

Request for Proposals  
for  
Construction Manager/General Contractor

Issue Date:

**February 17, 2025**

Proposal Due Date:

**March 13, 2025, at 3:00PM PST**

Tillamook Estuaries Partnership

PO Box 493

613 Commercial Street

Garibaldi, Oregon 97118

503-322-2222

503 703-5348

# Request for Proposals

## Tillamook Estuaries Partnership – Construction Manager/General Contractor

Tillamook Estuaries Partnership (TEP) is seeking proposals from qualified and experienced General Contractors (GCs) for the purpose of providing Construction Manager/General Contractor (CM/GC) services for development of a new Tillamook Estuary Science Center, located at 7855 Warren Street, Bay City, OR, 97107. TEP's objective is to enter into a CM/GC Agreement with a qualified GC who will provide these comprehensive services. This project is partially funded with federal funds and subject to current Federal Administration priorities.

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

The Request for Proposals (RFP) documents may be obtained from the TEPs website and viewed at [www.tbnep.org/](http://www.tbnep.org/). Or, the RFP documents may be viewed at 613 Commercial Street, Garibaldi Oregon 97118 by appointment. Appointments may be scheduled by contacting Liane Welch (see contact information below).

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

4 copies of the Proposals shall be submitted to TEP's office at 613 Commercial Street, Garibaldi, OR 97118 with a subject line plainly identifying the RFP and proposers name and address. In addition, a thumb drive with an electronic copy should also be submitted with the written proposals. Proposals shall be delivered to Liane Welch, Tillamook Estuaries Partnership.

Proposals will be received until 3:00 PM PST on March 13, 2025, Proposals received after the 3:00 PM deadline will not be considered.

For additional information regarding this RFP, please contact Liane Welch, [liane@tbnep.org](mailto:liane@tbnep.org), 503-703-5346. TEP reserves the right to reject any and all proposals or to negotiate individually with one or more contractors, and to

# I. INTRODUCTION

The Tillamook Estuaries Partnership (TEP) is seeking the services of an GC with demonstrated experience in working with public facilities for the construction of Tillamook Estuary Science Center (the Project). The site of the Project is a parcel located at 7855 Warren Street, Bay City, Oregon, 97107. The scope of work consists of preconstruction services necessary to develop a Guaranteed Maximum Price (GMP) and construction phase services as outlined in Exhibit A and the sample Construction Contract attached to this RFP as Exhibit B. Anticipated contract start date is April 2025.

TEP's owner's representative is Liane Welch, who will lead this project. TEP has contracted with Bearing Architecture to provide design services and to work with a CM/GC.

# II. PROJECT BACKGROUND

Tillamook Estuaries Partnership (TEP) is a 501(c)(3) non-profit organization and is part of 28 National Estuary Projects working throughout the United States. TEP is an equal opportunity provider and employer. In accordance with Federal law and the US Department of Agriculture policy, TEP is prohibited from discriminating on the base of race, color, national origin, religion, sex, age, disability, or familial status. This project is partially funded with federal funds and subject to Federal Administration priorities.

Phase 1 - The new Tillamook Estuary Science Center will house the headquarters of TEP including office space, a kitchenette, interpretive lobby and plaza, a laboratory, and parking area. The headquarters will be about 7,900 sf, not including the interpretive plaza. Phase 2 - to be constructed later, depending on the costs, will include a residential duplex for visiting scholars at about 1200 sf. The design will include both Phase 1 and Phase 2 elements. The site is relatively flat and 0.95 acres.

TEP has applied for and received a Conditional Use Permit for this project from the City of Bay City. The Site Plan developed for the Conditional Use permit application is attached as Exhibit C. TEP has completed a geotechnical analysis of the site and a topographic survey, both are attached to this RFP as Exhibit D and Exhibit E, respectively.

Currently, there is an old house located on the property. TEP will be responsible for removing the house. There is a stand of large conifer trees on the site, that needs to be protected during construction and left standing after the project is completed.

TEP owns and operates a native plant nursery at the Port of Tillamook Bay. This nursery propagates and grows native plants for watershed restoration projects for 5 counties. These plants will be used on this project for the landscaping.

The project site is directly north of the Kilchis Point Reserve, across from Spruce Street. The Kilchis Point Reserve is approximately 200 acres along Tillamook Bay in Bay City, Oregon. The Tillamook County Pioneer Museum (TCPM) owns, protects, maintains, and holds this land in public trust. Kilchis Point is home to a wide variety of plants (flora) and animals (fauna) that together form precious ecosystems. Declared a County Heritage Site by the Tillamook County Commissioners in 2010, Kilchis Point is an important prehistoric and historic site. Kilchis Point was the site of one of the largest permanent Native American villages on the Northern Oregon Coast. TEP has met with the TCPM and both organizations are excited to work together to enhance the visitor experience through the interpretive lobby and plaza.

TEP has been working with Lennox Insites to develop interpretive lobby concepts. Their work will be incorporated into the design by Bearing Architecture.

### III. ISSUANCE OF RFP DOCUMENTS

The RFP documents may be obtained at no cost from TEP’s website at <https://www.tbnep.org/> or viewed at 613 Commercial Street, PO Box 493, Garibaldi, OR 97118, by appointment. Appointments may be scheduled by contacting Liane Welch, [liane@tbnep.org](mailto:liane@tbnep.org), 503-703-5348. Liane Welch is the sole point of contact for all questions, concerns, and protests related to this RFP.

### IV. PROPOSAL SUBMISSIONS

4 copies of the Proposals (including attachments) and a thumb drive with an electronic copy shall be submitted and delivered by 3:00 PM on Monday March 13, 2025, at 613 Commercial Street, PO Box 493, Garibaldi, OR 97118: The name of the project – Tillamook Estuaries Science Center, and Liane Welch.

#### A. SCHEDULE OF EVENTS

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

- |      |  |                           |
|------|--|---------------------------|
| i.   | Posting to RFP                                       | February 17, 2025         |
| ii.  | Deadline for Clarifications/Questions/Changes to RFP | March 6, 2025, 4:00 PM    |
| iii. | Deadline for Protests of RFP                         | February March 6, 4:00 PM |
| iv.  | Proposal Due   | March 13, 2025, 3:00 PM   |
| v.   | Evaluation of Proposals Complete                     | March 27, 2025            |
| vi.  | Invitation to Proposers for Interview & Presentation | March 31, 2025            |
| vii. | Interview & Presentation Meetings, if necessary      | April 2025                |



## B. RFP CLARIFICATION AND PROTESTS; ADDENDA

- i. Informal Questions or Requests for Clarification. Any proposer requiring clarification of the information provided in this RFP may submit specific questions or comments in writing to the contact set forth in Section III of this RFP. Email is the preferred form of written communication. The deadline for submitting such questions is set forth in Section IV(A)(ii).
- ii. Request for Change. Any proposer wishing to request a change to the specification or contract term contained in the solicitation documents must submit the request to the contact set forth in Section III of this RFP. The deadline for submitting such requests is set forth in Section IV(A)(ii). The request for change must include a statement of the requested change(s) to the contract terms and conditions, including any specifications, together with the reason for the requested change. The request must be marked "Contract Provision Request for Change" and contain sufficient information to identify the solicitation that is the subject of the request for change.
- iii. Protest. Any proposer wishing to protest this RFP or specifications, or contract terms contained in the solicitation documents, must submit such protests to the contact set forth in Section III of this RFP. The deadline for submitting such protests is set forth in Section IV(A)(iii). The proposer's written protest must include all of the following and otherwise comply with OAR 137-049-0260(3):
  - a) A detailed statement of the legal and factual grounds for the protest.
  - b) flawed description of the resulting prejudice to the proposer.
  - c) A statement of the desired changes to the contract terms and conditions, including any specifications; and Marking of the protest as follows: "Contract Provision Protest" with sufficient information to identify the solicitation that is the subject of the protest.
- iv. Addenda. TEP reserves the right to make changes to the RFP by written addenda. If TEP determines that a change or clarification to the solicitation documents is necessary, such information, clarification, or interpretation will be supplied in a written addendum, posted to TEP's website at <https://www.tbnep.org>.
  - a) Proposers should consult TEP's website regularly until the proposal's due date and time to ensure that they have not missed any addendum announcements. If a Proposer registers with Liane Welch at [liane@tbnep.org](mailto:liane@tbnep.org) they will receive any addendum by email. By submitting a proposal, each proposer thereby agrees that it accepts all risks, and waives all claims, associated with or related to its failure to obtain addendum information. Proposers will also be required to acknowledge receipt of each addendum in writing as part of their proposals. Statements made by TEP's representatives, including but not limited to oral or written responses to a request for clarification, are not binding on TEP unless confirmed by written addendum.
  - b) No addenda will be issued later than five days before the date that proposals are due, except an addendum, if TEP deems necessary, postponing the due date for proposals, withdrawing the RFP, or modifying elements of the RFP resulting from delayed process.

## C. CONFIDENTIALITY

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

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

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

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

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

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

## **D. CANCELLATION**

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

## **E. LATE PROPOSALS**

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

## **F. DISPUTES**

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

## G. PROPOSER'S REPRESENTATION

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

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

## H. CONDITIONS OF SUBMITTAL

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

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

## I. COST OF REQUEST FOR PROPOSALS AND ASSOCIATED RESPONSES

- i. Proposers will bear sole responsibility for all costs incurred in preparing and providing their proposals in response to this RFP. TEP is not liable to any proposer for any loss or expense caused by or resulting from the cancellation of a solicitation or rejection of a proposal.

## J. TEP REQUESTS FOR CLARIFICATION, ADDITIONAL RESEARCH, & REVISIONS

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

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

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

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

## K. REJECTION OF PROPOSALS

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

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

## L. MODIFICATION OR WITHDRAWAL OF PROPOSAL BY PROPOSER

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

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

## M. PROPOSAL OWNERSHIP

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

## N. DURATION OF PROPOSAL

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

## O. AFFIRMATIVE ACTION/NONDISCRIMINATION

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

## P. TAX COMPLIANCE

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

## Q. PREVAILING WAGE REQUIREMENT

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

## R. SAVINGS AND COST LIMITATIONS

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

## S. PROPOSAL AND SUBMISSION REQUIREMENTS

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

- S.1 – An **Introductory Letter** indicating the proposers differentiating characteristics, why the firm is the right- fit for this project, and how TEP benefits from the firm's services. [1 page maximum]
- S.2 – **Relevant Experience** as CM/GC for publicly funded non-profits. [4 pages maximum]: Describe your company's experience with the construction of non-profit buildings and describe how this previous experience will benefit TEP. Provide 4 examples of comparable projects that demonstrate the range of construction services you have provided for public, non-profit or private sector CM/GC projects with a GMP. Include a brief description, year completed, total dollar value, contracting method, and location. Preference will be given to bidders who can demonstrate experience managing a project on the Oregon Coast or other rural communities.
- S.3 – **Approach to Collaboration and Community Involvement** [1 page maximum]: Describe your plan to establish and maintain good relationships and foster open and productive communication with TEP, TEP's architect (Bearing Architecture) and owner's representative for this Project. Describe how you plan to work in a neighborhood and keep good relationships with the neighbors.
- S.4 – **Proposed Key Personnel and Project Organization** [3 pages maximum] Provide resumes and relevant project experience for proposed key personnel including, but not limited to, the preconstruction manager, project manager, and superintendent. Describe their anticipated time commitment to this project for preconstruction and construction phases (e.g. Project Manager, 30% Preconstruction and 75% Construction)
- S.5 – **Bidding and Contracting Strategy** [1 page maximum]: Describe your approach to subcontractor bidding and contracting. Which trades, if any, do you propose adding to the team during design to assist in pre-construction efforts? Discuss any risks and/opportunities in your proposed strategy as it relates to subcontractor availability, early procurement of materials, labor shortages, etc. Provide an example of a costing exercise evaluating multiple schemes to assist an Owner in deciding which scheme to proceed with. What drawing submission phase do you propose to set the GMP?

- **S.6 – Approach to Maintaining Budget** [3 pages maximum]: Provide your company's approach to preconstruction collaboration to achieve the budget goals. What methodologies, recommendations, or practices does your company propose on this project to ensure the budget is maintained through GMP? What practices does your company use to control costs during construction? Describe how you manage price volatility and market conditions when providing cost estimates during the design phase without being unreasonably conservative. Describe your approach to establishing and maintaining contingency funds to ensure that the budget will not be exceeded. Describe potential constraints you foresee and how you would resolve them. What is your company's willingness to put its fee or a portion thereof at risk for not meeting the budget target?
- **S.7 – General Conditions and Fee Proposal** [3 pages maximum]: Provide detailed general conditions budget including all project staff and job site office functions. Include your assumptions to develop the General Conditions budget such as construction duration, final budget, design scheme, etc. General conditions are defined as any professional staff to oversee the construction as well as any job site office costs. Provide hourly rates for all CM/GC staff. General requirements would include any non-permanent field costs related to the construction of the project.
- Provide a lump sum fixed fee for the preconstruction phase. The preconstruction fee is to include at a minimum: attendance at 2 TEP Board of Director meetings; schedule development; contracting strategy development; cost analysis and document preparation for TEP Board meetings; site investigation (note that subcontracted destructive or non - destructive testing will be reimbursable and not included in the preconstruction fee); development of value engineering ideas; detailed 100% Schematic Design construction estimate, 100% Design Development estimate, 50% Construction Documents estimate, and GMP estimate; drawing and document review; budget reconciliation; other tasks common in the preconstruction phase; and other tasks identified in Exhibit A and the CM/GC contract.
- Provide fees and markups "below the line" expressed as a percentage of the cost of work. Cost of work is defined in the sample Construction Contract attached to this RFP as Exhibit B. These amounts will be carried into the contract and GMP amendment. Include at a minimum:
  - Subcontractor default insurance or Subguard (if needed)
  - Liability insurance per section B.3.2.2 of Exhibit B
  - Performance and Payment Bond per section B.3.4 of Exhibit B
  - Lawsuits and Claims [no page limit]: Provide a list of any outstanding lawsuits including claims, both settled and unsettled, for the past five (5) years

## T. PROPOSER REQUIREMENTS

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

- i. All Proposers must be licensed to perform business in the State of Oregon and properly licensed to perform the services described in this RFP, including but not limited to being registered with the Construction Contractors Board or licensed by the State Landscape Contractors Board, as specified in OAR 137-049-0230; and a City of Bay City business license.
- ii. All Proposers must be experienced in those services requested of TEP.
- iii. All Proposers must agree to execute TEP's Construction Agreement, if awarded; and
- iv. All Proposers must carry required insurance, naming TEP an additional insured.

## U. SELECTION COMMITTEE & INTERVIEW PANEL

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

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

Criteria	Maximum Points
Introductory Letter	5
Relevant Experience	20
Approach to Collaboration and Community Involvement	10
Proposed Personnel and Project Organization	20
Bidding and Contracting Strategy	10
Approach to Maintaining Budget	15
GCs and Fee Proposal	20
<b>TOTAL</b>	<b>100</b>

Each member of the selection committee will independently score proposals in accordance with the evaluation criteria above.

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

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

Criteria	Maximum Points
Team Capacity and Experience	25
Approach to collaboration with the Design Team	25
Approach to Preconstruction Services	25
Overall Quality of Interview and Presentation	25
<b>TOTAL</b>	<b>100</b>

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

### TEP reserves the right to:

- i. Reject any and all proposals not in compliance with all public procedures and requirements including but not limited to the requirement to demonstrate responsibility under ORS 279C.375(3)(b);
- ii. Reject any proposal not meeting the specifications set forth herein.
- iii. Waive any or all irregularities in proposals submitted.
- iv. Award contracts for any or all parts of the services solicited under this RFP.
- v. Request references and other data to determine responsiveness.

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

## V. PROTEST OF CONTRACT AWARD.

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



- ix. Protests not filed within the time specified in this Section V, or which fail to cite the specific law, rule, regulation, or procedure upon which the protest is based will be dismissed. An issue that could have been raised by request for clarification or protest of the solicitation documents is not a ground for protest of award.
- x. TEP will resolve all protests in accordance with OAR 137-049-0450.

## W. CONTRACT REQUIREMENTS

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

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

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

Exhibit A  
Scope of Work

## EXHIBIT A

### SCOPE OF WORK (SERVICES TO BE PROVIDED)

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

1. Constructability reviews including
  - a. Review design drawings and specifications concept design, schematic design, design development, and construction documents. Conduct page-turns with design team to present issues discovered.
  - b. Review drawings and specifications for inaccuracies, oversights, coordination, and thoroughness and during the construction document phase request clarifications to the plans based on the same to ensure bid out plans are as clear and complete as possible to reduce construction delays and additional costs.
  - c. Evaluate proposed systems and materials in terms of product delivery and installation in collaboration with project team. Provide feedback and alternate solutions as appropriate to benefit the design intent, project schedule and budget.
  - d. Evaluate proposed systems and materials in terms of maintenance and first costs vs life cycle costs in collaboration with project team. Provide feedback and alternate solutions as appropriate to benefit the design intent, project schedule and budget.
  - e. Solicit subcontractors and supplier input in terms of constructability, lead times, and pricing for any items deemed questionable by the project team.
2. Real-time estimating, Target Value Design (TVD), or similar approach to properly inform the design team to keep the project on budget.
  - a. Cost estimates should be developed and maintained in "Unit Price" format. CM/GC may convert format to CSI format for bidding purposes; however, CM/GC must show budget progression and variance reporting throughout and to GMP. Unit pricing shall include material costs, labor rates, and quantities. Ensure quantities correspond with drawings and specifications and provide take-offs. Deliver a detailed construction estimate for;
    - i. 100% Schematic Design.
    - ii. 100% Design Development
    - iii. 50% Construction Drawings
    - iv. GMP at 100% Construction Drawings
  - b. GMP submission shall include
    - i. GMP Cost Summary per division and/or trade package
    - ii. Trade package bid analysis showing bid values, any yet-to-buys, allowances, contingencies and total cost with recommendation for award any reasoning. The recommended bidder's value should align with the GMP Cost Summary.
    - iii. All bids organized by trade package with all price adjustments and correspondence
    - iv. List of allowances and derivation and reasoning for allowances
    - v. General requirements (GRs) summary and detailed derivation, takeoffs, estimates on how GRs were developed
  - c. This includes providing solutions for Value Engineering (VE) options, problem-solving ideas for issues discovered during the design and/or construction phase to mitigate, reduce, or eliminate cost and/or schedule impacts. Any necessary VE process or similar to resolve budget issues will be considered

included in the preconstruction services. In other words, if the preconstruction time frame is extended due to a VE exercise it will not be considered additional services and will therefore not be reimbursed. It's expected that the team own any budget overruns and mitigate them as part of goal to delivering a final set of design documents that meets the budget.

