

DRAFT AIA® Document A102™ - 2017

Standard Form of Agreement Between Owner and Construction Manager / General Contractor (CM / GC) where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price

AGREEMENT made as of the « » day of « » in the year « 202__ »
(In words, indicate day, month and year.)

[This document has instructions in bold, italics, and highlighted. Remove all instructions prior to sending any draft to CM/GC]

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

[Insert]»»»

and the Construction Manager / General Contractor (CM/GC):
(Name, address and other information)

«[Insert] »« »
« »
« »
« »

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

«[Insert] »
« »
« »

The Engineer:
(Name, address and other information)

«[Insert] »

The Owner and CM/GC agree as follows.

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

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

The parties should complete A102™-2017, Exhibit A, Insurance and Bonds, contemporaneously with this Agreement. AIA Document A201™-2017, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

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ARTICLE 1 INITIAL INFORMATION

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

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

§ 1.1.1 The Owner's program for the Project or other Project information:

(Insert the Owner's program, identify documentation that establishes the Owner's program, or state the manner in which the program will be developed. (Identify special characteristics or needs of the Project not provided elsewhere.)

« »

§ 1.1.2.1 The Owner identifies the following representative for the Project:

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

«[insert]»

Written notice for Claims also to be provided to:

«[insert] »

§ 1.1.2.2 The Owner's Representative in accordance with Section 4.2 is listed below:

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

<< [insert] >>

Owner's Representative is authorized to act on behalf of the Owner with respect to certain contract administration and pay application certification functions. The authority of Owner's Representative may be supplemented or changed in writing by the Owner. Owner's Representative shall have no obligations to make payments hereunder, and nothing contained in this Agreement is intended to create any contractual relationship between the CM/GC and the Owner's Representative, nor confer any third party beneficiary rights upon the CM/GC with relation to the Owner's Representative. Neither the presence of, nor the monitoring or observations of the Owner's Representative shall limit or reduce the CM/GC's liability for defects in its Work, and it is understood that the CM/GC will be solely and completely responsible for its Work, compliance with the Contract Documents, and the working conditions on the job site, including safety, during the performance of the Work.

§ 1.1.2.1 The Owner's Representative may designate a project manager to perform some of the obligations of the Owner's Representative.

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

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

.1 Geotechnical Engineer:

<< >>

.2 Civil Engineer: J-U-B Engineers, Inc.

<< >>< >>

.3 Other, if any:

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

<<<<>>

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

<< >>

§ 1.1.6 The CM/GC identifies the following representative for the Project:
(List name, address, and other contact information.)

<< >>

The CM/GC's representative shall not be changed without ten days' prior notice to the Owner.

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

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§ 1.2 The Owner and CM/GC may rely on the Initial Information. Both parties, however, recognize that such information may materially change and, in that event, the Owner and the CM/GC shall appropriately adjust the Project schedule, the CM/GC's services, and the CM/GC's compensation. The Owner shall adjust the Owner's

budget for the Guaranteed Maximum Price and the Owner's anticipated design and construction milestones, as necessary, to accommodate material changes in the Initial Information.

ARTICLE 2 GENERAL PROVISIONS

§ 2.1 The Contract Documents

§ 2.1 The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents and exhibits 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 CM/GC's Guaranteed Maximum Price (GMP) proposal as provided in Section 3.2.6, the Contract Documents will also include the documents described in Section 3.2.3 and identified in the Guaranteed Maximum Price Amendment. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern. An enumeration of the Contract Documents, other than a Modification, appears in Article 16. In entering into this Agreement or the Guaranteed Maximum Price Amendment, neither party has relied upon any statement, estimate, forecast, projection, representation, warranty, action, or agreement of the other party except for those expressly contained in this Agreement. The Contract may not be amended except by Change Order or other written Modification executed by the Owner and CM/GC.

§ 2.2 In the event of conflicts or discrepancies among the Contract Documents, interpretations will be based upon the following priorities in descending order:

- .1 Contract Modifications;
- .2 Change Orders issued after the GMP Amendment;
- .3 The GMP Amendment (exclusive of exhibits attached thereto);
- .4 This Agreement;
- .5 Approved revisions and addenda, with those of a later date taking precedence over those of earlier date or original documents;
- .6 the General Conditions of the Contract for Construction (AIA A201-2017 as revised);
- .7 Exhibits to the Agreement including Exhibits listed in each GMP Amendment.

In the case of a conflict or ambiguity between the Drawings and Specifications or within either document not clarified by Addendum, the Drawings shall govern Specifications for quantity, arrangement, details and location, and the Specifications shall govern Drawings for materials, quality, workmanship, installation, and performance). In the event of ambiguity in quality or quantity that is not resolved by the order of precedence above, the CM/GC shall (i) provide the best quality and the most reasonable quantity as applicable; and (ii) follow the stricter standard requiring the greatest measure of performance on CM/GC.

§ 2.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the CM/GC. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all.

§ 2.3 Relationship of the Parties

§ 2.3.1 The CM/GC accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Owner, Engineer, and consultants, and exercise the CM/GC's skill and judgment in furthering the interests of the Owner to furnish efficient construction management, preconstruction services, 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 CM/GC and to make payments to the CM/GC in accordance with the requirements of the Contract Documents.

§ 2.3.2 **Covenant of Good Faith and Fair Dealing.** By entering into this Agreement, as part of the covenant of good faith and fair dealing, CM/GC agrees to function within the laws, and statutes, and design codes applicable to its duties and responsibilities, proceed to fulfill its obligation under this Agreement diligently and honestly, and that it will supply accurate, complete, and current cost or pricing data for purposes of supporting or documenting CM/GC's requests for contract modification, compensation, and/or payments under this Agreement.

§ 2.4 General Conditions

The general conditions of the contract shall be as set forth in A201–2017, as modified by the parties, which document is incorporated herein by reference.

ARTICLE 3 CM/GC'S PRECONSTRUCTION RESPONSIBILITIES **[include if applicable]**

§ 3.0 The CM/GC is acting as a general CM/GC / construction manager on this Project and will be performing Preconstruction Phase services with Construction Phase Work. CM/GC's Preconstruction Phase responsibilities are set forth in Sections 3.1 and 3.2, and in the applicable provisions of A201-2017. The CM/GC's Construction Phase responsibilities are set forth in Section 3.3. The Owner and CM/GC may agree, in consultation with the Engineer, for the Construction Phase to commence prior to completion of the Preconstruction Phase, in which case, both phases will proceed concurrently.

§ 3.1 Preconstruction Phase

§ 3.1.1 Extent of Responsibility

The CM/GC shall exercise reasonable care in performing its Preconstruction Services. The Owner and Engineer shall be entitled to rely on, and shall not be responsible for, the accuracy, completeness, and timeliness of services and information furnished by the CM/GC. The CM/GC, however, does not warrant or guarantee estimates and schedules except as may be included as part of the Guaranteed Maximum Price. Except for design-build, delegated design, or deferred submittals that are the responsibility of the CM/GC, the CM/GC 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 CM/GC shall promptly report to the Engineer and Owner any nonconformity discovered by or made known to the CM/GC as a request for information in such form as the Engineer may require.

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

§ 3.1.3 Consultation

§ 3.1.3.1 The CM/GC shall schedule and conduct meetings with the Engineer and Owner to discuss such matters as procedures, progress, coordination, and scheduling of the Work.

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

§ 3.1.3.3 The CM/GC shall assist the Owner and Engineer in establishing design information modeling and digital data protocols for the Project, to establish the protocols for the development, use, transmission, and exchange of digital data.

§ 3.1.4 Project Schedule

A preliminary Project Schedule is attached as **Exhibit D**. When Project requirements in Section 4.1.1 have been sufficiently identified, the CM/GC shall prepare and periodically update an updated Project Schedule for the Engineer's review and the Owner's acceptance. The CM/GC shall obtain the Engineer's approval for the portion of the Project schedule relating to the performance of the Engineer's services. The Project schedule shall coordinate and integrate the CM/GC's services, the Engineer's services, other Owner consultants' services, and the Owner's responsibilities; and identify items that affect the Project's timely completion, and fully comply with the requirements of AIA Document A201-2017, as revised. The updated Project schedule shall fully comply with the requirements of AIA Document A201-2017, as revised and include the following: submission of the Guaranteed Maximum Price Proposal; components of the Work; times of commencement and completion required of each Subcontractor; ordering and delivery of products, including those that must be ordered in advance of construction; and the occupancy requirements of the Owner.

§ 3.1.5 Phased Construction

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

§ 3.1.6 Cost Estimates

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

§ 3.1.6.2 As the Engineer progresses with the preparation of the 30% Design, Final Design and Construction Documents, the CM/GC shall prepare and update, at appropriate intervals agreed to by the Owner, CM/GC and Engineer, an estimate of the Cost of the Work for all Scopes of Work with increasing detail and refinement. The CM/GC shall include in the estimate those costs to allow for the further development of the design, price escalation, and market conditions, until such time as the Owner and CM/GC agree on a Guaranteed Maximum Price for the particular Scope of Work. The estimate shall be provided for the Engineer's review and the Owner's approval. The CM/GC shall inform the Owner and Engineer in the event that the estimate of the Cost of the Work for any Scope of Work exceeds the latest approved Project budget and make recommendations for corrective action.

§ 3.1.6.3 If the Engineer is reviewing cost estimating services, and a discrepancy exists between the CM/GC's cost estimates and the Owner's cost estimates, the CM/GC and the Engineer and Owner shall work together to reconcile the cost estimates.

