

AIA[®] Document A133[™] – 2019

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

AGREEMENT made as of the « » day of « » in the year «2026»
(In words, indicate day, month, and year.)

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

«Sweet Home School District No. 55»
«1920 Long Street»
«Sweet Home, OR 97386»
«541-367-7122»

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

«To be completed following selection.»

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

«Sweet Home High School Renovation and New Construction Project»
«1641 Long Street»
«Sweet Home, OR 97386»

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

«GLAS Architects, LLC»
«44 W Broadway, Suite 430»
«Eugene, OR 97401»
«541-686-2014»

The Owner and Construction Manager agree as follows.

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

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

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

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TABLE OF ARTICLES

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

ARTICLE 1 INITIAL INFORMATION

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

(For each item in this section, insert the information or a statement such as "not applicable" or "unknown at time of execution.")

§ 1.1.1 The Owner's program for the Project.

See the Request for Proposals and Contract Documents.

§ 1.1.2 The Project's physical characteristics:

See the Request for Proposals, Contract Documents, and Owner-furnished site information and reports.

§ 1.1.3 The Owner's budget for the Guaranteed Maximum Price, as defined in Article 6 (referred to as the "Maximum Allowable Construction Cost" or "MACC"):

The MACC will be established and communicated by the Owner during Preconstruction and prior to establishment of the Guaranteed Maximum Price.

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

The Owner's anticipated design and construction milestone dates are set forth in Exhibit C – Project Schedule. The binding Substantial Completion and Final Completion dates shall be stated in the applicable Guaranteed Maximum Price Amendment.

§ 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.)

«See Exhibit C – Project Schedule and the Request for Proposals.»

§ 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.)

«None»

§ 1.1.7 Other Project information:

See the Request for Proposals and Contract Documents.

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

«Kevin Strong»
«1920 Long Street»
«Sweet Home, OR 97386»
«541-367-7122»
«kevin.strong@shsd55or.gov»

§ 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:

None, except as otherwise required by the Contract Documents.

§ 1.1.10 The Owner or the Architect shall retain the following consultants and contractors:

The Owner and Architect shall retain the following consultants in accordance with their respective agreements and Project responsibilities:

Owner-retained consultants: surveying, geotechnical investigation, environmental site assessment and related Owner-authorized environmental investigation, special inspections and testing, and commissioning.

Architect-retained consultants: civil, structural, mechanical, electrical, fire protection, technology, acoustical, landscape, cost estimating, CTE, and other design consultants included within the Architect's scope of services.

The Owner may retain additional consultants or contractors as necessary for the Project upon notice to the Construction Manager.

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

«Christopher Walkup»
«44 W Broadway, Suite 430»
«Eugene, OR 97401»
«541-686-2014»
«cwalkup@glas-arch.com»

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

§ 1.1.13 The Owner's requirements for the Construction Manager's staffing plan for Preconstruction Services, as required under Section 3.1.9, are set forth in Exhibit F – Key Personnel and Staffing.

§ 1.1.14

The Construction Manager shall procure Subcontractors and suppliers in accordance with Exhibit G – Subcontracting and Self-Performance Requirements, the Contract Documents, and applicable Oregon law.

§ 1.1.15

Other Initial Information on which this Agreement is based:

None, except as otherwise expressly identified in the Contract Documents.

§ 1.2 The Owner and Construction Manager may rely on the Initial Information identified in Section 1.1. If the Initial Information materially changes, the Owner and Construction Manager shall promptly evaluate the effect of the change on the Project schedule, the Construction Manager's services, the MACC, and the Construction Manager's compensation.

Any adjustment to the Contract Time, Contract Sum, MACC, scope of services, or other Contract requirement resulting from such change shall be made only as permitted by the Contract Documents and, when required, by written Modification.

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

§ 1.4 The Construction Manager acknowledges and agrees that the Contract Documents:

- (a) Describe the methods the Construction Manager will use to qualify and select subcontractors. The methods shall be competitive and provide prospective subcontractors with a reasonable opportunity to participate in the Construction Manager's qualification and selection process.
- (b) Identify the portions of the construction work for which the Construction Manager may waive the qualification and selection process described in paragraph (a) of this subsection and describe:
 - (A) How the Construction Manager may determine the portions of the construction work that will not be subject to the qualification and selection process described in paragraph (a) of this subsection; and
 - (B) The process the Construction Manager will use to qualify and select prospective subcontractors for the portions of the construction work that are not subject to the qualification and selection process described in paragraph (a) of this subsection.
- (c) Identify the conditions under which the Construction Manager or an affiliate or subsidiary of the Construction Manager may perform or compete with other prospective subcontractors to perform construction work under the Contract and describe the methods the Construction Manager will use to qualify and select an affiliate or subsidiary to perform the construction work.
- (d) Describe how the Construction Manager will announce which prospective subcontractors the Construction Manager has selected to perform construction services in connection with the Contract.
- (e) Describe the conditions under which the Construction Manager will discuss the qualification and selection process described in this subsection with a prospective subcontractor that the Construction Manager did not select for a subcontract if the Construction Manager receives a request from the prospective subcontractor to discuss the process.

ARTICLE 2 GENERAL PROVISIONS

§ 2.1 The Contract Documents

The Contract Documents consist of this Agreement, Conditions of the Contract (General Conditions-AIA Document A201-2017 (as modified), Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement, and Modifications and Exhibits issued after execution of this Agreement, all of which form the Contract and are as fully a part of the Contract as if attached to this Agreement or repeated herein. Upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, the Contract Documents will also include the documents described in Section 3.2.3 and identified in the Guaranteed Maximum Price Amendment and revisions prepared by the Architect and furnished by the Owner as described in Section 3.2.8. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. If a conflict, inconsistency, or ambiguity among the Contract Documents cannot reasonably be reconciled, the order of precedence in Section 15.3 shall apply. Applicable Oregon law, including the State of Oregon Model Rules related to Public Contracts for Construction Services (OAR 137-049), shall control to the extent required by law. An enumeration of the Contract Documents, other than a Modification, appears in Article 15.

§ 2.2 Relationship of the Parties

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

§ 2.3 General Conditions

§ 2.3.1 For the Preconstruction Phase, AIA Document A201™-2017, General Conditions of the Contract for Construction, shall apply. The term "Contractor" as used in A201-2017 shall mean the Construction Manager. 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.

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

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 A201-2017 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.

General Description of Preconstruction and Construction Phase Services

In accordance with ORS 279C.332 and 279C.337, following is a general and nonexclusive description of Construction Manager's services, as set forth in more detail in the Contract Documents:

1. Preconstruction Phase services generally:

(A) Include Construction Manager's:

(i) Functioning as a member of the project team that includes Owner, the Architect and other Owner contractors, and other consultants; and

(ii) Reviewing and analyzing the design for the Project in order to:

(I) Suggest changes in the design that minimize potential errors, delays, unexpected costs and other problems during construction;

(II) Recommend means by which the Owner may achieve the functions of the Project and all components of the Project safely, reliably, efficiently and at the lowest overall cost;

(III) Improve the value and quality of the Project; and

(IV) Reduce the time necessary to complete the Project; and

(B) Include, depending on whether Owner decides to proceed with construction, Construction Manager's:

(i) Devising a schedule for constructing the Work;

(ii) Estimating construction, materials, labor and other costs for the Work;

(iii) Establishing a Guaranteed Maximum Price and the components thereof;

(C) Other Preconstruction Phase Services described in the Request for Proposals and any commitments contained in the Construction Manager's Proposal that are expressly accepted and incorporated into the Contract Documents in accordance with Article 15.

2. Construction Phase services generally include Construction Manager's:

(A) Constructing portions of the Work with its own forces to the extent permitted by the Contract Documents, and subcontracting other portions to Subcontractors and permitted consultants;

(B) Coordinating and overseeing the construction process;

(C) Performing other services related to constructing the Work in accordance with the terms of the Contract Documents.

(D) Other Construction Phase Services described in the Request for Proposals and any commitments contained in the Construction Manager's Proposal that are expressly accepted and incorporated into the Contract Documents in accordance with Article 15.

§ 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.

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

§ 3.1.3 Consultation

§ 3.1.3.1 The Owner's Representative shall schedule and conduct meetings with the Architect and Construction Manager to discuss such matters as procedures, progress, coordination, and scheduling of the Work. Construction Manager shall attend and participate in such meetings, and promptly provide any comments on Owner's Representative's minutes of such meetings.

§ 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 Owner and the Architect regarding professional services or certifications to be provided by the Construction Manager during the Construction Phase under Section 3.12.10 of AIA Document A201–2017 and shall identify those services and certifications in the schedule required by Section 3.2.3.7.

§ 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 Architect-established standards for the development, use, transmission, and exchange of digital data.

§ 3.1.3.4 The Construction Manager shall assist Owner and Architect to identify all items required for the Project, including technical infrastructure and equipment. Construction Manager shall perform constructability reviews of drawings, specifications, and other materials prepared or submitted by Architect and/or any Consultants relating to the Project, including the schematic design documents, design development documents, and construction documents. Construction Manager shall advise on and facilitate all matters relating to or required for the Project, including the efficiency, cost and availability of labor, trade union issues, Utilities, materials, equipment, construction means and methods, sequencing, governmental review process, and/or other relevant matters relating to or required for the Project, including those which are reflected on, or required for, the drawings, specifications, and other materials for the Project prepared or submitted by Architect and/or any Consultants. To this end, Construction Manager shall review progressively the schematic design documents, design development documents, and construction drawings and specifications prepared by Architect, shall identify constructability issues, and shall advise upon selection of materials, building systems and equipment, and methods of delivery. Construction Manager shall also provide a detailed, complete and accurate logistics plan, updated monthly, identifying the sequencing of all elements of the Work during construction of the Project.