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

Exhibit B  
Conditional Use Site Plan





- Site Notes:**
1. Total est. Impervious area: 13,000 SF
  2. Lot area: 41,382 SF
  3. Lot coverage estimated at 31% of total site area.
  2. Spruce street is the "front" street in this configuration.
  3. Parking count is based on the zone of the site (S3) and preliminary building area per usage type.
  4. Building to not violate zoning height restrictions.



**Tillamook Estuaries Partnership  
Conditional Use Site Plan**  
Bay City, OR  
Scale: 1" = 30'



Exhibit C  
Draft Schedule

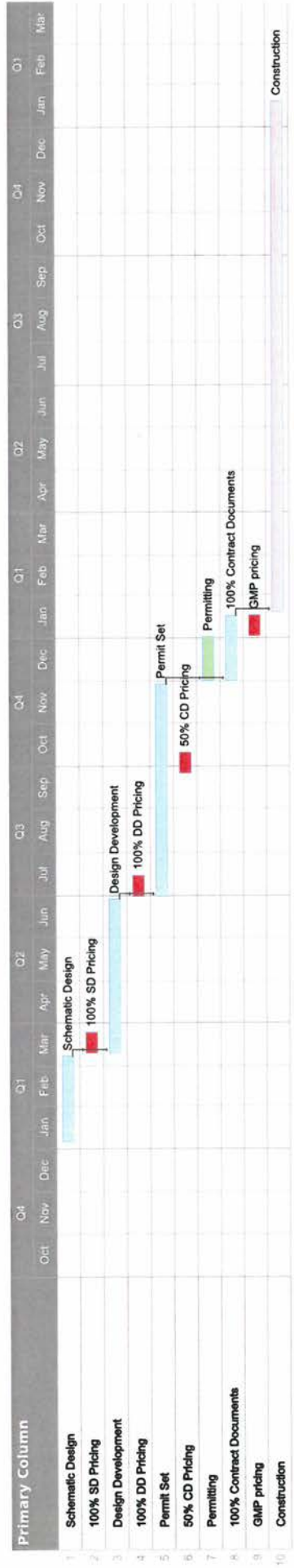




Exhibit D  
Geotechnical Report

**REPORT OF GEOTECHNICAL ENGINEERING SERVICES**

**Tillamook Estuaries Partnership  
Bay City Office Project  
Bay City, Oregon**

**Geotech  
Solutions Inc.**

December 12, 2024

GSI Project: tep-24-1-gi

Tillamook Estuaries Partnership  
[liane@tbnep.org](mailto:liane@tbnep.org); [claudine@tbnep.org](mailto:claudine@tbnep.org)

## **REPORT OF GEOTECHNICAL ENGINEERING SERVICES Tillamook Estuaries Offices 7855 Warren Street, Bay City, Oregon**

As authorized, we are pleased to present this report summarizing our geotechnical engineering services for the proposed new development on roughly one acre at the subject address. Development is to include demolition of existing structures and new construction including single-story office, lobby, and laboratory space covering roughly 8,000 square feet, along with a roughly 1,200 square foot single-story duplex. Proposed improvements also include pervious and impervious pavements and utilities. The purpose of our services was to provide geotechnical engineering recommendations for design. Our specific scope of work included the following:

- Provide principal-level geotechnical project management including client communications, management of field and subcontracted services, report writing, analyses, and invoicing.
- Review previous reports, geologic maps, and vicinity geotechnical information as indicators of subsurface conditions.
- Complete a site reconnaissance to observe surface features relevant to geotechnical issues, such as topography, vegetation, presence and condition of springs, exposed soils and rock, and evidence of previous grading.
- Complete a “one call” public locate and a private utility locate for locatable utilities (limited to metallic or with tracer wire). As-built utilities are also requested from the owner. Unlocatable utilities are the responsibility of the owner, and our scope does not include any related utility repair.
- Explore subsurface conditions by advancing one CPT probe to a depth of up to 60 feet or refusal and two test pits up to 10 feet or refusal in accessible areas. Complete ppd testing in the cone and observe for seepage to evaluate ground water depths.
- Complete shallow infiltration testing in one of the test pits, and provide a pervious pavement subgrade infiltration rate for the civil engineer’s use in design, if feasible. Low rates and shallow ground water are expected and significant infiltration may not be feasible.
- Classify and sample materials encountered and maintain a detailed log of the explorations.
- Determine the moisture content of selected samples obtained from the explorations and complete soil classification testing, as necessary.
- Provide recommendations for earthwork including site preparation, reuse of existing fill in place or stabilized or reinstalled, seasonal material usage, compaction criteria, utility trench backfill, and the need for subsurface drainage.
- Evaluate site liquefaction potential and estimate site deformations and provide qualitative means to address unsuitable deformations if needed.
- Provide recommendations for shallow foundations including suitable soils, stabilization, bearing pressures, sliding coefficient, and a seismic site class, as well as geotechnical parameters for deep foundation support for up to one pile type, if needed.

- Provide recommendations for slab support, including a subgrade modulus if needed, underslab rock thickness and materials, and the need for stabilization.
- Provide recommendations for pervious and non-pervious pavements including subgrade preparation and stabilization, and base rock and asphalt concrete and portland cement concrete thicknesses, as well as subgrade infiltration rate for pervious pavements.
- Provide a written report summarizing the results of our geotechnical evaluation.
- Complete an appended seismic hazard study identifying potential for liquefaction, amplification, fault surface rupture, and seismic elements for hazard evaluation to the degree of complexity compatible with the project.

## **SITE CONDITIONS**

### **Site Surface Conditions**

The site includes a residence and associated driveway and covered eastern concrete strips/features near the building, as well as an abandoned slab in the north, with most of the site area covered in grass and with large trees to the east. The site is relatively flat.

### **Site Geological Context**

We reviewed geological mapping on file with DOGAMI consisting of Bulletin 74 – Nehalem Quad, TIM Till-06, OFR O-21-08, OFR O-23-01, as well as Oregon SLIDO landslide mapping. These show the general site area mapped as Oligocene Miocene sedimentary rock of tuffaceous siltstone. No mapped slides are near the site. The site is expected to be inundated by most Cascadia Subduction Zone earthquake scenarios.

### **Subsurface Conditions**

**General** – Subsurface conditions at the site were explored on December 2 and 6, 2024 by completing 2 cone penetrometer test probes (CPT's) to refusal at depths of 11 to 15 feet, and test pits (TP-1 and TP-2) to depths of up to 11 feet below the existing ground surface (bgs). In general, explorations encountered 2 feet of very soft black organic topsoil underlain by medium stiff yellowish-brown silt with some clay and cemented zones near 5 and 11 feet. Tip resistance generally ranged from 5 to 25 tsf, higher where cemented, with refusal at over 400 tsf.

Approximate exploration locations are shown on the attached **Site Plan**. Specific subsurface conditions observed at each exploration are described in the attached exploration logs.

**Laboratory Testing** – Laboratory testing resulted in moisture contents of 32 to 49%, in the silt, and 53% in the topsoil (from organic content). Results of moisture content testing are provided in the attached **Moisture Contents**.

Infiltration testing at a depth of 2.5 feet in TP-1 indicated low infiltration rates less than 0.5 in<sup>3</sup>/in<sup>2</sup>/hr in the medium stiff yellowish-brown silt, which is typical of these soils.

**Groundwater** – We observed groundwater slow seepage near depths of 5 feet in the test pits, immediately above a cemented zone, and observe soil staining indicative of higher seasonal fluctuations in the top few feet.



## CONCLUSIONS AND RECOMMENDATIONS

### General

Based on the results of our explorations, laboratory testing, and engineering analyses, it is our opinion that the site can be developed as proposed following the recommendations contained herein. Key geotechnical issues include removal of topsoil and developed site features, and moisture sensitivity of site soils. Specific geotechnical recommendations are provided in the following sections.

### Site Preparation

**General** – Prior to earthwork construction, the site must be prepared by removing any existing structures, utilities, fill, and topsoil. Deeper topsoil stripping depths may be required in areas of loose organic soil typically associated with trees and shrubs. Root balls from trees and shrubs may extend several feet and grubbing operations can cause considerable subgrade disturbance. All disturbed material must be removed to undisturbed subgrade and backfilled with structural fill. In general, roots greater than one-inch in diameter must be removed as well as areas of concentrated smaller roots where organic content exceeds 2% by dry weight.

The test pit excavations were backfilled using relatively minimal compactive effort. Therefore, soft spots can be expected at these locations. We recommend that these relatively uncompacted soils be removed from the test pits located within the proposed building and paved areas to a depth of 3.0 feet below finished subgrade. The resulting excavation must be brought back to grade with structural fill. If located beneath a footing, the uncompacted soils must be completely removed and replaced with structural fill.

**Stabilization and Soft Areas** - After stripping and fill removal, we must be contacted to evaluate the exposed subgrade. This evaluation can be done by proof rolling in dry conditions or probing during wet conditions. Soft areas will require over-excavation and backfilling with well graded, angular crushed rock compacted as structural fill. Geosynthetics may also be required. We recommend that geosynthetics for stabilization consist of a Propex Geotex 801 overlying a suitable punched and drawn biaxial geogrid such as a Hanes EGrid 2020 or Propex Gridpro BXPI2-4 (or equivalents).

**Working Blankets and Haul Roads** - Construction equipment must not operate directly on the subgrade, as it is susceptible to disturbance and softening. Rock working blankets and haul roads placed over a geosynthetic in a thickened advancing pad can be used to protect subgrades. We recommend that sound, angular, pit run or crushed basalt with no more than 6 percent passing a #200 sieve be used to construct haul roads and working blankets. Working blankets must be at least 12 inches thick, and haul roads at least 18 inches thick. These can typically be reduced to 10 and 14 inches, respectively, with the use of the preceding separation geosynthetic and geogrid. Some repair of working blankets and haul roads should be expected.

The preceding rock and amendment thicknesses are the minimum recommended. Subgrade protection is the responsibility of the contractor and thicker sections may be required based on subgrade conditions during construction and type and frequency of construction equipment.

### Earthwork

**Fill** – The site fine grained native soil beneath the topsoil can be used for structural fill if properly moisture conditioned and free of deleterious materials. Use of this material will not be feasible during wet conditions, and use of the clayey material may not be feasible or advisable in any conditions due to

high plasticity. Given the site climate, proper drying of the soil is expected to be difficult and have a short late summer window of opportunity. The on-site soil will require drying by scarification and frequent mixing in thin lifts which again will only be feasible during hot dry summer conditions. Once moisture contents are within 3 percent of optimum, the material must be compacted to at least 92 percent relative to ASTM D1557 (modified proctor) using a tamping foot type compactor. Fill must be placed in lifts no greater than 10 inches in loose thickness. In addition to meeting density specifications, fill will also need to pass a proof roll using a loaded dump truck, water truck, or similar size equipment.

In wet conditions, fill must be imported granular soil with less than 6 percent fines, such as clean crushed or pit run rock. This material must also be compacted to 95 percent relative to ASTM D1557.

**Trenches** – Utility trenches may encounter ground water seepage and caving must be expected where seepage is present. Shoring of utility trenches will be required for depths greater than 4 feet and where groundwater seepage is present. We recommend that the type and design of the shoring system be the responsibility of the contractor, who is in the best position to choose a system that fits the plan of operation.

Depending on the excavation depth and amount of groundwater seepage, dewatering may be necessary for construction of underground utilities. Flow rates for dewatering are likely to vary depending on location, soil type, and the season during which the excavation occurs. The dewatering systems, if necessary, must be capable of adapting to variable flows.

Pipe bedding must be installed in accordance with the pipe manufacturers' recommendations. If groundwater is present in the base of the utility trench excavation, we recommend overexcavating the trench by 12 to 18 inches and placing trench stabilization material in the base. Trench stabilization material must consist of well-graded, crushed rock or crushed gravel with a maximum particle size of 4 inches and be free of deleterious materials. The percent passing the U.S. Standard No. 200 Sieve must be less than 5 percent by weight when tested in accordance with ASTM C 117.

Trench backfill above the pipe zone must consist of well graded, angular crushed rock or sand fill with no more than 7 percent passing a #200 sieve. Trench backfill must be compacted to 92 percent relative to ASTM D-1557, and construction of hard surfaces, such as sidewalks or pavement, must not occur within one week of backfilling.

### **Seismic Design**

**General** - In accordance with the International Building Code (IBC) as adapted by State of Oregon Structural Specialty Code (SOSSC) and based on our explorations and experience in the site vicinity, the subject project must be evaluated using the parameters associated with Site Class C. The site is subject to tsunami inundation from most Cascadia Subduction Zone interface earthquake events.

**Liquefaction** - Liquefaction occurs in loose, saturated, granular soils. Strong shaking, such as that experienced during earthquakes, causes the densification and the subsequent settlement of these soils. Given the soil type and consistency encountered in our explorations, the risk of liquefaction related structurally damaging deformations in proposed building areas is low.



**Infiltration**

Infiltration into site soils will be difficult, even for pervious pavements, and is generally not recommended due to the low rates and potential for shallow seasonal ground water. If attempted, the recommendations in the pervious pavements section in this report must be followed.

**Shallow Foundations**

Based on the provided information regarding building type and anticipated structural loads as previously stated, the proposed structure can be supported on shallow spread foundations bearing in the native medium stiff silt or structural fill. Footings must be embedded at least 18 inches below the lowest adjacent, exterior grade. Footings can be designed for an allowable net bearing pressure of 2,500 psf when founded on medium stiff or better native silt or structural fill. The preceding bearing pressure can be increased to 5,000 psf for temporary wind and seismic loads.

Continuous footings must be no less than 18 inches wide, and pad footings must be no less than 24 inches wide. Resistance to lateral loads can be obtained by a passive equivalent fluid pressure of 400 pcf against suitable footings, ignoring the top 12 inches of embedment, and by a footing base friction coefficient of 0.38. Each of these includes a factor of safety of 1.5 to limit deformation to near one inch. Properly founded footings are expected to settle less than a total of 1 inch, with less than ½ inch differentially.

If footing construction is to occur in wet conditions, a few inches of crushed rock must be placed at the base of footings to reduce subgrade disturbance and softening during construction.

**Slabs**

Floor slab loads up to 250 psf are expected to induce less than one inch of settlement if based on native soils. A minimum of 12 inches of clean, angular crushed rock with no more than 5 percent passing a #200 sieve is recommended for underslab rock. If the subgrade is fully prepared in the dry season, and if the slab is to be placed prior to fall rains, it may be possible to use 6 inches of rock on the pad if all rubber-tired traffic is supported on haul roads (such as thickening a road on the pad for use then cutting it back down). Prior to slab rock placement the subgrade will need to be evaluated by our probing or observation of proof rolling using a fully loaded dump truck or equivalent wheel load equipment. Underslab rock must be compacted to 92 percent compaction relative to ASTM D1557 and must also be proof rolled or evaluated by the geotechnical engineer for suitable stiffness/relative density. In addition, any areas contaminated with fines must be removed and replaced with clean rock. If the base rock is saturated or trapping water, this water must be removed prior to slab placement.

Some flooring manufacturers require specific slab moisture levels and/or vapor barriers to validate the warranties on their products. A properly installed and protected vapor flow retardant can reduce slab moisture. If a vapor flow retardant is used, care must be taken not to trap moisture within the overlying granular fill and floor slab concrete.

**Drainage**

**General** - We recommend installing perimeter foundation drains around all exterior foundations. These drains can be eliminated if a vapor barrier is used over the underslab rock surface and poured directly on, and if slab subgrade is at or above pre-existing grades. In all cases the surface around building perimeters must be sloped to drain away from the buildings. As stated previously, our retaining

wall recommendations are based on drained conditions. All retaining walls must include a drain constructed as described in the following section.

**Foundation and Wall Drains** - Foundation and retaining wall drains must consist of a two-foot-wide zone of drain rock encompassing a 4-inch diameter perforated pipe, all enclosed with a non-woven filter fabric. The drain rock must have no more than 2 % passing a #200 sieve and must extend to within one foot of the ground surface. The geosynthetic must have an AOS of a #70 sieve, a minimum permittivity of 1.0 sec<sup>-1</sup>, and a minimum puncture resistance of 80 pounds (such as Propex Geotex 601 or equivalent). Alternatively, a composite drain board such as an Amoco 500/520 could be used. In either case, one foot of low permeability soil (such as the on-site silt) must be placed over the fabric at the top of the drain to isolate the drain from surface runoff.

