3 CONSTRUCTION:

<u>274.3.01 Preparation</u> - Prior to applying the infiltration control material, the inside of the manhole shall be cleaned with a high pressure water hose to dislodge and remove any fractured and loose material that may interfere with the application of the sealant. Any large leaks or voids in the manhole wall, shelf, or invert shall be patched with suitable grout material. The surface of the wall shall be saturated but without noticeable droplets of running water and all inverts shall be plugged at the time of sealant application.

Storm flows through the manhole shall be maintained at all times using pumps and piping as needed. 274.3.02 Base Coat Application - Materials shall be spray applied from the bottom of the wall to the top, using as many passes as necessary, but each application shall not exceed 2 inch. The surface shall be rough troweled after each pass to assure that the material penetrates the voids and sets the bond.

<u>274.3.03 Final Application</u> - The final application shall be applied after the base coat has been rough troweled. Manufacturer's recommendations shall be followed whenever more than 24 hours have elapsed between applications. The final application shall be applied to assure a minimum total thickness of 2 inch. Application shall be from the bottom of the wall to the top and troweled to a relatively smooth finish. A brush finish shall be applied to the troweled finish or top coat surface.

<u>274.3.04 Shelf Application</u> - The shelf and invert shall be spray applied in such a manner as to produce a gradual slope from the walls to the invert. The thickness at the invert shall be no less than 2 inch. The wall/shelf intersection shall be rounded to a uniform radius the full circumference of the manhole.

<u>274.3.05 Testing</u> - After the application of the final coats of sealant, the manhole will remain out of service for the period of time specified by the manufacturer to allow the material to cure. After the material has cured, repaired manholes a visual inspection of the manhole will be required to ensure infiltration has stopped and the manhole is water tight.

274.4 MEASUREMENT AND PAYMENT:

<u>274.4.01</u> Manhole repair will not be a pay item and the cost thereof shall be included in the contract unit price for the appropriate manhole connection. Construction shall include all materials, equipment, and labor required to prepare the manhole, apply the sealing material, temporary bypass pumping and test the manhole.

END OF SECTION 274

SECTION 275 – ADJUSTMENT OF EXISTING MANHOLES, CLEANOUTS, CATCH BASINS AND WATER VALVES

275.1 DESCRIPTION:

This item includes all work necessary for the adjustment of existing sewer structures and storm drain manholes and catch basins to new finish grades with the use of cast iron paving riser rings and resetting of frames, lids and rims.

275.2 MATERIALS:

 $\underline{275.2.01\ \text{Concrete}}$ shall conform to the requirements of ASTM C94. Compressive field strength shall be not less than 3,000 p.s.i. at 28 days. Maximum size of aggregate shall be 3/4 inch. Slump shall be between 2 inches to 4 inches.

<u>275.2.02 Mortar</u> shall conform to the requirements of ASTM C387, or be proportioned 1 part Portland cement to 2 parts clean, well graded sand which will pass a 3/8 inch screen. Admixtures may be used not exceeding the following percentages of weight of cement: a) hydrated lime, 10%; b) diatomaceous earth or other inert materials, 5%. Consistency of mortar shall be such that it will readily adhere to the precast concrete. Mortar mixed longer than 30 minutes shall not be used.

<u>275.2.03 Non-Shrink grout</u> shall be Sika 212, Euco N-S, Five-Star, or approved equal non-metallic cementitious commercial grout exhibiting zero shrinkage per ASTM C-827 and CRD-C-621. Grout shall not be amended with cement or sand and shall not be reconditioned with water after initial mixing. Unused grout shall be discarded after 20 minutes and shall not be used. Non-shrink grouts shall be placed or packed only with the use of an approved commercial concrete bonding agent applied to all cured concrete surfaces being grouted. The bonding agent shall be compatible with the brand of grout being used. Water shall not be used as a substitute for the commercial bonding agent.

275.2.04 Precast Concrete Grade Rings shall conform to the requirements of ASTM C478.

<u>275.2.05 Cast Iron Paving Grade Rings</u> shall be supplied by Advantage Precast, Inc., Keizer, OR. or approved equal.

<u>275.2.06 Cast Iron Manhole Paving Grade Rings</u> shall conform to the requirements of H20 Load Ratings. All sewer paving riser rings will be furnished by NBWA and installed by the Contractor.

<u>275.2.07 Precast Concrete Water Valve Boxes</u> shall conform to the requirements of H20 Load Rating. All precast concrete water valve boxes as required for this project shall already be in place or will be furnished by the Owner and installed by the Contractor.