§ 3.1.4 Project Schedule

§ 3.1.4.1 Promptly after its delivery to Construction Manager, Construction Manager shall review the initial Project Schedule(s) sent by the Owner. When Project requirements in Section 4.1.1 have been sufficiently identified to the Owner's and Architect's satisfaction, the Construction Manager, in cooperation with the Owner and Architect, 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. Thereafter, Construction Manager shall revise and update the Project Schedule every other week to show the progress of design and construction of the Project. Construction Manager shall also make formal submissions of the Project Schedule with each Application for Payment delivered to Owner. In addition to achieving Substantial Completion and Final Completion by the dates required herein, if the Project Schedule provides for Owner's access to the Project prior to Substantial Completion for the purpose of Owner's installation of furniture, fixtures, cabling, equipment or other items, the Construction Manager shall achieve sufficient completion of the Work prior to Substantial Completion so that Owner has such access as scheduled. The Project Schedule shall not exceed the required dates for Substantial Completion and Final Completion.

§ 3.1.4.2 The Project Schedule shall be prepared by Construction Manager in a detailed precedence-style critical path method (CPM) in a format otherwise acceptable to Owner and Architect which shall (in accordance with industry CPM standards):

- (a) provide a graphic representation of all activities and events (including obtaining all necessary permits and/or approvals) that will occur during performance of the Work;
- (b) identify each phase of construction and occupancy (including commencement and completion dates of each stage of the Work of each Trade), and include detailed work tasks in accordance with the work breakdown structure, to produce a Level 3 CPM schedule;
- (c) identify deadlines for electing alternates under Trade Agreements;

- (d) set forth Construction Manager's estimated monthly cash flow projection for Requisitions during the period reflected in such Project Schedule;
- (e) prior to the time a subcontractor starts Work, depict in detail the time for such subcontractor's Work and showing week by week progress for each trade in a manner consistent with the most recent cash flow projection;
- (f) identify major equipment orders and delivery deadlines.
- (g) resource-load major activities and other activities as reasonably necessary to support Project planning, schedule analysis, and forecasting.

§ 3.1.4.3 Prior to the commencement of the Construction Phase and during final preparation, each update of the Project Schedule shall also include the status of cost estimates, document preparation and regulatory agency approvals. During the bidding stage, the monthly update shall include the status of bidding activity. During the Construction Phase, each updated Project Schedule shall contain detailed progress schedules of the Work by trade. If Construction Manager becomes aware of any delay or problem arising in connection with the progress of the Work, Construction Manager shall promptly notify Owner thereof.

§ 3.1.4.4 The Construction Manager shall not be entitled to any adjustment in the Contract Time or in the Contract Sum, or to any additional payment of any sort, by reason of the loss or the use of any float time, including time between the Construction Manager's anticipated completion date and the end of the Contract Time, whether or not the float time is described as such on the Construction Manager's Construction Schedule.

§ 3.1.5 Phased Construction

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

§ 3.1.6 Cost Estimates

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

§ 3.1.6.2 As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall prepare and update, at appropriate intervals agreed to by the Owner, Construction Manager and Architect, estimates of the anticipated Guaranteed Maximum Price with increasing detail and refinement. The Construction Manager shall include costs necessary to allow for 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.

Such estimates shall be provided for review by the Architect and Owner's cost consultant, if any, and for the Owner's approval. If the Owner or Architect procures the services of an independent cost consultant, the Construction Manager shall align its estimate format with that cost consultant's estimate format and cooperate in reconciling the estimates.

The Construction Manager shall promptly inform the Owner and Architect if the current estimate of the anticipated Guaranteed Maximum Price exceeds the Owner's MACC and shall provide recommendations for corrective action. At each stage of design, the Construction Manager shall provide value engineering services directed toward maintaining the Project within the MACC and shall identify and timely recommend appropriate cost-saving alternatives.

§ 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 shall work together with the Architect to reconcile the cost estimates.

§ 3.1.6.4 After its preparation, Owner shall deliver to Construction Manager Owner's initial Project Budget(s) including the latest MACC. The initial Project Budget(s) may be in the alternative, until Owner has selected either option. Promptly after the date of this Agreement, Construction Manager shall provide detailed comments on that Project

Budget(s), covering all categories of construction cost, cost evaluations of alternate construction methods and systems (including the phasing and sequencing of the Work), consideration of alternative components, communications and data requirements and (if applicable) salvage or re-use of Owner's existing equipment. Each version of the Project Budget shall be in form (and shall include documentation) satisfactory to Owner.

§ 3.1.6.5 Construction Manager shall deliver to Owner Cost Estimates at intervals acceptable to Owner, or as identified in the RFP. Cost Estimates submitted by Construction Manager shall be prepared independently of any prepared by Architect and its consultants and shall be in Construction Specifications Institute ("CSI") Format or in another format otherwise approved by Owner. Construction Manager's Cost Estimates shall include all elements of the scope of the Project reflected on Architect's most recent drawings and specifications. Construction Manager shall participate in meetings with Architect and the Owner's cost consultant (if any) to reconcile differences in their Cost Estimates. Construction Manager shall promptly prepare and submit to Owner a final reconciled version of each estimate for record purposes.

§ 3.1.6.6 Construction Manager shall identify discrepancies between actual and estimated costs and advise Owner whenever costs exceed budgets, estimates or the MACC.

§ 3.1.6.7 Construction Manager on request shall prepare, deliver, and update to Owner and Owner's representative a cash flow projection and an anticipated cost report for the Project, in a format approved by the Owner and keyed to the Project Budget and MACC, showing estimated monthly cash payments to each Trade, and breaking out major expenditure categories, costs of permits, and other likely causes of material cash outlay. Also, Construction Manager shall submit updates of the cash flow projection with each update of the Project Budget, showing changes in requirements and amounts previously paid.

§ 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 the Contract Documents.

§ 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 develop subcontractor and supplier bidding interest in the Project.

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

§ 3.1.12 Procurement

The Construction Manager shall prepare, for the Architect's review and the Owner's acceptance, and well in advance of construction, a procurement schedule for items that must be ordered in advance of construction. The Construction Manager shall expedite and coordinate the ordering, procurement and delivery of materials that must be ordered well in advance of construction. If the Owner agrees to the Construction Manager's procurement of any items prior to the establishment of the Guaranteed Maximum Price, the Construction Manager shall procure the items on terms and conditions acceptable to the Owner. The Owner shall not be obligated to pay for such items until bonded, insured, and confirmed as owned by Owner on terms satisfactory to Owner. If Owner decides not to engage the Construction Manager for construction, or otherwise at Owner's written request, the Construction Manager shall assign all contracts for these items to the Owner, conditioned on the Owner's payment for the items, and the Owner shall thereafter accept responsibility for them.

§ 3.1.12.1 Procurement Requirements. The provisions of this Section 3.1.12.1 collectively are referred to as the “Procurement Requirements.” The requirements of ORS 279C.337(3) and OAR 137-049-0690 also are incorporated herein by reference. In the event of any conflict between the Basic Requirements and the Additional Requirements below, the Basic Requirements shall prevail.

Basic Requirements:

Within the scope of ORS 279C.337(3), the Construction Manager’s subcontractor selection process must meet the following parameters:

- (A) Absent a written justification prepared by the Construction Manager and approved by the Owner as provided in this Section, the Construction Manager’s Subcontractor selection process must be competitive. Unless otherwise approved by the Owner in writing, the competitive process shall include publicly advertised subcontractor solicitations and shall use a low-bid competitive method, a low-quote competitive method for contracts in a dollar range approved by the Owner, or a method under which both price and qualifications are evaluated in a competitive environment, consistent with the RFP and Contract requirements.
- (B) 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:
 - (i) 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;
 - (ii) 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;
 - (iii) 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;
 - (iv) The Construction Manager must fully respond to any questions or comments submitted to the Construction Manager by the Owner; and
 - (v) 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.
- (C) If approved in advance by Owner, a competitive selection process may be preceded by a publicly advertised subcontractor pre-qualification process, with only those subcontractors meeting the pre-qualification requirements being invited to participate in the later competitive process through which the Construction Manager will select the subcontractor to perform the construction Work described in the selection process.
- (D) As used herein, “Affiliate” means a subsidiary of or a person or entity that, directly or indirectly through one or more intermediaries, controls, is controlled by or is under common control with Construction Manager or an Affiliate of Construction Manager. If the Construction Manager or an Affiliate 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 Construction Manager must establish to Owner and follow an 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 acceptable to Owner.

- (E) Subcontractor Approvals and Protests. The procedures and reporting mechanisms related to the resolution of subcontractor and supplier protests are established in the Additional Requirements below, including the Construction Manager's roles and responsibilities in this process and whether the Construction Manager's subcontracting records are considered to be public records. 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.
- (F) Construction Manager Self-Performance or Performance by Construction Manager Affiliates Without Competition. Consistent with the requirements of ORS 279C.337(3)(c), these Basic Requirements and the Additional Requirements establish the conditions under which the Construction Manager or an Affiliate 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 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 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.
- (G) 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:
 - (i) Subcontractor will be allowed 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
 - (ii) The Construction Manager shall set a meeting with the subcontractor under this section within 45 days of the subcontractor's written request. The Construction Manager shall maintain written minutes of such meeting and shall deliver a copy of such minutes to Owner within 10 days after each such meeting.

Additional Requirements:

1. The Construction Manager shall review the Contract Documents and verify, prior to bidding, that they are ready for subcontract and supplier bidding. The Construction Manager shall perform constructability review of each Bid Package prior to bidding.
2. If the documents are not ready for bidding, prior to bidding the Construction Manager shall notify the Owner and Architect, specifying the perceived deficiency, and thereafter shall work with the Architect to complete the documents.
3. The Construction Manager shall divide the portions of the Work (other than general supervisory and "general conditions" type work of the Construction Manager) into components suitable for bidding ("Work Components"). The Construction Manager shall deliver a list of proposed Work Components to the Owner's Representative for comment prior to preparation of the Requests for Proposal.