**Hardscaping and Pavement**

**Hardscaping** – These features include sidewalks and pavers subjected only to foot traffic. We must be contacted to evaluate increased thicknesses if vehicle support is planned. These features must be based on native subgrade or structural fill overlain by a Propex Geotex 801 separation geosynthetic (or equivalent), in turn overlain by at least 6 inches of well graded angular crushed rock with less than 5 percent fines compacted to 95% relative to ASTM D1557. A sand or fine gravel bedding layer may be used per manufacturers’ recommendations for pavers provided the material contains less than 3% fines. This material must be compacted to 92 percent relative to ASTM D1557.

**Asphalt Cement Concrete** – At the time of this report we did not have specific information regarding the type and frequency of expected traffic. We therefore developed asphalt concrete pavement thicknesses for areas exposed to passenger vehicles only and areas exposed to up to one truck per day based on a 20-year design life and a truck factor of 0.6. We assumed that the average truck will consist of a panel-type delivery truck, with occasional 3- to 5-axle trucks. Traffic volumes can be revised if specific data is available.

Our pavement analyses are based on AASHTO methods and subgrade of structural fill or undisturbed medium stiff or better native silt having a resilient modulus of 6,000 psi and prepared as recommended herein. We have also assumed that roadway construction will be completed during an extended period of dry weather. The results of our analyses based on these parameters are provided in the following table.

<u>Traffic</u>	<u>AC (inches)</u>	<u>CR (inches)</u>
Passenger Vehicle Only	2.5	6
Up to 3 Truck Per Day	3	8

The thicknesses listed in the above table are the minimum acceptable for construction during an extended period of dry weather. Increased rock thickness will be required for construction during wet conditions. Crushed rock must conform to ODOT base rock standards and have less than 6 percent passing the #200 sieve. Asphalt concrete must be level 2 or 3, ½” dense graded HMA compacted to a minimum of 91 percent of a Rice Density.

**Portland Cement Concrete** - We developed PCC pavement thicknesses at the site for the assumed one-way traffic levels as shown in the table below. Each of these sections is based on AASHTO



methods with no reduction for wander and a composite modulus of subgrade reaction of 350 pci (AASHTO Figure 3.3 with  $M_r = 6,000$  psi and 6 inches crushed rock base). Other parameters include 4,000 psi compressive strength portland cement concrete (PCC), and plain jointed concrete without load transfer devices or tied concrete shoulders. PCC pavements over trench backfill should not be placed within one week of fill installation unless survey data indicates that settlement of the backfill is complete.

Traffic	PCC (inches)	CRB (inches)
Up to 3, 3-axle Trucks Per Day	6	6

**Subgrade Preparation** - The pavement subgrade must be prepared in accordance with the **Earthwork and Site Preparation** recommendations presented in this report. All pavement subgrades must pass a proof roll prior to paving. Soft areas must be repaired by over-excavating the areas and installing a stabilization geosynthetic. Well graded, angular crushed rock backfill compacted as structural fill must be used to bring the aforementioned areas to-grade. For stabilization geosynthetics we recommend a Propex Geotex 801 for separation overlying a suitable punched and drawn biaxial geogrid such as a Propex Gridpro BXPI2-4 (or equivalents).

**Pervious Pavement Design Recommendations**

**General** - We understand that pervious asphalt concrete pavement is being considered, although site infiltration rates are low. It should be understood that infiltration into pervious pavement requires frequent maintenance to remove surface clogging particles. As such, designing an overflow system with associated grading is recommended. Pervious pavement typically does not perform well in areas of turning, with pavement surface raveling and a “gravelly” appearance over time being common. Maintenance is critical to improving performance.

The pervious pavement subgrade and separation fabric should be prepared as recommended in the following sections. Specific material recommendations and specifications are presented in the following sections.

**Design Infiltration Rate** - Design infiltration rates are low and summarized earlier in this report.

**Maintenance and Overflow** - Pervious pavements will require frequent maintenance to maintain infiltration capacity and reduce clogging. Maintenance should include monthly cleaning with vacuuming-sweeping machines, and salting or sanding must be avoided. Infiltration rates should be expected to gradually decrease with time. We therefore recommend that pervious pavement surface areas include overflow drains that drain to the rock storage layer underlying the pavement or a suitable alternate discharge. We also recommend that the subgrade be gently sloped to such alternative discharge.

**Subgrade Preparation** - All disturbed material must be removed to expose undisturbed subgrade. The subgrade should be prepared in accordance with the **Earthwork and Site Preparation** recommendations presented herein. Prior to placement of fabric, the subgrade should be lightly raked to disturb the top 1/2” to improve infiltration. This can be suitably seated for pavement support with fabric confinement and rock compaction.

**Subgrade Separation Geosynthetic** – The geosynthetic for stabilization can also serve the purpose of separation. We recommend that a geosynthetic over the subgrade consist of a Propex Geotex 801 or equivalent.

**Base Course** - The base course (or storage layer) aggregate should consist of 8 inches of an open-graded, single size, angular crushed rock material with a particle size of between 1 to 2.5 inches and have less than 2 percent passing the #200 sieve (ASSHTO 1 or 2 aggregate or approved alternative). The material should be suitably compacted until dense and well-keyed. We should be contacted to evaluate compaction of the base course prior to the placement of the ‘choker’ course. The base course should be capped with a ‘choker’ course to stabilize the base course for paving.

**Choker Course** – The choker course should be placed directly over the base course with a minimum thickness of 2 inches. The choker course aggregate should consist of an open-graded, angular crushed rock material with a predominant particle size of approximately ½-inch and have less than 2 percent passing the #200 sieve (ASSHTO 57 aggregate or approved alternative). The material should be suitably compacted until dense and well-keyed. We should be contacted to observe the ‘choker’ course prior to paving.

**Open Graded Asphalt Concrete** - Pervious asphalt cement concrete should consist of ODOT 2015 ½” porous asphalt concrete (PAC) using an asphalt cement of 70-22ER. The pavement should be compacted until uniform and dense with the roller marks removed. Over-compaction can increase bleeding and reduce permeability.

**Minimum Pavement and Base Thicknesses** - At the time of this report we did not have specific information regarding the type and frequency of expected traffic. We therefore pavement thicknesses for areas exposed to occasional use by an average of three 3 to 5 axle trucks per day and an average of up to 100 autos per day (the autos only contribute about 10% to the criteria, and this traffic is accommodated by the following minimum section).

Our recommendations for minimum combined pervious asphalt concrete and base aggregate thicknesses are based on AASHTO design methods, a 20-year design life, and subgrade of medium stiff silt subgrade with a DCPI of 14.8 and correlated resilient modulus of 6000 psi. Based on the preceding assumptions, we recommend the minimum surfacing and combined base aggregate (CBA) thicknesses shown in the following table. The combined base aggregate thickness is the total thickness of the open-graded base course and the ‘choker’ course. The ‘choker’ course should have a minimum thickness of 2 inches.

<u>Traffic</u>	<u>Surfacing Thickness</u> <u>(inches)</u>	<u>Combined Base</u> <u>(inches)</u>
100 Autos plus three 5-axle trucks per day on ave.	Pervious Asphalt Concrete – 3”	10

The preceding thicknesses are the minimum acceptable and are suitable for fire truck support (75,000 GVW). An increased base course thickness may be required for construction during wet weather and/or to provide adequate storage for infiltration. The civil engineer must evaluate storm water volumes relative to the design subgrade infiltration rate and provide a recommended base course thickness to provide adequate storage. A porosity of 0.40 may be used for the preceding rock.



**LIMITATIONS AND OBSERVATION DURING CONSTRUCTION**

We have prepared this report for use by Tillamook Estuaries Partnership and the design and construction teams for this project only. The information herein could be used for bidding or estimating purposes but must not be construed as a warranty of subsurface conditions. We have made observations only at the aforementioned locations and only to the stated depths. These observations do not reflect soil types, strata thicknesses, water levels or seepage that may exist between observations. We must be consulted to observe all foundation bearing surfaces, subgrade stabilization, proof rolling of slab and pavement subgrades, installation of structural fill, subsurface drainage, and cut and fill slopes. We must be consulted to review final design and specifications to see that our recommendations are suitably followed. If any changes are made to the anticipated locations, loads, configurations, or construction timing, our recommendations may not be applicable, and we must be consulted. The preceding recommendations must be considered preliminary, as actual soil conditions may vary. For our recommendations to be final, we must be retained to observe actual subsurface conditions encountered. Our observations will allow us to interpret actual conditions and adapt our recommendations if needed.

Within the limitations of scope, schedule and budget, our services have been executed in accordance with the generally accepted practices in this area at the time this report was prepared. No warranty, expressed or implied, is given.



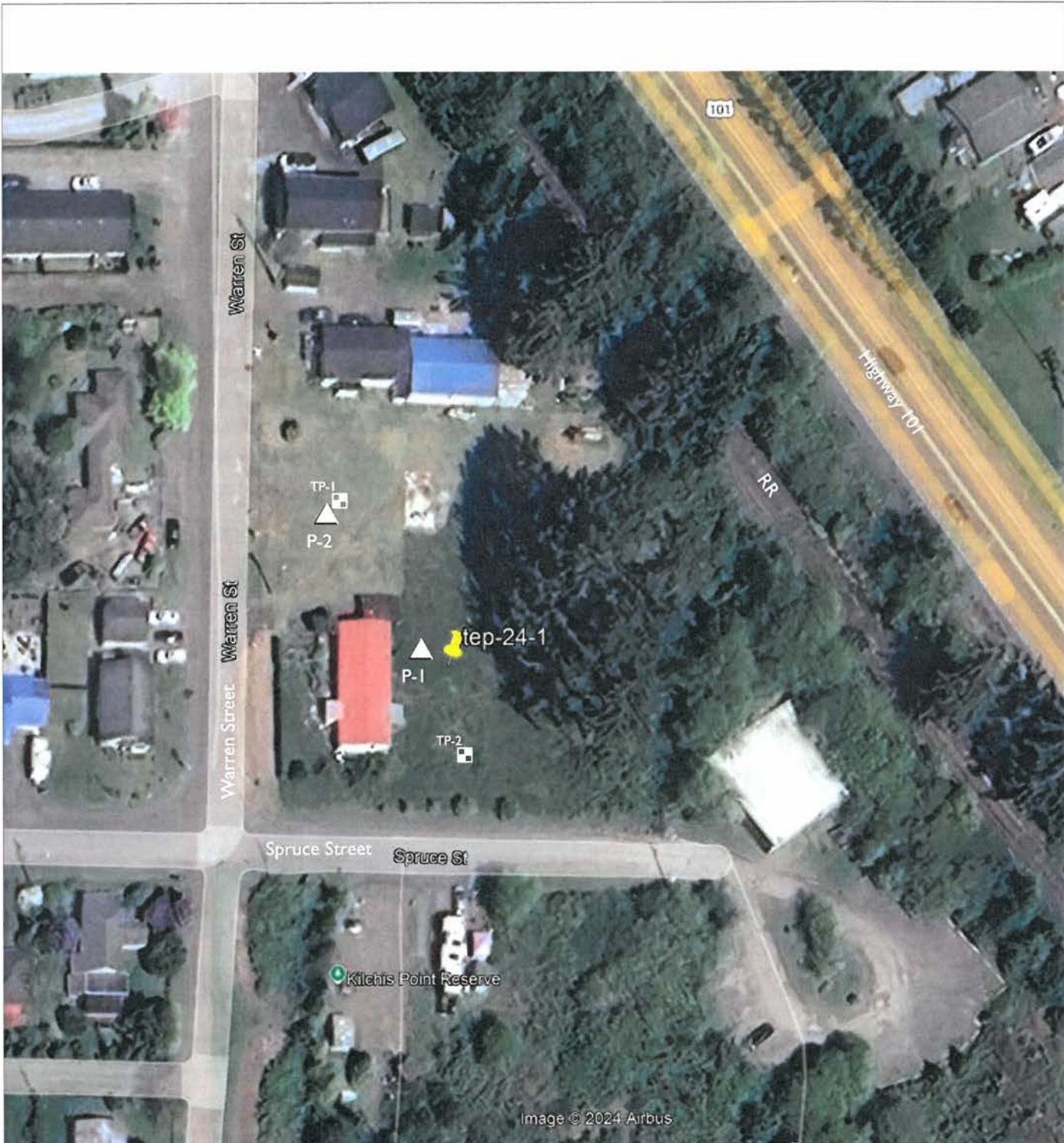
We appreciate the opportunity to work with you on this project and look forward to our continued involvement. Please call if you have any questions.

Sincerely,

Don Rondema, MS, PE, GE  
Principal



Attachments –  
Site Plan, Soil Classification, Test Pit Logs, CPT Log, Moisture Contents



BASE PHOTO FROM GOOGLE EARTH 2024 AERIAL

**Geotech  
Solutions Inc.**

**SITE PLAN**  
tep-24-1-gi



## GUIDELINES FOR CLASSIFICATION OF SOIL

Description of Relative Density for Granular Soil	
Relative Density	Standard Penetration Resistance (N-values) blows per foot
very loose	0 - 4
loose	4 - 10
medium dense	10 - 30
dense	30 - 50
very dense	over 50

Description of Consistency for Fine-Grained (Cohesive) Soils		
Consistency	Standard Penetration Resistance (N-values) blows per foot	Torvane Undrained Shear Strength, tsf
very soft	0 - 2	less than 0.125
soft	2 - 4	0.125 - 0.25
medium stiff	4 - 8	0.25 - 0.50
stiff	8 - 15	0.50 - 1.0
very stiff	15 - 30	1.0 - 2.0
hard	over 30	over 2.0

Grain-Size Classification	
Description	Size
Boulders	12 - 36 in.
Cobbles	3 - 12 in.
Gravel	1/4 - 3/4 in. (fine) 3/4 - 3 in. (coarse)
Sand	No. 200 - No. 40 Sieve (fine) No. 40 - No. 10 sieve (medium) No. 10 - No. 4 sieve (coarse)
Silt/Clay	Pass No. 200 sieve

Modifier for Subclassification	
Adjective	Percentage of Other Material In Total Sample
Clean/Occasional	0 - 2
Trace	2 - 10
Some	10 - 30
Sandy, Silty, Clayey, etc.	30 - 50

**Test Pit #    Depth (ft)    Soil Description**

*Explorations completed on December 6, 2024 with a rubber tracked excavator.*

<b>TP-1</b>	surface	grass in N side parking area. relatively flat
	0 - 1.9	Soft, dark brown to black, rooty, organic SILT; moist. (topsoil)
	1.9 - 5.0	Medium stiff, orange mottled yellowish-brown, SILT with trace to some clay; moist. 5 ft becomes wet.
	5.0 - 6.5	Very stiff, orange stained, yellowish brown CEMENTED SILT with trace clay and trace sand; wet.
	6.5 - 10	Soft, mottled orange, light gray clayey SILT; wet.
	10 - 11	Very stiff, mottled orange, light gray cemented clayey SILT; wet.

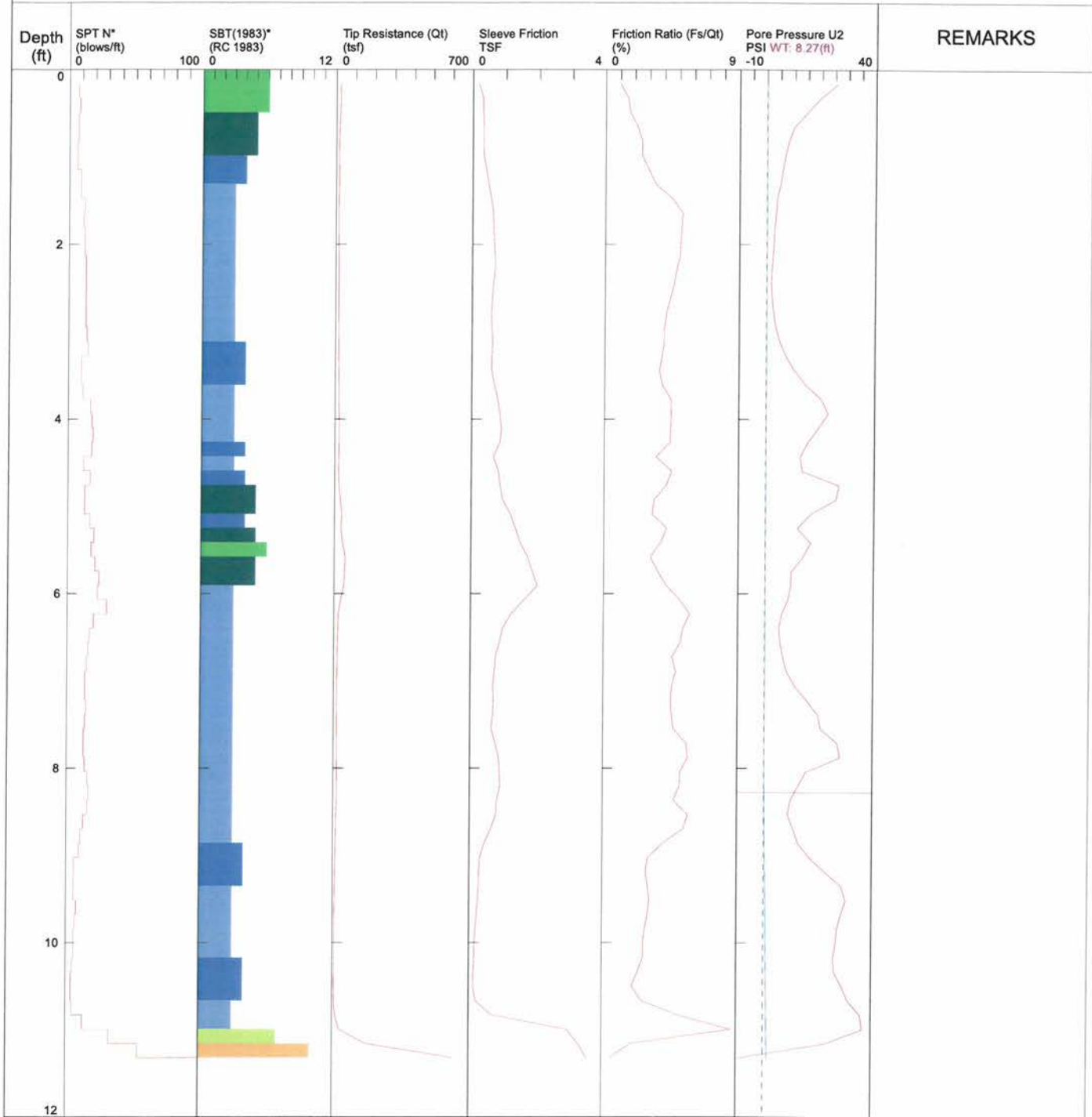
Slow seepage below 5 feet. Moderate caving above 5 feet. Backfilled and tamped every 2-3 ft.