 $\underline{275.2.08}$ Crushed Rock shall be of the designated size 3/4 inch-0 and shall meet the requirements of Oregon Standard Specifications Subsection 2630.

<u>275.2.09 Formwork</u> shall conform to the requirements of Section 310.

275.3 CONSTRUCTION:

<u>275.3.01</u> Manhole Frame Adjustment - Manholes shall be raised or lowered by removing the existing frames, grates or covers and adjusting the height as necessary to correspond to grade. Manholes may be raised or lowered by any of the following or combination of methods when no particular method is specified.

<u>275.3.01A Manhole necks</u> are defined as that upper portion of a manhole having vertical walls and a uniform diameter or dimensions sufficient to receive and support the metal frame. The manhole neck may be extended by the use of precast extension rings and mortar or by reconstructing the neck except that the total distance from the top of the metal frame at its new adjusted grade to the bottom of the neck shall not exceed 24 inches.

<u>275.3.01B Manhole cones</u> may be cut down and rebuilt provided the batter or slope of the cone does not exceed 6 inches horizontal per 12 inches vertical.

<u>275.3.01C Manhole barrels</u> of precast concrete shall be extended in kind with like Precast concrete materials.

<u>275.3.01D Existing frames</u> shall be reset in fresh mortar and brought to proper grade following manhole adjustment.

<u>275.3.02 Manhole Ring Addition</u> - Existing frames may be extended with cast iron paving rings where the existing slope across the manhole matches the finish grade slope.

<u>275.3.03 Water Valve Box Adjustment</u> – Precast concrete water valve boxes shall be raised by digging out the existing valve box and raising it to match the finish grade. The Contractor shall add and compact with mechanical compaction equipment such additional crushed rock as may be needed to fill the void resulting from lifting the valve box.

275.3.04 Pipe Connections to Existing Manholes shall be core-drilled and constructed such that connections are watertight and will provide smooth flow into and through the manhole. Existing pipe stubouts may be used for new pipe connections provided that the existing pipe stubout is not damaged and is in proper alignment with the new pipe. Connections to existing pipe stubouts shall be made with approved flexible couplings. When existing pipe stubouts are damaged or not in proper alignment with the new pipe, the existing stubout shall be removed and the new pipe installed in the manhole base as described in Subsection 270.3.01B. Where there are no existing pipe stubouts, the Contractor shall construct openings in the existing manhole base or barrel as required and shall construct connections that are watertight and will provide a smooth flow into and through the manhole, in accordance with Subsection 270.3.01B. The Contractor shall provide all diversion equipment and facilities and perform all work necessary to maintain flow in existing lines and manholes during work on any manhole.

<u>275.3.05 Storm Drain Catch Basin</u> - Existing concrete catch basins shall be modified by removing existing frame and grate and reinstalling new frame and grate as specified in Subsection 267.2.02 to match the finish grade.

275.4 MEASUREMENT AND PAYMENT:

<u>275.4.01 Sanitary Sewer Manhole Adjustments</u> will be measured on a per each basis for each sanitary sewer manhole adjusted with paving rings or if necessary adjustment of the manhole cone. Payment will be at the contract price per each under the bid item "Adjust Existing Surface Structures" and shall constitute full compensation for furnishing all labor, materials, tools and equipment necessary or incidental to the installation of the paving rings or cone adjustment. The paving riser rings will be supplied by the Nehalem Bay Wastewater Agency.

<u>275.4.02 Water Valve Box Adjustments</u> There will be no separate payment for the adjustment of water valve boxes. The cost of removal and disposal is to be included in one or more of the unit prices.

<u>275.4.03 Storm Drain Catch Basin</u> will be measured on a per each basis for each catch basin frame and grate removed and replaced with new frame and grate to new finished grade as specified in the design drawings. Payment will be at the contract price per each and shall constitute full compensation for furnishing all labor, materials, tools and equipment necessary or incidental to the modifying of the existing catch basin and installation and adjustment of the new frame and grate creating a water-tight connection.

<u>275.4.04 New Pipe Connections to Existing Structures</u> Measurement and payment for storm manhole or catch basin connections will be made on a per each basis under the bid item "Connect New Storm Pipe to Existing Storm Structure." Construction shall include all materials, equipment, and labor required to clean, prepare, and seal the manhole, including water-tight connection, temporary bypass pumping, materials, rechanneling and testing the manhole.

<u>275.4.05 Demolition of Existing Catch Basins</u> will be measured on a per each basis. Payment will be at the contract price per each and shall constitute full compensation for the demolition, excavation, backfill and disposal of the existing structure.