§ 3.1.6.4 In between the milestone estimates referenced in Section 3.1.6.2 above and during all phases of design, the CM/GC shall provide continuous monitoring of the design as it progresses and any potential impacts on existing estimates. CM/GC shall participate in weekly meetings with the Owner and design team and provide estimate updates in a timely manner on any design decisions that might have an impact on the overall estimate of the Cost of the Work for the Project.

§ 3.1.7 As the Engineer progresses with the preparation of the 30% Design, Final Design and Construction Documents, the CM/GC shall consult with the Owner and Engineer and make recommendations regarding constructability and schedules, for the Engineer's review and the Owner's approval.

§ 3.1.8 The CM/GC shall provide recommendations and information to the Owner and Engineer regarding equipment, materials, services, and temporary Project facilities.

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

§ 3.1.10 Procurement

The CM/GC shall prepare, for the Engineer's review and the Owner's acceptance, a procurement schedule for items that must be ordered in advance of construction. The CM/GC shall expedite and coordinate the ordering and delivery of materials that must be ordered in advance of construction. If the Owner agrees to procure any items prior to the establishment of the Guaranteed Maximum Price, the CM/GC shall procure all such items using a Letter of Authorization set forth in **Exhibit O**.

§ 3.1.11 Other Preconstruction Services

Insert a description of any other Preconstruction Phase services to be provided by the CM/GC, or reference an exhibit attached to this document.

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

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§ 3.2 Guaranteed Maximum Price Proposal

§ 3.2.1 At a time to be mutually agreed upon by the Owner and the CM/GC, the CM/GC shall prepare a Guaranteed Maximum Price proposal for the Owner's and Engineer's review, and the Owner's acceptance. The Guaranteed Maximum Price shall be the sum of the CM/GC's estimate of the Cost of the Work, the CM/GC's contingency described in Section 3.2.4, and the CM/GC's Fee described in Section 6.2.1.2. Submission by the CM/GC to the Owner of a Guaranteed Maximum Price Proposal is a representation that the CM/GC has reviewed the Contract Documents and field conditions as set forth in AIA Document A201-2017 Section 3.2, as revised.

§ 3.2.2 To the extent that the Contract Documents are anticipated to require further development, the Guaranteed Maximum Price shall include the costs attributable to such further development consistent with the Contract Documents and reasonably inferable therefrom and from the CM/GC's involvement in preconstruction services for the Project.

§ 3.2.3 The CM/GC 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 CM/GC in the preparation of the Guaranteed Maximum Price proposal, including assumptions under Section 3.2.2 identified as **Exhibit H**;
- .3 A statement of the proposed Guaranteed Maximum Price, including a statement of the estimated Cost of the Work organized by trade categories or systems, including schedules of allowances and alternates; the Construction Contingency; and the CM/GC's Fee. The Guaranteed Maximum Price takes into consideration the risk of fluctuation in equipment, material, and labor prices during the Contract Time.;
- .4 A list of all Work CM/GC plans to self-perform along with any required sealed Subcontractor bids for such Work;
- .5 The anticipated date of Substantial Completion upon which the proposed Guaranteed Maximum Price is based;
- .6 Any and all costs authorized and incurred by signed Letters of Authorization by Owner preceding the execution date GMP Amendment, are to be included in the Guaranteed Maximum Price.
- .7 A list of all inspections and certifications required by applicable law or by the Authorities Having Jurisdiction to be procured and paid for by Owner, along with the anticipated costs of such inspections.
- .8 Site Contamination Protocol, if any;
- .9 An updated Responsibility Matrix identifying all design-build, deferred submittals, or delegated design for which the CM/GC is responsible; and
- .10 A date by which the Owner must accept the Guaranteed Maximum Price which can be no less than 30 days after submission by the CM/GC.

§ 3.2.4 In preparing the CM/GC's Guaranteed Maximum Price proposal, the CM/GC shall include a contingency for the CM/GC's exclusive use to cover those costs that are included in the Guaranteed Maximum Price but not otherwise allocated to another line item or included in a Change Order (the "Construction Contingency"). The Construction Contingency shall not exceed [REDACTED] percent ([REDACTED]%) of the Cost of the Work. The Construction Contingency is an amount to cover unforeseen conditions and events not apparent as of the date of the establishment of the Guaranteed Maximum Price by Owner and CM/GC. CM/GC will obtain Owner's approval prior to billing against the Construction Contingency (or any part thereof) and will supply Owner with detailed information relative to such proposed billing. Owner's approval will not be unreasonably withheld. Requests for the use of the contingency shall be submitted by the CM/GC within thirty (30) days of the event which caused such Cost of Work to be incurred, or as soon as the need is apparent. The CM/GC's Contingency shall not be used for payment of Changes to the Work that the Owner would otherwise be obligated to pay pursuant to this Agreement. The balance of the Construction Contingency which has not been expended for the Project according to the procedures set forth herein shall be refunded entirely to the benefit of the Owner, upon final invoicing. The CM/GC shall also provide the Engineer and Owner documented status of the contingency amount on a monthly basis with each payment application.

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

§ 3.2.6 If the Owner notifies the CM/GC that the Owner has accepted the Guaranteed Maximum Price proposal, as may be amended by CM/GC, 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 CM/GC. Following acceptance of a Guaranteed Maximum Price, the Owner and CM/GC shall execute the Guaranteed Maximum Price Amendment (in the form set forth in **Exhibit N**) amending this Agreement, a copy of which the Owner shall provide to the Engineer.

§ 3.2.7 The CM/GC shall not incur any cost to be reimbursed as part of the Cost of the Work prior to the execution of the Guaranteed Maximum Price Amendment, unless the Owner provides prior written authorization for such costs and a Letter of Authorization is executed in the form set forth in **Exhibit O**.

§ 3.2.8 Execution of the GMP Amendment by the CM/GC is a representation that the CM/GC believes the Contract Documents are sufficient to have enabled the CM/GC to determine the Cost of the Work therein, to enter into the GMP Amendment, and to accomplish the Work for an amount not in excess of the Guaranteed Maximum Price within the Contract Time provided for in the Contract Documents. The CM/GC further represents and warrants that prior to execution of this Agreement and the GMP Amendment it has visited and examined the Project site, examined all readily ascertainable physical, legal, and other conditions affecting the Work and is fully familiar with all of the conditions thereon affecting the same, including (1) the nature, location and character of the Project site, including all readily visible structures and obstructions thereon, both natural and man-made; (2) the nature, location, and character of the general area in which the Project is located, including without limitation, its climatic conditions, available labor supply and labor costs, and available equipment supply and equipment costs; and (3) the quality and quantity of all materials, supplies, tools, equipment, labor, and professional services necessary to complete the Work in the manner and within the cost and time frame required by the Contract Documents. THE FAILURE OF THE CM/GC FULLY TO ACQUAINT ITSELF WITH ANY PROVISION OF THE CONTRACT DOCUMENTS OR OTHER MATTER SHALL NOT IN ANY WAY RELIEVE IT FROM THE RESPONSIBILITY FOR PERFORMING THE WORK IN ACCORDANCE WITH THE CONTRACT DOCUMENTS, AND WITHIN THE CONTRACT SUM AND THE CONTRACT TIME AS PROVIDED FOR IN THE CONTRACT DOCUMENTS.

§ 3.2.9 Failure to Accept the GMP Proposal

§ 3.2.9.1 If the Owner rejects the GMP Proposal, or fails to notify the CM/GC in writing on or before the date specified in the GMP Proposal that it accepts the GMP Proposal, the GMP Proposal shall be deemed withdrawn and of no effect. In such event, the Owner shall have the following options:

- .1** The Owner may suggest modifications to the GMP Proposal; whereupon, if such modifications are accepted in writing by CM/GC, the GMP Proposal shall be deemed accepted and the parties shall execute a GMP Amendment to this Agreement incorporating the GMP Proposal as modified, as set forth in Section 3.2.6;
- .2** The Owner may authorize the CM/GC to continue to proceed with the Work on the basis of reimbursement for time and materials without a Guaranteed Maximum Price, in which case all references in this Agreement to Guaranteed Maximum Price shall not be applicable; or
- .3** The Owner may terminate this Agreement in accordance with Section 14.1.1; in no event shall CM/GC be entitled to lost profit or Fee on Work not performed.

§ 3.2.9.2 If the Owner fails to exercise any of the above options within 60-days of the date specified in the GMP Proposal, CM/GC shall have the right to: (i) continue with the Work as if Owner had elected to proceed in accordance with Section 3.2.9.2 above, and be paid by Owner accordingly after proper notice as set forth in this Section, unless and until the Owner notifies it in writing to stop the Work; or (ii) suspend performance of the Work in accordance with AIA Document A201-2017, Section 14.3. Before incurring any costs for Work not previously authorized in writing by the Owner through an LOA or a Limited Notice to Proceed, CM/GC shall provide the Owner with 10 days' prior written notice that Work will be performed outside of an approved LOA or notice to proceed and subject to this Section 3.2.9.2(i). CM/GC shall provide at least 30 days' prior notice of any intent to suspend performance of the Work.

§ 3.3 Construction Phase

§ 3.3.1 General

§ 3.3.1.1 For purposes of Section 8.1.2 of A201–2017, the date of commencement of the Work shall mean the date of commencement of the Construction Phase for a particular Scope of Work.

§ 3.3.1.2 The Construction Phase shall commence upon the Owner's execution a full Notice to Proceed after execution of the Guaranteed Maximum Price Amendment or, prior to acceptance of the Guaranteed Maximum Price proposal and issuance of a full Notice to Proceed, by written agreement of the parties in the form of a Letter of Authorization (**Exhibit O**) or Limited Notice to Proceed. The written agreement shall set forth a description of the Work to be performed by the CM/GC. A Limited Notice to Proceed as used in this Agreement is a notice to proceed issued by the Owner that does not provide authorization for all of the Work under this Agreement. A Limited Notice to Proceed may be issued prior to or after execution of the GMP Amendment.

