

AIA[®] Document A133[™] – 2009

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 **TBD** day of **TBD** in the year 2017
(In words, indicate day, month and year.)

BETWEEN the Owner:
(Name, legal status and address)
SEASIDE SCHOOL DISTRICT 10
1801 SOUTH FRANKLIN STREET
SEASIDE, OREGON 97138

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

TBD

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

A new Seaside School District campus, which will include the following components, which are further:

- (1) Closing existing buildings that operate in the City of Seaside's tsunami zone;
- (2) Constructing a new facility on land donated by Weyerhaeuser Company, which will operate as Seaside High School and Broadway Middle School; and
- (3) Renovation and expansion of Seaside Heights Elementary School.

The Architect:
(Name, legal status and address)

DULL OLSON WEEKES-IBI GROUP ARCHITECTS INC.
907 SW STARK STREET
PORTLAND, OREGON 97205

The Owner's Designated Representative:
(Name, address and other information)

Justine Hill
Business Manager
Seaside School District 10
1801 South Franklin Street
Seaside, OR 97138

ADDITIONS AND DELETIONS:

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

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

AIA Document A201[™]-2007, 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.

Init.

The Construction Manager's Designated Representative:
(Name, address and other information)

| TBD

The Architect's Designated Representative:
(Name, address and other information)

| TBD

The Owner and Construction Manager agree as follows.



Init.

TABLE OF ARTICLES

1	GENERAL PROVISIONS
2	CONSTRUCTION MANAGER'S RESPONSIBILITIES
3	OWNER'S RESPONSIBILITIES
4	COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES
5	COMPENSATION FOR CONSTRUCTION PHASE SERVICES
6	COST OF THE WORK FOR CONSTRUCTION PHASE
7	PAYMENTS FOR CONSTRUCTION PHASE SERVICES
8	INSURANCE AND BONDS
9	DISPUTE RESOLUTION
10	TERMINATION OR SUSPENSION
11	MISCELLANEOUS PROVISIONS
12	SCOPE OF THE AGREEMENT

ARTICLE 1 GENERAL PROVISIONS

§ 1.1 The Contract Documents

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to the 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 2.2.3 and identified in the Guaranteed Maximum Price Amendment and revisions prepared by the Architect and furnished by the Owner as described in Section 2.2.8. If the Owner authorizes construction work prior to the execution of the Guaranteed Maximum Price Amendment, then the Contract Documents will include such Early Work Amendment. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern.

§ 1.2 Relationship of the Parties

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

§ 1.3 General Conditions

For the both the Preconstruction and Construction Phases, the General Conditions of the contract shall be the AIA A201 2007 edition as modified by the Owner ("General Conditions") which is incorporated herein by reference, as well as Supplementary General Conditions of the Owner, if any. The term "Contractor" as used in the General Conditions shall mean the Construction Manager/General Contractor. The Term "Construction Manager" as used in this Agreement shall mean the Construction Manager/General Contractor.

Init.

ARTICLE 2 CONSTRUCTION MANAGER'S RESPONSIBILITIES

The Construction Manager's Preconstruction Phase responsibilities are set forth in Sections 2.1 and 2.2. The Construction Manager's Construction Phase responsibilities are set forth in Section 2.3. The Owner and Construction Manager may agree, in consultation with the Architect, for the Construction Phase to commence prior to completion of the Preconstruction Phase, in which case, both phases will proceed concurrently. The Construction Manager shall identify a representative authorized to act on behalf of the Construction Manager with respect to the Project.

§ 2.1 Preconstruction Phase

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

§ 2.1.2 Consultation

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. The Construction Manager shall advise the Owner and the Architect on proposed site use and improvements, selection of materials, and building systems and equipment. The Construction Manager shall also provide recommendations consistent with the Project requirements to the Owner and Architect on constructability; availability of materials and labor; time requirements for procurement, installation and construction; 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.

§ 2.1.3 When Project requirements in Section 3.1.1 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 could affect the Project's timely completion. The updated Project schedule shall include the following: submission of the Guaranteed Maximum Price proposal; components of the Work; times of commencement and completion required of each Subcontractor; ordering and delivery of products, including those that must be ordered well in advance of construction; and the occupancy requirements of the Owner. If preliminary Project schedule updates indicate that previously approved schedules may not be met, the Construction Manager/General Contractor shall make appropriate recommendations for schedule recovery to the Owner and Architect.

§ 2.1.4 Phased Construction

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

§ 2.1.5 Preliminary Cost Estimates

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

§ 2.1.5.2 As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall prepare and update, at appropriate intervals agreed to by the Owner, Construction Manager and Architect, estimates of the Cost of the Work of increasing detail and refinement and allowing for the further development of the design until such time as the Owner and Construction Manager agree on a Guaranteed Maximum Price for the Work. Such estimates shall be provided for the Architect's review and the Owner's approval. The Construction Manager shall inform the Owner and Architect when estimates of the Cost of the Work exceed the latest approved Project budget and make recommendations for corrective action.

§ 2.1.5.3 When Design Development Documents have been prepared by the Architect and approved by the Owner, the Construction Manager/General Contractor shall prepare a detailed estimate with supporting data for review by

Init.

the Architect and approval by the Owner. During the preparation of the Construction Documents, the Construction Manager/General Contractor shall update and refine this estimate at appropriate intervals agreed to by the Owner, Architect and Construction Manager/General Contractor.

§ 2.1.5.4 If any estimate submitted to the Owner exceeds previously approved estimates or the Owner's budget, the Construction Manager/General Contractor shall make recommendations to the Owner and Architect to adjust the Project's size or quality to meet the Owner's budget.

§ 2.1.6 Subcontractors and Suppliers

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

§ 2.1.7 Long-Lead-Time-Items

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

§ 2.1.8 Extent of Responsibility

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

§ 2.1.9 Notices and Compliance with Laws

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

§ 2.2 Guaranteed Maximum Price Proposal and Contract Time

§ 2.2.1 At a time to be mutually agreed upon by the Owner and the Construction Manager and in consultation with the Architect, the Construction Manager shall prepare a Guaranteed Maximum Price proposal for the Owner's review and acceptance. The Guaranteed Maximum Price in the proposal shall be the sum of the Construction Manager's estimate of the Cost of the Work, including contingencies described in Section 2.2.4, and the Construction Manager's Fee.

§ 2.2.2 To the extent that the Drawings and Specifications are anticipated to require further development by the Architect, the Construction Manager shall provide in the Guaranteed Maximum Price for such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include such things as changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which, if required, shall be incorporated by Change Order.

§ 2.2.3 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 2.2.2, to supplement the information provided by the Owner and contained in the Drawings and Specifications;
- .3 A statement of the proposed Guaranteed Maximum Price, including a statement of the estimated Cost of the Work organized by trade categories or systems, allowances, contingency, and the Construction Manager's Fee;
- .4 The anticipated date of commencement for construction Work
- .5 The anticipated date of Substantial Completion (or, if the project is phased, dates of Substantial Completion) upon which the proposed Guaranteed Maximum Price is based;
- .6 A construction schedule identifying commencement and completion dates for project milestones;
- .7 The date of the applicable Prevailing Wage Rate publications (if not previously established in a previous authorization for Early Work, as defined in Section 2.3.1.2); and
- .8 A date by which the Owner must accept the Guaranteed Maximum Price.

§ 2.2.4 In preparing the Construction Manager's Guaranteed Maximum Price proposal, the Construction Manager shall include its contingency for the Construction Manager's exclusive use to cover those costs considered reimbursable as the Cost of the Work but not included in a Change Order. Use of this contingency requires the Owner's prior approval in writing. Such approval shall not be withheld if it would unreasonably impact the ability of the Construction Manager/General Contractor to meet its contractual obligations related to budget, schedule, and quality.

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

§ 2.2.6 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.

§ 2.2.7 The Construction Manager shall not incur any cost to be reimbursed as part of the Cost of the Work prior to the commencement of the Construction Phase, unless the Owner provides prior written authorization for such costs.

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

§ 2.2.9 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.

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

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

Init.

§ 2.3 Construction Phase

§ 2.3.1 General

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

§ 2.3.1.2 The Construction Phase shall commence upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal or the Owner's written authorization of Early Work, whichever occurs earlier. "Early Work" means construction services, construction materials and other Work authorized by the parties to be performed under the Contract in advance of the establishment of the Guaranteed Maximum Price. Permissible Early Work shall be limited to early procurement of materials and supplies, early release of bid or proposal packages for site development and related activities, and any other advance Work related to important components of the project for which performance prior to establishment of the GMP will materially and positively affect the development or completion of the project.

§ 2.3.2 Administration

§ 2.3.2.1 Those portions of the Work that the Construction Manager does not customarily perform with the Construction Manager's own personnel shall be performed under subcontracts or by other appropriate agreements with the Construction Manager. Subcontracts be solicited as provided in Section 2.3.2.9. The Construction Manager shall obtain bids from Subcontractors and from suppliers of materials or equipment fabricated especially for the Work and shall deliver such bids to the Architect. The Owner shall then determine, with the advice of the Construction Manager and the Architect, which bids will be accepted. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection.

§ 2.3.2.2 If the Guaranteed Maximum Price has been established and when a specific bidder (1) is recommended to the Owner by the Construction Manager, (2) is qualified to perform that portion of the Work, and (3) has submitted a bid that conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Construction Manager may require that a Change Order be issued to adjust the Contract Time for good cause and the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Construction Manager and the amount and time requirement of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

§ 2.3.2.3 Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement, and shall not be awarded on the basis of cost plus a fee without the prior consent of the Owner. If the Subcontract is awarded on a cost-plus a fee basis, the Construction Manager shall provide in the Subcontract for the Owner to receive the same audit rights with regard to the Subcontractor as the Owner receives with regard to the Construction Manager in Section 6.11 below.

§ 2.3.2.4 If the Construction Manager recommends a specific bidder that may be considered a "related party" according to Section 6.10, then the Construction Manager shall promptly notify the Owner in writing of such relationship and notify the Owner of the specific nature of the contemplated transaction, according to Section 6.10.2.

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

§ 2.3.2.6 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 submittal schedule in accordance with Section 3.10 of the General Conditions.

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

Init.

§ 2.3.2.8 The Construction Manager shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The Construction Manager shall identify variances between actual and estimated costs and report the variances to the Owner and Architect and shall provide this information in its monthly reports to the Owner and Architect, in accordance with Section 2.3.2.7 above.

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

- .1 Absent a written justification prepared by the Construction Manager and approved by the Owner as more particularly provided for in this section, the Construction Manager's Subcontractor selection process must be "competitive," meaning that the process should include publicly-advertised subcontractor solicitations and be based on a low-bid competitive method, a low-quote competitive method for contracts in a specified dollar range agreeable to the Owner, or a method whereby both price and qualifications of the subcontractors are evaluated in a competitive environment, consistent with the Contract requirements;
- .2 When the Subcontractor selection process for a particular Work package will not be "competitive" as provided for in this section, the process must meet the following requirements:
 - .1 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;
 - .2 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;
 - .3 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;
 - .4 The Construction Manager must fully respond to any questions or comments submitted to the Construction Manager by the Owner; and
 - .5 The Owner must approve the Construction Manager's use of the non-competitive Subcontractor selection process prior to the Construction Manager's pursuit of the non-competitive process.
- .3 A competitive selection process may be preceded by a publicly advertised sub-contractor pre-qualification process, with only those subcontractors meeting the pre-qualification requirements being invited to participate in the later competitive process through which the Construction Manager will select the subcontractor to perform the construction Work described in the selection process;
- .4 If the Construction Manager or an Affiliate or subsidiary of the Construction Manager will be included in the subcontractor selection process to perform particular construction Work on the

Init.

project, the Construction Manager must disclose that fact in the selection process documents and announcements. The Contract must also identify the conditions, processes and procedures the Construction Manager will utilize in that competitive process in order to make the process impartial, competitive and fair, including but not limited to objective, independent review and opening of bids or proposals for the elements of Work involved, by a representative of the Owner or another independent third party.