<b>TP-2</b>	surface	grass near S side of proposed building. relatively flat
	0 - 2.3	Very soft, dark brown to black, rooty, organic SILT; moist. (topsoil)
	2.3 - 5.5	Medium stiff, orange mottled yellowish-brown, SILT with trace to some clay; moist. 5 ft becomes wet.
	5.5 - 6.0	Very stiff, orange stained, yellowish brown CEMENTED SILT with trace clay and trace sand; wet.
	6 - 10.5	Soft, mottled orange, light gray clayey SILT; wet.
	10.5 - 11	Very stiff, mottled orange, light gray cemented clayey SILT; wet.

Slow seepage below 5 feet. Moderate caving above 5 feet. Backfilled and tamped every 2-3 ft.

# Geotech Solutions / CPT-1 / 7855 Warren St Bay City

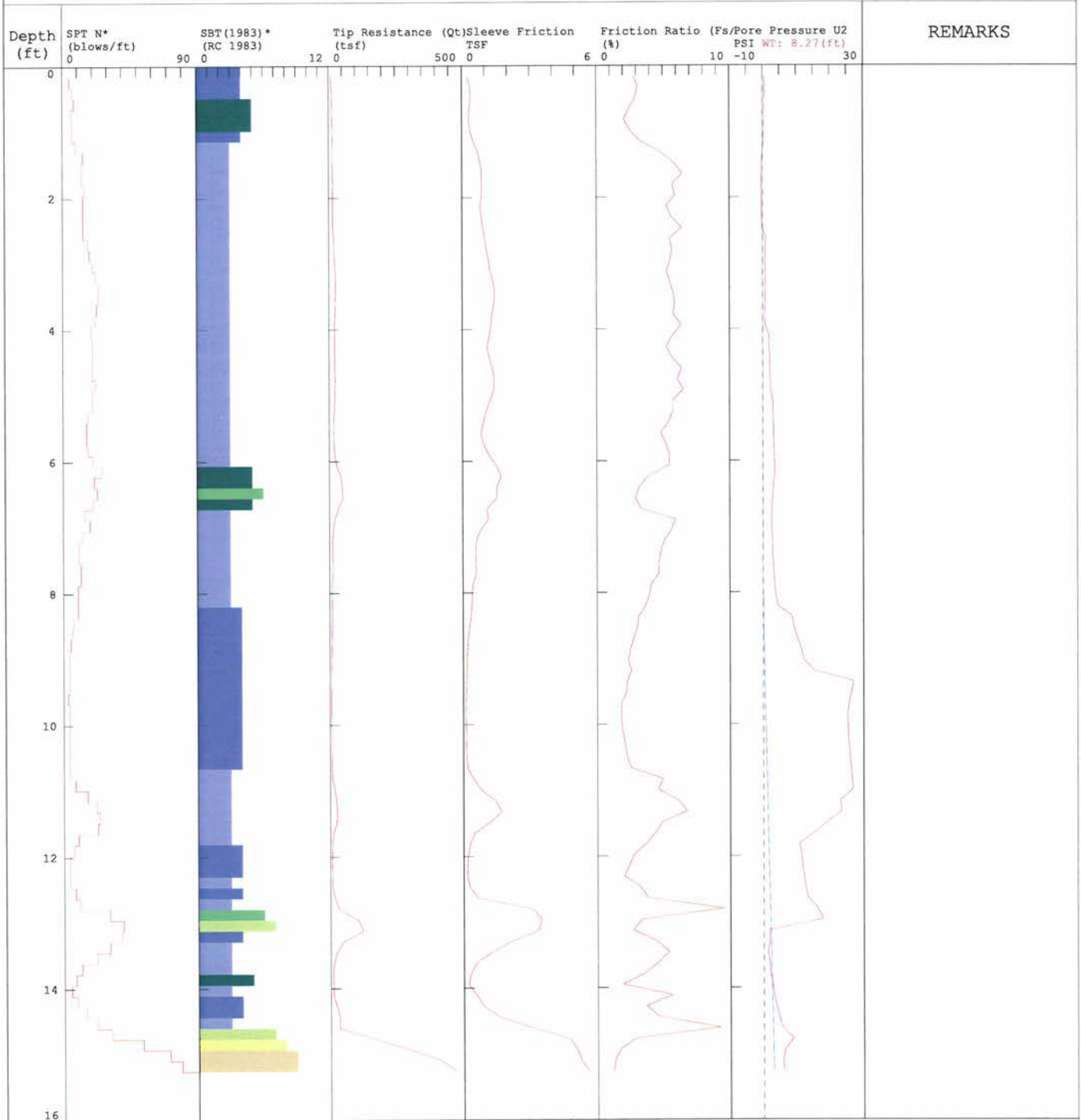
OPERATOR: OGE DMM  
 TEST DATE: 12/2/2024 8:28:06 AM  
 CONE ID: DDG1296  
 TOTAL DEPTH: 11.319 ft  
 HOLE NUMBER: CPT-1



- |                          |                             |                            |                                |
|--------------------------|-----------------------------|----------------------------|--------------------------------|
| 1 sensitive fine grained | 4 silty clay to clay        | 7 silty sand to sandy silt | 10 gravelly sand to sand       |
| 2 organic material       | 5 clayey silt to silty clay | 8 sand to silty sand       | 11 very stiff fine grained (*) |
| 3 clay                   | 6 sandy silt to clayey silt | 9 sand                     | 12 sand to clayey sand (*)     |
- \*SBT/SPT CORRELATION: UBC-1983

# Geotech Solutions / CPT-2 / 7855 Warren St Bay City

OPERATOR: OGE DMM  
 TEST DATE: 12/2/2024 8:56:14 AM  
 CONE ID: DDG1296  
 TOTAL DEPTH: 15.256 ft  
 HOLE NUMBER: CPT-2

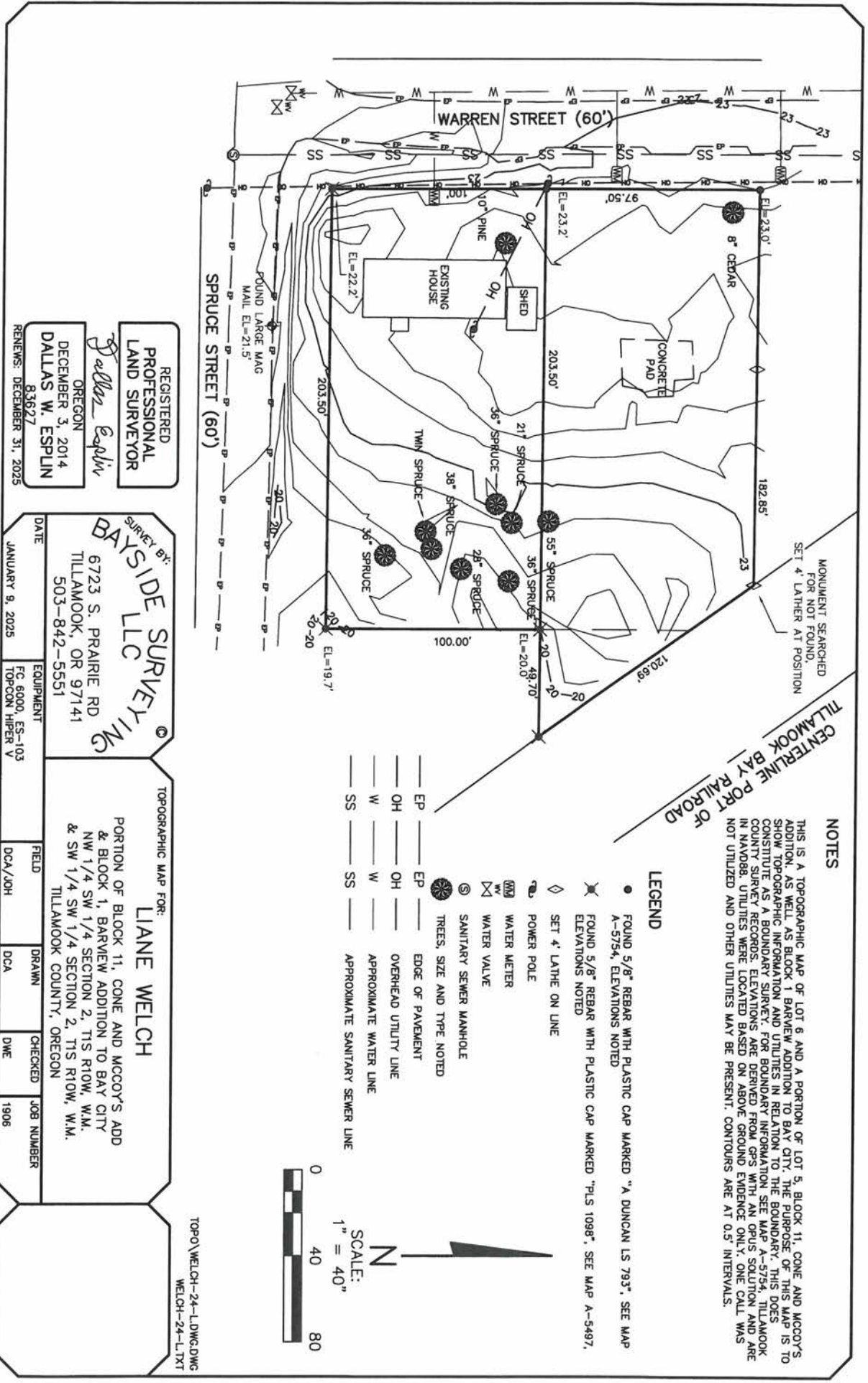


- |   |                        |   |                           |   |                                |    |                             |
|---|------------------------|---|---------------------------|---|--------------------------------|----|-----------------------------|
| 1 | sensitive fine grained | 4 | silty clay to clay        | 7 | silty sand to sandy silty sand | 10 | gravelly sand to sand       |
| 2 | organic material       | 5 | clayey silt to silty clay | 8 | sand to silty sand             | 11 | very stiff fine grained (*) |
| 3 | clay                   | 6 | sandy silt to clayey silt | 9 | sand                           | 12 | sand to clayey sand (*)     |
- \*SBT/SPT CORRELATION: UBC-1983



Exploration	Depth, ft	Moisture Content
TP-1	1.0	53%
TP-1	3.0	32%
TP-1	7.0	33%
TP-1	11.0	49%
TP-2	5.5	47%

Exhibit E  
Site Topographic Survey

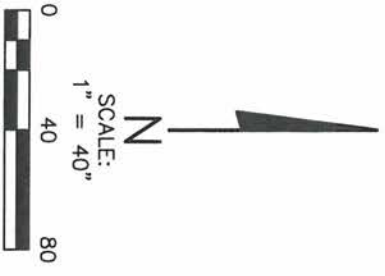


**NOTES**

THIS IS A TOPOGRAPHIC MAP OF LOT 6 AND A PORTION OF LOT 5, BLOCK 11, CONE AND MCCOY'S ADDITION, AS WELL AS BLOCK 1 BARVIEW ADDITION TO BAY CITY. THE PURPOSE OF THIS MAP IS TO SHOW TOPOGRAPHIC INFORMATION AND UTILITIES IN RELATION TO THE BOUNDARY. THIS DOES NOT CONSTITUTE AS A BOUNDARY SURVEY. FOR BOUNDARY INFORMATION SEE MAP A-5754 TILLAMOOK COUNTY SURVEY RECORDS. ELEVATIONS ARE DERIVED FROM GPS WITH AN OPEN SOLUTION AND ARE IN NAVD88. UTILITIES WERE LOCATED BASED ON ABOVE GROUND EVIDENCE ONLY. ONE CALL WAS NOT UTILIZED AND OTHER UTILITIES MAY BE PRESENT. CONTOURS ARE AT 0.5' INTERVALS.

**LEGEND**

- FOUND 5/8" REBAR WITH PLASTIC CAP MARKED "A DUNCAN LS 793". SEE MAP A-5754, ELEVATIONS NOTED
- ✕ FOUND 5/8" REBAR WITH PLASTIC CAP MARKED "PLS 1098". SEE MAP A-5497, ELEVATIONS NOTED
- ◇ SET 4" LATHE ON LINE
- ⚡ POWER POLE
- Ⓜ WATER METER
- Ⓜ WATER VALVE
- Ⓢ SANITARY SEWER MANHOLE
- ⊙ TREES, SIZE AND TYPE NOTED
- EP — EDGE OF PAVEMENT
- OH — OVERHEAD UTILITY LINE
- W — APPROXIMATE WATER LINE
- SS — APPROXIMATE SANITARY SEWER LINE



REGISTERED  
PROFESSIONAL  
LAND SURVEYOR

*William Esplin*

OREGON  
DECEMBER 3, 2014  
DALLAS W. ESPLIN  
83627  
RENEWS: DECEMBER 31, 2025

SURVEY BY:  
**BAYSIDE SURVEYING**  
6723 S. PRAIRIE RD  
TILLAMOOK, OR 97141  
503-842-5551

DATE  
JANUARY 9, 2025

EQUIPMENT  
FC 6000, ES-103  
TOPCON HIPER V

TOPOGRAPHIC MAP FOR:  
**LIANE WELCH**  
PORTION OF BLOCK 11, CONE AND MCCOY'S ADD  
& BLOCK 1, BARVIEW ADDITION TO BAY CITY  
NW 1/4 SW 1/4 SECTION 2, T1S R10W, W.M.  
& SW 1/4 SW 1/4 SECTION 2, T1S R10W, W.M.  
TILLAMOOK COUNTY, OREGON

FIELD  
DCA/JOH

DRAWN  
DCA

CHECKED  
DWE

JOB NUMBER  
1906

TOPO\WELCH-24-L.DWG.DWG  
WELCH-24-L.TXT

## Exhibit F

### Draft Standard Agreement between Owner and Contractor

# DRAFT AIA Document A133® - 2019

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

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

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

«Tillamook Estuaries Partnership »  
« PO Box 493 »  
«613 Commercial Street »  
Garibaldi, OR 97118

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

« »«TBD »  
« »  
« »  
« »

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

« Tillamook Bay Estuary Science Center »  
«7855 Warren Street, Bay City, OR 97107 »  
« Tillamook Estuaries Partnership (TEP) is a 501(c)(3)c non-profit organization and is part of 28 National Estuary Projects working throughout the United States. The site is relatively flat and 0.95 acres. The new Tillamook Estuary Science Center will house the headquarters of TEP including office space, a kitchenette, interpretive lobby and plaza, a laboratory, and parking area. The headquarters will be about 7,900 sf, not including the interpretive plaza. Phase 2, to be constructed later, depending on the costs, will include a residential duplex for visiting scholars at about 1200 sf.»

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

«Bearing Architecture, LLC »« »  
« 2222 NE Oregon Street, Suite 209 »  
«Portland, OR 97232»  
« »

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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- 8 DISCOUNTS, REBATES, AND REFUNDS
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- 15 SCOPE OF THE AGREEMENT

EXHIBIT A GUARANTEED MAXIMUM PRICE AMENDMENT

EXHIBIT B INSURANCE AND BONDS

ARTICLE 1 INITIAL INFORMATION

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

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

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

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

« Owner's program to consist of design, estimate, bid and construct a new building TEP has hired Bearing Architecture, LLC to design the project. Bearing Architecture has built a design team that includes engineering, landscaping, and mechanical, plumbing and electrical consultants. TEP has hired a geotechnical engineer and has completed an geotechnical evaluation of the site. This report is included in the RFP. There is also a topographic survey that is included in the RFP documents. »

§ 1.1.2 The Project's physical characteristics:

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

« Tillamook Estuaries Partnership (TEP) is a 501(c)(3c) non-profit organization and is part of 28 National Estuary Projects working throughout the United States. The site is relatively flat and 0.95 acres. The new Tillamook Estuary Science Center will house the headquarters of TEP including office space, a kitchenette, interpretive lobby and plaza, a laboratory, and parking area. The headquarters will be about 7,900 sf, not including the interpretive plaza. Phase 2 to be constructed later, depending on the costs, will include a residential duplex for visiting scholars at about 1200 sf. B

TEP will be responsible for a geotechnical analysis of the site and a topographic survey, which are being conducted in the winter of 2024. The geotechnical report is included in the RFP documents.

Currently, there is an old house located on the property. TEP will be responsible for removing the house. There is a stand of large conifer trees on the site, that needs to be left standing and in good condition after the project is completed.