§ 3.3.1.3 CM/GC's Key Project personnel shall be [Project Executive] [Senior Project Manager], [Project Manager], [Superintendent], [Assistant Superintendent] or other individuals as approved by the Owner. Other Project personnel are listed in **Exhibit I**. The CM/GC shall cause CM/GC's representative to be on the Project site at all times when Work is being performed and shall authorize CM/GC's representative to receive and act on the CM/GC's behalf upon instructions from the Owner given pursuant to the Contract Documents. Notice from the Owner or the Engineer to CM/GC's representative in connection with defective Work, or instructions for performance of the Work, shall be deemed notice of such issues to the CM/GC.

§ 3.3.1.3.1 CM/GC agrees that its Project team shall be of the highest capabilities, and CM/GC shall staff the Project with capable employees to whom Owner has no reasonable objection for the duration of the Project, including through all punch list work and Final Completion. CM/GC shall endeavor to maintain the continuity of the Key Personnel and, to the extent within CM/GC's reasonable control, CM/GC shall not change or remove Key Personnel until Final Completion without the written approval of the Owner

§ 3.3.2 Administration

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

§ 3.3.2.2 Upon the execution of the Guaranteed Maximum Price Amendment, the CM/GC shall prepare and submit to the Owner and Engineer a construction schedule for the Work and a submittal schedule in accordance with A201-2017.

§ 3.3.3 Monthly Report

The CM/GC shall record the progress of the Project. On a monthly basis, or otherwise as agreed to by the Owner, the CM/GC shall submit written progress reports to the Owner and Engineer, showing percentages of completion and other information required by the Owner including, but not limited to, status of cost/budget, schedule, and any other outstanding issues requiring resolution. The CM/GC shall maintain a daily log containing a record of weather, hours of all workers, Subcontractors working on the site, number of workers, their workers, Work accomplished, problems encountered, and other similar relevant data as the Owner may reasonably require. The log shall be available to the Owner and Engineer. CM/GC shall prepare, circulate, and maintain weekly meeting minutes, including 3-week look-ahead schedules, in addition to separate logs for Requests for Information (RFIs), Submittals, Change Orders, contingency use, buyout, critical delivery tracking, and permit tracking.

§ 3.3.4 Cost Control

The CM/GC 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 CM/GC shall identify variances between actual and estimated costs and report the variances to the Owner and Engineer, and shall provide this information in its monthly reports to the Owner and Engineer, in accordance with the Contract Documents. Reporting of variances is for accounting purposes only and shall not constitute a Notice of Claim.

ARTICLE 4 OWNER'S RESPONSIBILITIES

§ 4.1 Information and Services Required of the Owner

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

§ 4.1.2 The Owner shall establish and periodically update the Owner's budget for the entire Project, including (1) the budget for the Cost of the Work as defined in Article 7, (2) the Owner's other costs, (3) Owner's budget for different scopes of work, and (4) 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 CM/GC and Engineer. The Owner and the Engineer, in consultation with the CM/GC, shall thereafter agree to a corresponding change in the Project's scope and quality.

§ 4.1.3 **Structural and Environmental Tests, Surveys and Reports.** During the Preconstruction Phase and if applicable, 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 CM/GC's performance of the Work with reasonable promptness after receiving the CM/GC's written request for such information or services. The CM/GC shall be entitled to reasonably rely on the accuracy of information and services furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

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

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

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

§ 4.1.4 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 CM/GC's performance of the Work with reasonable promptness after receiving the CM/GC's written request for such information or services.

§ 4.1.5 The Owner, the Engineer, and the Engineer's Consultants shall not be liable for any claims damages or costs resulting from CM/GC's performance of Work under this Agreement, including but not limited to: GMP and unit price escalation, means and methods of construction including site and public safety, delays caused by CM/GC or their suppliers or subcontractors, any special, indirect, incidental, or consequential damages, performance of the Work itself, or any other liability. CM/GC will indemnify, defend, and hold the Owner, Engineer, and the Engineer's Consultants harmless from the aforementioned, except to the extent caused directly by Owner, Engineer, or Engineer's Consultants negligence in the performance of their services directly associated with the Project.

ARTICLE 5 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

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

- [« »] The date of this Agreement.
- [« »] A date set forth in a notice to proceed issued by the Owner as set forth in Section 4.1.1.
- [« X »] Established as follows:

CM/GC shall commence Preconstruction Services as of the date of this Agreement. CM/GC shall commence Construction Phase Work within _____ (____) days of receipt of a full, unrestricted Notice to Proceed issued by the

Owner, and issuance of the first, partial, or full permit for construction. The Owner may issue Letters of Authorization or limited notices to proceed for early Work or long lead items prior to issuance of a full, unrestricted Notice to Proceed. Owner's ability to issue a full Notice to Proceed is contingent upon availability of financing for the Project. Should the Owner's financing fail to be available as anticipated for any reason, this Agreement shall be null and void and the parties hereto shall have no further obligations to each other, except for work or materials previously approved or ordered in writing by Owner through a Letter of Authorization or Limited Notice to Proceed and for authorized preconstruction services.

§ 5.2 The Contract Time shall be measured from the date of commencement of the Construction Phase Work.

§ 5.3 Substantial Completion

§ 5.3.1 Subject to adjustments of the Contract Time as provided in the Contract Documents, the CM/GC shall achieve Substantial Completion of the entire Work:

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

[] Not later than «To be established in the GMP Amendment» calendar days from the date of commencement of the Work. Estimated Substantial Completion of the Work: [insert date]

[] By the following date: « »

§ 5.3.2 If the CM/GC fails to achieve Substantial Completion of Final Completion as provided in this Section 5.3, liquidated damages, if any, shall be assessed as set forth in Section 6.2.1.6.

§ 5.3.3 The CM/GC shall achieve Final Completion within thirty (30) days of the Substantial Completion Date established in the GMP Amendment, subject to adjustments of the Contract Time as provided in the Contract Documents, unless otherwise set forth in the Agreement.

ARTICLE 6 COMPENSATION AND PAYMENTS

§ 6.1 Compensation for Preconstruction Phase Services

§ 6.1.1 For the CM/GC's Preconstruction Phase services described in Sections 3.1 and 3.2, the Owner shall compensate the CM/GC as follows:

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

«Time and materials to a Not to Exceed amount of \$ [insert amount]. See Exhibit B Cost of the Work for allowable costs for preconstruction services. »

§ 6.1.2 The allowable billing rates for Preconstruction Phase services of the CM/GC and the CM/GC's Consultants and Subcontractors are set forth in Exhibit B Cost of the Work.

§ 6.1.3 Payments for Preconstruction Phase Services

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

§ 6.1.3.2 Payments are due and payable within thirty (30) days after receipt of CM/GC's invoice.

§ 6.2 Compensation for Construction Phase Services and Work

§ 6.2.1 Contract Sum

§ 6.2.1.1 The Owner shall pay the CM/GC the Contract Sum in current funds for the CM/GC's performance of the Contract after execution of the Guaranteed Maximum Price Amendment or for the performance of any Construction Phase Work provided pursuant to a Letter of Authorization or early work/limited Notice to Proceed. The Contract Sum is the Cost of the Work as defined in Article 7 plus the CM/GC's Fee.

§ 6.2.1.2 The CM/GC's Fee:

«§ 6.2.1.2.1 The CM/GC's Fee shall be _____ percent (____%) of the Cost of the Work, as defined in Article 7. The CM/GC's Fee is expressly understood to include, but is not limited to, any and all home office costs and overhead, margins, profit, and economic impact associated with the Project and Work.

§ 6.2.1.2.2 There shall be no CM/GC's Fee or mark-up paid on the value of Work attributable to errors, omissions, or fault of the CM/GC.

§ 6.2.1.2.3 All self-performed Work must be agreed upon in advance and in writing by Owner. Unless specifically agreed in advance and in writing by Owner, amounts for overhead and profit on Work self-performed by the CM/GC may not exceed CM/GC's Fee percentage set forth in this Section. All self-performed Work will be billed at actual labor rates as provided in **Exhibit Q**. Should the Owner agree to allow the CM/GC to self-perform Work, at its discretion Owner may require the CM/GC to provide sealed bids to be returned to Owner for scopes of work. ».

§ 6.2.1.3 The method of adjustment of the CM/GC's Fee for changes in the Work:

« CM/GC's Fee on Change Orders shall applied to both additive and deductive Change Orders. The CM/GC's Fee is expressly understood to include, but is not limited to, any and all home office costs and overhead, margins, profit, and economic impact (for itself and its Subcontractors) associated with the changed Work.

In calculating equitable adjustments for changes in the Work, no adjustment shall be included for CM/GC or Subcontractor indirect "general conditions" costs unless there is a change in the Contract Time, or a substantial change in the Schedule for the Work, or the CM/GC or Subcontractor reasonably demonstrates to the Owner it will incur additional or less indirect general conditions costs as a result of the change.»

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

« Fee for each Subcontractor(s) and sub-tier Subcontractor(s) shall not exceed 15% and 20% in aggregate, without prior written approval by Owner. »

§ 6.2.1.5 Rental rates for CM/GC-owned equipment are set forth in **Exhibit J** and shall not exceed « sixty » percent (« 60 » %) of the standard rental rate paid at the place of the Project.