- .5 **Subcontractor Approvals and Protests.** The Construction Manager shall include in its solicitation documents a process by which an adversely affected bidder or proposer may protest the selection of subcontractors and suppliers. The Construction Manager will resolve all protests in writing and the Construction Manager shall notify the Owner of the filing and disposition of any protest. The Owner retains the right to monitor the subcontracting process in order to protect the Owner's interests and to confirm the Construction Manager's compliance with the Contract and with applicable statutes, administrative rules and other legal requirements. The Construction Manager shall submit any documents relating to the subcontracting process to the Owner upon the Owner's requests. Any documents that are shared with the Owner become public records subject to disclosure.
- .6 **Construction Manager Self-Performance or Performance by Construction Manager Affiliates or Subsidiaries Without Competition.** The Construction Manager must obtain approval of the Owner before the Construction Manager or an Affiliate or subsidiary of the Construction Manager may perform elements of the construction Work without competition from subcontractors, including, for example, job-site GC Work. Other than for GC Work, in order for the Construction Manager or an Affiliate or subsidiary of the Construction Manager to perform elements of the construction Work without competition from subcontractors, the Construction Manager must provide, or must have included in the Construction Manager's RFP proposal to perform Construction Manager Services for this Project, a detailed proposal for performance of the Work by the Construction Manager or an Affiliate or subsidiary of the Construction Manager. If required by the Owner, the Construction Manager's proposal to perform the construction Work must be supported by at least one independent cost estimate prior to the Work being included in the Contract.
- .7 **Unsuccessful Subcontractor Briefing.** ORS 279C.337(3)(e) is designed to allow a subcontractor who was not selected by the Construction Manager to perform a particular element of the construction Work to obtain specific information from the Construction Manager, and meet with the Construction Manager to discuss the subcontractor qualification and selection process involved and the Construction Manager's subcontractor selection decisions, in order to better understand why the subcontractor was not successful in being selected to perform the particular element of the Work and to improve the subcontractor's substantive qualifications or the subcontractor's methods in competing for elements of the Work for the particular project involved, or for future projects. The briefing meetings may be held with individual subcontractors or, if the subcontractors agree, in groups of subcontractors, with those groups established by bid package or other designation agreed to by the contracting agency and the Construction Manager. Nevertheless, the Construction Manager is not obligated to provide this briefing opportunity unless the Construction Manager receives a written request from a subcontractor to discuss the subcontractor qualification and selection process involved. Unless the Owner and the Construction Manager agree on a different schedule for a particular solicitation, the Construction Manager will:
 - .1 Allow a subcontractor 60 days from the Construction Manager's notice of award of a subcontract for a particular Work package to request, in writing, a post-selection meeting with the Construction Manager under this section; and
 - .2 Set a meeting with the subcontractor under this section within 45 days of the subcontractor's written request.
- .8 **Award of Subcontracts.** All subcontract awards require the Owner's approval. Such approval shall not be unreasonably withheld or delayed.

§2.3.2.10. Bid Alternates.

Init.

- .1 The Construction Manager, Owner, and Architect shall agree on appropriate bid alternates for every bid package such that if the Cost of the Work in connection with the Guaranteed Maximum Price is less than (or more than) the Guaranteed Maximum Price, the Owner shall have the opportunity to authorize additive (or deductive) alternates, as appropriate. It is understood that the Owner and Construction Manager/General Contractor may choose to defer the award of alternates in order to ensure the successful outcome of later bid packages.
- .2 Bid alternates for subcontractor packages, authorized by the Owner under the above provisions, shall be performed by the Construction Manager with no increase to the Guaranteed Maximum Price, with no time extension, and with no increase in Construction Manager's Fee, unless both the Owner and the Construction Manager/General Contractor agree in writing at the time of the designation of alternates that awarding of the alternates will result in an increase in the Construction Manager's Fee, and/or time extension.
- .3 If the Construction Manager/General Contractor and Owner agree to the execution of alternates outside of the parameters described in this document, such that the Guaranteed Maximum Price is not exceeded, then the Construction Manager/General Contractor shall not be eligible for an increase in the Construction Manager's Fee. However, the Construction Manager/General Contractor may be eligible for a time extension, if such extension is determined to be warranted.
- .4 If the Construction Manager/General Contractor and Owner agree to the execution of alternates outside of the parameters described in this document, such that the Guaranteed Maximum Price will be exceeded, then the Construction Manager/General Contractor shall be entitled to an increase in the Construction Manager's Fee, for the increase in the Cost of the Work above the Guaranteed Maximum Price, and as described in this document.

§ 2.4 Professional Services

Section 3.12.10 of the General Conditions shall apply to both the Preconstruction and Construction Phases.

§ 2.5 Hazardous Materials

Section 10.3 of the General Conditions shall apply to both the Preconstruction and Construction Phases.

ARTICLE 3 OWNER'S RESPONSIBILITIES

§ 3.1 Information and Services Required of the Owner

§ 3.1.1 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.

§ 3.1.2 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. If the Construction Manager submits a request, then the Owner's submission of written evidence shall be a condition to commencement of the Work. Thereafter, the Construction Manager may only request such evidence if (1) the Owner fails to make payments to the Construction Manager as the Contract Documents require, (2) a change in the Work materially changes the Contract Sum, or (3) the Construction Manager identifies in writing a reasonable concern regarding the Owner's ability to make payment when due. Any request made after the commencement of the Work shall not serve as a basis for the Construction Manager to stop the Work.

§ 3.1.3 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 Section 6.1.1, (2) the Owner's other costs, and (3) reasonable contingencies related to all of these costs. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Construction Manager and Architect. The Owner and the Architect, in consultation with the Construction Manager, shall thereafter agree to a corresponding change in the Project's scope and quality.

§ 3.1.4 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.

§ 3.1.4.1 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.

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

§ 3.1.4.3 The Owner, when such services are requested, shall furnish services of geotechnical engineers, which may include but are not limited to 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.

§ 3.1.4.4 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.

§ 3.2 Owner's Designated Representative

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

§ 3.2.1 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.

§ 3.3 Architect

The Owner shall retain an Architect to provide services, duties and responsibilities as described in AIA Document B101-2007, Standard Form of Agreement Between Owner and Architect, 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 a copy of the executed agreement between the Owner and the Architect, and any further modifications to the agreement.

ARTICLE 4 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

§ 4.1 Compensation

§ 4.1.1 For the Construction Manager's Preconstruction Phase services, the Owner shall compensate the Construction Manager as follows:

§ 4.1.2 For the Construction Manager's Preconstruction Phase services described in Sections 2.1 and 2.2:
(Insert amount of, or basis for, compensation and include a list of reimbursable cost items, as applicable.)

[TBD]

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

§ 4.1.4 Compensation based on Direct Personnel Expense includes the direct salaries of the Construction Manager's personnel providing Preconstruction Phase services on the Project and the Construction Manager's costs for the mandatory and customary contributions and benefits related thereto, such as employment taxes and other statutory employee benefits, insurance, sick leave, holidays, vacations, employee retirement plans and similar contributions.

§ 4.2 Payments

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

§ 4.2.2 Payments are due and payable thirty (30) days from the date the Construction Manager's invoice is received by the Owner, or fifteen (15) days after payment is approved by the Owner, whichever is the earlier date. Amounts unpaid after the date on which payment is due shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the place where the Project is located

Interest on payments due and unpaid under the Contract Documents shall bear interest as specified in ORS 279C.570.

ARTICLE 5 COMPENSATION FOR CONSTRUCTION PHASE SERVICES

§ 5.1 For the Construction Manager's performance of the Work as described in Section 2.3, the Owner shall pay the Construction Manager the Contract Sum in current funds. The Contract Sum is the Cost of the Work as defined in Section 6.1.1 plus the Construction Manager's Fee.

§ 5.1.1 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 for all Work shall be [TBD].

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

The Construction Manager's Fee shall remain equal to the rate set in Section 5.1.1 of the total Cost of the Work, inclusive of all additive or deductive changes.

§ 5.1.3 Limitations on a Subcontractor's overhead and profit for increases in the cost of its portion of the *(Paragraphs deleted)*

Work shall be governed by Section 7.5 of the General Conditions:

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

§ 5.1.5 Unit prices, if any:

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

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

§ 5.2 Guaranteed Maximum Price

§ 5.2.1 The Construction Manager guarantees that the Contract Sum shall not exceed the Guaranteed Maximum Price set forth in the Guaranteed Maximum Price Amendment, as it is amended from time to time. To the extent the Cost of the Work exceeds the Guaranteed Maximum Price, the Construction Manager shall bear such costs in excess of the Guaranteed Maximum Price without reimbursement or additional compensation from the Owner.

(Insert specific provisions if the Construction Manager is to participate in any savings.)

Init.

§ 5.2.1.1 The Owner shall receive the benefit of all Savings.

§ 5.2.2 The Guaranteed Maximum Price is subject to additions and deductions by Change Order as provided in the Contract Documents and the Date of Substantial Completion shall be subject to adjustment as provided in the Contract Documents.

§ 5.3 Changes in the Work

§ 5.3.1 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 Architect may make minor changes in the Work as provided in Section 7.4 of the General Conditions. The Construction Manager shall be entitled to an equitable adjustment in the Contract Time as a result of changes in the Work.

§ 5.3.2 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 Section 7.3.3 of the General Conditions.

§ 5.3.3 In calculating adjustments to subcontracts (except those awarded with the Owner's prior consent on the basis of cost plus a fee), the terms "cost" and "fee" as used in Section 7.3.3.3 of the General Conditions and the term "costs" as used in Section 7.3.7 of AIA Document A201-2007 shall have the meanings assigned to them in the General Conditions and shall not be modified by Sections 5.1 and 5.2, Sections 6.1 through 6.7, and Section 6.8 of this Agreement. Adjustments to subcontracts awarded with the Owner's prior consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.

§ 5.3.4 In calculating adjustments to the Guaranteed Maximum Price, the terms "cost" and "costs" as used in the above-referenced provisions of the General Conditions shall mean the Cost of the Work as defined in Sections 6.1 to 6.7 of this Agreement and the term "fee" shall mean the Construction Manager's Fee as defined in Section 5.1 of this Agreement.

§ 5.3.5 [Deleted]

ARTICLE 6 COST OF THE WORK FOR CONSTRUCTION PHASE

§ 6.1 Costs to Be Reimbursed

§ 6.1.1 The term Cost of the Work shall mean costs reasonably and necessarily incurred by the Construction Manager in the proper performance of the Work. Such costs shall be at rates not higher than the standard paid at the location of the Project except with prior consent of the Owner. The Cost of the Work shall include only the items set forth in Sections 6.1 through 6.7.

§ 6.1.2 Where any cost is subject to the Owner's prior approval, the Construction Manager shall obtain this approval prior to incurring the cost. The parties shall endeavor to identify any such costs prior to executing Guaranteed Maximum Price Amendment.

§ 6.2 Labor Costs

§ 6.2.1 Wages 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.

§ 6.2.2 Wages or salaries of the Construction Manager's supervisory personnel assigned to the Project when stationed at the Project site or at the Contractor's main office, but only for that portion of the time required for the Work.

§ 6.2.3 Wages and salaries of the Construction Manager's supervisory personnel assigned to the Project and engaged at factories, workshops or on the road, 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.

§ 6.2.4 Costs paid or incurred by the Construction Manager for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such agreements,

Init.

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 6.2.1 through 6.2.3.

§ 6.2.5 [Deleted].

§ 6.3 Subcontract Costs

Payments made by the Construction Manager to Subcontractors in accordance with the requirements of the subcontracts. The costs in any cost-plus subcontracts must conform to the requirements of this Article 6.

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

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

§ 6.4.2 Costs of materials described in the preceding Section 6.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, 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.

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

§ 6.5.1 Costs of transportation, storage, installation, maintenance, dismantling 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 hand 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 will be fair market value.

§ 6.5.2 Rental charges (not to exceed fair market rental costs in the greater Seaside area) for temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site and costs of transportation, installation, minor repairs, dismantling and removal. The total rental cost of any Construction Manager-owned item may not exceed seventy-five percent of the purchase price of any comparable item. Rates of Construction Manager-owned equipment and quantities of equipment shall be subject to the Owner's prior approval.

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

§ 6.5.4 Costs of document reproductions, facsimile transmissions and long-distance telephone calls, postage and parcel delivery charges, telephone service at the site and reasonable petty cash expenses of the site office.

§ 6.5.5 That portion of the reasonable expenses of the Construction Manager's supervisory personnel incurred while traveling in discharge of duties connected with the Work, with Owner's prior approval.

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

§ 6.6 Miscellaneous Costs

§ 6.6.1 Premiums for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to this Contract, if identified to and approved in advance by the Owner. The Construction Manager's Fee is not assessed against the Costs of the Work identified in this Section 6.6.1..

§ 6.6.2 Sales, use or similar taxes (but not income or receipt taxes) imposed by a governmental authority that are related to the Work and for which the Construction Manager is liable. The Construction Manager's Fee is not assessed against the Costs of the Work identified in this Section 6.6.2.

§ 6.6.3 Fees and assessments for the building permit other permits, licenses and inspections for which the Construction Manager is required by the Contract Documents to pay. The Construction Manager's Fee is not assessed against the cost of the building permit.

Init.

§ 6.6.4 Fees of laboratories for tests required by the Contract Documents, except those related to defective or nonconforming Work for which reimbursement is excluded by Section 13.5.3 of the General Conditions or by other provisions of the Contract Documents, and which do not fall within the scope of Section 6.7.3.

§ 6.6.5 Royalties and license fees paid for the use of a particular design, process or product required by the Contract Documents; the cost of defending suits or claims for infringement of patent rights arising from such requirement of the Contract Documents; and 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. However, such costs of legal defenses, judgments and settlements shall not be included in the calculation of the Construction Manager's Fee or subject to the Guaranteed Maximum Price. If such royalties, fees and costs are excluded by the last sentence of Section 3.17 of the General Conditions or other provisions of the Contract Documents, then they shall not be included in the Cost of the Work.

§ 6.6.6 [Deleted].