4. The Construction Manager shall prepare a template form of Request for Proposal for Work Component procurement. The Construction Manager shall deliver a copy of such template to the Owner's Representative for review and comment before use. The Request for Proposals shall identify the scope of Component Services with reasonable specificity, the minimum qualifications of prospective bidders, the deadline for bid submissions, and such other matters as the owner may require. The Construction Manager shall deliver a copy of each Request for Proposal to the Owner's Representative concurrent with publication. Each Request for Proposal shall identify any professional design services the Construction Manager believes are required for the applicable Work Component and the performance and design criteria established by the Architect.

5. Except as otherwise permitted by the Procurement Requirements or approved by the Owner in writing, the Construction Manager shall competitively procure Work Components in a manner that provides qualified Subcontractors and suppliers a reasonable opportunity to participate. The Construction Manager shall make reasonable efforts to obtain at least three competitive bids, proposals, or quotes for each Work Component. Receipt of fewer than three responses shall not require rebidding if the Construction Manager documents its solicitation efforts and the Owner approves proceeding with the procurement.

Unless otherwise approved by the Owner in writing, competitive subcontractor solicitations shall be advertised in the Daily Journal of Commerce at least ten (10) calendar days before the deadline for receipt of bids or proposals. The Construction Manager shall establish clear submission requirements and deadlines for each solicitation. Competitive selections may be based on price alone or on price and qualifications, as permitted by the Procurement Requirements and identified in the applicable solicitation.

Any proposed sole-source or other noncompetitive procurement shall comply with the Basic Requirements of this Section and shall require the Owner's prior written approval.

Applicable prevailing wage and other Oregon public works requirements shall apply to Subcontracts as required by law.

6. Except for General Conditions work authorized under the Contract Documents, the Construction Manager shall identify in writing and in advance any Work Component that the Construction Manager or an Affiliate proposes to self-perform. If the Construction Manager or an Affiliate competes for a Work Component, the solicitation shall disclose that fact and the procurement shall include an objective and independent receipt, review, and opening of bids or proposals by the Owner's Representative or another independent third party acceptable to the Owner.

Self-performed Work that is not competitively procured may be performed only as permitted by the Basic Requirements of this Section and with the Owner's prior written approval.

7. The Construction Manager shall establish the bidding schedule, conduct a pre-bid conference to familiarize bidders with bid documents and management techniques, maintain a log of firms attending the pre-bid conference and a log of the bidders, successful or not.

8. The Construction Manager shall respond to questions from potential bidders and clarifications or interpretations of the Bidding Documents. The Owner's Representative and Architect shall assist as they determine appropriate.

9. Addenda affecting a Work Component solicitation shall be issued or approved by the Owner, Architect, or Construction Manager, as applicable to the subject matter. The Construction Manager shall ensure that all known prospective bidders or proposers receive or have access to each applicable addendum before the solicitation deadline.

10. The Owner's Representative shall receive advance notice of and have the opportunity to observe the opening of Subcontractor bids or proposals. When the Construction Manager or an Affiliate is competing for a Work Component, bids or proposals shall be received and opened by the Owner's Representative, Owner's staff, or an independent third party acceptable to the Owner, in accordance with the Basic Requirements of this Section.

11. With respect to any subcontractor to whom Construction Manager proposes to subcontract a portion of the Work, Construction Manager shall submit the following information to Owner in sufficient time to prevent delays in the Project Schedule:

- (a) the name and address of the Subcontractor;
- (b) a description of the portion of the Work and type of activity to be performed by such Subcontractor;
- (c) a brief summary of the Subcontractor's past experience in performing services or producing products similar to those to be performed or produced by the Subcontractor in connection with the Work (including number of years in business and recent major projects);
- (d) evidence that the Subcontractor has sufficient capacity (staff and/or plant) and financial resources to perform or produce the Work;
- (e) any documents or materials required under applicable laws regarding the qualifications of the Subcontractor to be accepted for work under this Contract; and
- (f) any ownership or other financial affiliations between Construction Manager and the proposed subcontractor
- (g) such other evidence of the Subcontractor's fitness and responsibility as Owner may reasonably request.

12. The Owner's Representative shall be given the opportunity to review the Construction Manager's evaluation of bids and recommendations and authorize (or deny authorization of) the award, prior to bid award.

13. The Construction Manager shall review and respond to any recommendations of the Owner's Representative.

14. The Construction Manager shall make recommendations for awards. The Owner's Representative may require disqualification of particular bids for good cause, including without limitation the bidder's (or its affiliates) presence on the Owner's disqualified contractor list. No subcontract or supply award shall be made without the Owner's written approval. The Owner's approval shall not constitute approval of the individual subcontractor and supplier, and the Construction Manager remains responsible for their selection.

15. The Construction Manager will announce which prospective Subcontractors the Construction Manager intends to select by written notice given to the Owner and all bidders for the Work Component at issue. The Construction Manager shall make such announcement at least five business days prior to the date of prospective award. The Construction Manager shall respond to any questions, comments, or protests of the prospective bidders for the Work Component in writing, with a copy of the writing given concurrently to all prospective bidders for the Work Component and to the Owner's Representative. The Construction Manager shall make no award without Owner's prior written authorization.

16. The Construction Manager shall not discuss or communicate about the selection process with any prospective Subcontractor, or any entity not selected for award, without at least one business day's prior written notice to the Owner's Representative, so that Owner may participate in such discussion or communication at Owner's election. If the Construction Manager discusses with or communicates about the selection process for a Subcontract with a prospective Subcontractor or any entity that the Construction Manager did not select for the Work Component at issue, the Construction Manager shall maintain complete written minutes of such discussion and deliver a copy to the Owner's Representative.

17. After award, the Construction Manager shall prepare subcontracts and supply agreements. At Owner's option and written request, Owner shall have the right of prior written approval of the subcontract and supply agreements (or the form of the same) before execution. Whether or not Owner requests such prior written approval, Construction Manager shall deliver copies of the executed subcontracts and supply agreements to the Owner's Representative within five business days after execution.

18. The Construction Manager may not waive the competitive process for a Work Component, including proposed self-performed Work, except in accordance with the Basic Requirements of this Section. The Construction Manager shall submit to the Owner in advance a written justification describing the Work Component, the reason for the proposed waiver, and the proposed alternative procurement method. No alternative procurement method may be used without the Owner's prior written approval.

19. Subcontractor and supplier procurements under this Contract are governed by the CM/GC subcontracting requirements established in this Section, ORS 279C.337, OAR 137-049-0690, and other applicable law. Owner approval is required for all subcontract and supplier awards.

The Construction Manager shall maintain complete records of its subcontracting and procurement activities, including solicitation, evaluation, award, and protest documentation, and shall provide such records to the Owner upon request.

Subcontracting and procurement records shall be maintained and disclosed in accordance with applicable Oregon public records law, including applicable exemptions from disclosure. The Owner shall determine responses to public records requests in accordance with applicable law.

The Owner retains the right to monitor the subcontracting and protest processes to protect the Owner's interests and confirm compliance with the Contract and applicable law. The Owner may require rebidding of a Work Component when reasonably necessary to ensure compliance with the Procurement Requirements or protect the Owner's interests.

20. The Construction Manager shall comply with all applicable federal, state, and local laws and regulations relating to nondiscrimination, subcontracting, and participation of certified businesses. Nothing in this Contract establishes any District-specific hiring quota, mandatory participation goal, or other socio-economic program beyond requirements imposed by applicable law.

21. A firm responding to a Work Component solicitation may submit a written request for clarification or change to the Construction Manager, with a copy to the Owner's Representative, no later than noon five (5) calendar days before the solicitation deadline, unless another deadline is stated in the solicitation. The request shall identify the provision at issue, the reason for the request, and any proposed change. Any material change accepted by the Owner shall be communicated by addendum to all known prospective bidders or proposers.

22. A firm that claims to be adversely affected or aggrieved by the Construction Manager's selection of another firm for a Work Component shall submit a written protest to the Construction Manager, with a copy to the Owner's Representative, within five (5) calendar days after notice of the intended selection. The protest shall identify with specificity the grounds for the protest. Failure to submit a timely protest shall constitute a waiver of the protest under this contractual process.

The Construction Manager shall be responsible, at its own expense, for reviewing and resolving timely subcontractor or supplier protests. The Construction Manager shall maintain a complete record of each protest and its resolution and shall provide the record to the Owner upon request.

The Owner may monitor the protest process but is not acting as the Construction Manager's representative and does not assume responsibility for resolving subcontractor or supplier protests unless required by applicable law or expressly agreed in writing. Resolution of a protest shall not increase the Guaranteed Maximum Price except through a written Modification authorized under the Contract Documents. Subcontractors and suppliers are not third-party beneficiaries of this provision.

23. The Construction Manager shall make reasonable good-faith efforts to inform and encourage qualified local subcontractors and suppliers to participate in Project procurement opportunities. Local firms shall compete on the same basis as other firms, and selection shall be based on the applicable competitive procurement criteria, including price, quality, qualifications, capacity, schedule, and overall value to the Project. Nothing in this Section requires selection of a local firm when another firm offers greater overall value to the Project.

24. The Construction Manager shall comply with applicable Oregon law concerning certified businesses and nondiscrimination in subcontracting. The District encourages broad participation by qualified firms but does not establish a mandatory participation goal or quota for COBID-certified businesses under this Contract.

§ 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 for inclusion in the Contract Documents.

§ 3.2 Guaranteed Maximum Price Proposal

§ 3.2.1 Within 30 days after written request by the Owner, given at any time that Owner has determined that design has progressed past the Design Development stage, the Construction Manager shall prepare a Guaranteed Maximum Price proposal for the Owner's and Architect's review, and the Owner's acceptance using the form of Exhibit A-1. The proposed Guaranteed Maximum Price shall include the allowable Cost of the Work and, as separately stated categories, General Conditions, the Construction Manager's contingency described in Section 3.2.4, the Construction Manager's Fee described in Section 6.1.2, Project-specific insurance and bonds, and other compensation expressly authorized by Exhibit E and the applicable Amendment, less applicable Early Work or prior GMP credits. A cost may be included in only one compensation category. The purpose of the Guaranteed Maximum Price proposal is to identify the Work specifications and the pricing (including subcontractors and suppliers) and schedule thereof; the Construction Manager shall not and may not include in its Guaranteed Maximum Price proposal any proposed clarification, assumption, qualification, exclusion, or other term that is at variance or conflicts with, that amends, or that adds to the terms and conditions of the Contract Documents unless approved by the Owner in the Owner's sole discretion.