§ 6.2.1.6 Liquidated damages, if any:

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

§ 6.2.1.6.1 The parties agree that (a) Owner will be damaged if CM/GC does not achieve Substantial Completion of the entire Work within the period of time set forth herein this Agreement for Substantial Completion, (b) such damages will be difficult to ascertain, and (c) the amounts set forth below are a reasonable approximation of the damages that Owner would sustain if Substantial Completion is delayed. The sums described below are: (1) liquidated damages and not a penalty, and (2) agreed to in order to avoid costly and lengthy litigation which would otherwise be required. The Owner may deduct all damages due it under this Section from any unpaid amounts then or thereafter due to the CM/GC under this Agreement. Any damages over and above unpaid amounts, and not so deducted, shall be payable by CM/GC to Owner upon Owner's demand. The liquidated damages provision herein is intended to be in addition to every other remedy enforceable at law, equity, or under this Contract, including without limitation the right to collect actual damages in any case where liquidated damages are unenforceable or otherwise unavailable. This Section shall survive termination of this Agreement.

§ 6.2.1.6.2 If CM/GC does not achieve Substantial Completion of the entire Work within the period of time set forth in this Agreement for Substantial Completion, liquidated damages will accrue as follows:

[OPTIONS: _____ dollars (\$ _____) per calendar day for each day Substantial Completion of the entire Project Work is delayed.

(a) 1-30 days: \$ _____ .00 per calendar day; and (b) for every additional 30-day period until Substantial Completion is reached, the Liquidated Damages amount shall be increased by \$5,000 per calendar day. By way of example, from day 31 through day 60 the Liquidated Damage amount would be \$ _____,000 per calendar day, and day 61 through day 90 the Liquidated Damage amount would be \$ _____,000 per calendar day, and so forth.]

§ 6.2.1.6.3 CM/GC understands that if Final Completion is not achieved within thirty (30) days of the Substantial Completion Date, Owner will suffer damages which are difficult to determine and accurately specify. CM/GC agrees that if Final Completion is not achieved within thirty (30) days of Substantial Completion, CM/GC shall pay to Owner _____ dollars (\$ _____) per calendar day basis as liquidated damages for each calendar day that Final Completion is delayed beyond the above-referenced number of days.

§ 6.2.1.6.4 Such liquidated damages are not a penalty but are the Owner's remedy for CM/GC-caused delay, which may be difficult to precisely calculate, which include but are not limited to: (a) additional carry costs, including interest and internal cost of funds, (b) loss of rents or revenues, (c) loss of prospective tenants or buyers of the designs/units which are to be constructed pursuant to this Agreement, (d) claims for damages due to breaches of the leases or other agreements because of failure to deliver the premises within the time periods stated in the leases, and (e) additional costs and commissions as a result of delay (collectively, the "Owner's Additional Costs"). CM/GC acknowledges that Owner's Additional Costs will increase exponentially the longer the period of delay.

§ 6.2.1.6.5 For purposes of assessment of liquidated damages under this Section, the CM/GC will be considered to have achieved Substantial Completion of the entire Project upon the occurrence of both of the following: (1) the later of Engineer's issuance of a Certificate of Substantial Completion for the entire Project or issuance of a Temporary Certificate of Occupancy for the entire Project by the appropriate authority having jurisdiction; and (2) when the total cost of the punch list items needed to be completed or corrected prior to final payment, is equal to or less than \$50,000.

[Insert any additional LD info – critical milestones, etc.]»

§ 6.2.1.7 Other:

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

§ 6.3 Guaranteed Maximum Price

§ 6.3.1 The Contract Sum is guaranteed by the CM/GC not to exceed that amount established by the GMP Amendment, all of which will be included in, and become part of, the Guaranteed Maximum Price, subject to additions and deductions by later Change Order as provided in the Contract Documents. This maximum sum is referred to in the Contract Documents as the Guaranteed Maximum Price. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the CM/GC without reimbursement by the Owner. Should Owner and CM/GC be unable to mutually agree upon the Guaranteed Maximum Price by Change Order, Owner shall have the right to terminate for convenience pursuant to Section 14.4 of the modified A201-2017, General Conditions of the Contract for Construction, but payment for Work executed and services provided shall be limited to the actual costs as allowed under this Agreement plus CM/GC's Fee.

§ 6.3.2 Any and all costs authorized and actually incurred by signed Letters of Authorization by Owner preceding the execution date of this Agreement, including preconstruction services, are to be included in the Guaranteed Maximum Price. Preconstruction services shall be billed with the first construction progress pay the CM/GC become aware of cost saving opportunities during the performance of the Work, the CM/GC shall so advise the Owner in writing in order to provide the Owner the option to minimize the final Cost of the Work. Examples include, but are not limited to, vehicles, equipment, or tools purchase versus rental, resale of structural preload materials, or surplus or recyclable consumable materials or supplies.

§ 6.3.3 The Guaranteed Maximum Price includes a construction contingency of _____ percent (%) of the Cost of the Work, which is for the CM/GC's use in addressing unanticipated Costs of the Work within the scope of the CM/GC's responsibility ("Construction Contingency"). The CM/GC may, upon prior written authorization by the Owner before incurring the cost or performing the Work, apply an amount up to the Construction Contingency towards cost overruns, circumstances in which actual cost of an item exceeds the amount allocated to such item in the Guaranteed Maximum Price, warranty costs prior to final completion, and all costs allowed by this Agreement. The CM/GC shall provide the Owner with monthly accounting of the Construction Contingency. Documentation for contingency expenditures shall be separate from Change Order documentation. The expensing of Construction Contingency budget funds does not alter the Guaranteed Maximum Price. Any unused Construction Contingency funds shall be credited to the Owner in the form of a reduction to the Contract Sum and Guaranteed Maximum Price.

§ 6.3.4 Alternates. Alternates, if any, included in the Guaranteed Maximum Price shall be listed in the GMP Amendment. Upon acceptance of an Alternate, the Owner shall issue a Modification to this Agreement.

§ 6.3.5 Allowances. Allowances, if any, included in the Guaranteed Maximum Price shall be listed in the GMP Amendment and shall clearly indicate whether they are for labor, material, or both. Underruns and overages on

allowance items shall not be commingled. If the actual cost of an allowance item is different than the allowance, the difference shall be reflected by Change Order to the Contract Sum and Guaranteed Maximum Price.

§ 6.3.6 Assumptions. Assumptions, if any, upon which the Guaranteed Maximum Price is based will all be set forth in the GMP Amendment in **Exhibit H**.

§ 6.3.7 Letters of Authorization. Any and all costs authorized and actually incurred by signed Letters of Authorization by Owner preceding the execution date of this Agreement, including preconstruction services, are to be included in the Guaranteed Maximum Price.

§ 6.3.8 Review and Adjustment to the Guaranteed Maximum Price After Subcontractor Buyout

Within ninety (90) days execution of the Guaranteed Maximum Price Agreement for a particular Scope of Work, the CM/GC shall confirm and buyout all major Subcontractors and Suppliers ("Subcontractor Buyout"). During this period, as the CM/GC enters into written subcontracts for the Work with fixed pricing terms, the CM/GC shall prepare and maintain a Buyout Log on a line item basis that (a) identifies the specific scope of Work and CM/GC or Subcontractor or Supplier in each line item for which the pricing has been fixed, (b) the amount of such pricing, (c) the scope, (d) estimated cost of the Work for line items that are not yet fixed by written agreement, and (e) any savings or overages *from the* Guaranteed Maximum Price. To the extent that the fixed Cost of the Work for a specific line item is less than the estimated cost of the work in the Guaranteed Maximum Price, such line item shall be decreased to account for the difference in the Subcontractor Buyout. To the extent that the fixed Cost of the Work is greater than the estimated Cost of the Work for a respective line item, such line item shall be increased by such amount, if available, from an established "savings" from another line item. Any savings from buyout after adjusting all such line items at the end of the period for Subcontractor Buyout shall be transferred as follows: 50% to reduce the overall GMP and 50% transferred to the Construction Contingency. To the extent there are no savings at the end of the period for Subcontractor Buyout, the CM/GC may transfer from the Construction Contingency to "true up" the line items. Increases in excess of the Construction Contingency shall be borne by the CM/GC. The CM/GC shall provide an updated Schedule of Values showing the reduction or increase in each line item of the Schedule of Values, and shall provide an updated Contingency Transfer Log showing the changes set forth in this Section.

§ 6.3.9 Issued for Construction (IFC) Amendment. The parties understand that the GMP may be established prior to issuance of the Issued for Construction set of Construction Documents (IFC Set). Within fifteen (15) days of receipt of the IFC Set, CM/GC shall inform the Owner of any changes in the IFC Set that it believes were not reasonably inferable from the Contract Documents as of the date the GMP Amendment was executed. CM/GC's failure to so notify the Owner within such time period is waiver of any claims, costs, or Change Orders arising out of the issuance of the IFC Set. After receipt of any notice required under this Section, Owner and CM/GC shall meet to discuss the changes in the IFC Set. Owner and CM/GC may amend any GMP to include changes set forth in the IFC Set. The GMP as amended after issuance of the IFC Set (if applicable) shall include costs reasonably inferable from the Contract Documents as established by the IFC Set.

§ 6.4 Changes in the Work

§ 6.4.1 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 CM/GC may be entitled to an equitable adjustment in the Contract Time as a result of changes in the Work.

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

§ 6.4.2 Adjustments to the Guaranteed Maximum Price on account of changes in the Work subsequent to the execution of the Guaranteed Maximum Price Amendment may be determined by any of the methods listed in Article 7 of AIA Document A201™–2017, General Conditions of the Contract for Construction, as revised.