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

§ 6.6.8 Legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between the Owner and Construction Manager, reasonably incurred by the Construction Manager after the execution of this Agreement in the performance of the Work and with the Owner's prior approval, which shall not be unreasonably withheld. Such costs do not include costs (1) to defend claims asserted by the Construction Manager's employees, Subcontractors or suppliers or the Architect (including without limitation wage or benefit claims), or (2) connected to violations of labor laws or regulations.

§ 6.6.9 Subject to the Owner's prior approval, 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.

§ 6.7 Other Costs and Emergencies

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

§ 6.7.2 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 Section 10.4 of the General Conditions.

§ 6.7.3 Costs of repairing or correcting damaged or nonconforming Work executed by the Construction Manager, Subcontractors or suppliers, provided that such damaged or nonconforming Work was not caused by negligence or failure to fulfill a specific responsibility of the Construction Manager and only to the extent that the cost of repair or correction is not recovered by the Construction Manager from insurance, sureties, Subcontractors, suppliers, or others. The Work described in this Section 7.7.3 does not include Work performed during or after the one-year period for correction of Work.

§ 6.7.4 [Deleted].

§ 6.8 Costs Not To Be Reimbursed

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

- .1 Salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal office or offices other than the site office, except as specifically provided in Section 6.2, or as may be provided in Article 11;
- .2 Expenses of the Construction Manager's principal office and offices other than the site office;
- .3 Overhead and general expenses, except as may be expressly included in Sections 6.1 to 6.7;
- .4 The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work;

Init.

- .5 Except as provided in Section 6.7.3 of this Agreement, costs due to the negligence or failure of 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 to fulfill a specific responsibility of the Contract including all Work performed during and after the one-year period for correction of Work;
- .6 Any cost not specifically and expressly described in Sections 6.1 to 6.7;
- .7 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded;
- .8 Costs for services incurred during the Preconstruction Phase;
- .9 Any cost not specifically and expressly described in Sections 6.1 through 6.7;
- .10 Costs which would cause the Guaranteed Maximum Price to be exceeded;
- .11 Premiums for insurance and bonding other than those that are directly and solely attributable to the construction of the Project.
- .12 Fines other than those incurred because of the acts or omissions of the Owner or Owner's Representatives;
- .13 Consultants to the Construction Manager not previously approved in writing by the Owner;
- .14 Corporate accounting and check processing costs; and
- .15 Cost of the Work performed under guaranties or warranties.

§ 6.8.2 In no event shall the Cost of the Work include the cost of any item more than once

§ 6.9 Discounts, Rebates and Refunds

§ 6.9.1 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 them in an Application for Payment and received payment from the Owner, or (2) the Owner has deposited funds with the Construction Manager with which to make payments; otherwise, cash discounts shall accrue to the Construction Manager. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Construction Manager shall make provisions so that they can be obtained. The Construction Manager shall notify the Owner in a timely manner of the availability of such cash discounts, rebates, or refunds.

§ 6.9.2 Amounts that accrue to the Owner in accordance with the provisions of Section 6.9.1 shall be credited to the Owner as a deduction from the Cost of the Work.

§ 6.10 Affiliated Entity Transactions

§ 6.10.1 For purposes of Section 6.10, the term "Affiliated Entity" shall mean a parent, subsidiary, affiliate or other entity having common ownership or management with the Construction Manager; any entity in which any stockholder in, or management employee of, the Construction Manager owns any interest in excess of ten percent in the aggregate; or any person or entity which has the right to control the business or affairs of the Construction Manager. The term "Affiliated Entity" includes any member of the immediate family of any person identified above.

§ 6.10.2 If any of the costs to be reimbursed arise from a transaction between the Construction Manager and an Affiliated Entity, the Construction Manager shall notify the Owner of the specific nature of the contemplated transaction, including the identity of the Affiliated Entity 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, 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 Affiliated Entity, as a Subcontractor, according to the terms of Sections 2.3.2.1, 2.3.2.2 and 2.3.2.3. If the Owner fails to authorize the transaction, the Construction Manager shall procure the Work, equipment, goods or service from some person or entity other than an Affiliated Entity according to the terms of Sections 2.3.2.1, 2.3.2.2 and 2.3.2.3.

§ 6.11 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, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, purchase orders, vouchers, memoranda and other data relating to this Contract. The Construction

Init.

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 7 PAYMENTS FOR CONSTRUCTION PHASE SERVICES

§ 7.1 Progress Payments

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

§ 7.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the
(Paragraphs deleted)
month.

§ 7.1.3 Pursuant to ORS 279C.570, the Owner shall make payment to the Construction Manager not later than thirty (30) days after receipt of the Construction Manager's Application for Payment or 15 days following issuance of the Certificate for Payment, whichever is the earlier date. Late payments shall accrue interest at the rate set forth in ORS 279C.570(2).

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

§ 7.1.4 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 cash disbursements 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, less that portion of those payments attributable to the Construction Manager's Fee, plus payrolls for the period covered by the present Application for Payment.

§ 7.1.5 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 the various portions of the Work, except that the Construction Manager's Fee shall be shown as a single separate item. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Construction Manager's Applications for Payment.

§ 7.1.6 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 for which the Construction Manager has made or intends to make actual 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. As a condition of approval, but without limitation of any other conditions, each Application for Payment must contain written certification by Construction Manager as follows:

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

Init.

§ 7.1.7 Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

- .1 Take 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 schedule of values. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 7.3.9 of the General Conditions;
- .2 Add 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 Work, or if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing;
- .3 Add the Construction Manager's Fee, less retainage of five percent (5 %) of the sum of amounts computed pursuant to Subparagraphs 7.1.7.1, 7.1.7.2, and 7.1.7.3. The Construction Manager's Fee shall be computed upon the Cost of the Work at the rate stated in Section 5.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, shall be an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- .4 Subtract retainage of five percent (5 %) from that portion of the Work that the Construction Manager self-performs;
- .5 Subtract the aggregate of previous payments made by the Owner;
- .6 Subtract the shortfall, if any, indicated by the Construction Manager in the documentation required by Section 7.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
- .7 Subtract amounts, if any, for which the Architect has withheld or nullified a Certificate for Payment as provided in Section 9.5 of the General Conditions.

§ 7.1.8 The Owner and Construction Manager shall agree upon (1) a mutually acceptable procedure for review and approval of payments to Subcontractors and (2) the percentage of retainage held on Subcontracts, and the Construction Manager shall execute subcontracts in accordance with those agreements.

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

§ 7.1.10 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 shall not be deemed to represent that the Architect has made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Section 7.1.4 or other supporting data; that the Architect has made exhaustive or continuous on-site inspections; or 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.

§ 7.2 Final Payment

§ 7.2.1 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 Section 12.2.2 of the General Conditions, and to satisfy other requirements, if any, which extend beyond final payment;
- .2 the Construction Manager has submitted a final accounting for the Cost of the Work and a final Application for Payment; and
- .3 a final Certificate for Payment has been issued by the Architect.

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

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

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

§ 7.2.2 The Owner's auditors will review and report in writing on the Construction Manager's final accounting within 30 days after delivery of the final accounting to the Architect by the Construction Manager. Based upon such Cost of the Work as the Owner's auditors report to be substantiated by the Construction Manager's final accounting, and provided the other conditions of Section 7.2.1 have been met, the Architect will, within seven days after receipt of the written report of the Owner's auditors, 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 Section 9.5.1 of the General Conditions. The time periods stated in this Section supersede those stated in Section 9.4.1 of the General Conditions. The Architect is not responsible for verifying the accuracy of the Construction Manager's final accounting.

§ 7.2.3 If the Owner's auditors report the Cost of the Work as substantiated by the Construction Manager's final accounting to be less than claimed by the Construction Manager, the Construction Manager shall be entitled to invoke the dispute resolution procedure of Paragraphs 15.3 and 15.4 of the General Conditions. Construction Manager must submit notice of its dispute to Owner within 30 days after the Construction Manager's receipt of a copy of the Architect's final Certificate for Payment. Failure to submit notice of a dispute within this 30-day period shall result in the substantiated amount reported by the Owner's auditors becoming binding on the Construction Manager. Pending a final resolution of the disputed amount, the Owner shall pay the Construction Manager the undisputed amount certified in the Architect's final Certificate for Payment.

§ 7.2.4 If, subsequent to final payment and at the Owner's request, the Construction Manager incurs costs described in Section 6.1.1 and not excluded by Section 6.8 to correct defective or nonconforming Work, and such Work is not performed during or after the one-year period for correction of Work, the Owner shall reimburse the Construction Manager 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 the Construction Manager has participated in savings as provided in Section 5.2.1, the amount of such savings shall be recalculated and appropriate credit given to the Owner in determining the net amount to be paid by the Owner to the Construction Manager.

ARTICLE 8 INSURANCE AND BONDS

For all phases of the Project, the Construction Manager and the Owner shall purchase and maintain insurance, and the Construction Manager shall provide bonds as set forth in Article 11 of the General Conditions and Section 11.3.2 of this Contract.

(Table deleted)

ARTICLE 9 DISPUTE RESOLUTION [Deleted]. Claims and Disputes shall be resolved as set forth in Article 15 of the General Conditions.

(Paragraphs deleted)

ARTICLE 10 TERMINATION OR SUSPENSION

§ 10.1 Termination Prior to Establishment of the Guaranteed Maximum Price

§ 10.1.1 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 Section 14.1.1 of the General Conditions.

§ 10.1.2 In the event of termination of this Agreement pursuant to Section 10.1.1, the Construction Manager shall be equitably compensated for Preconstruction Phase services 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 4.1.

§ 10.1.3 If the Owner terminates the Contract pursuant to Section 10.1.1 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 10.1.2:

- .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 5.1 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.

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 which the Owner elects to retain and which is not otherwise included in the Cost of the Work under Section 10.1.3.1. 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 10, 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.

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.

§ 10.2 Termination Subsequent to Establishing Guaranteed Maximum Price

Following execution of the Guaranteed Maximum Price Amendment and subject to the provisions of Section 10.2.1 and 10.2.2 below, the Contract may be terminated as provided in Article 14 of the General Conditions.

§ 10.2.1 If the Owner terminates the Contract after execution of the Guaranteed Price Amendment, the amount payable to the Construction Manager pursuant to Sections 14.2 and 14.4 of the General Conditions shall not exceed the amount the Construction Manager would otherwise have received pursuant to Sections 10.1.2 and 10.1.3 of this Agreement.

Init.

§ 10.2.2 If the Construction Manager terminates the Contract after execution of the Guaranteed Maximum Price Amendment, the amount payable to the Construction Manager under Section 14.1.3 of the General Conditions shall not exceed the amount the Construction Manager would otherwise have received under Sections 10.1.2 and 10.1.3 above, except that the Construction Manager's Fee shall be calculated as if the Work had been fully completed by the Construction Manager, utilizing as necessary a reasonable estimate of the Cost of the Work for Work not actually completed.

§ 10.3 Suspension

The Work may be suspended by the Owner as provided in Article 14 of the General Conditions. In such case, the Guaranteed Maximum Price and Contract Time shall be increased as provided in Section 14.3.2 of the General Conditions, except that the term "profit" shall be understood to mean the Construction Manager's Fee as described in Sections 5.1 and 5.3.5 of this Agreement.

ARTICLE 11 MISCELLANEOUS PROVISIONS

§ 11.1 Unless otherwise explicitly provided in this Agreement, the terms in this Agreement shall have the same meaning as those in the General Conditions.

§ 11.2 Ownership and Use of Documents

Section 1.5 of the General Conditions shall apply to both the Preconstruction and Construction Phases.

§ 11.3 Governing Law

This Section shall control over any conflicting provisions in the Contract Documents. Construction Manager shall comply with all federal, state, and local laws applicable to the Work under this Contract, and all regulations and administrative rules established pursuant to those laws, including without limitation, the following requirements of the Oregon Public Contract Code:

§ 11.3.1 **ORS 279A.110 (Non-discrimination certification):** Construction Manager shall certify that Construction Manager has not discriminated and will not discriminate against a Subcontractor in the awarding of a subcontract because the Subcontractor is a minority, women, or emerging small business enterprise certified under ORS 200.055.

§ 11.3.2 **ORS 279C.380 (Performance and Payment Bonds):** Unless exempted by the Owner in writing pursuant to the Owner's local public contracting rules, prior to starting work under this Contract, Construction Manager shall execute and deliver to Owner a good and sufficient performance bond, in a form acceptable to Owner, in a sum equal to 100% of the Guaranteed Maximum Price, and Construction Manager shall execute and deliver to Owner a good and sufficient payment bond, in a form acceptable to Owner, in a sum equal to 100% of the Guaranteed Maximum Price, solely for the protection of claimants under ORS 279C.600. Provided no construction Work is included with the preconstruction services to be performed under the initial form of the CM/GC Contract, no performance bond or payment bond is required to be provided by the Construction Manager at the time of Contract signing, consistent with ORS 279C.380. Once construction Work is included in the Contract and authorized by the Owner to be performed by the Construction Manager, however, the Construction Manager must provide a performance bond and payment bond in the full amount of any Early Work to be performed by the Construction Manager, or the full amount of the Guaranteed Maximum Price, as applicable. Furthermore, in the event additional Early Work is added to the Construction Manager Contract after the initial Early Work or in the event an amendment to the Construction Manager Contract is made so that the Guaranteed Maximum Price must be increased, the performance bond and the payment bond must be increased in an amount equal to the additional Early Work or the increased Guaranteed Maximum Price.