<u>275.4.06 Storm Manhole Adjustments</u> will be measured on a per each basis for each storm manhole adjusted with paving rings or if necessary adjustment of the manhole cone. Payment will be at the contract price per each under the bid item "Adjust Existing Surface Structures" and shall constitute full compensation for furnishing all labor, materials, tools and equipment necessary or incidental to the installation of the paving rings or cone adjustment. The paving riser rings will be supplied by the City Public Works Department.

END OF SECTION 275

SECTION 292 – GRASS RESEEDING

292.1 DESCRIPTION:

This item includes all work necessary to restore and reshape the existing or proposed grass surface within the project or clearing and grubbing limits.

292.2 MATERIALS:

<u>292.2.01 Topsoil</u> shall be the existing native topsoil material excavated from the surrounding vicinity or imported topsoil consisting of fertile, loamy, natural surface soil consisting of sands, silts, clays and organic matter in combination and free from substances toxic to plant growth, noxious weeds, roots, refuse, sticks and lumps. Sticks and roots shall be removed from the topsoil. All material shall be approved by the engineer prior to placement and fine grading.

<u>292.2.02 Seed</u> shall be from blue tag stock and from the latest crop available. Each variety shall be from tested seed and shall be delivered in standard sealed containers labeled in accordance with Oregon State laws and U.S. Department of Agriculture rules and regulations. The percentage of purity, germination and maximum weed content shall be as set forth in the General seed Certification Standard by Oregon State University Certification Board or as specified. The label shall show the variety of seed, the percentage of germination, purity and weed content, and the date of test. The seed shall have been tested within nine months of date of delivery and shall not be moldy, or show evidence of having been wet or otherwise damaged.

Each lot of seed shall be subject to inspection, sampling and testing on delivery to the project. Seed not meeting the requirements of these specifications or not labeled as specified, will be rejected and shall be replaced with seed conforming to the specifications. Grass seed may be delivered to the

project as a mixture providing each variety of grass seed in the mixture is identified and labeled as specified or a certification from the supplier is attached giving the percentage of each variety of grass seed in the mixture and the percentage of purity, germination, and weed content. Grass seed mixture shall be as follows:

Grass Mixture Table

Annual, Perennial or	Lbs. of Seed per Acre
Hybrid Rye	3 lbs./acre
Tall Fescue	18lbs./acre
Creeping Red Fescue	8 lbs./acre
Bentgrass	1 lbs./acre
Big Trefoil	4 lbs./acre

<u>292.2.03 Fertilizer</u> shall be furnished in moisture proof bags. Each bag shall be marked with the weight and with the manufacturer's analysis of the contents showing the percentage for each ingredient contained therein. Fertilizer shall be furnished in a dry conditions free from lumps and caking, in granular or pelletized form. Fertilizer shall be standard commercial grade and shall conform to all State and Federal regulations, and to the standards of the Association of Official Agricultural Chemists. Inorganic fertilizer shall consist of a co-granulated ammonium phosphate and magnesium potassium phosphate, controlled-release compound having a minimum analysis expressed as percent of total weight as follows:

16-20-0	
Nitrogen	16%
Available Phosphoric Acid	20%
Soluble Potash	0%

The chemical composition shall be as specified.

END OF SECTION 292

END OF DIVISION TWO

DIVISION THREE - CONCRETE

SECTION 310 – CONCRETE FORMWORK

310.1 DESCRIPTION:

This item includes all work necessary to do all of the concrete formwork required to complete this project. Concrete formwork engineering, design and construction shall be the responsibility of the Contractor.

310.2 MATERIALS:

- <u>310.2.01 General</u> Concrete formwork shall conform to ACI 347-68 unless otherwise noted. The Contractor shall be responsible for adequate strength and safety of all formwork including false work, bracing and shoring.
- 310.2.02 Plywood forms shall be DFPA exterior "Plyform", or approved, Class I or Class II as required by concrete placement rate.
- 310.2.03 Form ties shall be plastic cone type, Burke, Bowman, Richmond, Dayton, JEF, or approved equal.
- 310.2.04 Form coating shall be stainless, non-grain raising, form sealer, Madden "N", or approved equal.

310.3 CONSTRUCTION:

- 310.3.01 General Forms shall be constructed to the required lines, grades, dimensions and surfaces, all according to ACI 347-68.
- 310.3.02 Embedded items such as sleeves, inserts, anchors, conduits, etc. shall be properly located and placed. All embedded items required by other trades shall be coordinated with those trades.
- 310.3.03 Form Removal The Contractor shall not remove formwork until concrete has sufficient strength to permit safe removal and adequate support of its own weight and imposed loads.