§ 3.2.2 To the extent that the Drawings and Specifications 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 or quality of materials, finishes, or equipment, which, if authorized, shall be addressed by written Modification.

The Construction Manager shall notify the Owner of any proposed increase or decrease to the Guaranteed Maximum Price resulting from a change in the Drawings or Specifications within 10 days after receipt of the change, or any claim for an increase shall be barred.

The Guaranteed Maximum Price shall be adjusted only by written Modification and as permitted by the Contract Documents and applicable law. The Owner shall not be required to pay an amount exceeding the Guaranteed Maximum Price except to the extent an adjustment is permitted by the Contract Documents or required by applicable law. A reduction in the scope of Work shall result in an appropriate reduction to the Guaranteed Maximum Price.

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

- .1 A list of the Drawings and Specifications, including all Addenda thereto, and the Conditions of the Contract;
- .2 A list of the clarifications and assumptions made by the Construction Manager in the preparation of the Guaranteed Maximum Price proposal, including assumptions under Section 3.2.2, to supplement the information provided by the Owner and contained in the Drawings and Specifications;
- .3 A statement of the proposed Guaranteed Maximum Price, including the estimated Cost of the Work organized by trade categories or systems and separately stating, as applicable, General Conditions, allowances, the Construction Manager's contingency set forth in Section 3.2.4, the Construction Manager's Fee, Project-specific insurance, performance and payment bonds, approved SDI/Subguard or similar programs, CAT tax or approved surcharge, other expressly authorized compensation, and credits for Early Work or prior GMP amounts;
- .4 The dates of Substantial Completion and Final Completion upon which the proposed Guaranteed Maximum Price is based, if not stated in this A133 Contract;
- .5 A schedule of values breaking down the Guaranteed Maximum Price proposal by task and trade, and including a copy of any bids or subcontractor estimates, in accordance with the Procurement Requirements; and
- .6 A date by which the Owner must accept the Guaranteed Maximum Price.
- .7 A schedule identifying professional design services or certifications specifically required by the Contract Documents or needed to carry out the Construction Manager's responsibilities for construction means, methods, techniques, sequences, and procedures pursuant to Section 3.12.10 of AIA Document A201-2017, including the applicable portions of the Work, the responsible party and design professional, if

known, applicable performance and design criteria, scope boundaries, fees and other associated costs, permit responsibilities, and schedule impacts.

§ 3.2.4 In preparing the Construction Manager's Guaranteed Maximum Price proposal, the Construction Manager shall include its proposed contingency ("Contingency"), which shall not exceed 5% of the estimated Cost of the Work. The Contingency shall be applied by Construction Manager solely to cover unanticipated costs reimbursable as Cost of the Work that exceed the estimated Cost of the Work, but are not included in a Change Order. Construction Manager's application of the Contingency shall not change the Guaranteed Maximum Price. Change Orders shall not increase the Contingency. The Contingency may be used only with the Owner's prior written authorization, which shall not be unreasonably withheld. The status of the Contingency will be evaluated by Owner and the Construction Manager on a regular basis to reallocate unused or unneeded Contingency to Owner, or to allow the Owner to potentially add scope, to enhance aspects of the Project, or otherwise pay for Change Orders without increase to the Guaranteed Maximum Price. Such reallocation shall be based on an evaluation of remaining risk to the Project, and such reallocation shall not be unreasonably opposed or delayed by the Construction Manager. The Construction Manager shall provide a monthly status of the Construction Contingency with each Application for Payment, including its specific line item application and the basis therefor. Any portion of the Contingency not used or applied as provided above shall, at Owner's election, either be applied to pay for Owner-directed Change Orders or shall reduce the Guaranteed Maximum Price at the time of Substantial Completion.

§ 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 (using the form of Exhibit A-1), 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, which shall be consistent with the Procurement Requirements.

§ 3.2.7 The Construction Manager shall not incur any cost to be reimbursed as part of the Cost of the Work prior to execution of the applicable Guaranteed Maximum Price Amendment, except to the extent expressly authorized by an executed Early Work Amendment using the form of Exhibit A-2. Any Early Work shall be subject to the insurance and bonding requirements of the Contract Documents before the authorized Work begins.

§ 3.2.8 The Owner shall authorize the Architect to provide the revisions to the Drawings and Specifications to incorporate the agreed-upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment. The Owner shall promptly furnish those revised Drawings and Specifications to the Construction Manager as they are revised. The Construction Manager shall notify the Owner and Architect of any inconsistencies between the Guaranteed Maximum Price Amendment and the revised Drawings and Specifications.

§ 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, but only to the extent included in the definition of the Cost of the Work.

§ 3.2.10 Unless Owner directs otherwise, General Conditions shall be separately stated and limited to the amount established in Exhibit E and the applicable Early Work or Guaranteed Maximum Price Amendment. General Conditions are not Cost of the Work and shall be administered as a not-to-exceed amount unless the applicable Amendment expressly provides otherwise.

§ 3.2.11 Prior to execution of the applicable Guaranteed Maximum Price Amendment, demolition, construction, or long-lead procurement may proceed only to the extent expressly authorized in an executed Early Work Amendment. A time-and-materials direction or informal not-to-exceed authorization, by itself, does not authorize Early Work.

§ 3.2.12 The Guaranteed Maximum Price Amendment may include allowances for items of Work identified in the Amendment. If the actual allowable cost of an item is greater or less than the applicable allowance, the Guaranteed Maximum Price shall be adjusted by the difference, subject to the Owner's authorization and the Contract Documents.

Any adjustment to the Construction Manager's Fee, General Conditions, insurance, bonds, or other markup arising from allowance reconciliation shall be determined in accordance with Exhibit E. No cost or markup may be recovered more than once.

§ 3.2.13 Any Construction Manager or Subcontractor proposals referenced as part of the Contract Documents, whether herein, in the Guaranteed Maximum Price Amendment, or in any other Amendment or Modification, are incorporated solely for: (i) any statement of fees and schedule that is otherwise consistent with the terms of this Agreement; and (ii) any statement of services and scope of Work that is consistent with the remainder of this Agreement, or that provides additional Work without adjustment to the Contract Sum or Contract Time.

No other provisions of any proposal are part of this Agreement, including, without limitation, any purported limitation on liability. To the extent that a proposal term conflicts with the other terms of this Agreement, such conflicting term is void unless expressly accepted by the Owner in writing.

In the event of overlap or inconsistency between the provisions of such proposals and the other Contract Documents, the conflict shall first be resolved in accordance with Section 15.3. Where provisions of equal precedence cannot reasonably be reconciled, the provision requiring the better quality or greater quantity of service to the Owner shall control.

§ 3.2.14 Alternates

§ 3.2.14.1 The Owner, Construction Manager, and Architect may identify additive or deductive alternates for inclusion in bid packages or the Guaranteed Maximum Price Amendment. The Owner may elect or defer an Alternate in accordance with the terms stated in the applicable bid package or Guaranteed Maximum Price Amendment.

§ 3.2.14.2 The price stated for each Alternate shall be the total adjustment to the Guaranteed Maximum Price resulting from election of the Alternate and shall include all applicable Cost of the Work, General Conditions, Construction Manager's Fee, insurance, bonds, and other compensation unless expressly stated otherwise.

§ 3.2.14.3 Upon the Owner's written election of an Alternate, the Guaranteed Maximum Price shall be increased or decreased by the stated Alternate amount. Any adjustment to Contract Time shall be made only as expressly stated for the Alternate or otherwise authorized by written Modification.

§ 3.2.14.4 Any adjustment to the Construction Manager's Fee, General Conditions, insurance, bonds, or other compensation arising from an Alternate that is not included in the stated Alternate price shall be determined in accordance with Exhibit E and must be expressly authorized in writing by the Owner.

§ 3.2.14.5 No cost, Fee, markup, General Conditions, insurance, bond cost, or other compensation associated with an Alternate may be recovered more than once.

§ 3.3 Construction Phase

§ 3.3.1 General

§ 3.3.1.1 For purposes of Section 8.1.2 of A201–2017, 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 mutual execution of the Guaranteed Maximum Price Amendment or execution of an Early Work Amendment pursuant to Section 3.3.1.3, whichever occurs earlier.

§ 3.3.1.3 In the event the Owner determines, in its discretion, to authorize Work prior to execution of the applicable Guaranteed Maximum Price Amendment ("Early Work"), such Early Work shall be authorized only through an executed Early Work Amendment using the form of Exhibit A-2. The Early Work Amendment shall identify the authorized scope, basis documents, schedule or delivery milestone, maximum price and cost treatment, applicable Construction Manager's Fee, insurance and bond requirements, and the

manner in which the Early Work will be reconciled into a later Guaranteed Maximum Price. The Construction Manager shall not proceed with Early Work until the applicable Early Work Amendment has been executed and required insurance and bonds are in place. Emergency Work shall be authorized only by a written Modification permitted by the Contract Documents and applicable law.

§ 3.3.2 Administration

§ 3.3.2.1 The Owner Representative shall schedule and conduct meetings to discuss such matters as procedures, progress, coordination, scheduling, and status of the Work, not less than weekly with the Construction Manager, Architect, and Owner. The Owner Representative shall prepare and promptly distribute minutes of the meetings to the Construction Manager and Architect. Construction Manager shall attend and participate in such meetings, and promptly provide in writing any comments on Owner's Representative's minutes of such meetings. Except for written comments of the Construction Manager regarding meeting minutes delivered to the Owner's Representative within the earlier of (i) seven days after submission of the minutes, or (ii) by the next OAC meeting, Construction Manager shall be deemed to have approved the meeting minutes as submitted.

§ 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 (consistent with the required Substantial Completion and Final Completion Dates with appropriate time contingencies) and a submittal schedule in accordance with Section 3.10 of A201-2017.