§ 11.3.3 **ORS 279C.505 (Prompt Pay Requirement, Liens, Taxes, and Drug Testing):** Construction Manager shall make payment promptly, as due, to all persons supplying to such Construction Manager labor or material for the performance of the Work provided for in such Contract; pay all contributions or amounts due the Industrial Accident Fund from such Construction Manager or Subcontractor incurred in the performance of the Contract; not permit any lien or claim to be filed or prosecuted against the state or a county, school district, municipality, municipal corporation or subdivision thereof, on account of any labor or material furnished; and pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167. Construction Manager shall further demonstrate that an employee drug testing program is in place.

Init.

§ 11.3.4 ORS 279C.510 (Recycling/Composting): If this Contract includes demolition work, the Construction Manager shall salvage or recycle construction and demolition debris, if feasible and cost-effective. If this Contract includes lawn or landscape maintenance, the Construction Manager shall compost or mulch yard waste material at an approved site, if feasible and cost-effective.

§ 11.3.5 ORS 279C.515 (Failure to Pay Promptly): If Construction Manager fails, neglects, or refuses to make prompt payment of any claim for labor or services furnished to the Construction Manager or a Subcontractor by any person in connection with this Contract as such claim becomes due, the Owner may pay such claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due the Construction Manager by reason of this Contract. The payment of a claim in the manner authorized in this section shall not relieve the Construction Manager or the Construction Manager's surety from any obligation with respect to any unpaid claims.

Unless the payment is subject to a good faith dispute as defined in ORS 279C.580, if Construction Manager or any first-tier Subcontractor fails to pay any claim for materials or labor furnished under this Contract within 30 days after being paid by Owner, interest shall be due on such claim as specified in ORS 279C.515(2) at the end of the 10-day period that payment is due under ORS 279C.580(4). A person with any such unpaid claim may file a complaint with the Construction Contractor's Board unless the complaint is subject to a good faith dispute as defined in ORS 279C.580.

§ 11.3.6 ORS 279C.520 and 279C.540 (Hours of Labor, Holidays, and Overtime): Except as otherwise provided in an applicable collective bargaining agreement with a labor organization, Construction Manager shall not employ and shall require that its Subcontractors not employ any person to perform construction work for more than ten hours in any one day, or 40 hours in any one week, except in cases of necessity, emergency, or where the public policy absolutely requires it, and in such cases, except in cases of Contracts for personal services as defined in ORS 279C.100, the laborer shall be paid at least time and a half pay:

- .1 For all overtime in excess of eight hours a day or 40 hours in any one week when the work week is five consecutive days, Monday through Friday; and
- .2 For all overtime in excess of ten hours a day or 40 hours in any one week when the work week is four consecutive days, Monday through Friday; and
- .3 For work performed on Saturday and on any legal holiday specified in any applicable collective bargaining agreement or ORS 279C.540(1)(b).

The requirement to pay at least time and a half for all overtime worked in excess of 40 hours in any one week shall not apply to individuals who are excluded under ORS 653.010 to 653.261 or under 29 U.S.C. Section 201 to 209 from receiving overtime.

Construction Manager shall and shall require its Subcontractors to give notice in writing to their employees who perform Work under this Contract, either at the time of hire or before commencement of work on the Contract, or by posting a notice in a location frequented by employees, of the number of hours per day and days per week that the employees may be required to work.

§ 11.3.7 ORS 279C.525 (Notice of Environmental Regulations): State law requires that solicitation documents for a public improvement contract make specific reference to federal, state, and local agencies that have enacted ordinances, rules, or regulations dealing with the prevention of environmental pollution or the preservation of natural resources that may affect the performance of this Contract. These agencies include, but are not limited to:

- .1 **Federal Agencies:** Department of Agriculture, Forest Service, Soil and Water Conservation Service, Coast Guard, Department of Defense, Army Corps of Engineers, Department of Emergency, Federal Energy Regulatory Commission, Environmental Protection Agency, Department of Health and Human Services, Department of Housing and Urban Development, Solar Energy and Energy Conservation Bank, Department of Interior, Bureau of Land Management, Bureau of Indian Affairs, Bureau of Mines, Bureau of Reclamation, Geological Survey, Minerals Management Service, U.S.

Init.

Fish and Wildlife Service, Department of Labor, Mine Safety and Health Administration, Occupation Safety and Health Administration, Department of Transportation, Federal Highway Administration, Water Resources Council.

- .2 **State Agencies:** Department of Administrative Services, Department of Agriculture, Soil and Water Conservation Commission, Columbia River Gorge Commission, Department of Energy, Department of Environmental Quality, Department of Fish and Wildlife, Department of Forestry, Department of Geology and Mineral Industries, Department of Human Resources, Department of Consumer and Business Services, Land Conservation and Development Commission, Department of Parks and Recreation, Division of State Lands, Department of Water Resources.
- .3 **Local Agencies:** City councils, county courts, county boards of commissioners, metropolitan service district councils, design commissions, historic preservation commissions, planning commissions, development review commissions, special district boards of directors, and other special districts and special governmental agencies such as Tri-Met, urban renewal agencies, and Port Districts.
- .4 **Tribal Governments.**

§ 11.3.8 ORS 279C.530 (Payment for Medical Care and Workers' Compensation): Construction Manager shall promptly, as due, make payments to any person, co-partnership, association, or corporation furnishing medical, surgical, and hospital care or other needed care and attention, incident to sickness or injury, to the employees of such Construction Manager, of all sums which the Construction Manager agrees to pay for such services and all moneys and sums which the Construction Manager collected or deducted from the wages of employees pursuant to any law, contract, or agreement for the purpose of providing or paying for such service.

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

§ 11.3.9 ORS 279C.545 (Time Limitations on Claims for Overtime): Construction workers employed by the Construction Manager or its Subcontractor shall be foreclosed from the right to collect for any overtime under this Contract unless a claim for payment is filed with the Construction Manager or Subcontractor within 90 days from the completion of the Contract, provided the Construction Manager or Subcontractor has:

- .1 Caused a circular clearly printed in blackface pica type and containing a copy of this section to be posted in a prominent place alongside the door of the timekeeper's office or in a similar place which is readily available and freely visible to any or all workers employed on the Work, and
- .2 Maintained such circular continuously posted from the inception to the completion of the Contract on which workers are or have been employed.

§ 11.3.10 ORS 279C.580(3) (Prompt Payment of First-Tier Subcontractors): Construction Manager shall include in each subcontract for property or services with a first-tier Subcontractor a clause that obligates the Construction Manager to pay the first-tier Subcontractor for satisfactory performance under its subcontract within ten days out of such amounts as are paid to the Construction Manager by the Owner. Construction Manager shall also include in each subcontract a clause that states that if the Construction Manager fails to pay any claim for materials or labor furnished under this Contract within 30 days after being paid by Owner, interest shall be due on such claim as specified in ORS 279C.515(2) at the end of the ten-day period that payment is due under ORS 279C.580(3). Construction Manager shall require each first-tier Subcontractor to include a payment clause and interest clause conforming to the requirements of ORS 279C.580 in each of its subcontracts, and to require each of its Subcontractors to include a similar clause in each contract with a lower-tiered Subcontractor or supplier.

§ 11.3.11 ORS 279C.605 (Notice of Claim on Bond): Any person claiming a right of action under ORS 279C.600 must file a notice of claim as provided in ORS 279C.605.

§ 11.3.12 ORS 279C.800 to 279C.870 (Payment of Prevailing Wage Required):

Init.

- .1 The hourly rate of wage to be paid by Construction Manager or any Subcontractor to workers in each trade or occupation required for the public works employed in the performance of this Contract shall not be less than the specified minimum rate of wage in accordance with ORS 279C.838 and ORS 279C.840.
- .2 The latest prevailing wage rates for public works contracts in Oregon are contained in the following publications: Prevailing Wage Rates for Public Works Projects in Oregon, the PWR Apprenticeship Rates, and any amendments to the PWR rates or Apprenticeship rates since the most current publication of those rates. Such publications can be reviewed electronically at http://www.boli.state.or.us/BOLI/WHD/PWR/pwr_state.shtml and are hereby incorporated as part of the Contract Documents. Pursuant to OAR 839-025-0025(6), the prevailing wage rates for this Contract are established either when the contract first constitutes a binding and enforceable obligation on the part of the Construction Manager to perform or arrange for the performance of construction, reconstruction, major renovation or painting of an improvement that is a public works or when the Contract enters the construction phase, whichever occurs first. The prevailing wage rate in effect at that time shall apply and must be included with the construction specifications for the Contract.
- .3 Construction Manager and all Subcontractors shall keep the prevailing wage rates for this Project posted in a conspicuous and accessible place in or about the Project.
- .4 The Owner shall pay a fee to the Commissioner of the Oregon Bureau of Labor and Industries as provided in ORS 279C.825. The fee shall be paid to the Commissioner under the administrative rule of the Commissioner.
- .5 If Construction Manager or any Subcontractor also provides for or contributes to a health and welfare plan or a pension plan, or both, for its employees on the Project, it shall post notice describing such plans in a conspicuous and accessible place in or about the Project. The notice shall contain information on how and where to make claims and where to obtain future information.

§ 11.3.13 ORS 279C.836 (Public Works Bond Required): The Construction Manager shall:

- .1 file a public works bond with the Construction Contractors Board pursuant to ORS 279C.836 before starting work on the Project, unless exempt under ORS 279C.836(2) (7) or (8).
- .2 Include in every subcontract a provision requiring the Subcontractor to file a public works bond with the Construction Contractors Board pursuant to ORS 279C.836 before starting work on the Project, unless exempt under ORS 279C.836(2) (7) or (8).

§ 11.3.14 ORS 279C.845 (Prevailing Wage Certification; Additional Retainage):

- .1 Construction Manager and every Subcontractor shall file certified statements with Owner in writing in the form prescribed by the Commissioner of the Bureau of Labor and Industries, certifying the hourly rate of wage paid each worker whom Construction Manager or Subcontractor has employed upon such public work, and further certifying that no worker employed upon such public work has been paid less than the prevailing rate of wage or less than the minimum hourly rate of wage specified in the Contract, which certificate and statement shall be verified by the oath of Construction Manager or Construction Manager's surety or Subcontractor or Subcontractor's surety that Construction Manager and any Subcontractor has read such statement and certificate and knows the contents thereof, and that the same is true to Construction Manager or Subcontractor's knowledge. The certified statements shall set out accurately and completely the payroll records for the prior week including the name and address of each worker, the worker's correct classification, rate of pay, daily and weekly number of hours worked, deductions made, and actual wages paid.
- .2 The certified statement shall be delivered or mailed by Construction Manager or Subcontractor to Owner. Certified statements for each week during which the Construction Manager or Subcontractor employs a worker upon the public work shall be submitted once a month, by the fifth business day of

the following month. Information submitted on certified statements may be used only to ensure compliance with the provisions of ORS 279C.800 to 279C.870. Notwithstanding any other provision of this Contract and in addition to any other retainage required under this Contract, the Owner shall retain 25% of any amount earned by the Construction Manager until the Construction Manager has filed the certified statements with the Owner as required by this Section. The Owner will pay the retainage required under this Section within 14 days after the Construction Manager files the certified statements required by this Section.

- .3 Construction Manager and each Subcontractor shall preserve the certified statements for a period of three years from the date of completion of the Contract.

§ 11.3.15 ORS 671.560, 701.026 (Landscape/Construction Contractors License Required): If Construction Manager is performing work as a landscape contractor as defined in ORS 671.520(2), Construction Manager must have a current, valid landscape contractor's license issued under ORS 671.560. If Construction Manager is performing work as a Contractor as defined in ORS 701.005(2), Construction Manager must have a current, valid construction contractor's license issued under ORS 701.026. Construction Manager shall further certify that all Subcontractors performing Work described in ORS 701.005(2) are registered with the Construction Contractors Board or licensed by the State Landscaping Contractor's Board as required by the above noted statutes before they commence Work under this Contract. Construction Manager shall maintain in effect all licenses, permits, and certifications required for the performance of the Work. Construction Manager shall notify Owner immediately if any license, permit, or certification required for performance of this Contract shall cease to be in effect for any reason.

§ 11.4 Assignment

The Owner and Construction Manager, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither the Owner nor the Construction Manager shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement. Except as provided in Section 13.2.2 of the General Conditions, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 11.5 Other provisions:

§11.5.1 When Work is performed on the Owner's property, the Construction Manager must comply with the following:

- .1 Identification. When the Construction Manager or anyone for whom it is responsible performs Work on Owner Property, they shall carry photo identification and will present the identification to anyone on request. If Construction Manager or those whom it is responsible for do not have specific uniforms, then they shall provide identification tags as described above, or any other mechanism, that the Owner in its sole discretion determines is required to easily identify them.
- .2 Sign-in Required. Construction Manager will follow and enforce sign-in procedures that are satisfactory to the Owner and applicable law. Each day Construction Manager's employees shall sign into the Main Office to receive an in-school identification/visitors tag to be displayed on the person at all times they are on Owner's property.
- .3. No Smoking. Smoking or other use of tobacco is prohibited on Owner's property.
- .4. No Weapons or Firearms. Except as provided by Oregon Statutes and Owner policy, weapons and firearms are prohibited on Owner's property.