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

§ 6.4.4 In calculating adjustments to the Guaranteed Maximum Price, the terms "cost" and "costs" as used in Article 7 of AIA Document A201–2017 shall mean the Cost of the Work as defined in Article 7 of this Agreement and the term "fee" shall mean the CM/GC's Fee as defined in Section 6.2.1.2 of this Agreement.

§ 6.4.5 In no event shall the CM/GC receive any payment or compensation which would cause the Guaranteed Maximum Price to be exceeded nor shall the CM/GC be entitled to receive any compensation for extra Work, whether partially or fully completed or simply proposed, unless such additional Work is authorized by a written Change Order or Construction Change Directive signed by the Owner. The CM/GC waives the right to receive any additional compensation for extra Work which is not authorized by Change Order signed by the CM/GC and the Owner or Construction Change Directive or Unilateral Change Order signed by the Owner. This Section does not preclude the CM/GC from filing a claim for changed or differing conditions to the extent expressly allowed under other provisions of this Agreement.

ARTICLE 7 COST OF THE WORK FOR CONSTRUCTION PHASE

§ 7.1 Costs to Be Reimbursed

§ 7.1.1 The term Cost of the Work shall mean the net costs necessarily incurred by the CM/GC in the proper performance of the Work. The Cost of the Work shall include only those items set forth in this Article 7.

§ 7.1.2 Where, pursuant to the Contract Documents, any cost is subject to the Owner's prior approval, the CM/GC shall obtain such approval in writing prior to incurring the cost this approval prior to incurring the cost. The parties shall endeavor to identify any such costs prior to executing any Guaranteed Maximum Price Amendment.

§ 7.1.3 Unless otherwise specifically stated herein, costs shall be at rates not higher than the standard competitive rates paid at the place of the Project, except with prior written approval of the Owner.

§ 7.1.4 Throughout the performance of the Work, the CM/GC will seek to identify and work with the Engineer, Owner, and Owner's Representative (if any) in implementing cost savings opportunities to reduce the Cost of Work.

§ 7.2 Labor Costs

§ 7.2.1 Wages or salaries of construction workers directly employed by the CM/GC to perform the construction of the Work at the site or, with the Owner's prior approval, at off-site workshops. All labor costs shall be based on standard rates as shown in **Exhibit Q** hereto. Preconstruction labor rates are set forth in **Exhibit B**.

§ 7.2.1.1 It is the intent of the parties that neither wages nor labor burden of construction workers will include a mark-up, or an adder, for small tools or consumable supplies or any other non-labor related element of cost. The parties agree that those costs are to be directly charged to the Project at actual cost or as provided in Articles 7 and 8 of this Agreement, which shall be the same for Work under any Change Order. CM/GC shall not authorize any overtime, whether of its own workers or of its Subcontractors of any tier and their workers, without the prior written consent of the Owner. Such overtime will not increase the CM/GC's Fee under this Agreement without Owner's prior written approval. The CM/GC shall include a comparable provision in its subcontracts with its Subcontractors. See **Exhibit Q** hereto for approved labor/trade rates.

§ 7.2.2 Wages or salaries of the CM/GC's supervisory and administrative personnel when stationed at the site (or for supervisory personnel as a result of social distancing at the home office or employee's home) and performing Work, with the Owner's prior approval, and only for that portion of the time required for the Work.

§ 7.2.3 Wages or salaries of the CM/GC's supervisory or administrative personnel engaged at any location, including in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.

§ 7.2.4 Costs paid or incurred by the CM/GC, as required by law or collective bargaining agreements, for taxes , insurance, contributions, assessments, and benefits and, for personnel not covered by collective bargaining agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Sections 7.2.1 through 7.2.3.

§ 7.2.5 Costs for vacations, holidays, and sick leave shall be prorated to the Cost of the Work of this Project based on the time spent by each person on this Project as opposed to other projects as part of CM/GC's fully burdened rates set forth in **Exhibits Q/B**.

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

§ 7.3 Subcontract Costs

Payments made by the CM/GC to Subcontractors in accordance with the requirements of the subcontracts, but in no event shall markup on Subcontractors' and sub-Subcontractors' changed work exceed fifteen percent (15%) or an aggregate of twenty percent (20%). Any aggregate markup on Subcontractors' and sub-Subcontractors' changed work that exceed such amount shall not be considered a Cost of the Work and shall not be paid for or reimbursed by Owner. Labor rates per the self-performed labor schedule attached (**Exhibit Q**). Self-performed work is subject to fees and mark-ups noted in Section 6.2.1.2.3.

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

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

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

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

§ 7.5.1 Costs of transportation, storage, installation, dismantling, maintenance, and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the CM/GC at the site and fully consumed in the performance of the Work. For all items over \$1,000, CM/GC shall provide an itemized list to the Owner detailing all such items, including a full description and cost. Costs of materials, supplies, temporary facilities, machinery, equipment, and tools, that are not fully consumed, shall be based on the cost or value of the item at the time it is first used on the Project site less the value of the item when it is no longer used at the Project site. Costs and value for items not fully consumed by the CM/GC shall mean fair market value. Small tools and equipment owned or purchased by the CM/GC and charged to or included in the Cost of the Work, 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 CM/GC. Any amount realized from such sales shall be credited to the Cost of the Work. Any and all office equipment or supplies charged to the Cost of the Work shall become the property of the Owner upon completion of the Work or, at Owner's direction, shall be sold by the CM/GC and the proceeds credited to the Cost of the Work

§ 7.5.2 Rental charges for temporary facilities, jobsite office and shanties, machinery, equipment, and hand tools not customarily owned by construction workers that are provided by the CM/GC at the site, and the costs of transportation, installation, dismantling, minor repairs, and removal of such temporary facilities, machinery, equipment, structures, and hand tools. The cost of all CM/GC-owned rental equipment, materials, or temporary structures shall include insurance, repair and maintenance costs, except wear and tear. Rental equipment shall be obtained from the lowest cost rental source, whether it is the CM/GC or a third party.

§ 7.5.2.1 The total rental cost of any CM/GC-owned item shall not exceed 60% of the replacement cost of any comparable item. Rates and quantities of equipment owned by the CM/GC, or a related party as defined in Section 7.8, shall be subject to the Owner's prior approval and shall be in compliance with Section 5.1.4. Owner shall have the right to the purchase such equipment through the CM/GC at fair market value as an added Cost of the Work. Tool rental charges shall not be charged to the Cost of Work once the replacement value of the tool has been reached.

§ 7.5.2.2 Within fourteen (14) days after the Notice to Proceed and prior to the first Application for Payment, will prepare an Excel spreadsheet that shows each piece of equipment to be rented to the project and will include a unique equipment identification number, a definitive equipment description, date on site, date off site, replacement costs, stand-by rate, monthly rate pro-rated to daily, days billing per month, this month billing calculation and

cumulative billing to date, maximum rental allowed. This spreadsheet will be included in Excel format if requested by Owner.

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

§ 7.5.4 Costs of document reproductions, facsimile transmissions, postage and parcel delivery charges, internet service at the site, and reasonable petty cash expenses of the site office, including general office equipment and supplies.

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

§ 7.6 Miscellaneous Costs

§ 7.6.1 Premiums for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to this Contract. Self-insurance for either full or partial amounts of the coverages required by the Contract Documents, with the Owner's prior written approval. Costs of the CM/GC's liability insurance shall be charged at actual costs, not to exceed [REDACTED] % of the Cost of the Work. Builder's Risk insurance, if required by the Contract Documents, shall be charged at actual costs not to exceed [REDACTED] %. No CM/GC Fee shall be paid on insurance costs.

§ 7.6.1.2 Should Owner add the requirement of Payment and Performance Bond(s), the cost thereof shall be charged at actual cost not to exceed [REDACTED] % in total of the Cost of the Work. No CM/GC Fee shall be paid on Bond costs.

§ 7.4.1.3 Should the CM/GC or any Subcontractor tender a retainage bond in lieu of retainage, any such Retainage Bond shall not be considered a Cost of the Work and the costs associated with any such bond shall be borne solely by the CM/GC and/or Subcontractor. CM/GC shall require any such Subcontractor requesting a retainage bond to separately list the cost of such bond from its bid to ensure such costs are exclude.

§ 7.6.2 Sales, use, or similar taxes imposed by a governmental authority, that are related to the Work and for which the CM/GC is liable. For the avoidance of doubt, similar taxes as used in this Agreement does not include Oregon CAT.

§ 7.6.3 Fees and assessments for other permits, licenses, and inspections for which the CM/GC is required by the Contract Documents to pay. Owner shall pay for the design permit, for design and street improvement fees and permits, and city connection and utility franchise connection fees. CM/GC shall pay for all trade-related and design-build permits and deferred submittals as well as all permits related to site utilization.

§ 7.6.4 Owner shall pay Fees of laboratories for tests and inspections required by the Contract Documents, which may include those required by the Owner's testing agents, geotechnical inspections required by the Owner's testing agents, environmental testing for soils and dewatering. required for the Work, except those related to defective or nonconforming Work for which reimbursement is excluded under Article 13 of AIA Document A201-2017 or by other provisions of the Contract Documents, and which do not fall within the scope of Section 7.7.3. All other tests and inspections required by the Contract Documents are CM/GC's responsibility.

§ 7.6.5 Royalties and license fees paid for the use of a particular design, process, or product required by the Contract Documents.