§ 3.3.2.3 Monthly Report

The Construction Manager shall prepare and maintain ordinary and customarily accepted records of 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.

§ 3.3.2.6 Those portions of the Work that the Construction Manager does not customarily perform with the Construction Manager's own personnel shall be performed under subcontracts or by other appropriate agreements with the Construction Manager, in accordance with the Procurement Requirements. The Owner may designate specific persons from whom, or entities from which, the Construction Manager shall obtain bids. The Construction Manager shall obtain bids from Subcontractors and from suppliers of materials or equipment fabricated especially for the Work in accordance with the Procurement Requirements.

§ 3.3.2.7 If the Guaranteed Maximum Price has been established and when a specific bidder (1) satisfies the Procurement Requirements and 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 unreasonably requires that another bid be accepted, then the Construction Manager may require that a Change Order be issued to adjust the Contract Time and the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Construction Manager and the amount and time requirement of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

§ 3.3.2.8 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 prior consent of the Owner. If the Subcontract is awarded on a cost-plus a fee basis, the Construction Manager shall provide in the Subcontract for the Owner to receive the same audit rights with regard to the Subcontractor as the Owner receives with regard to the Construction Manager in

Section 10 below. Subcontracts shall provide that the Subcontractor shall correct defective or nonconforming Work at no additional charge.

§ 3.3.2.9 If the Construction Manager recommends a specific bidder that may be considered a “related party” under Section 7.8, the Construction Manager shall promptly notify the Owner in writing of such relationship and of the specific nature of the contemplated transaction in accordance with Section 7.8.2.

§ 3.3.2.10 In addition to the meetings set forth above and any other obligations of Construction Manager, Construction Manager shall assist Owner in dealing and working with the neighborhood groups, government agencies and/or funding sources (public or private) for the Project, attend meetings with such entities, if applicable or requested by Owner, assist Owner in completing forms and applications, organizing information, and assembling documents and materials, and generally assist Owner as necessary in connection with its financing, permitting, and approval activities for the Project. Construction Manager shall assemble such documents and materials as may be appropriate for the anticipated discussion at such meetings, and shall make presentations regarding the Project to such entities as applicable and as requested by Owner. Construction Manager shall receive no extra compensation for attending such meetings or making such presentations.

§ 3.3.2.11 The Construction Manager shall assign to the Owner all assignable extended manufacturer’s warranties and shall cooperate with the Owner in pursuing warranties and warranty claims. The Construction Manager shall execute such documents as the Owner may reasonably request to evidence or facilitate such assignment.

§ 3.3.3 Construction Manager shall comply with the Access Standards (see Exhibit I) in all aspects of performance of the Work.

ARTICLE 4 OWNER’S RESPONSIBILITIES

§ 4.1 Information and Services Required of the Owner

§ 4.1.1 To the extent not already identified in the Request for Proposals, 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 DELETED

§ 4.1.3 The Owner shall establish and periodically update the Owner’s budget for the Project, including (1) the MACC for the Guaranteed Maximum Price, (2) the Owner’s other Project costs, and (3) reasonable contingencies related to such costs. If the Owner significantly increases or decreases the MACC, the Owner shall notify the Construction Manager and Architect. The Owner and Architect, in consultation with the Construction Manager, may thereafter agree to a corresponding change in the Project’s scope or 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 site information in Owner’s possession 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 known 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, if such services are required under this Contract, shall furnish services of geotechnical engineers, which may include, but are not limited to, at Owner's discretion, 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.

§ 4.2 Owner's Designated Representative

The Owner shall designate one or more District staff members authorized to act on behalf of the Owner with respect to the Project ("Owner's Representative"). The Owner may change its designation by written notice to the Construction Manager. 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.

The Owner's Representative may act only within the authority delegated by the Owner. Nothing in this Section authorizes the Owner's Representative to approve amendments, Change Orders, Contract Sum adjustments, or other matters requiring approval by the Board of Directors or other approval under applicable law or District policy.

Except as otherwise provided in Section 4.2.1 of A201–2017, the Architect does not have such authority. References in the Contract Documents to the "Owner" include the Owner's Representative when acting within the scope of the authority delegated by the Owner.

§ 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. Owner is not responsible for providing legal, insurance or accounting services to or for Construction Manager.

§ 4.3 Architect The Owner shall retain an Architect to provide services, duties and responsibilities as described in AIA Document B101™–2017 or B133™–2019, Standard Form of Agreement Between Owner and Architect, Construction Manager as Constructor Edition, as modified by the Owner. If the Construction Manager identifies a need for additional Architect services, the Construction Manager shall notify the Owner. Any additional Architect services shall be provided only if authorized by the Owner.

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. Owner may elect to have any duty or right of the Architect under the Contract Documents, other than those required by law to be performed by a licensed design professional, instead performed by Owner's Representative. Architect-provided consulting services shall not reduce the Construction Manager's obligations under this Agreement.

§ 4.4 Key Persons. Construction Manager shall appoint the personnel identified in the Construction Manager's Proposal and incorporated into Exhibit F to work on the Project in the respective positions designated therein, which shall include the Principal in Charge, Project Manager and Superintendent ("Key Persons"). Each Key Person shall be authorized to communicate to Owner on behalf of Construction Manager (which communications shall be binding on Construction Manager, and Owner communications to any Key Person shall be deemed communications to Construction Manager). Construction Manager shall not change any of the Key Persons without Owner's prior written approval. In the case any such person is no longer employed by Construction Manager, Owner's approval of such change shall not be unreasonably withheld. If Owner requests a change to any of the Key Persons, Construction Manager shall work with Owner to replace such Key Person with a member of Construction Manager's staff reasonably acceptable to Owner.

§ 4.5 Owner-Direct Purchases, District-Performed Work, and District-Managed Separate Work

§ 4.5.1 The Owner and Construction Manager will work collaboratively during preconstruction and construction to identify portions of the Project that may be most effectively completed through Owner-direct purchases, District-Performed Work, District-Managed Separate Work, or the Construction Manager's contracted Work. In evaluating

these opportunities, the parties will consider cost, schedule, coordination, safety, quality, warranty, procurement, staffing, operational impacts, and overall Project efficiency.

§ 4.5.2 When District personnel perform work that the parties agree will be integrated into and managed as part of the Construction Manager's overall construction effort ("CM/GC-Managed District-Performed Work"), the Construction Manager shall provide the agreed construction management, scheduling, coordination, logistics, and related services. The Construction Manager shall be entitled to its otherwise applicable Construction Manager's Fee percentage on the agreed documented cost of that work. The underlying District labor, material, and equipment costs remain Owner costs and are not Cost of the Work. Unless otherwise agreed in writing, CM/GC-Managed District-Performed Work shall not result in additional markup, insurance, bond premium, General Conditions, or other compensation beyond the Construction Manager's Fee and any specifically approved incremental cost associated with managing or coordinating that work.

§ 4.5.3 District-Performed Work that is not managed by the Construction Manager, District-Managed Separate Work, and Owner-direct purchases will remain outside the Construction Manager's Cost of the Work and Fee except for reasonable incremental coordination or other services specifically agreed to by the parties in writing. The parties will document the applicable scope boundaries, management and coordination responsibilities, schedule interfaces, agreed cost basis, and compensation treatment in the applicable Early Work Amendment, Guaranteed Maximum Price Amendment, Change Order, or other written authorization, consistent with Exhibit H.

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 by the Preconstruction Services Lump Sum stated in Exhibit E, Compensation and Cost Classification. The lump sum includes all services and costs within the accepted preconstruction scope, except for hourly services or extraordinary reimbursable items expressly authorized in accordance with Exhibit E or by written Modification. Only services performed after the date of mutual signature of this Agreement are compensable.

§ 5.1.2

Hourly compensation outside the Preconstruction Services Lump Sum is permitted only when expressly authorized by the Owner. Any such compensation shall be based on the applicable rates and terms stated in Exhibit E.

§ 5.1.2.1

Hourly rates stated in Exhibit E are fully burdened and include wages or salaries and applicable payroll taxes, benefits, workers' compensation, unemployment costs, paid leave, and other costs identified in Exhibit E. Rate adjustments, if any, shall be governed by Exhibit E or a written Modification.

§ 5.1.3

Direct Personnel Expense is included in the Preconstruction Services Lump Sum and is not separately compensable except for hourly services expressly authorized under Section 5.1.2.

§ 5.2 Payments

§ 5.2.1

Unless otherwise agreed, the Construction Manager may invoice monthly for the portion of the Preconstruction Services Lump Sum attributable to services performed during the billing period and for any other compensation expressly authorized under this Article and Exhibit E.

§ 5.2.2

Payments shall be made in accordance with ORS 279C.570, including applicable prompt-payment and interest requirements.

ARTICLE 6 COMPENSATION FOR CONSTRUCTION PHASE SERVICES

§ 6.1 Contract Sum

§ 6.1.1

For each authorized Early Work Amendment or Guaranteed Maximum Price Amendment, the Owner shall pay the Construction Manager the applicable Contract Sum in accordance with the Contract Documents. The Contract Sum for construction is the allowable Cost of the Work, plus the separately stated General Conditions, Construction Manager's Fee, project-specific insurance and bonds, and other compensation expressly authorized in Exhibit E and the applicable Amendment, subject to the applicable maximum price.

§ 6.1.2 Construction Manager's Fee

The Construction Manager's Fee percentage shall be the percentage stated in Exhibit E. For each Early Work Amendment or Guaranteed Maximum Price Amendment, that percentage shall be applied to the applicable Fee basis established in Exhibit E, including, when applicable, the agreed documented cost of CM/GC-Managed District-Performed Work under Section 4.5 and Exhibit H, to establish a fixed-dollar Fee for the authorized scope. The Fee shall be subject only to adjustments expressly permitted by the Contract Documents. No Fee shall be applied to costs or compensation categories excluded from the Fee basis under Exhibit E.