§11.5.2 When Work Is Performed in or on Owner's property, Construction Manager Shall Comply With the Following:

- .1 No Unsupervised Contact with Students. Unsupervised contact with students means contact with students that provide the person opportunity and probability for personal communication or touch when not under direct supervision. Construction Manager will ensure that Construction Manager,

Init.

any subcontractors, and their officers, agents and employees will have no direct unsupervised contact with students while on Owner's property. Construction Manager will work with the Owner to ensure compliance with this requirement. If Construction Manager is unable to ensure through a security plan that none of its officers, agents or employees will have direct, unsupervised, contact with students in a particular circumstance or circumstances, Construction Manager shall so notify the Owner prior to beginning any Work that could result in such contact. Construction Manager authorizes Owner to obtain information about Construction Manager and Construction Manager's history and to conduct a criminal background check, including fingerprinting, of any officer, agent or employee of Construction Manager that will have unsupervised contact with students. Construction Manager also agrees to cause Construction Manager's employees and/or subcontractors, if any, to authorize Owner to conduct such background checks. Construction Manager shall pay all fees assessed by Oregon Department of Education for processing the background check. Owner may deduct the cost of such fees from a progress or final payment to the Construction Manager under this contract, unless Construction Manager elects to pay such fees directly.

2. Confidentiality. The Parties recognize that the Federal Education Privacy Rights Act (FERPA) imposes strict penalties for improper disclosure or re-disclosure of confidential student information including but not limited to denial of access to personally identifiable information from education records for at least five years (34 CFR 99.33(e)). Therefore, consistent with the requirements of FERPA, personally identifiable information obtained by the Construction Manager in the performance of this Contract: may not be re-disclosed to third parties without written consent of the students' parents/guardians; and must be used only for the purposes identified in this Contract.

ARTICLE 12 SCOPE OF THE AGREEMENT

§ 12.1 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.

§ 12.2 The following documents comprise the Agreement:

- .1 AIA Document A133–2009, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price, as amended.

.2

(Paragraphs deleted)

The General Conditions as identified in Section 1.3 and Attached to This Agreement.

(Paragraphs deleted).5 Other documents:

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

SEASIDE SCHOOL DISTRICT 10

[TBD]

OWNER *(Signature)*

Sheila Roley
Superintendent

(Printed name and title)

CONSTRUCTION MANAGER *(Signature)*

[TBD]

(Printed name and title)

Init.



AIA[®] Document A133[™] – 2009

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

ADDITIONS AND DELETIONS:

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

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

AIA Document A201[™]–2007, 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.

Init.

AIA Document A133[™] – 2009 (formerly A121[™]CMc – 2003). Copyright © 1991, 2003 and 2009 by The American Institute of Architects. **All rights reserved.**
WARNING: This AIA[®] Document is protected by U.S. Copyright Law and International Treaties. Unauthorized reproduction or distribution of this AIA[®] Document, or any portion of it, may result in severe civil and criminal penalties, and will be prosecuted to the maximum extent possible under the law.
This document was produced by AIA software at 19:45:36 on 03/30/2017 under Order No.8672347963 which expires on 01/24/2018, and is not for resale.
User Notes: AIA A133 CM-GC Contract -- Seaside School District Campus Construction (JMW 03.24.17) (846297652)

Additions and Deletions Report for AIA[®] Document A133[™] – 2009

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

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 19:45:36 on 03/30/2017.

PAGE 1

AGREEMENT made as of the **TBD** day of **TBD** in the year 2017

...

SEASIDE SCHOOL DISTRICT 10
1801 SOUTH FRANKLIN STREET
SEASIDE, OREGON 97138

...

TBD

...

(Name and address or location)

A new Seaside School District campus, which will include the following components, which are further:

- (1) Closing existing buildings that operate in the City of Seaside's tsunami zone;
- (2) Constructing a new facility on land donated by Weyerhaeuser Company, which will operate as Seaside High School and Broadway Middle School; and
- (3) Renovation and expansion of Seaside Heights Elementary School.

...

DULL OLSON WEEKES-IBI GROUP ARCHITECTS INC.
907 SW STARK STREET
PORTLAND, OREGON 97205

...

Justine Hill
Business Manager
Seaside School District 10
1801 South Franklin Street
Seaside, OR 97138

PAGE 2

TBD

...

TBD

PAGE 3

12 SCOPE OF THE AGREEMENT

EXHIBIT A ~~GUARANTEED MAXIMUM PRICE AMENDMENT~~

...

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to the 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 2.2.3 and identified in the Guaranteed Maximum Price Amendment and revisions prepared by the Architect and furnished by the Owner as described in Section 2.2.8. If the Owner authorizes construction work prior to the execution of the Guaranteed Maximum Price Amendment, then the Contract Documents will include such Early Work Amendment. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern.

...

~~For the Preconstruction Phase, AIA Document A201™-2007, General Conditions of the Contract for Construction, shall apply only as specifically provided in this Agreement. For the Construction Phase, the general conditions of the contract shall be as set forth in A201-2007, which document is incorporated herein by reference. both the Preconstruction and Construction Phases, the General Conditions of the contract shall be the AIA A201 2007 edition as modified by the Owner ("General Conditions") which is incorporated herein by reference, as well as Supplementary General Conditions of the Owner, if any. The term "Contractor" as used in A201-2007 shall mean the Construction Manager. the General Conditions shall mean the Construction Manager/General Contractor. The Term "Construction Manager" as used in this Agreement shall mean the Construction Manager/General Contractor.~~

PAGE 4

§ 2.1.3 When Project requirements in Section 3.1.1 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 could affect the Project's timely completion. The updated Project schedule shall include the following: submission of the Guaranteed Maximum Price proposal; components of the Work; times of commencement and completion required of each Subcontractor; ordering and delivery of products, including those that must be ordered well in advance of construction; and the occupancy requirements of the Owner. If preliminary Project schedule updates indicate that previously approved schedules may not be met, the Construction Manager/General Contractor shall make appropriate recommendations for schedule recovery to the Owner and Architect.

...

§ 2.1.5.3 When Design Development Documents have been prepared by the Architect and approved by the Owner, the Construction Manager/General Contractor shall prepare a detailed estimate with supporting data for review by the Architect and approval by the Owner. During the preparation of the Construction Documents, the Construction

Manager/General Contractor shall update and refine this estimate at appropriate intervals agreed to by the Owner, Architect and Construction Manager/General Contractor.

§ 2.1.5.4 If any estimate submitted to the Owner exceeds previously approved estimates or the Owner's budget, the Construction Manager/General Contractor shall make recommendations to the Owner and Architect to adjust the Project's size or quality to meet the Owner's budget.

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

§ 2.1.7 Long-Lead-Time-Items

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

PAGE 5

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

...

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~~ quasi-governmental authorities for inclusion in the Contract Documents.

PAGE 6

- .4 The anticipated date of commencement for construction Work
- .5 The anticipated date of Substantial Completion (or, if the project is phased, dates of Substantial Completion) upon which the proposed Guaranteed Maximum Price is based;
- .6 A construction schedule identifying commencement and completion dates for project milestones;
- .7 The date of the applicable Prevailing Wage Rate publications (if not previously established in a previous authorization for Early Work, as defined in Section 2.3.1.2); and
- .5—.8 A date by which the Owner must accept the Guaranteed Maximum Price.

§ 2.2.4 In preparing the Construction Manager's Guaranteed Maximum Price proposal, the Construction Manager shall include its contingency for the Construction Manager's exclusive use to cover those costs considered reimbursable as the Cost of the Work but not included in a Change Order. Use of this contingency requires the Owner's prior approval in writing. Such approval shall not be withheld if it would unreasonably impact the ability

of the Construction Manager/General Contractor to meet its contractual obligations related to budget, schedule, and quality.

...

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

...

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

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

PAGE 7

§ 2.3.1.1 For purposes of Section 8.1.2 of ~~A201–2007~~, the General Conditions, the date of commencement of the Work shall mean the date of commencement of the Construction Phase.

§ 2.3.1.2 The Construction Phase shall commence upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal or the Owner's issuance of a Notice to Proceed, ~~whichever occurs earlier~~ written authorization of Early Work, whichever occurs earlier. "Early Work" means construction services, construction materials and other Work authorized by the parties to be performed under the Contract in advance of the establishment of the Guaranteed Maximum Price. Permissible Early Work shall be limited to early procurement of materials and supplies, early release of bid or proposal packages for site development and related activities, and any other advance Work related to important components of the project for which performance prior to establishment of the GMP will materially and positively affect the development or completion of the project.

...

§ 2.3.2.1 Those portions of the Work that the Construction Manager does not customarily perform with the Construction Manager's own personnel shall be performed under subcontracts or by other appropriate agreements with the Construction Manager. ~~The Owner may designate specific persons from whom, or entities from which, the Construction Manager shall obtain bids. Subcontracts be solicited as provided in Section 2.3.2.9.~~ The Construction Manager shall obtain bids from Subcontractors and from suppliers of materials or equipment fabricated especially for the Work and shall deliver such bids to the Architect. The Owner shall then determine, with the advice of the Construction Manager and the Architect, which bids will be accepted. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection.

§ 2.3.2.2 If the Guaranteed Maximum Price has been established and when a specific bidder (1) is recommended to the Owner by the Construction Manager, (2) is qualified to perform that portion of the Work, and (3) has submitted a bid that conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Construction Manager may require that a Change Order be issued to adjust the Contract Time for good cause and the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Construction Manager and the amount and time requirement of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

§ 2.3.2.3 Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement, and shall not be awarded on the basis of cost plus a fee without the prior consent of the Owner. If the Subcontract is

awarded on a ~~cost-plus-cost-plus~~ a fee basis, the Construction Manager shall provide in the Subcontract for the Owner to receive the same audit rights with regard to the Subcontractor as the Owner receives with regard to the Construction Manager in Section 6.11 below.

...

§ 2.3.2.6 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 submittal schedule in accordance with Section 3.10 of A201–2007–the General Conditions.

PAGE 8

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

- .1 Absent a written justification prepared by the Construction Manager and approved by the Owner as more particularly provided for in this section, the Construction Manager's Subcontractor selection process must be "competitive," meaning that the process should include publicly-advertised subcontractor solicitations and be based on a low-bid competitive method, a low-quote competitive method for contracts in a specified dollar range agreeable to the Owner, or a method whereby both price and qualifications of the subcontractors are evaluated in a competitive environment, consistent with the Contract requirements;
- .2 When the Subcontractor selection process for a particular Work package will not be "competitive" as provided for in this section, the process must meet the following requirements:
 - .1 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;
 - .2 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;
 - .3 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;
 - .4 The Construction Manager must fully respond to any questions or comments submitted to the Construction Manager by the Owner; and
 - .5 The Owner must approve the Construction Manager's use of the non-competitive Subcontractor selection process prior to the Construction Manager's pursuit of the non-competitive process.
- .3 A competitive selection process may be preceded by a publicly advertised sub-contractor pre-qualification process, with only those subcontractors meeting the pre-qualification requirements being

invited to participate in the later competitive process through which the Construction Manager will select the subcontractor to perform the construction Work described in the selection process:

- .4 If the Construction Manager or an Affiliate or subsidiary of the Construction Manager will be included in the subcontractor selection process to perform particular construction Work on the project, the Construction Manager must disclose that fact in the selection process documents and announcements. The Contract must also identify the conditions, processes and procedures the Construction Manager will utilize in that competitive process in order to make the process impartial, competitive and fair, including but not limited to objective, independent review and opening of bids or proposals for the elements of Work involved, by a representative of the Owner or another independent third party.
- .5 **Subcontractor Approvals and Protests.** The Construction Manager shall include in its solicitation documents a process by which an adversely affected bidder or proposer may protest the selection of subcontractors and suppliers. The Construction Manager will resolve all protests in writing and the Construction Manager shall notify the Owner of the filing and disposition of any protest. The Owner retains the right to monitor the subcontracting process in order to protect the Owner's interests and to confirm the Construction Manager's compliance with the Contract and with applicable statutes, administrative rules and other legal requirements. The Construction Manager shall submit any documents relating to the subcontracting process to the Owner upon the Owner's requests. Any documents that are shared with the Owner become public records subject to disclosure.
- .6 **Construction Manager Self-Performance or Performance by Construction Manager Affiliates or Subsidiaries Without Competition.** The Construction Manager must obtain approval of the Owner before the Construction Manager or an Affiliate or subsidiary of the Construction Manager may perform elements of the construction Work without competition from subcontractors, including, for example, job-site GC Work. Other than for GC Work, in order for the Construction Manager or an Affiliate or subsidiary of the Construction Manager to perform elements of the construction Work without competition from subcontractors, the Construction Manager must provide, or must have included in the Construction Manager's RFP proposal to perform Construction Manager Services for this Project, a detailed proposal for performance of the Work by the Construction Manager or an Affiliate or subsidiary of the Construction Manager. If required by the Owner, the Construction Manager's proposal to perform the construction Work must be supported by at least one independent cost estimate prior to the Work being included in the Contract.
- .7 **Unsuccessful Subcontractor Briefing.** ORS 279C.337(3)(e) is designed to allow a subcontractor who was not selected by the Construction Manager to perform a particular element of the construction Work to obtain specific information from the Construction Manager, and meet with the Construction Manager to discuss the subcontractor qualification and selection process involved and the Construction Manager's subcontractor selection decisions, in order to better understand why the subcontractor was not successful in being selected to perform the particular element of the Work and to improve the subcontractor's substantive qualifications or the subcontractor's methods in competing for elements of the Work for the particular project involved, or for future projects. The briefing meetings may be held with individual subcontractors or, if the subcontractors agree, in groups of subcontractors, with those groups established by bid package or other designation agreed to by the contracting agency and the Construction Manager. Nevertheless, the Construction Manager is not obligated to provide this briefing opportunity unless the Construction Manager receives a written request from a subcontractor to discuss the subcontractor qualification and selection process involved. Unless the Owner and the Construction Manager agree on a different schedule for a particular solicitation, the Construction Manager will:

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

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

§2.3.2.10. Bid Alternates.