§ 7.6.5.1 The cost of defending suits or claims for infringement of patent rights arising from requirements of the Contract Documents, payments made in accordance with legal judgments against the CM/GC resulting from such suits or claims, and payments of settlements made with the Owner's written consent, unless the CM/GC had reason to believe that the required design, process or product was an infringement of a copyright or a patent, and the CM/GC failed to promptly furnish such information to the Engineer as required by Article 3 of AIA Document A201-2017. The costs of legal defenses, judgments, and settlements, shall not be included in the Cost of the Work used to calculate the CM/GC'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 or other provisions of the Contract Documents, then they shall not be included in the Cost of the Work.

§ 7.6.6 Unless otherwise included in CM/GC's labor burden, costs for communications services, electronic equipment, and software, directly related to the Work and located at the site, with the Owner's prior written approval.

§ 7.6.7 Deposits lost for causes other than the CM/GC's negligence or failure to fulfill a specific responsibility or requirement in the Contract Documents.

§ 7.6.8 Subject to the Owner's prior written approval, expenses incurred in accordance with the CM/GC's standard written personnel policy for relocation and temporary living allowances of the CM/GC's personnel required for the Work.

§ 7.6.9 Upon Owner's prior written approval, that portion of the reasonable expenses of the CM/GC's supervisory or administrative personnel incurred while traveling in discharge of duties connected with the Work.

§ 7.7 Other Costs and Emergencies

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

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

§ 7.7.3 Costs of repairing or correcting damaged or nonconforming Work executed by the CM/GC, Subcontractors, or suppliers shall not be a reimbursable cost. However, the correction of any work which is damaged by any event actually covered by any available insurance will be paid for from the proceeds of such insurance.

§ 7.8 Related Party Transactions

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

§ 7.8.2 If any of the costs to be reimbursed arise from a transaction between the CM/GC and a related party, the CM/GC shall notify the Owner of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction in writing, then the cost incurred shall be included as a cost to be reimbursed, and the CM/GC shall procure the Work, equipment, goods, or service, from the related party, as a Subcontractor, according to the terms of Article 10. If the Owner fails to authorize the transaction in writing, the CM/GC shall procure the Work, equipment, goods, or service from some person or entity other than a related party according to the terms of Article 10.

ARTICLE 8 COSTS NOT TO BE REIMBURSED

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

- .1 Salaries and other compensation of the CM/GC's personnel stationed at the CM/GC's principal office or offices other than the site office, except as specifically provided in Section 7.2, or as may be provided in Article 15;
- .2 Bonuses, profit sharing, incentive compensation, and any other discretionary payments, paid to anyone hired by the CM/GC or paid to any Subcontractor or vendor, unless the Owner has provided prior approval;
- .3 Expenses of the CM/GC's principal office and offices other than the site office;
- .4 Overhead and general expenses, except as may be expressly included in Article 7;
- .5 The CM/GC's capital expenses, including interest on the CM/GC's capital employed for the Work;
- .6 Costs due to the default, willful misconduct of, negligence of, or failure to fulfill a specific responsibility of the Contract by, the CM/GC, Subcontractors, and suppliers, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, except to the extent any such costs are covered by available insurance;
- .7 Any cost not specifically and expressly described in Article 7;

- .8 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded;
- .9 Costs associated with CM/GC or Subcontractor procuring a Retainage Bond;
- .10 Adjustments to the labor rates of the CM/GC's or Subcontractor's personnel; and
- .11 Food or entertainment, unless specifically agreed to in writing by Owner.
- .11 Costs for services incurred during the Preconstruction Phase [**use where applicable**].

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

ARTICLE 9 DISCOUNTS, REBATES AND REFUNDS

§ 9.1 CM/GC shall provide Owner with seven (7) days' prior written notice of any potential discounts, rebates, or refunds and an opportunity to furnish funds necessary to obtain the same. Cash discounts, rebates, and refunds obtained on payments made by the CM/GC shall accrue to the Owner if (1) before making the payment, the CM/GC included the amount to be paid, less such discount, in an Application for Payment and received payment from the Owner, or (2) the Owner has deposited funds with the CM/GC with which to make payments; otherwise, cash discounts shall accrue to the CM/GC. Trade discounts, rebates, refunds, and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the CM/GC shall make provisions so that they can be obtained.

§ 9.2 Amounts that accrue to the Owner in accordance with the provisions of Section 9.1 shall be credited to the Owner as a deduction from the Cost of the Work.

ARTICLE 10 SUBCONTRACTS AND OTHER AGREEMENTS

§ 10.1 Those portions of the Work that the CM/GC does not customarily perform with the CM/GC's own personnel shall be performed under subcontracts or by other appropriate agreements with the CM/GC. The Owner may designate specific persons from whom, or entities from which, the CM/GC shall obtain bids. For Work exceeding \$25,000 in value and where possible, the CM/GC shall obtain bids from at least three (3) qualified Subcontractors, and from suppliers of materials or equipment fabricated especially for the Work, who are qualified to perform that portion of the Work in accordance with the requirements of the Contract Documents, unless otherwise agreed to by the Owner. The CM/GC shall deliver such bids to the Engineer and Owner with an indication as to which bids the CM/GC intends to accept. In addition, CM/GC shall provide a detailed bid analysis and bid comparison from each trade in excess of \$25,000. The Owner then has the right to review the CM/GC's list of proposed Subcontractors and suppliers in consultation with the Engineer and, subject to Section 9.1.1, to object to any Subcontractor or supplier. The CM/GC shall not execute any agreements with Subcontractors or suppliers of material or equipment prior to receiving written approval from Owner that CM/GC has been released to buy out the work and execute agreements with Subcontractors and suppliers of material or equipment. Any advice of the Engineer, or approval or objection by the Owner, shall not relieve the CM/GC of its responsibility to perform the Work in accordance with the Contract Documents.

§ 10.1.1 Bids shall only be obtained from companies pre-qualified by CM/GC to ensure the company is financially responsible, has successfully completed equivalent work for others in a quality manner, and has adequate resources and staff. CM/GC will provide to Owner a monthly buyout log of subcontracts. The Owner shall then determine, with the advice of the CM/GC and Engineer, which bids will be accepted. Any advice of the Engineer, or approval or objection by the Owner, shall not relieve the CM/GC of its responsibility to perform the Work in accordance with the Contract Documents. The CM/GC shall not be required to contract with anyone to whom the CM/GC has reasonable objection, provided the CM/GC objects in writing within seven (7) days.

§ 10.1.2 Relative to the Owner's receipt of the bid analysis spreadsheets, as described in in this Section, it shall be understood that the Owner will not have responsibility to review or respond to any of the technical aspects of the bids or bidders qualifications, or determine whether all bids are complete and in compliance with the Contract Documents. The Owner is relying exclusively on the CM/GC's expertise in such review and analysis, and filling holes, coordination of bids with other trades, and establishing the GMP. Under no circumstance shall any Owner review relieve the CM/GC of obligations under the Contract Documents.

§ 10.1.3 CM/GC shall notify Owner if it intends to self-perform any Work and obtain prior written consent in accordance with this Agreement. CM/GC shall bid all Work prior to self-performing any Work if such Work is not customarily performed with CM/GC's own personnel. Should the Owner agree to allow the CM/GC to self-perform

Work, at its discretion Owner may require CM/GC to provide sealed bids to be returned to Owner for scopes of work. Self-performed work is subject to the fees and markup noted in this Agreement.

§ 10.1.4 When a specific Subcontractor or supplier (1) is recommended to the Owner by the CM/GC; (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 CM/GC may require that a Change Order be issued to adjust the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the CM/GC and the amount of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

§ 10.2 Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement, and shall not be awarded on the basis of cost plus a fee without the Owner's prior written approval. If a subcontract is awarded on the basis of cost plus a fee, the CM/GC 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 CM/GC in Article 11.

ARTICLE 11 ACCOUNTING RECORDS

The CM/GC shall keep full and detailed records concerning all aspects of the Work 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 CM/GC's project records and accounts, including, but not limited to, complete documentation supporting accounting entries, books, job cost reports, correspondence, e-mails, photos, schedules, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, Subcontractor's invoices, purchase orders, vouchers, memoranda, and other data relating to this Contract and the Work. The CM/GC shall be required to provide job cost transaction detail in a form compatible with Microsoft Excel. The CM/GC shall preserve these records for a period of three (3) years after final payment, or for such longer period as may be required by law. Additionally, at any time during this Agreement or up to one (1) year following termination or completion of this Agreement, Owner may request copies of any portion of CM/GC's financial books and records pertaining to the Project and/or elect to conduct an audit of such books and records. All such books and records of the CM/GC must be made available for inspection and copying by Owner at an office of CM/GC within ten (10) miles of the Project and will be subject to audit examination by the Project auditor designated by Owner. The cost of the audit will be paid for by Owner unless the audit reveals an overpayment by Owner of more than one-half percent (0.5%) in the reported Cost of Work, in which case the CM/GC will pay for all costs associated with the audit. In the event the CM/GC submits a Claim under the terms of this Agreement and the Owner requests an audit in response to such Claim, should CM/GC fail to provide the information set forth in this Section within thirty (30) days' of Owner's request, CM/GC's failure shall result in a complete waiver and release of any claimed amount for costs for which back-up documentation was not provided.

ARTICLE 12 PAYMENTS

§ 12.1 Progress Payments

§ 12.1.1 Based upon Applications for Payment submitted to the Owner by the CM/GC, and Certificates for Payment, the Owner shall make progress payments on account of the Contract Sum to the CM/GC as provided below and elsewhere in the Contract Documents.