§ 6.1.3 Adjustment of Construction Manager's Fee for Changes in the Work

The Construction Manager's Fee for additive and deductive changes shall be adjusted in accordance with the applicable Fee basis and Change/Markup Schedule stated in Exhibit E unless the parties agree by written Modification to a different fixed amount. Deductive changes shall reduce the Fee on the same basis used to calculate the Fee for the deleted Work.

The accepted Fee percentage shall also apply to the agreed documented cost of CM/GC-Managed District-Performed Work as provided in Section 4.5 and Exhibit H. District-Performed Work not managed by the Construction Manager, District-Managed Separate Work, and Owner-direct purchases shall not be subject to the Fee except as expressly agreed in writing.

No additional Construction Manager markup shall apply except as expressly permitted by Exhibit E or a written Modification.

§ 6.1.4 Subcontractor Overhead and Profit

Subcontractor and lower-tier overhead and profit on changes shall not exceed the applicable limits stated in Exhibit E. No additional markup may be charged unless expressly identified in Exhibit E or approved by written Modification.

§ 6.1.5 Construction Manager-Owned Equipment

Rental rates for equipment owned by the Construction Manager or a related party shall not exceed one hundred percent (100%) of the documented prevailing local market rental rate for comparable equipment for a comparable rental period and shall require the Owner's prior written approval. The total rental cost of an item shall not exceed its reasonable purchase price. Charges for operators, fuel, delivery, pickup, insurance, taxes, maintenance, or similar items shall not be duplicated.

§ 6.1.5.1

Unit prices, if any, shall be identified in the applicable Early Work Amendment or Guaranteed Maximum Price Amendment.

§ 6.1.6 Liquidated Damages

§ 6.1.6.1

The Owner and Construction Manager share the goal of completing the Project on schedule and will work collaboratively and in good faith to identify, mitigate, and resolve conditions that may affect timely completion.

The Substantial Completion Date shall be adjusted for extensions of Contract Time to which the Construction Manager is entitled under the Contract Documents. Liquidated damages will not apply to delays for which the Construction Manager is entitled to such an extension, including delays resulting from causes beyond the Construction Manager's reasonable control.

If Substantial Completion is not achieved by the adjusted Substantial Completion Date due to unexcused delay, liquidated damages will apply for each day of such delay until Substantial Completion is achieved. The daily amount shall be agreed upon by the Owner and Construction Manager prior to establishment of the Guaranteed Maximum Price.

The parties agree that actual damages resulting from unexcused delay would be difficult to determine precisely and that the agreed amount will represent a reasonable estimate of those damages, not a penalty. The Owner may deduct accrued liquidated damages from amounts otherwise due to the Construction Manager.

Liquidated damages apply only to unexcused delay in achieving Substantial Completion and do not affect either party's rights or obligations regarding other matters under the Contract.

§ 6.1.7 Other

One hundred percent (100%) of all Savings shall accrue to the Owner. "Savings" means the positive difference, if any, between the applicable Guaranteed Maximum Price or other maximum price established by the Contract Documents, as adjusted by authorized Modifications, and the final amount properly payable to the Construction Manager for the authorized scope, including Cost of the Work, General Conditions, Construction Manager's Fee, project-specific insurance, bonds, approved risk-program charges, and other compensation expressly authorized by the Contract Documents.

§ 6.2 Guaranteed Maximum Price

The Construction Manager guarantees that the Contract Sum for the authorized scope shall not exceed the Guaranteed Maximum Price set forth in the applicable Guaranteed Maximum Price Amendment, as adjusted by authorized Modifications.

Except to the extent the Guaranteed Maximum Price is properly adjusted in accordance with the Contract Documents, any amount that would cause the Contract Sum to exceed the Guaranteed Maximum Price shall be borne by the Construction Manager without reimbursement or additional compensation from 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 AIA Document A201–2017, 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 execution of the Guaranteed Maximum Price Amendment may be determined by any of the methods listed in Article 7 of AIA Document A201–2017, 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 AIA Document A201–2017, as those provisions 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.

Notwithstanding the foregoing, subcontractor and lower-tier overhead and profit, and any additional Construction Manager markup on subcontractor change work, shall be subject to the applicable rates and limitations stated in Exhibit E.

§ 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 shall mean allowable Cost of the Work as defined in Article 7 of this Agreement. General Conditions, Construction Manager’s Fee, project-specific insurance, bonds, risk-program charges, and other separately classified compensation shall be adjusted only as permitted by Exhibit E and the Contract Documents. The term “fee” shall mean the Construction Manager’s Fee established under Section 6.1.2.

§ 6.3.5

Adjustments to the Construction Manager’s Fee arising from changes in the Work shall be determined in accordance with Section 6.1.3 and Exhibit E. No other adjustment to the Construction Manager’s Fee shall be permitted except by written Modification.

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 only costs necessarily incurred by the Construction Manager in the proper performance of the Work in accordance with this Article 7 and Article 8. The Cost of the Work shall include only the items set forth in Sections 7.1 through 7.7, subject to the cost classifications and limitations established in Exhibit E. In the event of a conflict concerning the classification or recoverability of a Project cost, Section 7.1.4 and Exhibit E shall control.

§ 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. The parties shall endeavor to identify any such costs prior to executing Guaranteed Maximum Price Amendment.

§ 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.

§ 7.1.4 Exhibit E, Compensation and Cost Classification, controls the classification of Project costs. A cost may be recovered in only one compensation category. If a cost is included in the Construction Manager’s Fee, General Conditions, Preconstruction Services Lump Sum, insurance, bonds, or another separately stated category, it is not also reimbursable as Cost of the Work. In the event of a conflict between this Article 7 and Exhibit E concerning cost classification, Exhibit E controls.

§ 7.2 Labor Costs

§ 7.2.1 Wages or salaries of construction workers directly employed by the Construction Manager to perform construction of the Work at the site, or with the Owner’s prior written approval at off-site workshops, together with legally required payroll taxes, workers’ compensation costs, and applicable prevailing-wage fringe benefits directly attributable to such labor.

The premium portion of overtime wages shall not be reimbursable without the Owner’s prior written approval. Allowable labor costs shall be subject to Exhibit E and shall not include costs otherwise included in General Conditions or the Construction Manager’s Fee.

§ 7.2.2 Compensation and associated labor costs of the Construction Manager's supervisory, management, administrative, and project staff shall be classified and compensated as General Conditions or Construction Manager's Fee, as applicable, in accordance with Exhibit E, and shall not be separately reimbursable as Cost of the Work.

§ 7.2.3 Personnel costs included in General Conditions shall be subject to the staffing, rates, duration, and other limitations established in Exhibit E and the applicable Early Work or Guaranteed Maximum Price Amendment.

§ 7.2.4 Home-office administrative, executive, accounting, estimating, and other corporate personnel costs shall be included in the Construction Manager's Fee except to the extent expressly classified otherwise in Exhibit E.

§ 7.2.5 The rates and treatment of personnel costs shall be governed by Exhibit E. No personnel cost may be recovered in more than one compensation category.

§ 7.3 Subcontract Costs

Payments made by the Construction Manager to Subcontractors in accordance with the requirements of the subcontracts for Work properly performed.

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

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

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

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

§ 7.5.1 Costs of materials, supplies, temporary facilities, machinery, equipment, and tools that are directly attributable to a particular trade or portion of the Work may be included in the Cost of the Work to the extent permitted by Exhibit E. Project-wide temporary facilities, utilities, fencing, site support, and similar items shall be classified as General Conditions when so provided in Exhibit E.

§ 7.5.2 Rental charges for machinery, equipment, and tools properly classified as Cost of the Work under Exhibit E may be reimbursed at rates approved by the Owner. Equipment owned by the Construction Manager or a related party shall be subject to the requirements and limitations of Exhibit E, including applicable market-rate and purchase-price limitations.

§ 7.5.3 Trade-specific cleanup and debris removal directly attributable to a particular portion of the Work may be included in the Cost of the Work. Project-wide cleanup, waste management, and debris removal shall be classified as General Conditions to the extent provided in Exhibit E.

§ 7.5.4 Costs of the Construction Manager's site office, project administration, general office equipment, and supplies shall be classified as General Conditions and shall not be separately reimbursable as Cost of the Work.

§ 7.5.5 Costs of materials and equipment suitably stored off the site at a mutually acceptable location, subject to the Owner's prior approval. In addition to other requirements of the Contract Documents applicable to payment for stored materials, Owner may withhold payment for any stored materials until all of the following conditions are fulfilled to Owner's satisfaction: (i) evidence that Owner has acquired title to the same and such materials are covered by insurance required and the Owner is named as additional insured on insurance certificate; (ii) a Stored Materials Log for review by Owner and Architect, together with all invoices and bills of sale for such materials itemized therein; (iii) a schedule for the prompt incorporation thereof into the Property; (iv) written confirmation from the Architect verifying and approving the cost and acquisition of said materials, that such materials are stored in a secure building or bonded warehouse located on the Property, or in the jurisdiction in which the Property is situated, and that such materials are tagged and separate and not subject to commingling with other materials.

§ 7.6 Miscellaneous Costs

§ 7.6.1 Project-specific liability insurance and Construction Manager payment and performance bond costs are not Cost of the Work. They shall be separately stated and compensated only as provided in Exhibit E and the applicable Early Work or Guaranteed Maximum Price Amendment.

§ 7.6.2 Sales, use, or similar taxes imposed by a governmental authority that are related to the Work and for which the Construction Manager is liable may be included only to the extent permitted by Exhibit E. The Oregon Corporate Activity Tax is excluded from the Cost of the Work and is recoverable, if at all, only as a separately disclosed surcharge expressly accepted in Exhibit E or a written Modification.

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

§ 7.6.4 Fees of laboratories for tests required by the Contract Documents; except those related to defective or nonconforming Work for which reimbursement is excluded under Article 13 of AIA Document A201–2017 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 AIA Document A201–2017. 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 Deposits lost for causes other than the Construction Manager's negligence or failure to fulfill a specific responsibility in the Contract Documents.

§ 7.7 Other Costs and Emergencies

§ 7.7.1 Other costs incurred in the performance of the Work if, and to the extent, approved in advance in writing by the Owner.