- .1 The Construction Manager, Owner, and Architect shall agree on appropriate bid alternates for every bid package such that if the Cost of the Work in connection with the Guaranteed Maximum Price is less than (or more than) the Guaranteed Maximum Price, the Owner shall have the opportunity to authorize additive (or deductive) alternates, as appropriate. It is understood that the Owner and Construction Manager/General Contractor may choose to defer the award of alternates in order to ensure the successful outcome of later bid packages.
- .2 Bid alternates for subcontractor packages, authorized by the Owner under the above provisions, shall be performed by the Construction Manager with no increase to the Guaranteed Maximum Price, with no time extension, and with no increase in Construction Manager's Fee, unless both the Owner and the Construction Manager/General Contractor agree in writing at the time of the designation of alternates that awarding of the alternates will result in an increase in the Construction Manager's Fee, and/or time extension.
- .3 If the Construction Manager/General Contractor and Owner agree to the execution of alternates outside of the parameters described in this document, such that the Guaranteed Maximum Price is not exceeded, then the Construction Manager/General Contractor shall not be eligible for an increase in the Construction Manager's Fee. However, the Construction Manager/General Contractor may be eligible for a time extension, if such extension is determined to be warranted.
- .4 If the Construction Manager/General Contractor and Owner agree to the execution of alternates outside of the parameters described in this document, such that the Guaranteed Maximum Price will be exceeded, then the Construction Manager/General Contractor shall be entitled to an increase in the Construction Manager's Fee, for the increase in the Cost of the Work above the Guaranteed Maximum Price, and as described in this document.

Section 3.12.10 of A201-2007 the General Conditions shall apply to both the Preconstruction and Construction Phases.

PAGE 10

Section 10.3 of A201-2007 the General Conditions shall apply to both the Preconstruction and Construction Phases.

...

§ 3.1.1 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, systems sustainability and site requirements.

§ 3.1.2 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. If the Construction Manager submits a request, then the Owner's submission of written evidence shall be a condition to commencement of the Work. Thereafter, the Construction Manager may only request such evidence if (1) the Owner fails to make payments to the Construction Manager as the Contract Documents require, (2) a change in the Work materially changes the Contract Sum, or (3) the Construction Manager identifies in writing a reasonable concern regarding the Owner's ability to make payment when due. The Owner shall furnish such evidence as a condition precedent to commencement or continuation of the Work or the portion of the Work affected by a material change. After the Owner furnishes the evidence, the Owner shall not materially vary such financial arrangements without prior notice to the Construction Manager and

~~Architect. Any request made after the commencement of the Work shall not serve as a basis for the Construction Manager to stop the Work.~~

PAGE 11

The Owner shall ~~identify designate in writing~~ a representative authorized to act on behalf of the Owner with respect to the Project. The Owner's representative shall render decisions promptly and furnish ~~information expeditiously, so as to avoid unreasonable delay in the services or Work of the Construction Manager.~~ timely requested information expeditiously. The Owner's representative shall not have the authority to waive any provisions of the Contract Documents or to approve or authorize any change in the Guaranteed Maximum Price or the Contract Time except in writing. Except as otherwise provided in Section 4.2.1 of A201-2007, ~~the General Conditions,~~ the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

...

The Owner shall retain an Architect to provide services, duties and responsibilities as described in AIA Document B133™-2014, B101-2007, 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 a copy of the executed agreement between the Owner and the Architect, and any further modifications to the agreement.

...

[TBD]

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

PAGE 12

§ 4.2.2 Payments are due and payable ~~upon presentation of the Construction Manager's invoice. Amounts unpaid () days after the invoice date thirty (30) days from the date the Construction Manager's invoice is received by the Owner, or fifteen (15) days after payment is approved by the Owner, whichever is the earlier date. Amounts unpaid after the date on which payment is due shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Construction Manager.~~ place where the Project is located
(Insert rate of monthly or annual interest agreed upon.)

~~%~~ Interest on payments due and unpaid under the Contract Documents shall bear interest as specified in ORS 279C.570.

...

The Construction Manager's Fee for all Work shall be [TBD].

...

The Construction Manager's Fee shall remain equal to the rate set in Section 5.1.1 of the total Cost of the Work, inclusive of all additive or deductive changes.

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

Work shall be governed by Section 7.5 of the General Conditions:

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

...

[TBD]

[TBD]

[TBD]

PAGE 13

§ 5.2.1.1 The Owner shall receive the benefit of all Savings.

...

§ 5.3.1 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 Architect may make minor changes in the Work as provided in Section 7.4 of ~~AIA Document A201–2007, General Conditions of the Contract for Construction.~~ the General Conditions. The Construction Manager shall be entitled to an equitable adjustment in the Contract Time as a result of changes in the Work.

§ 5.3.2 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 Section 7.3.3 of ~~AIA Document A201–2007, General Conditions of the Contract for Construction.~~ the General Conditions.

§ 5.3.3 In calculating adjustments to subcontracts (except those awarded with the Owner's prior consent on the basis of cost plus a fee), the terms "cost" and "fee" as used in Section 7.3.3.3 of ~~AIA Document A201–2007~~ the General Conditions and the term "costs" as used in Section 7.3.7 of AIA Document A201–2007 shall have the meanings assigned to them in ~~AIA Document A201–2007~~ the General Conditions and shall not be modified by Sections 5.1 and 5.2, Sections 6.1 through 6.7, and Section 6.8 of this Agreement. Adjustments to subcontracts awarded with the Owner's prior consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.

§ 5.3.4 In calculating adjustments to the Guaranteed Maximum Price, the terms "cost" and "costs" as used in the above-referenced provisions of ~~AIA Document A201–2007~~ the General Conditions shall mean the Cost of the Work as defined in Sections 6.1 to 6.7 of this Agreement and the term "fee" shall mean the Construction Manager's Fee as defined in Section 5.1 of this Agreement.

§ 5.3.5 ~~If no specific provision is made in Section 5.1.2 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 5.1.2 will cause substantial inequity to the Owner or Construction Manager, the Construction Manager's Fee shall be equitably adjusted on the same basis that was used to establish the Fee for the original Work, and the Guaranteed Maximum Price shall be adjusted accordingly.~~ **[Deleted]**

...

§ 6.1.1 The term Cost of the Work shall mean costs reasonably and necessarily incurred by the Construction Manager in the proper performance of the Work. Such costs shall be at rates not higher than the standard paid at the ~~place~~ location of the Project except with prior consent of the Owner. The Cost of the Work shall include only the items set forth in Sections 6.1 through 6.7.

...

§ 6.2.2 Wages or salaries of the Construction Manager's supervisory ~~and administrative personnel when stationed at the site with the Owner's prior approval.~~

~~(If it is intended that the wages or salaries of certain personnel stationed at the Construction Manager's principal or other offices shall be included in the Cost of the Work, identify in Section 11.5, the personnel to be included, whether for all or only part of their time, and the rates at which their time will be charged to the Work.)~~ personnel

assigned to the Project when stationed at the Project site or at the Contractor's main office, but only for that portion of the time required for the Work.

~~§ 6.2.3 Wages and salaries of the Construction Manager's supervisory or administrative personnel-personnel assigned to the Project and engaged at factories, workshops or on the road, 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.~~

PAGE 14

~~§ 6.2.5 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, with the Owner's prior approval. [Deleted].~~

...

Payments made by the Construction Manager to Subcontractors in accordance with the requirements of the subcontracts. The costs in any cost-plus subcontracts must conform to the requirements of this Article 6.

...

~~§ 6.4.1 Costs, including transportation and storage, of materials and equipment incorporated or to be incorporated in the completed construction-construction, subject to Paragraph 9.3.2 of the General Conditions.~~

~~§ 6.4.2 Costs of materials described in the preceding Section 6.4.1 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.~~

...

~~§ 6.5.1 Costs of transportation, storage, installation, maintenance, dismantling 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 hand 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 will be fair market value.~~

~~§ 6.5.2 Rental charges (not to exceed fair market rental costs in the greater Seaside area) for temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site and costs of transportation, installation, minor repairs, dismantling and removal. The total rental cost of any Construction Manager-owned item may not exceed seventy-five percent of the purchase price of any comparable item. Rates of Construction Manager-owned equipment and quantities of equipment shall be subject to the Owner's prior approval.~~

...

~~§ 6.5.5 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. Work, with Owner's prior approval.~~

...

~~§ 6.6.1 Premiums for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to this Contract. Self insurance for either full or partial amounts of the coverages required by the Contract Documents, with the Owner's prior approval. Contract, if identified to and approved in advance by the Owner. The Construction Manager's Fee is not assessed against the Costs of the Work identified in this Section 6.6.1..~~

§ 6.6.2 Sales, use or similar taxes (but not income or receipt taxes) imposed by a governmental authority that are related to the Work and for which the Construction Manager is liable. The Construction Manager's Fee is not assessed against the Costs of the Work identified in this Section 6.6.2.

§ 6.6.3 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. The Construction Manager's Fee is not assessed against the cost of the building permit.

§ 6.6.4 Fees of laboratories for tests required by the Contract Documents, except those related to defective or nonconforming Work for which reimbursement is excluded by Section 13.5.3 of ~~AIA Document A201-2007~~ the General Conditions or by other provisions of the Contract Documents, and which do not fall within the scope of Section 6.7.3.

§ 6.6.5 Royalties and license fees paid for the use of a particular design, process or product required by the Contract Documents; the cost of defending suits or claims for infringement of patent rights arising from such requirement of the Contract Documents; and 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. However, such costs of legal defenses, judgments and settlements shall not be included in the calculation of the Construction Manager's Fee or subject to the Guaranteed Maximum Price. If such royalties, fees and costs are excluded by the last sentence of Section 3.17 of ~~AIA Document A201-2007~~ the General Conditions or other provisions of the Contract Documents, then they shall not be included in the Cost of the Work.

§ 6.6.6 ~~Costs for electronic equipment and software, directly related to the Work with the Owner's prior approval.~~ [Deleted].

PAGE 15

§ 6.6.8 Legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between the Owner and Construction Manager, reasonably incurred by the Construction Manager after the execution of this Agreement in the performance of the Work and with the Owner's prior approval, which shall not be unreasonably withheld. Such costs do not include costs (1) to defend claims asserted by the Construction Manager's employees, Subcontractors or suppliers or the Architect (including without limitation wage or benefit claims), or (2) connected to violations of labor laws or regulations.

...

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

§ 6.7.2 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 Section 10.4 of ~~AIA Document A201-2007~~ the General Conditions.

§ 6.7.3 Costs of repairing or correcting damaged or nonconforming Work executed by the Construction Manager, Subcontractors or suppliers, provided that such damaged or nonconforming Work was not caused by negligence or failure to fulfill a specific responsibility of the Construction Manager and only to the extent that the cost of repair or correction is not recovered by the Construction Manager from insurance, sureties, Subcontractors, suppliers, or others. The Work described in this Section 7.7.3 does not include Work performed during or after the one-year period for correction of Work.

§ 6.7.4 ~~The costs described in Sections 6.1 through 6.7 shall be included in the Cost of the Work, notwithstanding any provision of AIA Document A201-2007 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 6.8.~~ [Deleted].

...

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

PAGE 16

- .5 Except as provided in Section 6.7.3 of this Agreement, costs due to the negligence or failure of 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 to fulfill a specific responsibility of ~~the Contract;~~ the Contract including all Work performed during and after the one-year period for correction of Work;
- ...
- .7 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded; ~~and~~
- .8 Costs for services incurred during the Preconstruction ~~Phase-Phase;~~
- .9 Any cost not specifically and expressly described in Sections 6.1 through 6.7;
- .10 Costs which would cause the Guaranteed Maximum Price to be exceeded;
- .11 Premiums for insurance and bonding other than those that are directly and solely attributable to the construction of the Project.
- .12 Fines other than those incurred because of the acts or omissions of the Owner or Owner's Representatives;
- .13 Consultants to the Construction Manager not previously approved in writing by the Owner;
- .14 Corporate accounting and check processing costs; and
- .15 Cost of the Work performed under guaranties or warranties.