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

« »

§ 12.1.3 Provided that a draft Application for Payment with substantiation is received by the Owner not later than the 25th day of a month and a complete Final and approved Application for Payment is received by the Owner not later than the last day of a month, the Owner shall make payment of the amount certified to the CM/GC not later than the 14th day of the next month. If a final, approved Application for Payment is received by the Owner after the application date fixed above, payment shall be made by the Owner not later than fourteen (14) days after the Owner receives the Application for Payment.

§ 12.1.4 With each Application for Payment, the CM/GC shall submit payrolls, invoices, and any other evidence required by the Owner or Owner's lender to demonstrate that payments already made by the CM/GC on account of

the Cost of the Work equal or exceed progress payments already received by the CM/GC, plus payrolls for the period covered by the present Application for Payment, less that portion of the progress payments attributable to the CM/GC's Fee. Each Application for Payment shall be accompanied by CM/GC's Interim Lien/Claim Waiver. The Interim Lien/Claim Waiver shall be in a form acceptable to Owner and include a Conditional Release for labor, services, equipment, materials furnished and/or claims for which the CM/GC is entitled to be paid and an Unconditional Release for the entire amount for which the CM/GC has received payment.

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

§ 12.1.5.1 The Schedule of Values shall be prepared in such form and supported by such data to substantiate its accuracy as the Engineer or Owner may require. The Schedule of Values shall be used as a basis for reviewing the CM/GC's Applications for Payment.

§ 12.1.5.2 The allocation of the Guaranteed Maximum Price under this Section 12.1.5 shall not constitute a separate guaranteed maximum price for the Cost of the Work of each individual line item in the schedule of values.

§ 12.1.5.3 When the CM/GC allocates costs from a contingency to another line item in the schedule of values, the CM/GC shall submit supporting documentation.

§ 12.1.6 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 CM/GC on account of that portion of the Work and for which the CM/GC has made payment or intends to make payment prior to the next Application for Payment, by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the Schedule of Values.

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

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

- .1 That portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the most recent Schedule of Values;
- .2 That portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction or, if approved in writing in advance by the Owner, suitably stored off the site at a location agreed upon in writing;
- .3 That portion of Construction Change Directives that the Owner determine to be reasonably justified; and
- .4 The CM/GC's Fee, computed upon the Cost of the Work described in the preceding Sections 12.1.7.1.1 and 12.1.7.1.2 at the rate stated in in this Agreement or, if the CM/GC's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work included in Sections 12.1.7.1.1 and 12.1.7.1.2 bears to a reasonable estimate of the probable Cost of the Work upon its completion.

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

- .1 The aggregate of any amounts previously paid by the Owner;
- .2 The amount, if any, for Work that remains uncorrected and for which the Owner has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A201-2017;
- .3 Any amount for which the CM/GC does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the CM/GC intends to pay;

- .4 For Work performed or defects discovered since the last payment application, any amount for which the Owner may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A201–2017;
- .5 The shortfall, if any, indicated by the CM/GC in the documentation required by Section 12.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner’s auditors in such documentation; and
- .6 Retainage withheld pursuant to Section 12.1.8.

Following Final Completion, CM/GC shall be paid all retainage along with Owner’s final payment, exclusive of sums legitimately withheld.

§ 12.1.8 Retainage

§ 12.1.8.1 For each progress payment made prior to Substantial Completion of the Work, the Owner may withhold the following amount, as retainage, from the payment otherwise due:

« Five percent (5%). »

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

§ 12.1.8.1.1 Early release of retention may be granted on a case-by-case basis in Owner or its Lender’s sole and absolute discretion, and then only after receipt of notice from a Subcontractor that all of its work on the Project is fully complete. Any such early release of retention shall only be made after satisfactory completion and acceptance of all of the requesting Subcontractor’s work by the Owner, CM/GC, and Engineer, sign-off on all inspections associated with such work, receipt of any approvals from the authority having jurisdiction to the extent required for any associated work, and receipt and acceptance of all required close-out documents specific to the individual scope of work, including certificates of insurance for completed operations and final lien releases.

§ 12.1.8.2 Regardless of any early release of retention, all warranty time periods related to all Subcontractor’s Work or Supplier’s materials and/or equipment shall not begin until all Work for the entire Project has achieved Substantial Completion, regardless of whether final payment has been made by Owner or CM/GC to such Subcontractor or Supplier. All Subcontractors and Suppliers shall be bound to the provisions of the Contract Documents related to correction of Work prior to Substantial Completion of the entire Project, regardless of whether retention has been released and final payment to that Subcontractor or Supplier made.

§ 12.1.8.3 Owner and CM/GC agree that amounts withheld as retainage are not required to be deposited in an interest-bearing escrow account, and CM/GC waives the interest-bearing escrow account requirement under ORS 701.420. CM/GC agrees to use commercially reasonable efforts to include similar waivers in its subcontract agreements with all Subcontractors. If one or more Subcontractors refuse to waive the interest-bearing escrow account requirement of ORS 701.420, CM/GC will notify Owner and Owner and CM/GC will arrange for the retainage for that/those Subcontractors to be deposited in an interest-bearing account. If the Owner requires the CM/GC to open the interest-bearing account, the CM/GC shall be entitled to an increase in the Guaranteed Maximum Price for the cost associated with doing so (which also shall be reimbursable as a Cost of the Work).

§ 12.1.9 Except with the Owner’s prior written approval, the CM/GC shall not make advance payments to suppliers for materials or equipment which have not been delivered and suitably stored at the site.

§ 12.1.10 Each Application for Payment shall be accompanied by CM/GC’s Interim Lien/Claim Waiver. The Interim Lien/Claim Waiver shall be in a form identical to that shown in **Exhibit L** hereto and include a Conditional Release for labor, services, equipment, materials furnished and/or claims for which the CM/GC is entitled to be paid and an Unconditional Release for the entire amount for which the CM/GC has received payment. The Interim Lien/Claim Waiver shall not include any retainage or items furnished after the period covered by the Application for Payment.

§ 12.1.11 Attached to each Application for Payment for Progress Payments shall be the following, along with any additional information required by the Owner, its lender, or the Contract Documents:

- .1 Schedule of Values coordinated with back-up and the approved Certificate for Payment;
- .2 labor substantiation in the form of an accounting reports with names, weekly hours and dates;
- .3 material substantiation in the form of an actual invoice;
- .4 Subcontractor substantiation in the form of copies of their pay applications;

- .5 retention report showing owed, released, proposed for that current month;
- .6 executed Interim Lien Waiver and Release in a form approved by Owner from CM/GC, as noted above;
- .7 executed Interim Lien Waiver and Releases in a form approved by Owner from each first tier Subcontractors and suppliers, all those sending right to lien notices and any others the Owner may reasonably request;
- .8 updated Schedule;
- .9 buyout log;
- .10 Progress Report with pictures;
- .11 deficiency log;
- .12 cost variance or other documents requested by Owner; and
- .13 detail job cost report.

§ 12.1.12 The Owner and the CM/GC shall agree in writing upon a mutually acceptable procedure for review and approval of payments to Subcontractors, and the percentage of retainage held on Subcontracts, which shall not exceed the amount set forth above, and the CM/GC shall execute subcontracts in accordance with those agreements.

§ 12.1.13 In taking action on the CM/GC's Applications for Payment the Owner shall be entitled to rely on the accuracy and completeness of the information furnished by the CM/GC, and such action shall not be deemed to be a representation that the Owner (1) has made a detailed examination, audit, or arithmetic verification, of the documentation submitted in accordance with Section 12.1.4 or other supporting data; (2) has made exhaustive or continuous on-site inspections; or (3) has made examinations to ascertain how or for what purposes the CM/GC 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.

§ 12.1.14 In addition to its other rights of withholding, if CM/GC has not achieved Substantial Completion by the time required, Owner may withhold and retain all further payments until Substantial Completion is achieved.

§ 12.1.15 If Owner obtains construction financing, Pay Application submission and payments date, as well as information and documentation required to be provided by CM/GC, shall be coordinated with the lending requirements of Owner's lender or financing partner, including any required procedures regarding loan draws. CM/GC agrees to be bound by any such procedures and this Agreement shall automatically be deemed to fully incorporate such requirements, which shall supersede any contradictory provisions of this Section 12.1 such that the more stringent condition or longer periods of time shall apply.

§ 12.2 Final Payment

§ 12.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the CM/GC when

- .1 the CM/GC has fully performed the Contract (including but not limited to those items set forth in Section 9.10 of AIA Document A201-2017) and all other closeout requirements, except for the CM/GC's responsibility to correct Work as provided in Article 12 of AIA Document A201-2017, and to satisfy other requirements, if any, which extend beyond final payment;
- .2 the CM/GC has submitted a final accounting for the Cost of the Work and a final Application for Payment, including final lien releases from itself and all Subcontractor and suppliers;
- .3 a final Certificate for Payment has been issued by the Owner;
- .4 CM/GC has completed all requirements and submitted all documentation required by the Contract Documents for close out;
- .5 all warranties, as-built drawings, and operation and maintenance manuals have been completed and delivered to the Owner; and
- .6 a final Certificate for Payment has been issued in accordance with Section 12.2.2.2.

§ 12.2.2 The Owner will review and report in writing on the CM/GC's final accounting after delivery of the final accounting by the CM/GC, which will occur no later than 45 days after the later of: (a) the date the Owner received a final billing statement from the CM/GC, (b) the date that a certificate of occupancy is issued on the Project for all Scopes of Work or if no certificates of occupancy are to be issued, then the date all final inspections have been passed), (c) the date of Final Acceptance, (d) the date the permitting authority allows complete occupancy or use of the Project, or (e) the date the CM/GC accepts the final pay quantities. Based upon such Cost of the Work as the Owner's auditors report to be substantiated by the CM/GC's final accounting, and provided that the other conditions

of Section 12.2.1 have been met, the Owner will either issue to the Owner a final Certificate for Payment with a copy to the CM/GC, or notify the CM/GC and Owner in writing of the reasons for withholding a certificate as provided in Article 9 of AIA Document A201–2017. The time periods stated in this Section 12.2.2 supersede those stated in Article 9 of AIA Document A201–2017. The Owner is not responsible for verifying the accuracy of the CM/GC’s final accounting.