§ 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, that do not arise from the negligence of Construction Manager, its subcontractors or suppliers.

§ 7.7.3 Costs of repairing or correcting damaged Work executed by the Construction Manager, Subcontractors, or suppliers prior to Final Completion, provided that such damaged Work was not caused by the negligence of, or failure to fulfill a specific responsibility by, the Construction Manager, or its subcontractors or suppliers and only to the extent that the cost of repair or correction is not recovered or recoverable by the Construction Manager from insurance, sureties, subcontractors, suppliers, or others. Costs of repairing work damaged after Final Completion, and costs of repair or correction of nonconforming Work whether before or after Final Completion, are not recoverable.

§ 7.7.4 Costs described in Sections 7.1 through 7.7 shall be included in the Cost of the Work only to the extent classified as Cost of the Work under Exhibit E and otherwise permitted by the Contract Documents. Costs included in General Conditions, the Construction Manager's Fee, insurance, bonds, or another separately stated compensation category shall not also be included in the Cost of the Work.

§ 7.8 Related Party Transactions

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

Manager; or (4) any person, or any member of the immediate family of any person, who has the right to control the business or affairs of the Construction Manager.

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

§ 7.9 Costs Not To Be Reimbursed

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

- .1 Salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal office or offices other than the site office, except as specifically provided in Section 7.2;
- .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 Data processing or software costs related to the Work;
- .11 Any cost incurred by Construction Manager, including bond costs in response to any lien, stop notice, bonded stop notices or other such claims, unless the cost incurred by Construction Manager is solely the result of Owner's failure to make a payment to Construction Manager when due and payable with respect to the Work in question;
- .12 Costs to correct nonconforming work or to perform warranty work following Final Completion.
- .13 Travel, lodging, food, or relocation expenses;
- .14 Bonuses, profit sharing, incentive compensation, or other discretionary payments.
- .15 Costs of preparation of, and response to inquiries relating to, Construction Manager's required monthly reports to Owner;
- .16 Corporate Activity Tax; and
- .17 Any other cost or expense not expressly included in the definition of Cost of the Work.

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. Construction Manager shall make Owner aware of any discount/rebate programs and the timing of payments required under such programs so that Owner will have, at its discretion, the opportunity to participate in such programs and accrue the discount or rebate.

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

ARTICLE 9 SUBCONTRACTS AND OTHER AGREEMENTS

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

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

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

ARTICLE 10 ACCOUNTING RECORDS

§ 10.1 Accounting Records

§ 10.1.1 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. Construction Manager shall cooperate with any audits.

§ 10.1.2 The Construction Manager's system of cost control for the Work shall be in accordance with industry standards for projects of this scope, 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 at regular intervals, using Construction Manager's job-cost tracking system.

§ 10.1.3 The Construction Manager's records shall include but not be limited to accounting records, written policies and procedures, subcontractor files (including proposals of successful and unsuccessful bidders), original estimates, estimating work sheets, correspondence, change order files (including documentation covering negotiated settlements), the items described in Section 10.1.1, and any other supporting evidence necessary to substantiate charges related to the Contract shall be open to inspection and subject to audit and/or reproduction. Such records subject to examination shall also include, but not be limited to, those records necessary to evaluate and verify direct and indirect costs (including overhead allocations) as they may apply to costs associated with the Contract, and records relating to the performance of the Work.

ARTICLE 11 PAYMENTS FOR CONSTRUCTION PHASE SERVICES

§ 11.1 Progress Payments

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

§ 11.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month.

§ 11.1.3 Progress Payments shall be made in accordance with the Oregon Prompt Payment Act, ORS 279C.570.

§ 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, the applicable conditional or unconditional lien/claim/bond waivers and releases using the forms in Exhibit K, and any other evidence reasonably 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 applicable Guaranteed Maximum Price among: (1) the various portions of the Cost of the Work; (2) separately stated General Conditions; (3) any contingency included in the Guaranteed Maximum Price but not otherwise allocated; (4) the Construction Manager's Fee; (5) Project-specific insurance and bonds; and (6) other separately stated compensation categories authorized by Exhibit E and the applicable Amendment.

§ 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 (unless objected to by the Architect or the Owner), the Construction Manager shall submit supporting documentation to the Architect using the process (including supporting documentation) required for change orders (AIA 201 7.5), and such allocations must be approved in writing prior to the submission of the applicable Application for Payment.

§ 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 and then actually makes payment prior to the next Application for Payment, by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.

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

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

- .1** That portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the most recent schedule of values. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 7.3 of AIA Document A201-2017;
- .2** That portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction or, if approved in writing in advance by the Owner, suitably stored off the site at a location agreed upon in writing;
- .3** That portion of Construction Change Directives that the Owner determines to be reasonably justified; and

- .4 The portion of the Construction Manager's fixed-dollar Fee attributable to the Work completed during the applicable payment period, determined in accordance with Section 6.1.2, Exhibit E, and the applicable Early Work or Guaranteed Maximum Price Amendment.

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

- .1 The aggregate of any amounts previously paid by the Owner;
- .2 The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A201-2017;
- .3 Any amount for which the Construction Manager does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Construction Manager intends to pay;
- .4 For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A201-2017;
- .5 The shortfall, if any, indicated by the Construction Manager in the documentation required by Section 11.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
- .6 Retainage withheld pursuant to Section 11.1.8.

§ 11.1.8 Retainage

Retainage shall be administered in accordance with applicable Oregon law, including ORS 279C.550 through 279C.570.

§ 11.1.8.1

The Owner shall retain five percent (5%) of each progress payment, subject to applicable law.

§ 11.1.8.1.1

No items or categories of compensation are excluded from retainage unless otherwise required by law or approved in writing by the Owner.

§ 11.1.8.2

Any reduction or elimination of retainage prior to final payment shall be at the Owner's discretion and in accordance with applicable law.

§ 11.1.8.3

Substantial Completion does not, by itself, require release of retainage. Any remaining retainage shall be included in final payment in accordance with ORS 279C.570.

§ 11.1.9

If Final Completion of the Work is materially delayed through no fault of the Construction Manager, any adjustment to the Contract Time or Contract Sum shall be determined in accordance with the Contract Documents and applicable law.

§ 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 that have not been delivered and suitably stored at the site.

§ 11.1.11

The Construction Manager shall administer payments and retainage under its Subcontracts in accordance with ORS 279C.555, ORS 701.420, and other applicable law. Retainage withheld from a Subcontractor shall not exceed five percent (5%). Nothing in this Section requires the Owner to release or reduce retainage except as required by applicable law or otherwise approved by the Owner.

§ 11.1.12

In taking action on the Construction Manager's Applications for Payment, the Architect may rely on the accuracy and completeness of information furnished by the Construction Manager. The Owner may conduct examinations, audits, and verifications as permitted by the Contract Documents. Neither the Architect's review nor any Owner audit relieves the

Construction Manager of responsibility for the accuracy and completeness of its Applications for Payment and supporting documentation.

§ 11.2 Final Payment

§ 11.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum (including any previously unreleased or unapplied retainage, if and to the extent required to be released under ORS 279C.570), shall be made by the Owner to the Construction Manager when

- .1 the Construction Manager has fully performed the Contract, except for the Construction Manager's responsibility to correct Work as provided in Article 12 of AIA Document A201–2017, 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;
- .3 a final Certificate for Payment has been issued by the Architect in accordance with Section 11.2.2.2; and
- .4 All other conditions to Final Payment in the Contract Documents have been fulfilled.
- .5 The Construction Manager has delivered the unconditional final waiver and release required by Exhibit K, together with other final payment waivers or releases required by the Contract Documents.

§ 11.2.2 The Owner may, but is not required to, audit the Construction Manager's final accounting. The Construction Manager shall provide reasonable access to supporting records and documentation as required by the Contract Documents.

§ 11.2.2.1 If the Owner conducts an audit, the Owner shall provide the Architect and Construction Manager a written report of the audit findings within 10 days after completion of the audit.

§ 11.2.2.2 Within seven days after receipt of the audit report, or notice that the Owner will not conduct an audit, and provided the conditions of Section 11.2.1 have been satisfied, the Architect shall issue the final Certificate for Payment or notify the Owner and Construction Manager in writing of the reasons for withholding it in accordance with Article 9 of AIA Document A201–2017. The Architect is not responsible for independently auditing or verifying the Construction Manager's final accounting.

§ 11.2.2.3 If an audit report issued pursuant to Section 11.2.2.1 concludes that the Cost of the Work, as substantiated by the Construction Manager's final accounting, is less than claimed by the Construction Manager, the Construction Manager shall be entitled to request mediation of the disputed amount pursuant to the modified AIA A201–2017. 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 in the audit becoming binding on the Construction Manager. Pending final resolution of the disputed amount, the Owner shall pay the Construction Manager the amount certified in the Architect's final Certificate for Payment.

§ 11.2.3 The Owner's final payment to the Construction Manager shall be made no later than 30 days after the issuance of the Architect's final Certificate for Payment and fulfillment of the other conditions to Final Payment.

§ 11.2.4 If, subsequent to final payment and at the Owner's request, the Construction Manager incurs costs to correct defective or nonconforming Work, the Owner shall not reimburse the Construction Manager such costs, and such costs are not Cost of the Work.

§ 11.3 Interest

Payments due and unpaid under the Contract shall bear interest only as required by, and at the rate established under, ORS 279C.570 and other applicable Oregon law.

ARTICLE 12 DISPUTE RESOLUTION

§ 12.1 Binding Dispute Resolution

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

(Check the appropriate box.)

- [☒] Arbitration pursuant to Article 15 of AIA Document A201–2017
[☐] Litigation in a court of competent jurisdiction
[☐] Other: *(Specify)*
« »

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

ARTICLE 13 TERMINATION OR SUSPENSION

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

§ 13.1.1 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 13.1.1, for reasons other than Construction Manager's default, the Construction Manager shall be compensated for Preconstruction Phase services and Work performed prior to receipt of a notice of termination, in accordance with the terms of this Agreement. In no event shall the Construction Manager's compensation under this Section exceed the compensation set forth in Section 5.1.