TEP owns and operates a native plant nursery at the Port of Tillamook Bay. This nursery propagates and grows native plants for watershed restoration projects for 5 counties. These plants will be used on this project for the landscaping.

The project site is directly north of the Kilchis Point Reserve, across from Spruce Street. The Kilchis Point Reserve is approximately 200 acres along Tillamook Bay in Bay City, Oregon. The Tillamook County Pioneer Museum (TCPM) owns, protects, maintains, and holds this land in public trust. Kilchis Point is home to a wide variety of plants (flora) and animals (fauna) that together form precious ecosystems. Declared a County Heritage Site by the Tillamook County Commissioners in 2010, Kilchis Point is an important prehistoric and historic site. Kilchis Point was the site of one of the largest permanent Native American villages on the Northern Oregon Coast. TEP has met with the TCPM, and both organizations are excited to work together to enhance the visitor experience through the interpretive lobby and plaza.

TEP has been working with Lennox Insites to develop the interpretive lobby concepts. Their work will be incorporated into the design by Bearing Architecture.

»

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

« GMP to be established and formalized with GMP amendment. » Discuss with Chris

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

.1 Design phase milestone dates, if any:

«100% Schematic Design April 2025  
100% Design Development August 2025  
50% Construction Documents November 2025  
100% Construction Documents March 2026 »

.2 Construction commencement date:

« If all of the funding is in place will be April 2026 »

.3 Substantial Completion date or dates:

« Based on 1.1.4.2 will be March 2027 »

.4 Other milestone dates:

« Anticipated final closeout [June 2027] »

§ 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.)

« N/A »



§ 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.)

« N/A » ??

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

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

« N/A »

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

« Liane Welch »  
« PO Box 493 »  
« 613 Commercial Street, Garibaldi, OR 97118 »  
«liane@tbnep.org »  
«503-703-5348 »  
« »

§ 1.1.9 The persons or entities, in addition to the Owner's representative, who are required to review the Construction Manager's submittals to the Owner are as follows:  
(List name, address and other contact information.)

« « Bearing Architecture, LLC »  
« Chris Keane »  
«2222 NE Oregon Street, Suite 209 »  
«Portland, OR 97232 »  
« »

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

.1 Mechanical, Electrical, and Plumbing

« PAE Engineers »« »  
« 151 SW 1<sup>st</sup> Avenue, Suite 300 »  
«Portland, OR 97204 »  
« »  
« »

.2 Civil Engineer:

«Humber Design Group, Inc. »« »  
«110 SE Main Street, Suite 200 »  
« Portland, OR 97214 »  
« »  
« »

.3 Other, if any:



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

« »

**§ 1.1.11** The Architect's representative:

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

«

**§ 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:

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

« »

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

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

« »

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

« »

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

**§ 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 issued after execution of this Agreement, all of which form the Contract and are as fully a part of the Contract as if attached to this Agreement or repeated herein. Upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, the Contract Documents will also include the documents described in Section 3.2.3 and identified in the Guaranteed Maximum Price Amendment and revisions prepared by the Architect and furnished by the Owner as described in Section 3.2.8. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern. In addition, the Owner's Public Contracting Rules and OAR 137-049-0690 (governing CM/GC contracts) apply to this Agreement and will govern in the event of a conflict with these Agreement terms. 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, 5 business days 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 as follows: Section 1.5, Ownership and Use of Documents; Section 1.7, Digital Data Use and Transmission; Section 1.8, Building Information Model Use and Reliance; Section 2.2.4, Confidential Information; Section 3.12.10, Professional Services; Section 10.3, Hazardous Materials; Section 13.1, Governing Law. The term "Contractor" as used in A201-2017 shall mean the Construction Manager.

**§ 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 writing, in consultation with the Architect, for the Construction Phase to commence prior to completion of the Preconstruction



Phase, in which case, both phases will proceed concurrently. The Construction Manager shall identify a representative authorized to act on behalf of the Construction Manager with respect to the Project.

### **§ 3.1 Preconstruction Phase**

#### **§ 3.1.1 Extent of Responsibility**

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

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

#### **§ 3.1.3 Consultation**

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

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

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

#### **§ 3.1.4 Project Schedule**

When Project requirements in Section 4.1.1 have been sufficiently identified, the Construction Manager shall prepare and periodically update a Project schedule for the Architect's review and the Owner's acceptance. The Construction Manager shall obtain the Architect's approval for the portion of the Project schedule relating to the performance of the Architect's services. The Project schedule shall coordinate and integrate the Construction Manager's services, the Architect's services, other Owner consultants' services, and the Owner's responsibilities; and identify items that affect the Project's timely completion. The updated Project schedule shall include the following: submission of the Guaranteed Maximum Price proposal; components of the Work; times of commencement and completion required of each Subcontractor; ordering and delivery of products, including those that must be ordered in advance of construction; and the occupancy requirements of the Owner.

#### **§ 3.1.5 Phased Construction**

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

#### **§ 3.1.6 Cost Estimates**

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



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

§ 3.1.6.3. The CM/GC will be responsible for the cost estimating. The Design team will not be providing cost estimating services.

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

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

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

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

#### § 3.1.11 Subcontractors and Suppliers

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

§ 3.1.11.2 The Construction Manager shall develop bidders' 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, a procurement schedule for items that must be ordered in advance of construction. The Construction Manager shall expedite and coordinate the ordering and delivery of materials that must be ordered in advance of construction. If the Owner agrees to procure any items prior to the establishment of the Guaranteed Maximum Price, the Owner shall procure the items on terms and conditions acceptable to the Construction Manager. Upon the establishment of the Guaranteed Maximum Price, the Owner shall assign all contracts for these items to the Construction Manager and the Construction Manager shall thereafter accept responsibility for them.

##### § 3.1.12.1 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.

Within the scope of 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 more particularly provided for in this subsection B, below, the Construction Manager's Subcontractor selection process must be "competitive", meaning that the process must include publicly-advertised subcontractor solicitations and be based on a low-bid competitive method, a low-quote competitive method for contracts



in a specified dollar range agreeable to the Owner, or a method whereby both price and qualifications of the subcontractors are evaluated in a competitive environment, consistent with the 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.

### § 3.1.13 Compliance with Laws

The Construction Manager shall comply with applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to its performance under this Contract, and with equal employment opportunity programs, and other programs as may be required by governmental and quasi-governmental authorities. Including, but not limited to ORS 279A and C, as more particularly set forth in Oregon Public Contracting Code Provisions, attached and incorporated herein by this reference.

### § 3.1.14 Other Preconstruction Services

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

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

« Construction Manager to provide pre-construction serves as follows:

- Furnish cost estimates to the Owner for review and approval at, 100% Schematic Design, 100% Design Development, 50% construction documents, and GMP at 100 construction documents.
- Meet with TEPand Design Team at the end of each phase to review costs and reconcile cost estimates.
- Conduct thorough constructability review of the construction documents.
- Develop and implement a plan to actively generate interest from local sub-contractors and material suppliers as well as solicitation of bids.
- Value engineering and alternative construction methods.
- Submit a Guaranteed Maximum Price (GMP) proposal and GMP Supporting Documents to the Owner in conformance with Contract requirements. GMP proposal for the entire project will be based on 100% completed Construction Documents prepared by the Design Team.



- Upon Owner authorization (and execution of an Early Work Amendment and issuance of a Notice to Proceed for the Early Work), undertake early material procurement, site preparation and advance construction Work, including destructive demolition and investigation to discover existing conditions and uncover potential unforeseen conditions.

»

### § 3.2 Guaranteed Maximum Price Proposal

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

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

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

- .1 A list of the Drawings and Specifications, including all Addenda thereto, and the Conditions of the Contract;
- .2 A list of the clarifications and assumptions made by the Construction Manager in the preparation of the Guaranteed Maximum Price proposal, including assumptions under Section 3.2.2;
- .3 A statement of the proposed Guaranteed Maximum Price, including a statement of the estimated Cost of the Work organized by trade categories or systems, including allowances; the Construction Manager's contingency set forth in Section 3.2.4; and the Construction Manager's Fee;
- .4 The anticipated date of Substantial Completion upon which the proposed Guaranteed Maximum Price is based; and
- .5 A date by which the Owner must accept the Guaranteed Maximum Price.

§ 3.2.4 In preparing the Construction Manager's Guaranteed Maximum Price proposal, the Construction Manager shall include a contingency for the Construction Manager's exclusive use to cover those costs that are included in the Guaranteed Maximum Price but not otherwise allocated to another line item or included in a Change Order.

§ 3.2.5 The Construction Manager shall meet with the Owner and Architect to review the Guaranteed Maximum Price proposal. In the event that the Owner or Architect discover any inconsistencies or inaccuracies in the information presented, they shall promptly notify the Construction Manager, who shall make appropriate adjustments to the Guaranteed Maximum Price proposal, its basis, or both.

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

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

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



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

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

#### § 3.3.2 Administration

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

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

#### § 3.3.2.3 Monthly Report

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

#### § 3.3.2.4 Daily Logs

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

#### § 3.3.2.5 Cost Control

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

## ARTICLE 4 OWNER’S RESPONSIBILITIES

### § 4.1 Information and Services Required of the Owner

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

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

§ 4.1.3 The Owner shall establish and periodically update the Owner’s budget for the Project, including (1) the budget for the Cost of the Work as defined in Article 7, (2) the Owner’s other costs, and (3) reasonable contingencies related to all of these costs. If the Owner significantly increases or decreases by 15% or more, the Owner’s budget for the Cost of the Work, the Owner shall notify the Construction Manager and Architect. The



Owner and the Architect, in consultation with the Construction Manager, shall thereafter agree to a corresponding change in the Project's scope and quality.

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

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

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

**§ 4.1.4.3** The Owner, when such services are requested, shall furnish services of geotechnical engineers, which may include test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

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

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

#### **§ 4.2 Owner's Designated Representative**

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

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

#### **§ 4.3 Architect**

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



**ARTICLE 5 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES**

**§ 5.1 Compensation**

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

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

« Reimbursable costs of work 100% plus CM fee for the following: Mileage @ \$.XXX per mile, printing, advertising, and sub-contractors »

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

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

« »

**Individual or Position**

**Rate**

« »

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

§ 5.1.3 If the Preconstruction Phase services covered by this Agreement have not been completed within « 12 » ( « Twelve » ) months of the date of this Agreement, through no fault of the Construction Manager, the Construction Manager’s compensation for Preconstruction Phase services shall be negotiated and agreed upon by the CM/GC and Owner at time of change.

**§ 5.2 Payments**

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

§ 5.2.2 Payments are due and payable upon presentation of the Construction Manager’s invoice. Amounts unpaid « 30 » ( « Thirty » ) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Construction Manager.

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

« 1 » % « per annum »

**ARTICLE 6 COMPENSATION FOR CONSTRUCTION PHASE SERVICES**

**§ 6.1 Contract Sum**

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

§ 6.1.2 The Construction Manager’s Fee:

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

« The Construction Manager’s Fee shall be established as X.X% of the estimated Cost of the Work as established at the time of the Guaranteed Maximum Price Amendment, except no fee shall be calculated on Fee Exclusion Items. The Construction Manager’s Fee is inclusive of all profit, overhead and all other indirect and non-reimbursable costs. The Fee does not include any fee paid to the Construction Manager for performing pre-construction services during the pre-construction phase. No Fee shall be applied to the following items: Insurance, bond charges. »

§ 6.1.3 The method of adjustment of the Construction Manager’s Fee for changes in the Work are as established in the AIA Document A201-2017 (as modified):



« »

§ 6.1.4 Limitations, if any, on a Subcontractor's overhead and profit for increases in the cost of its portion of the Work area as established in the AIA Document A201-2017 (As modified):

« »

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

§ 6.1.6 Liquidated damages, if any:

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

« The Contractor acknowledges that the Owner will incur serious and substantial special, incidental and consequential damages if the Project is not completed within the Contract Time, including without limitation, damages in the form of inability to use the Project and all related facilities ("Loss of Use"); which are in addition to other damages such as delay costs for completion of portions of the Project or related projects to be constructed by the Owner or the Owner's separate contractors; or costs of extended services of the Owner's project management staff, outside construction management firms, Architect, any separate contractors and consultants, and others performing work or services related to the Project. In consideration of these factors, the Contractor acknowledges and agrees that time is particularly of the essence in the Contractor's performance of the Work in accordance with the agreed date of commencement of the Work, the agreed dates of Substantial Completion and Final Completion of the Work, and the approved Construction Schedule.

Consequently, liquidated damages of \$250 per day (in the event Substantial Completion is not achieved in compliance with the approved Construction Schedule) is a reasonable estimate of loss. Such liquidated damages are a reasonable estimate of actual damages from Loss of Use delay and are not a penalty. The Owner's right to liquidated damages for delay is not affected by partial completion, occupancy, or beneficial occupancy. If the Work is to be performed in phases, with separate dates set forth elsewhere in the Contract Documents, then the liquidated damages of this Section shall apply separately to each such phase.

The liquidated damages provisions herein are intended to be in addition to every other remedy enforceable at law, equity, or under this Contract, including without limitation additional Owner costs related to the Project, and the right to collect consequential damages in any case where liquidated damages are unenforceable or otherwise unavailable. The provisions shall not relieve or release the Contractor from liability for any and all damage or damages suffered by the Owner due to other breaches of the Contract or suffered by separate contractors or under the indemnification and warranty provisions of this Contract, or other damages that are not expressly covered by liquidated damages. »

§ 6.1.7 Other:

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

« N/A »

## § 6.2 Guaranteed Maximum Price

The Construction Manager guarantees that the Contract Sum shall not exceed the Guaranteed Maximum Price set forth in the Guaranteed Maximum Price Amendment, subject to additions and deductions by Change Order as provided in the Contract Documents. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Construction Manager without reimbursement by the Owner.

## § 6.3 Changes in the Work

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



§ 6.3.1.1 The Architect may order minor changes in the Work as provided in Article 7 of 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 the execution of the Guaranteed Maximum Price Amendment may be determined by any of the methods listed in Article 7 of AIA Document A201–2017, General Conditions of the Contract for Construction.

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

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

§ 6.3.5 Subject to Article 15 of AIA Document A201-2017 (as modified). If no specific provision is made in Section 6.1.3 for adjustment of the Construction Manager’s Fee in the case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment provisions of Section 6.1.3 will cause substantial inequity to the Owner or Construction Manager, the Construction Manager’s Fee shall be negotiated and agreed upon by the CM/GC and Owner at time of change. on the same basis that was used to establish the Fee for the original Work, and the Guaranteed Maximum Price shall be adjusted accordingly.

## ARTICLE 7 COST OF THE WORK FOR CONSTRUCTION PHASE

### § 7.1 Costs to Be Reimbursed

§ 7.1.1 The term Cost of the Work shall mean costs necessarily incurred by the Construction Manager in the proper performance of the Work. The Cost of the Work shall include only the items set forth in Sections 7.1 through 7.7.

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

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

### § 7.2 Labor Costs

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

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

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

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

« [Insert Personnel] are allowed to bill to project when working on the project from off-site to provide services for project setup, billing, submittals, schedule development, logistics planning or estimating. »

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

§ 7.2.4 Costs paid or incurred by the Construction Manager, as required by law or collective bargaining agreements, for taxes, insurance, contributions, assessments and benefits and, for personnel not covered by collective bargaining agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions,



provided such costs are based on wages and salaries included in the Cost of the Work under Sections 7.2.1 through 7.2.3.

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

### § 7.3 Subcontract Costs

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

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

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

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

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

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

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

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

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

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

### § 7.6 Miscellaneous Costs

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

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

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

§ 7.6.2 Sales, use, or similar taxes, imposed by a governmental authority, that are related to the Work and for which the Construction Manager is liable.

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



**§ 7.6.4** Fees of laboratories for tests required by the Contract Documents; except those related to defective or nonconforming Work for which reimbursement is excluded under Article 13 of 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** Costs for communications services, electronic equipment, and software, directly related to the Work and located at the site, with the Owner's prior approval.

**§ 7.6.7** Costs of document reproductions and delivery charges.

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

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

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

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

**§ 7.7 Other Costs and Emergencies**

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

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

**§ 7.7.3** Not Used.

**§ 7.7.4** The costs described in Sections 7.1 through 7.7 shall be included in the Cost of the Work, notwithstanding any provision of AIA Document A201–2017 or other Conditions of the Contract which may require the Construction Manager to pay such costs, unless such costs are excluded by the provisions of Section 7.9.

**§ 7.8 Related Party Transactions**

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

**§ 7.8.2** If any of the costs to be reimbursed arise from a transaction between the Construction Manager and a related party, the Construction Manager shall notify the Owner of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is



consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction in writing, then the cost incurred shall be included as a cost to be reimbursed, and the Construction Manager shall procure the Work, equipment, goods, or service, from the related party, as a Subcontractor, according to the terms of Article 9. If the Owner fails to authorize the transaction in writing, the Construction Manager shall procure the Work, equipment, goods, or service from some person or entity other than a related party according to the terms of Article 9.

#### **§ 7.9 Costs Not To Be Reimbursed**

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

- .1 Salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal office or offices other than the site office, except as specifically provided in Section 7.2, or as may be provided in Article 14;
- .2 Bonuses, profit sharing, incentive compensation, and any other discretionary payments, paid to anyone hired by the Construction Manager or paid to any Subcontractor or vendor, unless the Owner has provided prior approval;
- .3 Expenses of the Construction Manager's principal office and offices other than the site office;
- .4 Overhead and general expenses, except as may be expressly included in Sections 7.1 to 7.7;
- .5 The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work;
- .6 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; and
- .9 Costs for services incurred during the Preconstruction Phase.