END OF SECTION 310

SECTION 320 - CONCRETE REINFORCEMENT

320.1 DESCRIPTION:

This item includes all work necessary for the furnishing and placement of all materials for the reinforcing steel work for all concrete as shown on the plans.

320.2 MATERIALS:

<u>320.2.01 Reinforcing bars</u> shall be deformed as defined in ASTM specifications. All reinforcing bars shall be Grade 40, ASTM A615. Metal reinforcement at the time concrete is placed shall be free from mud, oil, loose mill scale, loose rust, or other coatings that adversely affect bonding capacity in the opinion of the Engineer.

320.3 INSTALLATION:

<u>320.3.01 General</u> - All requirements of concrete reinforcement not covered in these specifications or on the plans shall be in accordance with "Manual of Standard Practice", as published by the Concrete Reinforcing Steel Institute (CRSI). All hooks shall conform to bend dimensions defined as "Standard Hooks" in "Manual of Standard Practice", as published by CRSI. Reinforcing bars shall not be bent or straightened in a manner that will injure the material.

320.3.02 Placing - Reinforcing bars shall be accurately placed and shall be firmly and securely held in position by wiring at intersections with black annealed No. 16 gage wire and by using precast mortar blocks or metal chairs, spacers, metal hangers, supporting wires and other approved devices of sufficient strength to resist crushing under full load. Metal supports which extend to the surface of the concrete, except where shown on the plans, and wooden supports shall not be used. Placing bars on layers of fresh concrete as the work progresses and adjusting bars during this placing of concrete will not be permitted. Clearance between reinforcement and embedded pipe, etc., shall not be less than 12 times the maximum aggregate size. Minimum lap splices shall be 12 inches.

END OF SECTION 320

SECTION 330 - CAST-IN-PLACE CONCRETE

330.1 DESCRIPTION:

This item includes the furnishing of all labor, materials and tools necessary to do all the plain and reinforced concrete work, including finishing as shown on the plans.

330.2 MATERIALS:

330.2.01 Concrete shall be 6-sack transit-mixed concrete in accordance with ASTM C94. In no case will the use of concrete be permitted which has been mixed with water for more than 90 minutes prior to placing. Water content shall be controlled such that maximum slump by standard slump cone test, ASTM C143, shall not exceed $3\frac{1}{2}$ inches.

330.3 CONSTRUCTION:

330.3.01 Placing - Concrete shall be placed in such a manner as to prevent segregation. Concrete shall be consolidated to the maximum practicable density, free from pockets of coarse aggregate and entrapped air, and closed snugly against all surfaces of forms and embedded materials. Consolidation of concrete in structures shall be by electric or pneumatic drive, immersion-type vibrators. Consolidation of all other concrete shall be by vibration, hand spading, rodding, or tamping. Mechanical vibration shall not be used to transport concrete.

330.3.02 Finishing of Slabs - After the concrete has been placed, consolidated, struck off, and leveled, the concrete shall not be worked further until ready for floating. Floating shall begin when the water sheen has disappeared and when the surface has stiffened sufficiently to permit the operation. All high and low spots shall be leveled during this operation to produce a true plane surface within 3 inch in 10 feet, as determined by a 10 foot straightedge placed anywhere on the surface. Immediately after the concrete has received a float finish, it shall be given a coarse transverse scored texture by drawing a broom or burlap belt across the surface.

<u>330.3.03</u> Form tie holes and minor defects which are exposed to final view shall be filled with patching mortar mixed as dry as feasible, packed solid, and neatly finished to match adjoining surfaces.

330.3.04 Curing - Concrete shall be protected from premature drying, freezing, wash by drainage rains, snow, vandalism, and from traffic and mechanical injury. Formed concrete surfaces shall be cured by leaving the forms in place for at least 7 days after placing. Steel plates shall be furnished for protection as requested by the engineer. Flat concrete surfaces shall be water cured by spraying lightly with water as soon as the concrete has hardened enough to prevent damage from spraying, then covered completely with a plastic waterproof membrane. A curing compound approved by the Engineer and applied in accordance with manufacturer's instructions may be used in lieu of water curing. Precast concrete slabs shall not be moved for at least 28 days after casting.