§ 6.8.2 In no event shall the Cost of the Work include the cost of any item more than once

...

§ 6.9.1 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 them in an Application for Payment and received payment from the Owner, or (2) the Owner has deposited funds with the Construction Manager with which to make payments; otherwise, cash discounts shall accrue to the Construction Manager. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Construction Manager shall make provisions so that they can be obtained. The Construction Manager shall notify the Owner in a timely manner of the availability of such cash discounts, rebates, or refunds.

...

§ 6.10 Related Party Transactions/Affiliated Entity Transactions

§ 6.10.1 For purposes of Section 6.10, the term "~~related party~~" "Affiliated Entity" shall mean a parent, subsidiary, affiliate or other entity having common ownership or management with the Construction Manager; any entity in which any stockholder in, or management employee of, the Construction Manager owns any interest in excess of ten percent in the aggregate; or any person or entity which has the right to control the business or affairs of the Construction Manager. The term "~~related party~~" "Affiliated Entity" includes any member of the immediate family of any person identified above.

§ 6.10.2 If any of the costs to be reimbursed arise from a transaction between the Construction Manager and a ~~related party~~, an Affiliated Entity, the Construction Manager shall notify the Owner of the specific nature of the contemplated transaction, including the identity of the ~~related party~~ Affiliated Entity 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, 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~~, Affiliated Entity, as a Subcontractor, according to the terms of Sections 2.3.2.1, 2.3.2.2 and 2.3.2.3. If the Owner fails to authorize the

transaction, the Construction Manager shall procure the Work, equipment, goods or service from some person or entity other than a ~~related party~~ an Affiliated Entity according to the terms of Sections 2.3.2.1, 2.3.2.2 and 2.3.2.3.

PAGE 17

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

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

month.

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

...

§ 7.1.6 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 for which the Construction Manager has made or intends to make actual 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. As a condition of approval, but without limitation of any other conditions, each Application for Payment must contain written certification by Construction Manager as follows:

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

PAGE 18

- .1 Take 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 schedule of values. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 7.3.9 of ~~AIA Document A201-2007;~~ the General Conditions;

- ...
- .3 Add the Construction Manager's Fee, less retainage of percent (~~—~~%) five percent (5 %) of the sum of amounts computed pursuant to Subparagraphs 7.1.7.1, 7.1.7.2, and 7.1.7.3. The Construction Manager's Fee shall be computed upon the Cost of the Work at the rate stated in Section 5.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, shall be an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work bears to a reasonable estimate of the probable Cost of the Work upon its completion;
 - .4 Subtract retainage of five percent (5 %) from that portion of the Work that the Construction Manager self-performs;

- ...
- .7 Subtract amounts, if any, for which the Architect has withheld or nullified a Certificate for Payment as provided in Section 9.5 of ~~AIA Document A201-2007~~ the General Conditions.
- ...

- .1 the Construction Manager has fully performed the Contract except for the Construction Manager's responsibility to correct Work as provided in Section 12.2.2 of ~~AIA Document A201-2007~~ the General Conditions, and to satisfy other requirements, if any, which extend beyond final payment;
- ...

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

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

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

§ 7.2.2 The Owner's auditors will review and report in writing on the Construction Manager's final accounting within 30 days after delivery of the final accounting to the Architect by the Construction Manager. Based upon such Cost of the Work as the Owner's auditors report to be substantiated by the Construction Manager's final accounting, and provided the other conditions of Section 7.2.1 have been met, the Architect will, within seven days after receipt of the written report of the Owner's auditors, 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 Section 9.5.1 of the ~~AIA Document A201-2007~~ General Conditions. The time periods stated in this Section supersede those stated in Section 9.4.1 of the ~~AIA Document A201-2007~~ General Conditions. The Architect is not responsible for verifying the accuracy of the Construction Manager's final accounting.

~~§ 7.2.3~~ If the Owner's auditors report the Cost of the Work as substantiated by the Construction Manager's final accounting to be 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 Section 15.2 of A201-2007. A request for mediation shall be made by the Construction Manager invoke the dispute resolution procedure of Paragraphs 15.3 and 15.4 of the General Conditions. Construction Manager must submit notice of its dispute to Owner within 30 days after the Construction Manager's receipt of a copy of the Architect's final Certificate for Payment. Failure to ~~request mediation~~ submit notice of a dispute within this 30-day period shall result in the substantiated amount reported by the Owner's auditors becoming binding on the Construction Manager. Pending a final resolution of the disputed amount, the Owner shall pay the Construction Manager the undisputed amount certified in the Architect's final Certificate for Payment.

~~§ 7.2.4~~ If, subsequent to final payment and at the Owner's request, the Construction Manager incurs costs described in Section 6.1.1 and not excluded by Section 6.8 to correct defective or nonconforming Work, and such Work is not performed during or after the one-year period for correction of Work, the Owner shall reimburse the Construction Manager 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 the Construction Manager has participated in savings as provided in Section 5.2.1, the amount of such savings shall be recalculated and appropriate credit given to the Owner in determining the net amount to be paid by the Owner to the Construction Manager.

PAGE 19

For all phases of the Project, the Construction Manager and the Owner shall purchase and maintain insurance, and the Construction Manager shall provide bonds as set forth in Article 11 of AIA Document A201-2007. ~~(State bonding requirements, if any, and limits of liability for insurance required in Article 11 of AIA Document A201-2007.)~~ the General Conditions and Section 11.3.2 of this Contract.

Type of Insurance or Bond

Limit of Liability or Bond Amount (\$0.00)

ARTICLE 9 DISPUTE RESOLUTION [Deleted]. Claims and Disputes shall be resolved as set forth in Article 15 of the General Conditions.

~~§ 9.1~~ Any Claim between the Owner and Construction Manager shall be resolved in accordance with the provisions set forth in this Article 9 and Article 15 of A201-2007. 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 9.3 of this Agreement shall not apply.

~~§ 9.2~~ For any Claim subject to, but not resolved by mediation pursuant to Section 15.3 of AIA Document A201-2007, the method of binding dispute resolution shall be as follows:
(Check the appropriate box. If the Owner and Construction Manager do not select a method of binding dispute resolution below, 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.)

— Arbitration pursuant to Section 15.4 of AIA Document A201-2007

— Litigation in a court of competent jurisdiction

— Other: *(Specify)*

§ 9.3 Initial Decision Maker

The Architect will serve as the Initial Decision Maker pursuant to Section 15.2 of AIA Document A201-2007 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.)*

PAGE 20

§ 10.1.1 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 Section 14.1.1 of A201-2007-the General Conditions.

...

Following execution of the Guaranteed Maximum Price Amendment and subject to the provisions of Section 10.2.1 and 10.2.2 below, the Contract may be terminated as provided in Article 14 of AIA Document A201-2007-the General Conditions.

§ 10.2.1 If the Owner terminates the Contract after execution of the Guaranteed Maximum Price Amendment, the amount payable to the Construction Manager pursuant to Sections 14.2 and 14.4 of A201-2007-the General Conditions shall not exceed the amount the Construction Manager would otherwise have received pursuant to Sections 10.1.2 and 10.1.3 of this Agreement.

§ 10.2.2 If the Construction Manager terminates the Contract after execution of the Guaranteed Maximum Price Amendment, the amount payable to the Construction Manager under Section 14.1.3 of A201-2007-the General Conditions shall not exceed the amount the Construction Manager would otherwise have received under Sections 10.1.2 and 10.1.3 above, except that the Construction Manager's Fee shall be calculated as if the Work had been fully completed by the Construction Manager, utilizing as necessary a reasonable estimate of the Cost of the Work for Work not actually completed.

PAGE 21

The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201-2007-the General Conditions. In such case, the Guaranteed Maximum Price and Contract Time shall be increased as provided in Section 14.3.2 of AIA Document A201-2007-the General Conditions, except that the term "profit" shall be understood to mean the Construction Manager's Fee as described in Sections 5.1 and 5.3.5 of this Agreement.

...

§ 11.1 ~~Terms~~ Unless otherwise explicitly provided in this Agreement, the terms in this Agreement shall have the same meaning as those in A201-2007-the General Conditions.

...

Section 1.5 of A201-2007-the General Conditions shall apply to both the Preconstruction and Construction Phases.

...

Section 13.1 of A201–2007 shall apply to both the Preconstruction and Construction Phases. This Section shall control over any conflicting provisions in the Contract Documents. Construction Manager shall comply with all federal, state, and local laws applicable to the Work under this Contract, and all regulations and administrative rules established pursuant to those laws, including without limitation, the following requirements of the Oregon Public Contract Code:

§ 11.3.1 ORS 279A.110 (Non-discrimination certification): Construction Manager shall certify that Construction Manager has not discriminated and will not discriminate against a Subcontractor in the awarding of a subcontract because the Subcontractor is a minority, women, or emerging small business enterprise certified under ORS 200.055.

§ 11.3.2 ORS 279C.380 (Performance and Payment Bonds): Unless exempted by the Owner in writing pursuant to the Owner's local public contracting rules, prior to starting work under this Contract, Construction Manager shall execute and deliver to Owner a good and sufficient performance bond, in a form acceptable to Owner, in a sum equal to 100% of the Guaranteed Maximum Price, and Construction Manager shall execute and deliver to Owner a good and sufficient payment bond, in a form acceptable to Owner, in a sum equal to 100% of the Guaranteed Maximum Price, solely for the protection of claimants under ORS 279C.600. Provided no construction Work is included with the preconstruction services to be performed under the initial form of the CM/GC Contract, no performance bond or payment bond is required to be provided by the Construction Manager at the time of Contract signing, consistent with ORS 279C.380. Once construction Work is included in the Contract and authorized by the Owner to be performed by the Construction Manager, however, the Construction Manager must provide a performance bond and payment bond in the full amount of any Early Work to be performed by the Construction Manager, or the full amount of the Guaranteed Maximum Price, as applicable. Furthermore, in the event additional Early Work is added to the Construction Manager Contract after the initial Early Work or in the event an amendment to the Construction Manager Contract is made so that the Guaranteed Maximum Price must be increased, the performance bond and the payment bond must be increased in an amount equal to the additional Early Work or the increased Guaranteed Maximum Price.

§ 11.3.3 ORS 279C.505 (Prompt Pay Requirement, Liens, Taxes, and Drug Testing): Construction Manager shall make payment promptly, as due, to all persons supplying to such Construction Manager labor or material for the performance of the Work provided for in such Contract; pay all contributions or amounts due the Industrial Accident Fund from such Construction Manager or Subcontractor incurred in the performance of the Contract; not permit any lien or claim to be filed or prosecuted against the state or a county, school district, municipality, municipal corporation or subdivision thereof, on account of any labor or material furnished; and pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167. Construction Manager shall further demonstrate that an employee drug testing program is in place.

§ 11.3.4 ORS 279C.510 (Recycling/Composting): If this Contract includes demolition work, the Construction Manager shall salvage or recycle construction and demolition debris, if feasible and cost-effective. If this Contract includes lawn or landscape maintenance, the Construction Manager shall compost or mulch yard waste material at an approved site, if feasible and cost-effective.

§ 11.3.5 ORS 279C.515 (Failure to Pay Promptly): If Construction Manager fails, neglects, or refuses to make prompt payment of any claim for labor or services furnished to the Construction Manager or a Subcontractor by any person in connection with this Contract as such claim becomes due, the Owner may pay such claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due the Construction Manager by reason of this Contract. The payment of a claim in the manner authorized in this section shall not relieve the Construction Manager or the Construction Manager's surety from any obligation with respect to any unpaid claims.

Unless the payment is subject to a good faith dispute as defined in ORS 279C.580, if Construction Manager or any first-tier Subcontractor fails to pay any claim for materials or labor furnished under this Contract within 30 days after being paid by Owner, interest shall be due on such claim as specified in ORS 279C.515(2) at the end of the 10-day period that payment is due under ORS 279C.580(4). A person with any such unpaid claim may file a complaint

with the Construction Contractor's Board unless the complaint is subject to a good faith dispute as defined in ORS 279C.580.

§ 11.3.6 ORS 279C.520 and 279C.540 (Hours of Labor, Holidays, and Overtime): Except as otherwise provided in an applicable collective bargaining agreement with a labor organization, Construction Manager shall not employ and shall require that its Subcontractors not employ any person to perform construction work for more than ten hours in any one day, or 40 hours in any one week, except in cases of necessity, emergency, or where the public policy absolutely requires it, and in such cases, except in cases of Contracts for personal services as defined in ORS 279C.100, the laborer shall be paid at least time and a half pay:

- .1 For all overtime in excess of eight hours a day or 40 hours in any one week when the work week is five consecutive days, Monday through Friday; and
- .2 For all overtime in excess of ten hours a day or 40 hours in any one week when the work week is four consecutive days, Monday through Friday; and
- .3 For work performed on Saturday and on any legal holiday specified in any applicable collective bargaining agreement or ORS 279C.540(1)(b).