#### **ARTICLE 8 DISCOUNTS, REBATES, AND REFUNDS**

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

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

#### **ARTICLE 9 SUBCONTRACTS AND OTHER AGREEMENTS**

**§ 9.1** Those portions of the Work that the Construction Manager does not customarily perform with the Construction Manager's own personnel shall be performed under subcontracts or other appropriate agreements with the Construction Manager. 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

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

#### ARTICLE 11 PAYMENTS FOR CONSTRUCTION PHASE SERVICES

##### § 11.1 Progress Payments

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

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

« »

§ 11.1.3 Provided that an Application for Payment is received by the Architect not later than the « 10th » day of a month, the Owner shall make payment of the amount certified to the Construction Manager not later than the « 5th » day of the « following » month. If an Application for Payment is received by the Architect after the application date fixed above, payment of the amount certified shall be made by the Owner not later than « Twenty Five » ( « 25 » ) days after the Architect receives the Application for Payment.

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

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

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

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

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



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

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

§ 11.1.7 In accordance with AIA Document A201–2017 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; The construction manager should be ready to provide certified payroll reports that would be in compliance with Oregon Prevailing wages, or Davis Bacon Act.
- .2 That portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction or, if approved in writing in advance by the Owner, suitably stored off the site at a location agreed upon in writing;
- .3 That portion of Construction Change Directives that the Architect determines, in the Architect's professional judgment, to be reasonably justified; and
- .4 The Construction Manager's Fee, computed upon the Cost of the Work described in the preceding Sections 11.1.7.1.1 and 11.1.7.1.2 at the rate stated in Section 6.1.2 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work included in Sections 11.1.7.1.1 and 11.1.7.1.2 bears to a reasonable estimate of the probable Cost of the Work upon its completion.

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

- .1 The aggregate of any amounts previously paid by the Owner;
- .2 The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A201–2017;
- .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

§ 11.1.8.1 Unless the Construction Manager submits security as permitted by, and which complies with, ORS 279C.560 and 701.435 for all or a portion of the retainage required herein, for each progress payment made prior to Substantial Completion of the Work, the Owner may withhold the following amount, as retainage, from the payment otherwise due, 5%:

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

« 5% to be held in accordance with ORS 701.420 »

§ 11.1.8.1.1 The following items are not subject to retainage:

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



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

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

« Retention will be released in accordance with ORS701.420 »

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

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

« Subject to Owner's final grant reimbursement »

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

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

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

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

**§ 11.2 Final Payment**

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

- .1 the Construction Manager has fully performed the Contract, except for the Construction Manager's responsibility to correct Work as provided in Article 12 of 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; and
- .3 a final Certificate for Payment has been issued by the Architect in accordance with Section 11.2.2.2.

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

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

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



notify the Construction Manager and Owner in writing of the Architect's reasons for withholding a certificate as provided in Article 9 of AIA Document A201-2017. The time periods stated in this Section 11.2.2 supersede those stated in Article 9 of AIA Document A201-2017. The Architect is not responsible for verifying the accuracy of the Construction Manager's final accounting.

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

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

« Subject to Owner's final grant reimbursement »

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

**§ 11.3 Interest**

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

*(Insert rate of interest agreed upon, if any.)*

« 1 » % « Annual »

**ARTICLE 12 DISPUTE RESOLUTION**

**§ 12.1 Initial Decision Maker**

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

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

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

« »  
« »  
« »  
« »

**§ 12.2 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 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, 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 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 the commencement of the Construction Phase but prior to the execution of the Guaranteed Maximum Price Amendment, the Owner shall pay to the Construction Manager an amount calculated as follows, which amount shall be in addition to any compensation paid to the Construction Manager under Section 13.1.4:

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

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



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

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

### § 13.2.1 Termination

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

### § 13.2.2 Termination by the Owner for Cause

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

- 1 Take the Cost of the Work incurred by the Construction Manager to the date of termination;
- 2 Add the Construction Manager's Fee, computed upon the Cost of the Work to the date of termination at the rate stated in Section 6.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- 3 Subtract the aggregate of previous payments made by the Owner; and
- 4 Subtract the costs and damages incurred, or to be incurred, by the Owner under Article 14 of AIA Document A201–2017.

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

### § 13.2.3 Termination by the Owner for Convenience

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

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

« Work performed to date subject to audited invoices for allowable preconstruction services »

## § 13.3 Suspension

The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2017; in such case, the Guaranteed Maximum Price and Contract Time shall be increased 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 14.2.2 of this Agreement, and in Section 13.2.2 of A201–2017, neither party to the Contract



shall assign the Contract as a whole without written consent of the other. If either party attempts to make an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

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

### § 14.3 Insurance and Bonds

#### § 14.3.1 Preconstruction Phase

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

§ 14.3.1.1 Commercial General Liability with policy limits of not less than « f Million » (\$ « ,000,000 » ) for each occurrence and « Four Million » (\$ « 4,000,000 » ) in the aggregate for bodily injury and property damage.

§ 14.3.1.2 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Construction Manager with policy limits of not less than « One Million » (\$ « 1,000,000 » ) per accident for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles, along with any other statutorily required automobile coverage.

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

§ 14.3.1.4 Workers' Compensation at statutory limits and Employers Liability with policy limits not less than « One Million » (\$ « 1,000,000 » ) each accident, « One Million » (\$ « 1,000,000 » ) each employee, and « One Million » (\$ « 1,000,000 » ) policy limit.

§ 14.3.1.5 Professional Liability covering negligent acts, errors and omissions in the performance of professional services, with policy limits of not less than « 2 million » (\$ « 2,000,000 » ) per claim and « 4 million » (\$ « 4,000,000 » ) in the aggregate.

#### § 14.3.1.6 Other Insurance

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

Coverage	Limits
« N/A »	N/A

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

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

#### § 14.3.2 Construction Phase

After execution of the Guaranteed Maximum Price Amendment, the Owner and the Construction Manager shall purchase and maintain insurance as set forth in AIA Document A133™-2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus

a Fee with a Guaranteed Maximum Price, Exhibit B, Insurance and Bonds, and elsewhere in the Contract Documents.

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

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

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

« N/A »

§ 14.5 Other provisions:

« N/A »

**ARTICLE 15 SCOPE OF THE AGREEMENT**

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

§ 15.2 The following documents comprise the Agreement:

- .1 AIA Document A133™-2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price
- .2 AIA Document A133™-2019, Exhibit A, Guaranteed Maximum Price Amendment, if executed
- .3 AIA Document A133™-2019, Exhibit B, Insurance and Bonds
- .4 AIA Document A201™-2017, General Conditions of the Contract for Construction
- .6 Other Exhibits:  
*(Check all boxes that apply.)*

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

« »

[ « » ] Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages
« »			

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

« Oregon Public Contracting Code Provisions  
General Conditions – Cost of Work Matrix »



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

« »

OWNER (Signature)

« »« »

(Printed name and title)

« »

CONSTRUCTION MANAGER (Signature)

« »« »

(Printed name and title)

TELEBAR

## Exhibit G

### Draft Insurance and Bonds

Exhibit G

Insurance and Bonds

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

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

« Tillamook Estuaries Science Center »
« 7855 Warren Street »
« Bay City, OR 97107 »

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

« Tillamook Estuaries Partnership »
« PO Box 493, 613 Commercial Street »
« Garibaldi, OR 97118 »

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

« »
« »
« »

TABLE OF ARTICLES

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

ARTICLE B.1 GENERAL

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

ARTICLE B.2 OWNER'S INSURANCE

§ B.2.1 General

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

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.

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



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**§ B.2.2 Liability Insurance**

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

**§ B.2.3 Required Property Insurance**

**§ B.2.3.1** Unless this obligation is placed on the Construction Manager pursuant to Section B.3.3.2.1, the Owner shall purchase and maintain, from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located, property insurance written on a builder's risk “all-risks” completed value or equivalent policy form and sufficient to cover the total value of the entire Project on a replacement cost basis. The Owner’s property insurance coverage shall be no less than the amount of the initial Contract Sum, plus the value of subsequent Modifications and labor performed and materials or equipment supplied by others. The property insurance shall be maintained until Substantial Completion and thereafter as provided in Section B.2.3.1.3, unless otherwise provided in the Contract Documents or otherwise agreed in writing by the parties to this Agreement. This insurance shall include the interests of the Owner, Construction Manager, Subcontractors, and Sub-subcontractors in the Project as insureds. This insurance shall include the interests of ~~mortgagees~~mortgages as loss payees.

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

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

Cause of Loss	Sub-Limit

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

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

Coverage	Sub-Limit

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

**§ B.2.3.1.4 Deductibles and Self-Insured Retentions.** If the insurance required by this Section B.2.3 is subject to deductibles or self-insured retentions, the Owner shall be responsible for all loss not covered because of such deductibles or retentions.

**§ B.2.3.2 Occupancy or Use Prior to Substantial Completion.** The Owner’s occupancy or use of any completed or partially completed portion of the Work prior to Substantial Completion shall not commence until the insurance company or companies providing the insurance under Section B.2.3.1 have consented in writing to the continuance of coverage. The Owner and the Construction Manager shall take no action with respect to partial occupancy or use that would cause cancellation, lapse, or reduction of insurance, unless they agree otherwise in writing.

**§ B.2.3.3 Insurance for Existing Structures**

If the Work involves remodeling an existing structure or constructing an addition to an existing structure, the Owner shall purchase and maintain, until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, “all-risks” property insurance, on a replacement cost basis, protecting the existing structure

against direct physical loss or damage from the causes of loss identified in Section B.2.3.1, notwithstanding the undertaking of the Work. The Owner shall be responsible for all co-insurance penalties.

**§ B.2.4 Optional Extended Property Insurance.**

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

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

[  ] **§ B.2.4.1 Loss of Use, Business Interruption, and Delay in Completion Insurance**, to reimburse the Owner for loss of use of the Owner's property, or the inability to conduct normal operations due to a covered cause of loss.

[  ] **§ B.2.4.2 Ordinance or Law Insurance**, for the reasonable and necessary costs to satisfy the minimum requirements of the enforcement of any law or ordinance regulating the demolition, construction, repair, replacement or use of the Project.

[  ] **§ B.2.4.3 Expediting Cost Insurance**, for the reasonable and necessary costs for the temporary repair of damage to insured property, and to expedite the permanent repair or replacement of the damaged property.

[  ] **§ B.2.4.4 Extra Expense Insurance**, to provide reimbursement of the reasonable and necessary excess costs incurred during the period of restoration or repair of the damaged property that are over and above the total costs that would normally have been incurred during the same period of time had no loss or damage occurred.

[  ] **§ B.2.4.5 Civil Authority Insurance**, for losses or costs arising from an order of a civil authority prohibiting access to the Project, provided such order is the direct result of physical damage covered under the required property insurance.

[  ] **§ B.2.4.6 Ingress/Egress Insurance**, for loss due to the necessary interruption of the insured's business due to physical prevention of ingress to, or egress from, the Project as a direct result of physical damage.

[  ] **§ B.2.4.7 Soft Costs Insurance**, to reimburse the Owner for costs due to the delay of completion of the Work, arising out of physical loss or damage covered by the required property insurance: including construction loan fees; leasing and marketing expenses; additional fees, including those of architects, engineers, consultants, attorneys and accountants, needed for the completion of the construction, repairs, or reconstruction; and carrying costs such as property taxes, building permits, additional interest on loans, realty taxes, and insurance premiums over and above normal expenses.



**§ B.2.5 Other Optional Insurance.**

The Owner shall purchase and maintain the insurance selected below.

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

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

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

Coverage	Limits

**ARTICLE B.3 CONSTRUCTION MANAGER'S INSURANCE AND BONDS**

**§ B.3.1 General**

**§ B.3.1.1 Certificates of Insurance.** The Construction Manager shall provide certificates of insurance acceptable to the Owner evidencing compliance with the requirements in this Article B.3 at the following times: (1) prior to commencement of the Work; (2) upon renewal or replacement of each required policy of insurance; and (3) upon the Owner's written request. An additional certificate evidencing continuation of commercial liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment and thereafter upon renewal or replacement of such coverage until the expiration of the periods required by Section B.3.2.1 and Section B.3.3.1. The certificates will show the Owner as an additional insured on the Construction Manager's Commercial General Liability and excess or umbrella liability policy or policies.

**§ B.3.1.2 Deductibles and Self-Insured Retentions.** The Construction Manager shall disclose to the Owner any deductible or self- insured retentions applicable to any insurance required to be provided by the Construction Manager.

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

**§ B.3.2 Construction Manager's Required Insurance Coverage**

**§ B.3.2.1** The Construction Manager shall purchase and maintain the following types and limits of insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Construction Manager shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, unless a different duration is stated below:

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



**§ B.3.2.2 Commercial General Liability**

**§ B.3.2.2.1** Commercial General Liability insurance for the Project written on an occurrence form with policy limits of not less than « Two Mmillion » (\$ « 2,000,000 » ) each occurrence, « Four Mmillion » (\$ « 4,000,000 » ) general aggregate, and « » (\$ « » ) aggregate for products-completed operations hazard, providing coverage for claims including

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

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

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

**§ B.3.2.3** Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Construction Manager, with policy limits of not less than « One Mmillion » (\$ « 1,000,000 » ) per accident, for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles along with any other statutorily required automobile coverage.

**§ B.3.2.4** The Construction Manager may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided such primary and excess or umbrella insurance policies result in the same or greater coverage as the coverages required under Section B.3.2.2 and B.3.2.3, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

**§ B.3.2.5** Workers' Compensation at statutory limits.

**§ B.3.2.6** Employers' Liability with policy limits not less than « One Mmillion » (\$ « 1,000,000 » ) each accident, « One Mmillion » (\$ « 1,000,000 » ) each employee, and « One Mmillion » (\$ « 1,000,000 » ) policy limit.

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



§ B.3.2.8 If the Construction Manager is required to furnish professional services as part of the Work, the Construction Manager shall procure Professional Liability insurance covering performance of the professional services, with policy limits of not less than « Two Mmillion » (\$ « 2,000,000 » ) per claim and « Four Mmillion » (\$ « 4,000,000 » ) in the aggregate.

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

§ B.3.2.10 Coverage under Sections B.3.2.8 and B.3.2.9 may be procured through a Combined Professional Liability and Pollution Liability insurance policy, with combined policy limits of not less than « Two Mmillion » (\$ « 2,000,000 » ) per claim and « Four Mmillion » (\$ « 4,000,000 » ) in the aggregate.

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

§ B.3.2.12 Insurance for the use or operation of manned or unmanned aircraft, if the Work requires such activities, with policy limits of not less than « One Mmillion » (\$ « 1,000,000 » ) per claim and « One Mmillion » (\$ « 1,000,000 » ) in the aggregate.

### § B.3.3 Construction Manager's Other Insurance Coverage

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

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

« »

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

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

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

« »

- [ « » ] § B.3.3.2.2 Railroad Protective Liability Insurance, with policy limits of not less than « » (\$ « » ) per claim and « » (\$ « » ) in the aggregate, for Work within fifty (50) feet of railroad property.

[  ] § B.3.3.2.3 **Asbestos Abatement Liability Insurance**, with policy limits of not less than  **Million** » (\$  » ) per claim and  **Million** » (\$  » ) in the aggregate, for liability arising from the encapsulation, removal, handling, storage, transportation, and disposal of asbestos-containing materials.

[  ] § B.3.3.2.4 Insurance for physical damage to property while it is in storage and in transit to the construction site on an “all-risks” completed value form.

[  ] § B.3.3.2.5 Property insurance on an “all-risks” completed value form, covering property owned by the Construction Manager and used on the Project, including scaffolding and other equipment.

[  ] § B.3.3.2.6 **Other Insurance**  
*(List below any other insurance coverage to be provided by the Construction Manager and any applicable limits.)*

Coverage	Limits

**§ B.3.4 Performance Bond and Payment Bond**

The Construction Manager shall provide surety bonds, from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located, as follows:  
*(Specify type and penal sum of bonds.)*

Type	Penal Sum (\$0.00)
Payment Bond	<input type="text" value="100%"/>
Performance Bond	<input type="text" value="100%"/>

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

**ARTICLE B.4 SPECIAL TERMS AND CONDITIONS**

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





## Exhibit H

### Draft Guaranteed Maximum Price Amendment

# DRAFT AIA® Document A133® – 2019

## Exhibit A

### Guaranteed Maximum Price Amendment

This Amendment dated the « » day of « » in the year « », is incorporated into the accompanying AIA Document A133™-2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price dated the « » day of « » in the year « » (the "Agreement")  
(In words, indicate day, month, and year.)

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

«Tillamook Estuary Science Center »  
«7855 Warren Street, Bay City, OR 97107 »

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

«Tillamook Estuaries →Partnership »« »  
«PO Box 493, 613 Commercial Street, Garibaldi, OR 97118 »

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

« »« »  
« »

#### TABLE OF ARTICLES

- A.1 GUARANTEED MAXIMUM PRICE
- A.2 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION
- A.3 INFORMATION UPON WHICH AMENDMENT IS BASED
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#### ARTICLE A.1 GUARANTEED MAXIMUM PRICE

##### § A.1.1 Guaranteed Maximum Price

Pursuant to Section 3.2.6 of the Agreement, the Owner and Construction Manager hereby amend the Agreement to establish a Guaranteed Maximum Price. As agreed by the Owner and Construction Manager, the Guaranteed Maximum Price is an amount that the Contract Sum shall not exceed. The Contract Sum consists of the Construction Manager's Fee plus the Cost of the Work, as that term is defined in Article 6 of the Agreement.