<u>330.3.05 Finishing of Walls</u> – Minor defects on exposed vertical surfaces shall be repaired with patching mortar containing one part Portland Cement and two parts sand. Patching mortar shall be mixed as dry as feasible, packed solid, and neatly finished to match adjoining surfaces. Plastering will not be permitted on exposed surfaces. Honeycombed and other structurally defective concrete shall be removed and replaced at no expense to the Owner. While the concrete is still green, the exposed surfaces shall be broom finished as required to provide a uniform texture and smooth surface.

330.4 QUALITY ASSURANCE:

<u>330.4.01</u> Inspection of formwork and reinforcement by the Engineer will be required prior to concrete placing. The Contractor shall notify the Engineer 24 hours before each expected concrete pour.

END OF SECTION 320

SECTION 360 - GROUT

360.1 DESCRIPTION:

This item includes the furnishing of all labor, materials and tools necessary to perform all grouting and drypacking as shown on the plans.

360.2 MATERIALS:

<u>360.2.01 Grout</u> shall consist by volume of one part Portland cement and two parts of sand passing No. 16 U.S. standard sieve, of aluminum powder or other approved admixture which prevents settlement & shrinkage, and of water. For drypack only enough water shall be used to produce a mix that is at the point of becoming rubbery when solidly packed.

360.3 INSTALLATION:

360.3.01 Concrete areas to be in contact with the grout shall be cleaned of all loose or foreign matter that would in any way prevent bond between the mortar and the concrete surface and shall be kept thoroughly saturated with water prior to placing the grout. The grout shall be tightly packed in place and fill all the voids intended to be grouted or packed. After placing, all exposed surfaces of the grout shall be kept covered with a heavy thickness of burlap saturated with water for a period of three days, or shall be improperly cured or otherwise defective grout shall be removed and replaced.

END OF SECTION 360

SECTION 361 – NON-SHRINK GROUT

361.1 DESCRIPTION:

This item includes the furnishing of all labor, materials and tools necessary to perform all grouting and drypacking as shown on the plans.

361.2 MATERIALS:

361.2.01A Non-Shrink grout shall be Sika 212, Euco N-S, Five-Star, or approved equal non-metallic cementitious commercial grout exhibiting zero shrinkage per ASTM C-827 and CRD-C-621. Grout shall not be amended with cement or sand and shall not be reconditioned with water after initial mixing. Unused grout shall be discarded after 20 minutes and shall not be used. Non-shrink grouts shall be placed or packed only with the use of an approved commercial concrete bonding agent applied to all cured concrete surfaces being grouted. The bonding agent shall be compatible with the brand of grout being used. Water shall not be used as a substitute for the commercial bonding agent.

361.3 INSTALLATION:

361.3.01 Concrete areas to be in contact with the grout shall be cleaned of all loose or foreign matter that would in any way prevent bond between the mortar and the concrete surface and shall be kept thoroughly saturated with water prior to placing the grout. The grout shall be tightly packed in place and fill all the voids intended to be grouted or packed. After placing, all exposed surfaces of the grout shall be kept covered with a heavy thickness of burlap saturated with water for a period of three days, or shall be improperly cured or otherwise defective grout shall be removed and replaced.

END OF SECTION 361

END OF DIVISION THREE

END OF TECHNICAL SPECIFICATIONS DOCUMENTS



COUNCIL STAFF REPORT

To: Mayor and City Council Date Written: November 3,

2022

From: Leila Aman, City Manager

Subject: Planning Commission Criteria

ACTION REQUESTED

Review, provide feedback and approve criteria for the appointment of three new planning commissioners.

ANALYSIS

On August 3, 2022, at its regular meeting the Manzanita City Council approved amendments to the Council Rules of Procedure, Section 8, Appointments. Section 8 II(A) requires the Mayor to appoint a member of Council to lead a committee selection process. Mayor Scott, and the Council confirmed the appointment of Councilor Jenna Edginton to serve as the Councilor in charge of the Planning Commission selection process. Section 8 II (C)(c) requires that a third member of an existing committee serve on the selection committee in addition to the City Manager. The Planning Commission appointed Planning Commission Chair Karen Reddick Yurka to serve in this role.

In October, the three committee members met and collectively developed criteria and a new application for the selection process. Both are being put forward to the Council for consideration, feedback and approval. The application is included as Attachment 1 to this staff report. The proposed criteria include:

- 1. Balanced group of people that represent people who live, or own property in Manzanita.
- 2. Have read the Comprehensive Plan and have a general understanding of basic land use issues/principles.
- 3. Can be objective weigh and balance complex issues and rely on the Comprehensive Plan and Zoning Ordinance for decision making. (eg. Does not let personal opinion bias objective analysis of a land use issue)
- 4. Has limited if any potential conflicts of interest.