The requirement to pay at least time and a half for all overtime worked in excess of 40 hours in any one week shall not apply to individuals who are excluded under ORS 653.010 to 653.261 or under 29 U.S.C. Section 201 to 209 from receiving overtime.

Construction Manager shall and shall require its Subcontractors to give notice in writing to their employees who perform Work under this Contract, either at the time of hire or before commencement of work on the Contract, or by posting a notice in a location frequented by employees, of the number of hours per day and days per week that the employees may be required to work.

§ 11.3.7 ORS 279C.525 (Notice of Environmental Regulations): State law requires that solicitation documents for a public improvement contract make specific reference to federal, state, and local agencies that have enacted ordinances, rules, or regulations dealing with the prevention of environmental pollution or the preservation of natural resources that may affect the performance of this Contract. These agencies include, but are not limited to:

- .1 **Federal Agencies:** Department of Agriculture, Forest Service, Soil and Water Conservation Service, Coast Guard, Department of Defense, Army Corps of Engineers, Department of Emergency, Federal Energy Regulatory Commission, Environmental Protection Agency, Department of Health and Human Services, Department of Housing and Urban Development, Solar Energy and Energy Conservation Bank, Department of Interior, Bureau of Land Management, Bureau of Indian Affairs, Bureau of Mines, Bureau of Reclamation, Geological Survey, Minerals Management Service, U.S. Fish and Wildlife Service, Department of Labor, Mine Safety and Health Administration, Occupation Safety and Health Administration, Department of Transportation, Federal Highway Administration, Water Resources Council.
- .2 **State Agencies:** Department of Administrative Services, Department of Agriculture, Soil and Water Conservation Commission, Columbia River Gorge Commission, Department of Energy, Department of Environmental Quality, Department of Fish and Wildlife, Department of Forestry, Department of Geology and Mineral Industries, Department of Human Resources, Department of Consumer and Business Services, Land Conservation and Development Commission, Department of Parks and Recreation, Division of State Lands, Department of Water Resources.
- .3 **Local Agencies:** City councils, county courts, county boards of commissioners, metropolitan service district councils, design commissions, historic preservation commissions, planning commissions, development review commissions, special district boards of directors, and other special districts and special governmental agencies such as Tri-Met, urban renewal agencies, and Port Districts.
- .4 **Tribal Governments.**

§ 11.3.8 ORS 279C.530 (Payment for Medical Care and Workers' Compensation): Construction Manager shall promptly, as due, make payments to any person, co-partnership, association, or corporation furnishing medical, surgical, and hospital care or other needed care and attention, incident to sickness or injury, to the employees of such Construction Manager, of all sums which the Construction Manager agrees to pay for such services and all moneys and sums which the Construction Manager collected or deducted from the wages of employees pursuant to any law, contract, or agreement for the purpose of providing or paying for such service.

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

§ 11.3.9 ORS 279C.545 (Time Limitations on Claims for Overtime): Construction workers employed by the Construction Manager or its Subcontractor shall be foreclosed from the right to collect for any overtime under this Contract unless a claim for payment is filed with the Construction Manager or Subcontractor within 90 days from the completion of the Contract, provided the Construction Manager or Subcontractor has:

- .1 Caused a circular clearly printed in blackface pica type and containing a copy of this section to be posted in a prominent place alongside the door of the timekeeper's office or in a similar place which is readily available and freely visible to any or all workers employed on the Work, and
- .2 Maintained such circular continuously posted from the inception to the completion of the Contract on which workers are or have been employed.

§ 11.3.10 ORS 279C.580(3) (Prompt Payment of First-Tier Subcontractors): Construction Manager shall include in each subcontract for property or services with a first-tier Subcontractor a clause that obligates the Construction Manager to pay the first-tier Subcontractor for satisfactory performance under its subcontract within ten days out of such amounts as are paid to the Construction Manager by the Owner. Construction Manager shall also include in each subcontract a clause that states that if the Construction Manager fails to pay any claim for materials or labor furnished under this Contract within 30 days after being paid by Owner, interest shall be due on such claim as specified in ORS 279C.515(2) at the end of the ten-day period that payment is due under ORS 279C.580(3). Construction Manager shall require each first-tier Subcontractor to include a payment clause and interest clause conforming to the requirements of ORS 279C.580 in each of its subcontracts, and to require each of its Subcontractors to include a similar clause in each contract with a lower-tiered Subcontractor or supplier.

§ 11.3.11 ORS 279C.605 (Notice of Claim on Bond): Any person claiming a right of action under ORS 279C.600 must file a notice of claim as provided in ORS 279C.605.

§ 11.3.12 ORS 279C.800 to 279C.870 (Payment of Prevailing Wage Required):

- .1 The hourly rate of wage to be paid by Construction Manager or any Subcontractor to workers in each trade or occupation required for the public works employed in the performance of this Contract shall not be less than the specified minimum rate of wage in accordance with ORS 279C.838 and ORS 279C.840.
- .2 The latest prevailing wage rates for public works contracts in Oregon are contained in the following publications: Prevailing Wage Rates for Public Works Projects in Oregon, the PWR Apprenticeship Rates, and any amendments to the PWR rates or Apprenticeship rates since the most current publication of those rates. Such publications can be reviewed electronically at http://www.boli.state.or.us/BOLI/WHD/PWR/pwr_state.shtml and are hereby incorporated as part of the Contract Documents. Pursuant to OAR 839-025-0025(6), the prevailing wage rates for this Contract are established either when the contract first constitutes a binding and enforceable obligation on the part of the Construction Manager to perform or arrange for the performance of construction, reconstruction, major renovation or painting of an improvement that is a public works or when the Contract enters the construction phase, whichever occurs first. The prevailing wage rate in effect at that time shall apply and must be included with the construction specifications for the Contract.

- .3 Construction Manager and all Subcontractors shall keep the prevailing wage rates for this Project posted in a conspicuous and accessible place in or about the Project.
- .4 The Owner shall pay a fee to the Commissioner of the Oregon Bureau of Labor and Industries as provided in ORS 279C.825. The fee shall be paid to the Commissioner under the administrative rule of the Commissioner.
- .5 If Construction Manager or any Subcontractor also provides for or contributes to a health and welfare plan or a pension plan, or both, for its employees on the Project, it shall post notice describing such plans in a conspicuous and accessible place in or about the Project. The notice shall contain information on how and where to make claims and where to obtain future information.

§ 11.3.13 ORS 279C.836 (Public Works Bond Required): The Construction Manager shall:

- .1 file a public works bond with the Construction Contractors Board pursuant to ORS 279C.836 before starting work on the Project, unless exempt under ORS 279C.836(2) (7) or (8).
- .2 Include in every subcontract a provision requiring the Subcontractor to file a public works bond with the Construction Contractors Board pursuant to ORS 279C.836 before starting work on the Project, unless exempt under ORS 279C.836(2) (7) or (8).

§ 11.3.14 ORS 279C.845 (Prevailing Wage Certification; Additional Retainage):

- .1 Construction Manager and every Subcontractor shall file certified statements with Owner in writing in the form prescribed by the Commissioner of the Bureau of Labor and Industries, certifying the hourly rate of wage paid each worker whom Construction Manager or Subcontractor has employed upon such public work, and further certifying that no worker employed upon such public work has been paid less than the prevailing rate of wage or less than the minimum hourly rate of wage specified in the Contract, which certificate and statement shall be verified by the oath of Construction Manager or Construction Manager's surety or Subcontractor or Subcontractor's surety that Construction Manager and any Subcontractor has read such statement and certificate and knows the contents thereof, and that the same is true to Construction Manager or Subcontractor's knowledge. The certified statements shall set out accurately and completely the payroll records for the prior week including the name and address of each worker, the worker's correct classification, rate of pay, daily and weekly number of hours worked, deductions made, and actual wages paid.
- .2 The certified statement shall be delivered or mailed by Construction Manager or Subcontractor to Owner. Certified statements for each week during which the Construction Manager or Subcontractor employs a worker upon the public work shall be submitted once a month, by the fifth business day of the following month. Information submitted on certified statements may be used only to ensure compliance with the provisions of ORS 279C.800 to 279C.870. Notwithstanding any other provision of this Contract and in addition to any other retainage required under this Contract, the Owner shall retain 25% of any amount earned by the Construction Manager until the Construction Manager has filed the certified statements with the Owner as required by this Section. The Owner will pay the retainage required under this Section within 14 days after the Construction Manager files the certified statements required by this Section.
- .3 Construction Manager and each Subcontractor shall preserve the certified statements for a period of three years from the date of completion of the Contract.

§ 11.3.15 ORS 671.560, 701.026 (Landscape/Construction Contractors License Required): If Construction Manager is performing work as a landscape contractor as defined in ORS 671.520(2), Construction Manager must have a current, valid landscape contractor's license issued under ORS 671.560. If Construction Manager is performing work as a Contractor as defined in ORS 701.005(2), Construction Manager must have a current, valid construction contractor's license issued under ORS 701.026. Construction Manager shall further certify that all Subcontractors performing Work described in ORS 701.005(2) are registered with the Construction Contractors Board or licensed by the State Landscaping Contractor's Board as required by the above noted statutes before they commence Work

under this Contract. Construction Manager shall maintain in effect all licenses, permits, and certifications required for the performance of the Work. Construction Manager shall notify Owner immediately if any license, permit, or certification required for performance of this Contract shall cease to be in effect for any reason.

PAGE 25

The Owner and Construction Manager, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither the Owner nor the Construction Manager shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement. Except as provided in Section 13.2.2 of A201-2007, ~~the General Conditions~~, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

...

§11.5.1 When Work is performed on the Owner's property, the Construction Manager must comply with the following:

- .1 Identification. When the Construction Manager or anyone for whom it is responsible performs Work on Owner Property, they shall carry photo identification and will present the identification to anyone on request. If Construction Manager or those whom it is responsible for do not have specific uniforms, then they shall provide identification tags as described above, or any other mechanism, that the Owner in its sole discretion determines is required to easily identify them.
- .2 Sign-in Required. Construction Manager will follow and enforce sign-in procedures that are satisfactory to the Owner and applicable law. Each day Construction Manager's employees shall sign into the Main Office to receive an in-school identification/visitors tag to be displayed on the person at all times they are on Owner's property.
- .3. No Smoking. Smoking or other use of tobacco is prohibited on Owner's property.
- .4. No Weapons or Firearms. Except as provided by Oregon Statutes and Owner policy, weapons and firearms are prohibited on Owner's property.

§11.5.2 When Work Is Performed in or on Owner's property, Construction Manager Shall Comply With the Following:

- .1 No Unsupervised Contact with Students. Unsupervised contact with students means contact with students that provide the person opportunity and probability for personal communication or touch when not under direct supervision. Construction Manager will ensure that Construction Manager, any subcontractors, and their officers, agents and employees will have no direct unsupervised contact with students while on Owner's property. Construction Manager will work with the Owner to ensure compliance with this requirement. If Construction Manager is unable to ensure through a security plan that none of its officers, agents or employees will have direct, unsupervised, contact with students in a particular circumstance or circumstances, Construction Manager shall so notify the Owner prior to beginning any Work that could result in such contact. Construction Manager authorizes Owner to obtain information about Construction Manager and Construction Manager's history and to conduct a criminal background check, including fingerprinting, of any officer, agent or employee of Construction Manager that will have unsupervised contact with students. Construction Manager also agrees to cause Construction Manager's employees and/or subcontractors, if any, to authorize Owner to conduct such background checks. Construction Manager shall pay all fees assessed by Oregon Department of Education for processing the background check. Owner may deduct the cost of such fees from a progress or final payment to the Construction Manager under this contract, unless Construction Manager elects to pay such fees directly.

.2. Confidentiality. The Parties recognize that the Federal Education Privacy Rights Act (FERPA) imposes strict penalties for improper disclosure or re-disclosure of confidential student information including but not limited to denial of access to personally identifiable information from education records for at least five years (34 CFR 99.33(e)). Therefore, consistent with the requirements of FERPA, personally identifiable information obtained by the Construction Manager in the performance of this Contract: may not be re-disclosed to third parties without written consent of the students' parents/guardians; and must be used only for the purposes identified in this Contract.

PAGE 26

- .1 AIA Document A133–2009, 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 ~~Price~~, as amended.
- .2 ~~AIA Document A201–2007, General Conditions of the Contract for Construction~~
- .3 ~~AIA Document E201™–2007, Digital Data Protocol Exhibit, if completed, or the following:~~

The General Conditions as identified in Section 1.3 and Attached to This Agreement.

- .4 ~~AIA Document E202™–2008, Building Information Modeling Protocol Exhibit, if completed, or the following:~~

.5 Other documents:

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

...

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

SEASIDE SCHOOL DISTRICT 10

[TBD]

...

Sheila Roley
Superintendent

[TBD]

Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, _____, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 19:45:36 on 03/30/2017 under Order No. 8672347963 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A133™ – 2009, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

(Signed)

(Title)

(Dated)