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

#### ADDITIONS AND DELETIONS:

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

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

*(Provide itemized statement below or reference an attachment.)*

« »

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

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

**§ A.1.1.5 Alternates**

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

Item	Price
N/A	N/A

**§ A.1.1.5.2** Subject to the conditions noted below, the following alternates may be accepted by the Owner following execution of this Exhibit A. Upon acceptance, the Owner shall issue a Modification to the Agreement.

*(Insert below each alternate and the conditions that must be met for the Owner to accept the alternate.)*

Item	Price	Conditions for Acceptance
N/A	N/A	

**§ A.1.1.6** Unit prices, if any:

*(Identify the item and state the unit price and quantity limitations, if any, to which the unit price will be applicable.)*

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

**ARTICLE A.2 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION**

**§ A.2.1** The date of commencement of the Work shall be:

*(Check one of the following boxes.)*

[  ] The date of execution of this Amendment.

[  ] Established as follows:

*(Insert a date or a means to determine the date of commencement of the Work.)*

« »

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

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

**§ A.2.3 Substantial Completion**

**§ A.2.3.1** Subject to adjustments of the Contract Time as provided in the Contract Documents, the Construction Manager shall achieve Substantial Completion of the entire Work:

*(Check one of the following boxes and complete the necessary information.)*

[  ] Not later than « » (  ) calendar days from the date of commencement of the Work.

[ « X » ] By the following date: « [Insert Date of anticipated substantial completion] »

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

Portion of Work	Substantial Completion Date

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

**ARTICLE A.3 INFORMATION UPON WHICH AMENDMENT IS BASED**

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

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

Document	Title	Date	Pages

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

« »

Section	Title	Date	Pages

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

« »

Number	Title	Date

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

Title	Date	Pages
N/A	N/A	N/A

Other identifying information:

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

Item	Price

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

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*(Identify each assumption and clarification.)*

« »

**§ A.3.1.7** The Guaranteed Maximum Price is based upon the following other documents and information:  
*(List any other documents or information here, or refer to an exhibit attached to this Amendment.)*

« »

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

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

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

« »

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

\_\_\_\_\_  
**OWNER** *(Signature)*

« »« »

*(Printed name and title)*

\_\_\_\_\_  
**CONSTRUCTION MANAGER** *(Signature)*

« »« »

*(Printed name and title)*



Exhibit I  
Draft General Conditions

# DRAFT AIA® Document A201® - 2017

## General Conditions of the Contract for Construction

### for the following PROJECT:

(Name and location or address)

« Tillamook Estuary Science Center »  
« 7855 Warren Street »  
« Bay City, OR 97107 »

### THE OWNER:

(Name, legal status and address)

« Tillamook Estuaries Partnership » « »  
« PO Box 493, 613 Commercial Street »  
« Garibaldi, OR 97118 »

### THE ARCHITECT:

(Name, legal status and address)

« Bearing Architecture, LLC » « »  
« 2222 NE Oregon Street, Suite 209 »  
« Portland, OR »

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

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

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



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- 14 TERMINATION OR SUSPENSION OF THE CONTRACT
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TELBRAD



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## ARTICLE 1 GENERAL PROVISIONS

### § 1.1 Basic Definitions

#### § 1.1.1 The Contract Documents

The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement, and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive, or (4) a written order for a minor change in the Work issued by the Architect. Unless specifically enumerated in the Agreement, the Contract Documents do not include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of Addenda relating to bidding or proposal requirements.

#### § 1.1.2 The Contract

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

#### § 1.1.3 The Work

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

#### § 1.1.4 The Project

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

#### § 1.1.5 The Drawings

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

#### § 1.1.6 The Specifications

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

#### § 1.1.7 Instruments of Service

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

#### § 1.1.8 Initial Decision Maker

The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2. The Initial Decision Maker shall not show partiality to the Owner or Contractor and shall not be liable for results of interpretations or decisions rendered in good faith.

### § 1.2 Correlation and Intent of the Contract Documents

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



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

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

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

### § 1.3 Capitalization

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

### § 1.4 Interpretation

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

### § 1.5 Ownership and Use of Drawings, Specifications, and Other Instruments of Service

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

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

### § 1.6 Notice

§ 1.6.1 Except as otherwise provided in Section 1.6.2, where the Contract Documents require one party to notify or give notice to the other party, such notice shall be provided in writing to the designated representative of the party to whom the notice is addressed and shall be deemed to have been duly served if delivered in person, by mail, by courier, or by electronic transmission if a method for electronic transmission is set forth in the Agreement within 5 business days.

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

### § 1.7 Digital Data Use and Transmission

The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form. The parties will use AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.



## § 1.8 Building Information Models Use and Reliance

Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document G202™-2013, Project Building Information Modeling Protocol Form, shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

## ARTICLE 2 OWNER

### § 2.1 General

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

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

### § 2.2 Evidence of the Owner's Financial Arrangements

§ 2.2.1 Prior to commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. The Contractor shall have no obligation to commence the Work until the Owner provides such evidence. If commencement of the Work is delayed under this Section 2.2.1, the Contract Time shall be extended appropriately.

§ 2.2.2 Following commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract only if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) the Contractor identifies in writing concern regarding the Owner's ability to make payment when due; or (3) a change in the Work materially changes the Contract Sum. If the Owner fails to provide such evidence, as required, within fourteen days of the Contractor's request, the Contractor may immediately stop the Work and, in that event, shall notify the Owner that the Work has stopped. However, if the request is made because a change in the Work materially changes the Contract Sum under (3) above, the Contractor may immediately stop only that portion of the Work affected by the change until evidence is provided. If the Work is stopped under this Section 2.2.2, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided in the Contract Documents.

§ 2.2.3 After the Owner furnishes evidence of financial arrangements under this Section 2.2, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor.

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

### § 2.3 Information and Services Required of the Owner

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



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

§ 2.3.3 If the employment of the Architect terminates, the Owner shall employ a successor.

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

§ 2.3.5 The Owner shall furnish information or services required of the Owner by the Contract Documents with 5 business days. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Contractor's performance of the Work within 5 business days after receiving the Contractor's written request for such information or services.

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

#### § 2.4 Owner's Right to Stop the Work

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

#### § 2.5 Owner's Right to Carry Out the Work

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such default or neglect. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect and the Architect may, pursuant to Section 9.5.1, withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect, or failure. If current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. If the Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15.

### ARTICLE 3 CONTRACTOR

#### § 3.1 General

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

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

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



### **§ 3.2 Review of Contract Documents and Field Conditions by Contractor**

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

**§ 3.2.2** Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.3.4, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect and TEP any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

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

**§ 3.2.4** If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall submit Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner, subject to Section 15.1.7, as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.

### **§ 3.3 Supervision and Construction Procedures**

**§ 3.3.1** The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work under the Contract. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences, or procedures, the Contractor shall evaluate the jobsite safety thereof and shall be solely responsible for the jobsite safety of such means, methods, techniques, sequences, or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely notice to the Owner and Architect, and shall propose alternative means, methods, techniques, sequences, or procedures. The Architect shall evaluate the proposed alternative solely for conformance with the design intent for the completed construction. Unless the Architect objects within 10 business days to the Contractor's proposed alternative, the Contractor shall perform the Work using its alternative means, methods, techniques, sequences, or procedures.

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

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

### **§ 3.4 Labor and Materials**

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



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

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

### § 3.5 Warranty

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

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

### § 3.6 Taxes

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

### § 3.7 Permits, Fees, Notices and Compliance with Laws

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

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

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

### § 3.7.4 Concealed or Unknown Conditions

If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than 14 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend that an equitable adjustment be made in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may submit a Claim as provided in Article 15.

§ 3.7.5 If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately



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

### § 3.8 Allowances

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

§ 3.8.2 Unless otherwise provided in the Contract Documents,

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

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

### § 3.9 Superintendent

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

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

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

### § 3.10 Contractor's Construction and Submittal Schedules

§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall contain detail appropriate for the Project, including (1) the date of commencement of the Work, interim schedule milestone dates, and the date of Substantial Completion; (2) an apportionment of the Work by construction activity; and (3) the time required for completion of each portion of the Work. The schedule shall provide for the orderly progression of the Work to completion and shall not exceed time limits current under the Contract Documents. The schedule shall be revised at appropriate intervals as required by the conditions of the Work and Project.

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



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

**§ 3.11 Documents and Samples at the Site**

The Contractor shall make available, at the Project site, the Contract Documents, including Change Orders, Construction Change Directives, and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and the approved Shop Drawings, Product Data, Samples, and similar required submittals. These shall be in electronic form or paper copy, available to the Architect and Owner, and delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

**§ 3.12 Shop Drawings, Product Data and Samples**

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

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

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

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

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

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

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

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

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



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

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

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

### § 3.13 Use of Site

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

### § 3.14 Cutting and Patching

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

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

### § 3.15 Cleaning Up

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

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

### § 3.16 Access to Work

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



### § 3.17 Royalties, Patents and Copyrights

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

### § 3.18 Indemnification

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

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

## ARTICLE 4 ARCHITECT

### § 4.1 General

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

§ 4.1.2 Duties, responsibilities, and limitations of authority of the Architect as set forth in the Contract Documents shall not be restricted, modified, or extended without written consent of the Owner, Contractor, and Architect. Consent shall not be unreasonably withheld.

### § 4.2 Administration of the Contract

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

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

§ 4.2.3 On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not



have control over or charge of, and will not be responsible for acts or omissions of, the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

#### **§ 4.2.4 Communications**

The Owner and Contractor shall include the Architect in all communications that relate to or affect the Architect's services or professional responsibilities. The Owner shall promptly notify the Architect of the substance of any direct communications between the Owner and the Contractor otherwise relating to the Project. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and suppliers shall be through the Contractor. Communications by and with Separate Contractors shall be through the Owner. The Contract Documents may specify other communication protocols.

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

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

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

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

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

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

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

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



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

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

## ARTICLE 5 SUBCONTRACTORS

### § 5.1 Definitions

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

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

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

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

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

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

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

### § 5.3 Subcontractual Relations

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



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

#### **§ 5.4 Contingent Assignment of Subcontracts**

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

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

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

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

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

### **ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS**

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

**§ 6.1.1** The term "Separate Contractor(s)" shall mean other contractors retained by the Owner under separate agreements. The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and with Separate Contractors retained under Conditions of the Contract substantially similar to those of this Contract, including those provisions of the Conditions of the Contract related to insurance and waiver of subrogation.

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

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

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

#### **§ 6.2 Mutual Responsibility**

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

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



Work shall constitute an acknowledgment that the Owner's or Separate Contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work. The Contractor shall not be responsible for discrepancies or defects in the construction or operations by the Owner or Separate Contractor that are not apparent.

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

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

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

### § 6.3 Owner's Right to Clean Up

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

## ARTICLE 7 CHANGES IN THE WORK

### § 7.1 General

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

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

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

### § 7.2 Change Orders

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

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

### § 7.3 Construction Change Directives

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

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

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

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 Unit prices stated in the Contract Documents or subsequently agreed upon;



- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 As provided in Section 7.3.4.

§ 7.3.4 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall determine the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.4 shall be limited to the following:

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

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

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

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

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

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

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

#### § 7.4 Minor Changes in the Work

The Architect may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. The Architect's order for minor changes shall be in writing. If the Contractor believes that the proposed minor change in the Work will affect the Contract Sum or Contract Time, the Contractor shall notify the Architect and shall not proceed to implement the change in the Work. If the Contractor performs the Work set forth in the Architect's order for a minor



change without prior notice to the Architect that such change will affect the Contract Sum or Contract Time, the Contractor waives any adjustment to the Contract Sum or extension of the Contract Time.

## **ARTICLE 8 TIME**

### **§ 8.1 Definitions**

§ 8.1.1 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

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

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

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

### **§ 8.2 Progress and Completion**

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

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

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

### **§ 8.3 Delays and Extensions of Time**

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by (1) an act or neglect of the Owner or Architect, of an employee of either, or of a Separate Contractor; (2) by changes ordered in the Work; (3) by labor disputes, fire, unusual delay in deliveries, unavoidable casualties, adverse weather conditions documented in accordance with Section 15.1.6.2, or other causes beyond the Contractor's control; (4) by delay authorized by the Owner pending mediation and binding dispute resolution; or (5) by other causes that the Contractor asserts, and the Architect determines, justify delay, then the Contract Time shall be extended for such reasonable time as the Architect may determine.

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

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

## **ARTICLE 9 PAYMENTS AND COMPLETION**

### **§ 9.1 Contract Sum**

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

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

### **§ 9.2 Schedule of Values**

Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit a schedule of values to the Architect before the first Application for Payment, allocating the entire Contract Sum to the various portions of the Work. The schedule of values shall be prepared in the form, and supported by the data to substantiate its accuracy, required by the Architect. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment. Any changes to the schedule of values shall be submitted to the Architect and supported by such data to substantiate its accuracy as the Architect may require, and unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's subsequent Applications for Payment.



### **§ 9.3 Applications for Payment**

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

**§ 9.3.1.1** As provided in Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Architect, but not yet included in Change Orders.

**§ 9.3.1.2** Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or supplier, unless such Work has been performed by others whom the Contractor intends to pay.

**§ 9.3.2** Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage, and transportation to the site, for such materials and equipment stored off the site.

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

### **§ 9.4 Certificates for Payment**

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

**§ 9.4.2** The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and the data in the Application for Payment, that, to the best of the Architect's knowledge, information, and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is entitled to payment in the amount certified. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion, and to specific qualifications expressed by the Architect. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work; (2) reviewed construction means, methods, techniques, sequences, or procedures; (3) reviewed copies of requisitions received from Subcontractors and suppliers and other data requested by the Owner to substantiate the Contractor's right to payment; or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

### **§ 9.5 Decisions to Withhold Certification**

**§ 9.5.1** The Architect may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's opinion the representations to the Owner required by Section 9.4.2 cannot



be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner as provided in Section 9.4.1. If the Contractor and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims, unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or suppliers for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a Separate Contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 repeated failure to carry out the Work in accordance with the Contract Documents.

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

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

§ 9.5.4 If the Architect withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or supplier to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Contractor shall reflect such payment on its next Application for Payment.

#### § 9.6 Progress Payments

§ 9.6.1 After the Architect has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Architect.

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

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

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

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

§ 9.6.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.



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

§ 9.6.8 Provided the Owner has fulfilled its payment obligations under the Contract Documents, the Contractor shall defend and indemnify the Owner from all loss, liability, damage or expense, including reasonable attorney's fees and litigation expenses, arising out of any lien claim or other claim for payment by any Subcontractor or supplier of any tier. Upon receipt of notice of a lien claim or other claim for payment, the Owner shall notify the Contractor. If approved by the applicable court, when required, the Contractor may substitute a surety bond for the property against which the lien or other claim for payment has been asserted.

### § 9.7 Failure of Payment

If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents, the amount certified by the Architect or awarded by binding dispute resolution, then the Contractor may, upon seven additional days' notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided for in the Contract Documents.

### § 9.8 Substantial Completion

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

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

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

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

§ 9.8.5 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in the Certificate. Upon such acceptance, and consent of surety if any, the Owner shall make payment of retainage applying to the Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.



### **§ 9.9 Partial Occupancy or Use**

**§ 9.9.1** The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect.

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

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

### **§ 9.10 Final Completion and Final Payment**

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

**§ 9.10.2** Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect, (3) a written statement that the Contractor knows of no reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment, (5) documentation of any special warranties, such as manufacturers' warranties or specific Subcontractor warranties, and (6) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts and releases and waivers of liens, claims, security interests, or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien, claim, security interest, or encumbrance. If a lien, claim, security interest, or encumbrance remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging the lien, claim, security interest, or encumbrance, including all costs and reasonable attorneys' fees.

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



- § 9.10.4 The making of final payment shall constitute a waiver of Claims by the Owner except those arising from
- .1 unsettled liens, Claims, security interests, or encumbrances arising out of the Contract;
  - .2 failure of the Work to comply with the requirements of the Contract Documents;
  - .3 terms of special warranties required by the Contract Documents; or
  - .4 audits performed by the Owner, if permitted by the Contract Documents, after final payment.

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

## ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

### § 10.1 Safety Precautions and Programs

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

### § 10.2 Safety of Persons and Property

§ 10.2.1 The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury, or loss to

- .1 employees on the Work and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody, or control of the Contractor, a Subcontractor, or a Sub-subcontractor; and
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction.

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

§ 10.2.3 The Contractor shall implement, erect, and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards; promulgating safety regulations; and notifying the owners and users of adjacent sites and utilities of the safeguards.

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

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

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

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



### § 10.2.8 Injury or Damage to Person or Property

If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, notice of the injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

### § 10.3 Hazardous Materials and Substances

§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials or substances. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and notify the Owner and Architect of the condition.

§ 10.3.2 Upon receipt of the Contractor's notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of the material or substance or who are to perform the task of removal or safe containment of the material or substance. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable additional costs of shutdown, delay, and start-up.

§ 10.3.3 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such damage, loss, or expense is due to the fault or negligence of the party seeking indemnity.

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for hazardous materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for hazardous materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances.

§ 10.3.5 The Contractor shall reimburse the Owner for the cost and expense the Owner incurs (1) for remediation of hazardous materials or substances the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

§ 10.3.6 If, without negligence on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall reimburse the Contractor for all cost and expense thereby incurred.

### § 10.4 Emergencies

In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury, or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7.