There will be three open positions on the Planning Commission at the end of 2022. Two incumbent Planning Commissioners, Bert Went and Steven Bloom will complete their terms in December 2022 and will not be applying to serve another term. Two appointees will serve four years terms commencing in January 2023 and ending in December 2026. One position will be a 2-year appointment to complete the term Jenna Edginton who resigned in September 2022 upon her appointment to the City Council. This term will end December 2024.

The timeline for the selection process includes approval of the criteria at the November 9 2022, City Council meeting. Per council rules, applications must be accepted for a minimum of three weeks. Applications will open on November 11th, 2022 and will close Friday December 2, 2022.

The committee will review applications and anticipate interviews to occur on December 9th. A slate will be prepared for the January 4th City Council meeting. Ideally appointments will be made at this meeting to ensure that there is a full Planning Commission in time for the January 17, 2023 meeting.

A special joint training "Land Use 101" will be offered to the Planning Commission and the City Council on Saturday January, 28, 2023 and a second training provided by the Department of Land Conservation and Development will occur on February 13, 2023 at 3:30pm.

BUDGET IMPACT

None

WORKLOAD IMPACT

The City Manager will need to dedicate time to conduct the process, including finalizing the application, posting and advertising the positions, answering questions and managing receipt of applications, conducting application review and scoring of applications, coordination of interviews and conducting interviews with the Selection Committee and finalizing a recommended slate to the City Council for approval.

STAFF RECOMMENDATION

Provide feedback and approve criteria for the appointment process for the Planning Commission.

ALTERNATIVES

The Council can elect not to approve criteria. It should be noted however that due to the required process that would delay appointments until at least February leaving the Planning Commission with only 4 members.

ATTACHMENTS

1. Application for Planning Commission Appointments

Phone (503) 812-2514 | Fax (503) 368-4145 | TTY Dial 711 ci.manzanita.or.us

2022 Planning Commission Application

Name:	Phone:
Address:	Email:
City/State/Zip:	
Occupation:	
There are three positions open on the Planning Commissi complete the term of a commissioner who resigned in 20 term (4-year) positions will be open at the end of 2022. T December 2026. Please select what position you are into	22. This term will end December 2024. Two other ful the appointments for these terms will end in
2-year appointment 4-year appointment	both
Do you live, own property, or a business within the City o your relationship to the City of Manzanita.	r Urban Growth Boundary? If yes, please describe
Please explain what skills or qualifications you bring that Planning Commission. Be brief but be as specific as possible	•

Please describe Planning.	e your unde	rstanding	of the Co	mpreher	nsive Plan, t	the City's	Zoning Or	dinance a	and/or Land	d Use
As a Planning C Zoning Ordinar in this position disagree with v	nce. Your ab . Please des	ility to int cribe how	erpret the	e Zoning	Ordinance	and crite	ria will be	essential	to your su	ccess

Do you have any expected or anticipated conflicts of interest that may require you to recuse yourself from a planning application? If yes, please describe.

Planning Commission Meetings are held on the third Monday of each month at 4 pm. In cases where the Monday falls on a holiday the Planning Commission will meet on the third Tuesday of each month. There are also potential trainings and special meetings that may be required. Can you meet this time commitment?
Yes No
Meetings are currently held via the Zoom and are expected to continue on Zoom for two more years. Are yo able to participate via Zoom? If meetings were held in person would you be able to participate? Please describe your availability to attend meetings either via Zoom or in person below.
Is there anything else you would like to share with the selection committee about your experience and interest in the position?
You are also welcome and encouraged to submit a CV or Resume as part of your application.

THE DEADLINE FOR SUBMISSIONS IS DATE, 2022 AT 4:00 PM

Please return this form by email to planning@ci.manzanita.or.us

If you have any questions, please call 503-368-5343 or email us at planning@ci.manzanita.or.us



COUNCIL STAFF REPORT

^{To:} Mayor and City Council Date Written: October 28,

2022

Reviewed: Leila Aman, City Manager

From: Scott Gebhart, Development Services Manager, Building Official

Judy Wilson, STR Program Manager

subject: Adjusting Short-term Rental Inspection and License Application Fees

ACTION REQUESTED

Approve Resolution 22-17 Repealing Resolution 21-16 and Replacing it with Resolution 22-17 Amending Inspection and License Fees for Short Term Rentals

HISTORY OF PRIOR ACTIONS AND DISCUSSIONS

Oct. 5, 2022 – City Council reviewed and discussed Staff's proposal adopt new license and inspection fees for short-term rentals

Oct. 6, 2021 - City Council Adopted Resolution 21-16 Amending Inspection and License Fees for Short Term Rentals and Adding New Inspection Fees for Short Term Rental Inspections.