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

§ 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 commencement of the Construction Phase but before execution of the Guaranteed Maximum Price Amendment, including after execution of an Early Work Amendment, the Owner shall pay the Construction Manager the amounts properly earned and payable for authorized Construction Phase Work performed through the effective date of termination.

Such amount shall include, as applicable, allowable Cost of the Work, General Conditions, the portion of the Construction Manager's fixed-dollar Fee earned through the effective date of termination, Project-specific insurance and bonds, and other compensation expressly authorized by Exhibit E and the applicable Early Work Amendment, less previous payments and any amounts properly chargeable to the Construction Manager under the Contract Documents.

Any reasonable costs necessarily incurred as a result of termination shall be payable only to the extent permitted by the Contract Documents and applicable law.

§ 13.1.6 Except in the event of Construction Manager default, 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 compensation payable under Section 13.1.5. 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 legal assignment of such subcontracts and other contractual rights, as the Owner may reasonably require to vest in the Owner the rights and benefits of such subcontracts or purchase orders. All Subcontracts, purchase orders, and rental agreements entered into by the Construction Manager shall contain provisions allowing for assignment to the Owner as described above.

§ 13.1.6.1 Except in the event of Construction Manager default, if the Owner accepts assignment of subcontracts, purchase orders, or rental agreements as described above, the Owner shall reimburse or indemnify the Construction Manager for costs arising under such agreements after the date of assignment to the extent such costs would otherwise have been payable under the Contract Documents. If the Owner elects not to accept assignment, the Construction Manager shall terminate the applicable agreement, and the Owner shall pay reasonable termination costs to the extent permitted by the Contract Documents.

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

§ 13.2.1 Termination The Contract may be terminated by the Owner or the Construction Manager as provided in Article 14 of AIA Document A201–2017.

§ 13.2.2 Termination by the Owner

§ 13.2.2.1 Termination for Cause If the Owner terminates the Contract for cause as provided in Article 14 of AIA Document A201–2017, the amount, if any, payable to the Construction Manager shall be determined in accordance with Article 14 of AIA Document A201–2017 and the Contract Documents and shall not cause the Guaranteed Maximum Price, as adjusted by authorized Modifications, to be exceeded.

Any compensation earned through the effective date of termination shall be calculated in accordance with Article 6, Exhibit E, and the applicable Guaranteed Maximum Price Amendment, including allowable Cost of the Work, General Conditions, the earned portion of the Construction Manager’s fixed-dollar Fee, Project-specific insurance and bonds, and other expressly authorized compensation.

From such amount shall be deducted previous payments and all costs, damages, and other amounts properly chargeable to the Construction Manager under the Contract Documents. The Construction Manager shall not be entitled to Fee or other compensation on Work not performed except as otherwise expressly provided by the Contract Documents.

§ 13.2.2.2 Termination for Convenience If the Owner terminates the Contract for convenience as provided in Article 14 of AIA Document A201–2017 and the Construction Manager is not in default, amounts payable to the Construction Manager shall be determined in accordance with Article 14 of AIA Document A201–2017 and the Contract Documents.

If the Owner elects to retain Construction Manager-owned equipment, the Owner shall pay fair compensation, by purchase or rental at the Owner’s election, to the extent such compensation is not otherwise included in amounts payable under the Contract Documents. If the Owner elects to accept assignment of subcontracts, purchase orders, or rental agreements, the Construction Manager shall reasonably cooperate and execute such documents as are necessary to transfer those rights to the Owner.

§ 13.3 Suspension

The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2017; in such case, unless suspension is the result of acts or omissions of the Construction Manager, the Guaranteed Maximum Price and Contract Time shall be increased or decreased as provided in Article 14 of AIA Document A201–2017, except that the term “profit” shall be understood to mean the Construction Manager’s Fee as described in Sections 6.1 and 6.3.5 of this Agreement.

ARTICLE 14 MISCELLANEOUS PROVISIONS

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

§ 14.2 Successors and Assigns

§ 14.2.1 The Owner and Construction Manager, respectively, bind themselves, their partners, successors, assigns and legal representatives to covenants, agreements, and obligations contained in the Contract Documents. Except as provided in Section 13.2.2 of AIA Document A201–2017, the Construction Manager shall not assign the Contract as a

whole without the written consent of the Owner. If the Construction Manager attempts to make an assignment, the Construction Manager shall nevertheless remain legally responsible for all obligations under the Contract.

§ 14.2.2 Deleted.

§ 14.3 Insurance and Bonds

§ 14.3.1 Provision

Insurance and bond requirements are set forth in Exhibit B, and the prescribed payment and performance bond forms are set forth in Exhibit J. The Construction Manager shall furnish evidence of required insurance and bonds before entering the Project site or commencing any Work, as required by those Exhibits and applicable law.

§ 14.3.2 Reserved. Insurance and additional-insured requirements are governed by Exhibit B.

§ 14.3.3 Reserved. Certificate-of-insurance requirements are governed by Exhibit B.

§ 14.3.4 Any owner-controlled or contractor-controlled insurance program shall apply only if expressly adopted by written Modification and shall be administered in accordance with Exhibit B and applicable law.

§ 14.4 Electronic Notice Notice in electronic format may be given by email to the representatives and addresses identified in this Agreement or otherwise designated by a party in writing. Notices required by the Contract Documents to be delivered by a particular method shall be given in accordance with those requirements.

ARTICLE 15 SCOPE OF THE AGREEMENT

§ 15.1 Entire Agreement

The Contract Documents identified in this Article constitute the entire and integrated agreement between the Owner and Construction Manager and supersede prior negotiations, representations, or agreements, either written or oral, except to the extent expressly incorporated into the Contract Documents. The Contract may be modified only as provided in the Contract Documents.

§ 15.2 Contract Documents

The following documents comprise the Contract Documents and, collectively, the Agreement:

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

.2 Project-Specific Exhibit A – Guaranteed Maximum Price and Early Work Amendments, including Exhibit A-1 (Guaranteed Maximum Price Amendment) and Exhibit A-2 (Early Work Amendment), which replaces and supersedes AIA Document A133™–2019, Exhibit A;

.3 AIA Document A201™–2017, General Conditions of the Contract for Construction, as modified by the Contract Documents;

.4 Project-Specific Exhibit B – Insurance and Bonds, which replaces and supersedes AIA Document A133™–2019, Exhibit B;

.5 Project-Specific Supplementary Conditions, including Oregon Public Contracting and Public Works Requirements;

.6 The following Project-Specific Exhibits:

- Exhibit C – Project Schedule;
- Exhibit D – Preconstruction Services;
- Exhibit E – Compensation and Cost Classification, based on the accepted Price Proposal and Fee Schedule;

- Exhibit F – Key Personnel and Staffing, based on the accepted Staffing Matrix;
- Exhibit G – Subcontracting and Self-Performance Requirements;
- Exhibit H – District-Performed Work, CM/GC-Managed District-Performed Work, District-Managed Separate Work, and Owner-Direct Purchases;
- Exhibit I – District Access Standards;
- Exhibit J – Forms of Payment and Performance Bonds; and
- Exhibit K – Lien/Claim Waiver Forms.

.7 Division 00 and Division 01 requirements expressly incorporated into the Contract Documents;

.8 The Drawings and Specifications, including applicable addenda and authorized revisions;

.9 The District's Request for Proposals for CM/GC Services and issued addenda, subject to Section 15.3;

.10 Specific commitments, representations, clarifications, qualifications, and Contract Exceptions and Clarifications contained in the Construction Manager's Proposal only to the extent expressly accepted by the Owner in writing and incorporated into this Agreement, an Exhibit, or another Contract Document; and

.11 Early Work Amendments, Guaranteed Maximum Price Amendments, Change Orders, Construction Change Directives, and other Modifications issued or executed after this Agreement in accordance with the Contract Documents.

§ 15.3 Order of Precedence

The Contract Documents shall be interpreted, to the extent reasonably possible, as complementary and consistent with one another. If a conflict, inconsistency, or ambiguity cannot reasonably be reconciled, the following order of precedence shall apply, but only to the subject matter of the conflict:

(1) Change Orders, Construction Change Directives, Early Work Amendments, Guaranteed Maximum Price Amendments, and other Modifications issued or executed after this Agreement, as applicable. A later-issued or later-executed document shall control over an earlier document only to the extent it expressly modifies or addresses the same subject matter;

(2) this Agreement, including its project-specific revisions and additions;

(3) the Project-Specific Supplementary Conditions;

(4) Project-Specific Exhibits A through K;

(5) AIA Document A201™–2017, as modified by the Contract Documents;

(6) Division 00 and Division 01 requirements expressly incorporated into the Contract Documents;

(7) the Drawings and Specifications, including applicable addenda and authorized revisions; and

(8) the District's Request for Proposals, including issued addenda, and specific commitments, representations, clarifications, qualifications, and Contract Exceptions and Clarifications contained in the Construction Manager's Proposal only to the extent expressly accepted by the Owner and incorporated into the Contract Documents.

A document lower in the foregoing order of precedence shall not enlarge the Construction Manager's compensation, Construction Manager's Fee, General Conditions, Guaranteed Maximum Price, or Contract Time beyond an express limitation or requirement established by a higher-order Contract Document.

Notwithstanding the foregoing order of precedence, Exhibit B shall control insurance and bonding requirements to the extent expressly provided in Exhibit B, and Exhibit E shall control the classification of Project costs to the extent expressly provided in Section 7.1.4.

A provision that is more specific to a particular scope, phase, package, cost, or obligation shall control over a more general provision at the same level of precedence to the extent the provisions cannot reasonably be reconciled.

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

SWEET HOME SCHOOL DISTRICT NO. 55

CONSTRUCTION MANAGER

OWNER *(Signature)*

« »« »

(Printed name and title)

CONSTRUCTION MANAGER *(Signature)*

« »« »

(Printed name and title)