## ARTICLE 11 INSURANCE AND BONDS

### § 11.1 Contractor's Insurance and Bonds

§ 11.1.1 The Contractor shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Contractor shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Owner, Architect, and Architect's consultants shall be named as additional insureds under the Contractor's commercial general liability policy or as otherwise described in the Contract Documents.

§ 11.1.2 The Contractor shall provide surety bonds of the types, for such penal sums, and subject to such terms and conditions as required by the Contract Documents. The Contractor shall purchase and maintain the required bonds from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located.

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

§ 11.1.4 **Notice of Cancellation or Expiration of Contractor's Required Insurance.** Within three (3) business days of the date the Contractor becomes aware of an impending or actual cancellation or expiration of any insurance required by the Contract Documents, the Contractor shall provide notice to the Owner of such impending or actual cancellation or expiration. Upon receipt of notice from the Contractor, the Owner shall, unless the lapse in coverage arises from an act or omission of the Owner, have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by the Contractor. The furnishing of notice by the Contractor shall not relieve the Contractor of any contractual obligation to provide any required coverage.

### § 11.2 Owner's Insurance

§ 11.2.1 The Owner shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Owner shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located.

§ 11.2.2 **Failure to Purchase Required Property Insurance.** If the Owner fails to purchase and maintain the required property insurance, with all of the coverages and in the amounts described in the Agreement or elsewhere in the Contract Documents, the Owner shall inform the Contractor in writing prior to commencement of the Work. Upon receipt of notice from the Owner, the Contractor may delay commencement of the Work and may obtain insurance that will protect the interests of the Contractor, Subcontractors, and Sub-Subcontractors in the Work. When the failure to provide coverage has been cured or resolved, the Contract Sum and Contract Time shall be equitably adjusted. In the event the Owner fails to procure coverage, the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent the loss to the Owner would have been covered by the insurance to have been procured by the Owner. The cost of the insurance shall be charged to the Owner by a Change Order. If the Owner does not provide written notice, and the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain the required insurance, the Owner shall reimburse the Contractor for all reasonable costs and damages attributable thereto.

§ 11.2.3 **Notice of Cancellation or Expiration of Owner's Required Property Insurance.** Within three (3) business days of the date the Owner becomes aware of an impending or actual cancellation or expiration of any property insurance required by the Contract Documents, the Owner shall provide notice to the Contractor of such impending or actual cancellation or expiration. Unless the lapse in coverage arises from an act or omission of the Contractor: (1) the Contractor, upon receipt of notice from the Owner, shall have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by either the Owner or the Contractor; (2) the Contract Time and Contract Sum shall be equitably adjusted; and (3) the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent any loss to the Owner would have been covered by the insurance had it not expired or been cancelled. If the Contractor purchases replacement coverage, the cost of the insurance shall be charged to the Owner by an appropriate Change Order. The furnishing of notice by the Owner shall not relieve the Owner of any contractual obligation to provide required insurance.



### **§ 11.3 Waivers of Subrogation**

**§ 11.3.1** The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents, and employees, each of the other; (2) the Architect and Architect's consultants; and (3) Separate Contractors, if any, and any of their subcontractors, sub-subcontractors, agents, and employees, for damages caused by fire, or other causes of loss, to the extent those losses are covered by property insurance required by the Agreement or other property insurance applicable to the Project, except such rights as they have to proceeds of such insurance. The Owner or Contractor, as appropriate, shall require similar written waivers in favor of the individuals and entities identified above from the Architect, Architect's consultants, Separate Contractors, subcontractors, and sub-subcontractors. The policies of insurance purchased and maintained by each person or entity agreeing to waive claims pursuant to this section 11.3.1 shall not prohibit this waiver of subrogation. This waiver of subrogation shall be effective as to a person or entity (1) even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, (2) even though that person or entity did not pay the insurance premium directly or indirectly, or (3) whether or not the person or entity had an insurable interest in the damaged property.

**§ 11.3.2** If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, to the extent permissible by such policies, the Owner waives all rights in accordance with the terms of Section 11.3.1 for damages caused by fire or other causes of loss covered by this separate property insurance.

### **§ 11.4 Loss of Use, Business Interruption, and Delay in Completion Insurance**

The Owner, at the Owner's option, may purchase and maintain insurance that will protect the Owner against loss of use of the Owner's property, or the inability to conduct normal operations, due to fire or other causes of loss. The Owner waives all rights of action against the Contractor and Architect for loss of use of the Owner's property, due to fire or other hazards however caused.

### **§ 11.5 Adjustment and Settlement of Insured Loss**

**§ 11.5.1** A loss insured under the property insurance required by the Agreement shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.5.2. The Owner shall pay the Architect and Contractor their just shares of insurance proceeds received by the Owner, and by appropriate agreements the Architect and Contractor shall make payments to their consultants and Subcontractors in similar manner.

**§ 11.5.2** Prior to settlement of an insured loss, the Owner shall notify the Contractor of the terms of the proposed settlement as well as the proposed allocation of the insurance proceeds. The Contractor shall have 14 days from receipt of notice to object to the proposed settlement or allocation of the proceeds. If the Contractor does not object, the Owner shall settle the loss and the Contractor shall be bound by the settlement and allocation. Upon receipt, the Owner shall deposit the insurance proceeds in a separate account and make the appropriate distributions. Thereafter, if no other agreement is made or the Owner does not terminate the Contract for convenience, the Owner and Contractor shall execute a Change Order for reconstruction of the damaged or destroyed Work in the amount allocated for that purpose. If the Contractor timely objects to either the terms of the proposed settlement or the allocation of the proceeds, the Owner may proceed to settle the insured loss, and any dispute between the Owner and Contractor arising out of the settlement or allocation of the proceeds shall be resolved pursuant to Article 15. Pending resolution of any dispute, the Owner may issue a Construction Change Directive for the reconstruction of the damaged or destroyed Work.

## **ARTICLE 12 UNCOVERING AND CORRECTION OF WORK**

### **§ 12.1 Uncovering of Work**

**§ 12.1.1** If a portion of the Work is covered contrary to the Architect's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Architect, be uncovered for the Architect's examination and be replaced at the Contractor's expense without change in the Contract Time.

**§ 12.1.2** If a portion of the Work has been covered that the Architect has not specifically requested to examine prior to its being covered, the Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, the Contractor shall be entitled to an equitable adjustment to



the Contract Sum and Contract Time as may be appropriate. If such Work is not in accordance with the Contract Documents, the costs of uncovering the Work, and the cost of correction, shall be at the Contractor's expense.

**§ 12.2 Correction of Work**

**§ 12.2.1 Before Substantial Completion**

The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, discovered before Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense.

**§ 12.2.2 After Substantial Completion**

**§ 12.2.2.1** In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of notice from the Owner to do so, unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within 21 business days after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.5.

**§ 12.2.2.2** The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

**§ 12.2.2.3** The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Section 12.2.

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

**§ 12.2.4** The Contractor shall bear the cost of correcting destroyed or damaged construction of the Owner or Separate Contractors, whether completed or partially completed, caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

**§ 12.2.5** Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

**§ 12.3 Acceptance of Nonconforming Work**

If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

**ARTICLE 13 MISCELLANEOUS PROVISIONS**

**§ 13.1 Governing Law**

The Contract shall be governed by the law of the place where the Project is located, excluding that jurisdiction's choice of law rules. If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 15.4.

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## § 13.2 Successors and Assigns

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

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

## § 13.3 Rights and Remedies

§ 13.3.1 Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights, and remedies otherwise imposed or available by law.

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

## § 13.4 Tests and Inspections

§ 13.4.1 Tests, inspections, and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules, and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections, and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections, and approvals. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of tests, inspections, or approvals that do not become requirements until after bids are received or negotiations concluded. The Owner shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require.

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

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

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

§ 13.4.5 If the Architect is to observe tests, inspections, or approvals required by the Contract Documents, the Architect will do so promptly and, where practicable, at the normal place of testing.

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

## § 13.5 Interest

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



### **§ 13.6 Compliance with All Governmental Laws and Regulations**

The Contractor shall comply with all federal, state and local laws, codes, regulations and ordinances applicable to the Work and this Agreement, including, without limitation, all applicable provisions of ORS Chapters 279A and 279C, as identified in the Agreement as Oregon Public Contracting Code Provisions. Contractor and the Owner agree to comply with all requirements of ORS Chapter 297A and 279C, the Rules and all other applicable laws and regulations (collectively "Laws"), whether or not such applicable provisions are included in Agreement Exhibit C. In the event of a conflict between any applicable Law and the provisions of this Contract, including Agreement Exhibit C, the Law shall prevail and control.

## **ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT**

### **§ 14.1 Termination by the Contractor**

**§ 14.1.1** The Contractor may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, for any of the following reasons:

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .2 An act of government, such as a declaration of national emergency, that requires all Work to be stopped;
- .3 Because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or
- .4 The Owner has failed to furnish to the Contractor reasonable evidence as required by Section 2.2.

**§ 14.1.2** The Contractor may terminate the Contract if, through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, repeated suspensions, delays, or interruptions of the entire Work by the Owner as described in Section 14.3, constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

**§ 14.1.3** If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed, as well as reasonable overhead and profit on Work not executed, and costs incurred by reason of such termination.

**§ 14.1.4** If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, or their agents or employees or any other persons or entities performing portions of the Work because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

### **§ 14.2 Termination by the Owner for Cause**

**§ 14.2.1** The Owner may terminate the Contract if the Contractor

- .1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors or suppliers in accordance with the respective agreements between the Contractor and the Subcontractors or suppliers;
- .3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- .4 otherwise is guilty of substantial breach of a provision of the Contract Documents.

**§ 14.2.2** When any of the reasons described in Section 14.2.1 exist, and upon certification by the Architect that sufficient cause exists to justify such action, the Owner may, without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

- .1 Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- .2 Accept assignment of subcontracts pursuant to Section 5.4; and



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

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

§ 14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Initial Decision Maker, upon application, and this obligation for payment shall survive termination of the Contract.

#### § 14.3 Suspension by the Owner for Convenience

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

§ 14.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay, or interruption under Section 14.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent

- .1 that performance is, was, or would have been, so suspended, delayed, or interrupted, by another cause for which the Contractor is responsible; or
- .2 that an equitable adjustment is made or denied under another provision of the Contract.

#### § 14.4 Termination by the Owner for Convenience

§ 14.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

§ 14.4.2 Upon receipt of notice from the Owner of such termination for the Owner's convenience, the Contractor shall

- .1 cease operations as directed by the Owner in the notice;
- .2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and
- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

§ 14.4.3 In case of such termination for the Owner's convenience, the Owner shall pay the Contractor for Work properly executed; costs incurred by reason of the termination, including costs attributable to termination of Subcontracts; and the termination fee, if any, set forth in the Agreement.

### ARTICLE 15 CLAIMS AND DISPUTES

#### § 15.1 Claims

##### § 15.1.1 Definition

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

##### § 15.1.2 Claims

Contractor shall commence all Claims and causes of action against the Owner and arising out of or related to the Contract, whether in contract, tort, breach of warranty or otherwise, in accordance with the requirements of the binding dispute resolution method selected in the Agreement. Contractor waives all Claims and causes of action not commenced in accordance with this Section 15.1.2.



### § 15.1.3 Notice of Claims

§ 15.1.3.1 Claims by either the Owner or Contractor, shall be initiated by written notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker.

Unless a different period for assertion of particular Claims is specifically identified in the Agreement, Contractor must give written notice of any Claim to the Owner not later than seven (7) days after the occurrence of the event giving rise to the Claim or Contractor first becomes aware of the Claim, whichever is sooner, or the Claim shall be deemed forever time barred and waived. Owner's Claims shall be initiated within the applicable statute of limitations.

Both parties' notice shall provide sufficient detail to enable the other to investigate the matter. Contractor's notice shall include a clear description of the Claim, the proposed change in the Contract Sum and/or Contract Time of the Claim, and data supporting the Claim. Prior to the initiation of a dispute resolution procedure, the Owner or its representatives shall have the right to audit and copy any subcontractor or supplier of any tier whose claim is part of or included in the Claim. Contractor's claims shall be sent to Owner, with a copy sent concurrently to the Architect.

### § 15.1.4 Continuing Contract Performance

§ 15.1.4.1 Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments of undisputed amounts in accordance with the Contract Documents.

§ 15.1.4.2 The Contract Sum and Contract Time shall be adjusted in accordance with the Initial Decision Maker's decision, subject to the right of either party to proceed in accordance with this Article 15. The Architect will issue Certificates for Payment in accordance with the decision of the Initial Decision Maker.

### § 15.1.5 Claims for Additional Cost

If the Contractor wishes to make a Claim for an increase in the Contract Sum, notice as provided in Section 15.1.3 shall be given before proceeding to execute the portion of the Work that is the subject of the Claim. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

### § 15.1.6 Claims for Additional Time

§ 15.1.6.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, notice as provided in Section 15.1.3 shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

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

### § 15.1.7 Waiver of Claims for Consequential Damages

The Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes

- .1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
- .2 damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit, except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.7 shall be deemed to preclude assessment of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

### § 15.2 Initial Decision

§ 15.2.1 Claims, excluding those where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2 or arising under Sections 10.3, 10.4, and 11.5, shall



be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation of any Claim. If an initial decision has not been rendered within 30 days after the Claim has been referred to the Initial Decision Maker, the party asserting the Claim may demand mediation and binding dispute resolution without a decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

§ 15.2.2 The Initial Decision Maker will review Claims and within ten days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.

§ 15.2.3 In evaluating Claims, the Initial Decision Maker may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Initial Decision Maker in rendering a decision. The Initial Decision Maker may request the Owner to authorize retention of such persons at the Owner's expense.

§ 15.2.4 If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of the request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished, or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part.

§ 15.2.5 The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the Architect, if the Architect is not serving as the Initial Decision Maker, of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.

§ 15.2.6 Either party may file for mediation of an initial decision at any time, subject to the terms of Section 15.2.6.1.

§ 15.2.6.1 Either party may, within 30 days from the date of receipt of an initial decision, demand in writing that the other party file for mediation. If such a demand is made and the party receiving the demand fails to file for mediation within 30 days after receipt thereof, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.

§ 15.2.7 In the event of a Claim against the Contractor, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

§ 15.2.8 If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.

### § 15.3 Mediation

§ 15.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract, except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.7, shall, at the election of the Owner, be subject to mediation as a condition precedent to binding dispute resolution. If the Owner has given written notice to Contractor requiring mediation of a Claim, Contractor may not commence litigation against the Owner until the mediation is concluded, except as is necessary to avoid a time bar from commencement of litigation under this Contract or



applicable law. The Owner may opt to have such action resolved by binding arbitration at any time, pursuant to Section 15.4.1.

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

#### § 15.4 Arbitration

§ 15.4.1 All claims, disputes, and other matters in question between Owner and Contractor arising out of, or relating to the contract documents, or the breach thereof except for claims which may have been waived by the making or acceptance of final payment or for acquisition of property subject to eminent domain, may be decided by arbitration. Owner shall have the sole discretion as to whether or not dispute will be decided by arbitration conducted in [Insert County, Oregon], rather than through the court process.

§ 15.4.1.1 No demand for arbitration of any claimed dispute or other matter shall be effective until after a claim or demand is made to Owner and its Board, at its next regularly scheduled meeting, has rendered a written decision with respect thereto denying the claim or demand. No demand for arbitration of any such claim, dispute, or other matter shall be made later than thirty (30) days after the date on which the Board has rendered a written decision in respect herein. The failure to demand arbitration within said 30 days shall result in the board's decision being binding upon Owner and Contractor.

§ 15.4.2 Notice of demand for arbitration shall be filed in writing with the other party to the Contract. The demand for arbitration shall be made within the 30-day period specified above. Owner, if not the party demanding arbitration, has the option of allowing the matter to proceed with arbitration or by written notice within five (5) days after receipt of a demand for arbitration, reject arbitration and require the other party to proceed through the courts for relief. Arbitration shall be conducted under the Uniform Arbitration Act, ORS 36.600 et seq. If the parties are unable to mutually select an arbitrator within twenty (20) days following Owner's decision to pursue arbitration, then each party shall select an arbitrator, and the two arbitrators shall select a single arbitrator. The arbitrator(s) shall have substantial experience in construction disputes. The parties agree that any award rendered by the arbitrator(s) will be final, and judgment may be entered upon the award in any court having jurisdiction thereof, and will not be subject to modification or appeal except to the extent permitted by Oregon law.

#### § 15.4.4 Consolidation or Joinder

§ 15.4.4.1 Notwithstanding any contrary language in other documents or agreements related to services provided by Contractor pursuant to this Contract, including contracts for construction services, either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact arising out of or related to this Contract and whose presence is required if complete relief is to be accorded. This Section applies to any and all claims, disputes, and other matters arising out of, or relating to this Contract, including but not limited to those claims, disputes, and other matters subject to litigation or arbitration.

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

#### § 15.5 Attorneys' Fees

§ 15.5.1 In the event a suit, action, arbitration, or other proceeding of any nature whatsoever, including without limitation any proceeding under the U.S. Bankruptcy Code, is instituted, or the services of an attorney are retained, to interpret or enforce any provision of this Agreement or with respect to any dispute relating to this Agreement, the prevailing party shall be entitled to recover from the losing party its attorneys', paralegals', accountants', and other experts' fees and all other fees, costs, and expenses actually incurred and reasonably necessary in connection therewith. In the event of suit, action, arbitration, or other proceeding, the amount thereof shall be determined by the judge or arbitrator, shall include fees and expenses incurred on any appeal or review, and shall be in addition to all other amounts provided by law. The prevailing party shall be the party receiving the net award/determined as to each separate claim.