ANALYSIS

Due to the additional staff time required to administer and enforce Ordinance 21-06 which amended Manzanita's STR Ordinance 10-03 on October 6, 2021, the current short-term rental fees are not adequate to recover the cost of staff time.

Staff are proposing to increase the Short-term Rental Inspection and License Application Fees for the purpose of greater cost recovery.

Staff has evaluated the time it takes to review, process and issue licenses and to conduct inspections and have made the following determinations:

Short-Term Rental License Initial Application and Inspection – Requires 5 hours of staff time for the STR Program Manager; 1.5 hours for the Building Permit Tech/ Inspector and .5 hours of the Development Services Manager to obtain and process the required paperwork, and to complete an initial inspection and communicate the results; and 3.15 hours for the Accounting Manager to process related payments. The current fee is \$250 which does not fully cover the cost of required staff time. Staff propose an increase to this fee from \$250 to \$650 based on hours required, staff hourly rates, and the addition of a 5% technology fee.

Annual License Renewal – Requires 5 hours of staff time for the STR Program Manager; 1.5 hours for the Building Permit Tech/ Inspector and .5 hours of the Development Services Manager to obtain and process the required paperwork; and 3.15 hours for the Accounting Manager to process related payments. Currently the annual short term-rental license renewal

fee is \$250. Of that \$250 fee \$150 of those funds are allocated to the City's Civic Improvement Fund the balance of the renewal fee and all other fees go into the General Fund. Including the \$150 for the Civic Improvement Fund, staff propose an increase to this fee from \$250 to \$850 based on hours required, staff hourly rates, and the addition of a 5% technology fee.

Periodic Re-inspection - Once a license is issued, periodic inspections are required every three years per Ordinance 10-03 Section 5(b). The current fee for a periodic re-inspection is \$150. A periodic inspection requires 2.5 hours of staff time for the STR Program Manager; 1.5 hours for the Building Permit Tech/ Inspector and 1 hour of the Development Services Manager to obtain and process the required paperwork, and to complete an initial inspection and communicate the results; and .5 hours for the Accounting Manager to process related payments. Staff propose an increase to this fee from \$150 to \$350 based on hours required, staff hourly rates, and the addition of a 5% technology fee.

Follow Up Inspections – If any deficiencies are noted, staff work with STR licensees and/or their agents to resolve the issues to maintain those licenses. This usually requires much correspondence in addition to the on-site follow up inspection to achieve correction of the deficiencies. A follow up inspection requires 2.5 hours of staff time for the STR Program Manager; 1 hour for the Building Permit Tech/ Inspector and 1 hour of the Development Services Manager to obtain and process the required paperwork, and to complete a follow up inspection and communicate the results; .25 hours of staff time for the City Manager for review; and .5 hours for the Accounting Manager to process related payments. The current fee for this is \$75 and only recovers the time of the on-site inspection itself. Staff proposes increasing the fee to \$325 based on hours required, staff hourly rates, and the addition of a 5% technology fee.

Other Inspections – City staff are occasionally asked to perform pre-application or pre-purchase inspections to provide owners or prospective owners information concerning what would need to be done to a property to pass a short-term rental inspection. Randoms inspections require 2.5 hours of staff time for the STR Program Manager; 1 hours for the Building Permit Tech/ Inspector and .5 hours of the Development Services Manager to complete a random inspection and communicate the results; and .05 hours for the Accounting Manager to process related payments. Staff propose an increase to this fee from \$150 to \$225 based on hours required, staff hourly rates, and the addition of a 5% technology fee.

In summary, staff recommend that Council makes the following fee increases to better recover current costs of associated staff time and implement a 5% technology fee on these transactions:

- The short-term rental license initial application and inspection fee from \$250 to \$650
- The annual license renewal fee from \$250 to at least \$850 (includes \$150 to the Civic Improvement Fund)
- The periodic re-inspection fee from \$150 to \$350
- The follow up inspection fee from \$75 to \$325
- The fee for other random inspections from \$150 to \$225

BUDGET IMPACT

This will have a positive impact on the City's budget as it will provide additional revenue to recover staff time and costs associated with implementing and managing the City's short-term rental program.

WORKLOAD IMPACT

There will be no additional workload impact on staff to collect these fees.

STAFF RECOMMENDATION

Staff recommend that the City Council approve Resolution 22-17 Repealing Resolution 21-16 and Replacing it with Resolution 22-17 Amending Inspection and License Fees for Short Term Rentals

ALTERNATIVES

Council can elect to maintain the existing fee structure.

ATTACHMENTS

1. Resolution 21-17



COUNCIL RESOLUTION No. 22-17

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MANZANITA, OREGON, REPEALING RESOLUTION 21-16 AND REPLACING IT WITH RESOLUTION 22-17 AMENDING INSPECTION AND LICENSE FEES FOR SHORT TERM RENTALS.

TYPE TEXT HERE.

WHEREAS, Section 3 of Ordinance No. 10-03 establishes regulations on short-term rentals within the City; and

WHEREAS, Section 3 of Ordinance No. 10-03 provides that the City Council by resolution may establish fees for short-term rental licenses and inspections; and

WHEREAS, Section 3 of Ordinance No. 10-03 requires that "the fee shall include the cost of staff time to process the application and the initial Short-Term Rental inspection," the City Council wishes to set fees which more effectively cover the cost of staff time required to process short term rental license applications and perform short term rental inspections;

Now, Therefore, be it Resolved that:

- Section 1. Effective August 1, 2023, the annual short-term rental license renewal fee shall be \$400 for the period beginning August 1 and ending July 31 of the following year. Effective August 1, 2023, the Civic Improvements Reserve shall be credited with \$150 of each annual short-term rental license fee collected.
- Section 2. Effective November 9, 2022, the short-term rental license initial application and inspection fee shall be \$400 for any new short-term rental application.
- <u>Section 3.</u> Effective November 9, 2022, the fees related to short-term rental inspections shall be as follows:
 - a) The fee for periodic re-inspections as required in Section 5(b) of Ordinance 10-03 shall be \$300.
 - b) The fee for all follow-up short-term rental inspections shall be \$225.
 - c) The fee for all other short-term rental inspections shall be billed at \$250 per hour with a minimum one-hour fee. Addition inspection time shall be billed in half-hour increments.

Section 4.	The balance of the annual short term rental license renewal fee, the initial application and inspection fee, and all other fees collected noted in section 3 shall be credited to the General Fund.
Section 5.	Effective November 9, 2022, Resolution No. 21-16 adopted by the City Council on October 6, 2021, is hereby repealed.
	ed and adopted by the City Council on November 9, 2022 . lution is effective on November 9, 2022 .
	Michael Scott, Mayor
ATTEST:	
	City Manager/ City
Recorder	



COUNCIL STAFF REPORT

To: Mayor and City Council

Reviewed: Leila Aman, City Manager

From: Dan Weitzel, Public Works Director

Subject: Vehicle Surplus

HISTORY OF PRIOR ACTIONS AND DISCUSSIONS

October 5, 2022 Council was asked to declare 4x4 Ranger surplus. Council requested staff consider the use of the vehicle for proposed STR enforcement staff summer position.

ACTION REQUESTED

Declare 2010 extended cab 4x4 Ford Ranger (VIN 1FTLR1FE2APA49771) surplus and authorize the Public Works Director to sell the equipment and return the funds to the vehicle replacement fund from which is was purchased.

Date Written: November 1, 2022

ANALYSIS

Council requested staff consider using the vehicle for a yet to be determined position that would include summertime enforcement and community engagement position noting that one of the barriers of implementing the position is access to a vehicle. The Public Works Director, Chief of Police and City Manager discussed this option and determined the vehicle is not appropriate for this type of position. The vehicle is flatbed truck with a manual transmission. The city expects to surplus another Police vehicle next calendar year and that may be a more appropriate vehicle.

Furthermore, the City Manager is evaluating whether a full-time position that not only addresses STR enforcement but other enforcement, and community service-related issues may be viable. In the meantime, staff request that council deem the Ranger surplus. The Ranger has been used by Utility Workers and the Director for the last 12 years. The ranger size has made its use in Public Works very limited and it was recently replaced with a 2006 2500HD Silverado purchased through the state surplus program.

BUDGET IMPACT

Sale of surplus equipment returns funds back into the vehicle replacement fund in which they were purchased from.

WORKLOAD IMPACT

Staff intends to take the vehicles to the Oregon reuse program.

STAFF RECOMMENDATION

Staff recommends that the 2010 Ford Ranger be deemed surplus equipment.

ALTERNATIVES

Council can elect not to surplus and retain the vehicle.