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

§ 12.2.2.2 Within seven days after receipt of the written report described in Section 12.2.2.1, or receipt of notice that the Owner will not conduct an audit, and provided that the other conditions of Section 12.2.1 have been met, the Owner will either issue a final Certificate for Payment to the CM/GC, or notify the CM/GC in writing of the reasons for withholding a certificate as provided in Article 9 of AIA Document A201–2017. The time periods stated in this Section 12.2.2 supersede those stated in Article 9 of AIA Document A201–2017. The Owner is not responsible for verifying the accuracy of the CM/GC’s final accounting.

§ 12.2.3 If the Owner’s audit concludes that the Cost of the Work, as substantiated by the CM/GC’s final accounting, is less than claimed by the CM/GC, the CM/GC shall be entitled to request mediation of the disputed amount pursuant to Article 15 of AIA Document A201–2017. A request for mediation shall be made by the CM/GC within 30 days after the CM/GC’s receipt of a copy of the final Certificate for Payment. Failure to request mediation within this 30-day period shall result in the substantiated amount reported by the Owner’s auditors becoming binding on the CM/GC. Pending a final resolution of the disputed amount, the Owner shall pay the CM/GC the amount certified in the final Certificate for Payment.

§ 12.2.4 The Owner’s final payment to the CM/GC shall be made no later than 30 days after CM/GC’s satisfaction of this Section 12.2 and corresponding provisions in the A201. Invoices submitted after Final Payment shall not be paid and shall be deemed waived by the CM/GC, who shall indemnify, defend and hold Owner harmless from such invoices.

§ 12.2.5 If, subsequent to final payment and at the Owner’s request, the CM/GC incurs costs described in Article 7 and not excluded by Article 8, the Owner shall reimburse the CM/GC such costs and the CM/GC’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 CM/GC has participated in savings as provided in Section 6.2.1.7, 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 CM/GC.

§ 12.3 Interest

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

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

« Five percent » (5%) «per annum »

ARTICLE 13 DISPUTE RESOLUTION

§ 13.1 Any Claim between the Owner and CM/GC shall be resolved in accordance with the provisions set forth in this Article 13 and Article 15 of A201–2017.

§ 13.2 Binding Dispute Resolution

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

(Check the appropriate box.)

[] Arbitration pursuant to Section 15 of AIA Document A201–2017

[] Litigation in a court of competent jurisdiction.

[] Other *(Specify)*

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

ARTICLE 14 TERMINATION OR SUSPENSION

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

§ 14.1.1 If the Owner and the CM/GC do not reach an agreement on the initial Guaranteed Maximum Price for the Work, the Owner may terminate this Agreement as set forth in Section 6.2.1.

§ 14.1.2 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 CM/GC for the Owner's convenience and without cause. In the event of termination of this Agreement pursuant to this Section 14.1.2, the CM/GC shall be equitably compensated for Preconstruction Phase services performed prior to receipt of a notice of termination, for the Cost of the Work plus CM/GC's Fee. In no event shall the CM/GC's compensation under this Section exceed the compensation set forth in Section 6.1.

§ 14.1.3 If the Owner terminates this Agreement pursuant to Section 14.1.2 after the commencement of the Construction Phase but prior to the execution of the Guaranteed Maximum Price Amendment (pursuant to written LOAs or limited notices to proceed), the Owner shall pay to the CM/GC an amount calculated as follows, which amount shall be in addition to any compensation paid to the CM/GC under Section 14.1.2, but in no event shall such cost exceed those authorized in writing by Owner through LOA or limited notice to proceed:

- .1 Take the authorized Costs of the Work incurred by the CM/GC to the date of termination;
- .2 Add the CM/GC's Fee computed upon the authorized Cost of the Work to the date of termination at the rate stated in Section 6.2.1.2 or, if the CM/GC'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.

§ 14.1.4 The Owner shall also pay or credit toward the CM/GC fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the CM/GC that the Owner elects to retain and that is not otherwise included in the Cost of the Work. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the CM/GC shall, as a condition of receiving the payments referred to in this Article 14, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the CM/GC, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the CM/GC under such subcontracts or purchase orders. All subcontracts, purchase orders and rental agreements entered into by the CM/GC will contain provisions allowing for assignment to the Owner as described above.

§ 14.1.5 If the Owner accepts assignment of subcontracts, purchase orders or rental agreements as described above, the Owner will reimburse or indemnify the CM/GC 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 CM/GC will terminate the subcontract, purchase order or rental agreement and the Owner will pay the CM/GC the costs necessarily incurred by the CM/GC because of such termination.

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

§ 14.2.1 Termination

The Contract may be terminated in whole or in part by the Owner or the CM/GC as provided in Article 14 of AIA Document A201-2017.

§ 14.2.2 Termination by the Owner for Cause

§ 14.2.2.1 If the Owner terminates the Contract in whole or only for a particular Scope of Work for cause as provided in Article 14 of AIA Document A201-2017, the amount, if any, to be paid to the CM/GC under Article 14

of AIA Document A201–2017 shall not cause the Guaranteed Maximum Price for any Scope of Work to be exceeded, nor shall it exceed an amount calculated as follows:

- .1 Take the Cost of the Work for the terminated Scope(s) of Work incurred by the CM/GC to the date of termination;
- .2 Add the CM/GC's Fee, computed upon the Cost of the Work for each such terminated Scope of Work to the date of termination at the rates stated in this Agreement or, if such Fees are stated as a fixed sum in that Section, an amount that bears the same ratio to the fixed-sum Fees as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work for each Scope of Work upon its completion;
- .3 Subtract the aggregate of previous payments made by the Owner; and
- .4 Subtract the costs and damages incurred, or to be incurred, by the Owner under Article 14 of AIA Document A201–2017.

§ 14.2.2.2 The Owner shall also pay or credit toward the CM/GC fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the CM/GC that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Section 14.2.2.1.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the CM/GC shall, as a condition of receiving the payments referred to in this Article 14, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the CM/GC, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the CM/GC under such subcontracts or purchase orders.

§ 14.3 Suspension

The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2017; in such case, the Guaranteed Maximum Price and Contract Time shall be increased as provided in Article 14 of AIA Document A201–2017, except that the term “profit” shall be understood to mean the CM/GC's Fee.

ARTICLE 15 MISCELLANEOUS PROVISIONS

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

§ 15.2 Successors and Assigns

§ 15.2.1 The Owner and CM/GC, respectively, bind themselves, their partners, successors, assigns and legal representatives to covenants, agreements, and obligations contained in the Contract Documents. Except as provided in Section 15.2.2 of this Agreement, and in Section 13.2.2 of A201–2017, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 15.2.2 The Owner may, without consent of the CM/GC, assign the Contract to another entity owned or related to Owner, or a lender providing construction financing for the Project, if the assignee assumes the Owner's rights and obligations under the Contract Documents. The CM/GC shall execute all consents reasonably required to facilitate the assignment.

§ 15.3 Insurance and Bonds

§ 15.3.1 The Owner and the CM/GC shall purchase and maintain insurance as set forth in AIA Document A102™–2017, Standard Form of Agreement Between Owner and CM/GC where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price, **Exhibit A**, Insurance and Bonds, and elsewhere in the Contract Documents.

§ 15.3.2 The CM/GC shall provide bonds as set forth in AIA Document A102™–2017 **Exhibit A**, and elsewhere in the Contract Documents.

§ 15.4 Confidentiality.

§ 15.4.1 During the course of this Agreement, the Owner may communicate Confidential Information to the CM/GC or the CM/GC may have physical or electronic access to Confidential Information. "Confidential Information" means any and all confidential and proprietary information, whether oral or recorded in any form or medium,

concerning the Owner, its affiliates, subsidiaries, subscribers, members, applicants or other CM/GCs performing work for the Owner, including, but not limited to, the terms and conditions of this Agreement. CM/GC shall:

- .1 treat all such Confidential Information as proprietary and confidential whether or not it is identified as such;
- .2 acknowledge receipt of and comply with the terms and conditions of Owner's Confidentiality of Protected Personal Information Policy, which is incorporated by reference herein;
- .3 require that each Subcontractor performing services under this Agreement and any Work Order on behalf of the CM/GC shall attest to, acknowledge receipt of and comply with the terms and conditions of Owner's Confidentiality of Protected Personal Information Policy, which, when executed, are incorporated by reference herein;
- .4 not use any such Confidential Information for any purpose other than as specified in this Agreement;
- .5 not disclose any such Confidential Information or make available any reports, recommendations and/or work product, which CM/GC produces for the Owner to any person, firm, or corporation, without the prior written consent of the Owner;
- .6 immediately report to the Owner any improper use or unauthorized disclosure of Confidential Information;
- .7 promptly notify the Owner if the CM/GC is required by compulsory process to disclose any Confidential Information supplied to it under the terms of this Agreement prior to making any such disclosure so that the Owner may seek an appropriate protective order;
- .8 indemnify and hold harmless the Owner and its directors, officers, employees, and agents from and against any and all costs, liabilities, damages, claims, losses or expenses (including reasonable attorneys' fees) arising out of or connected to the CM/GC's unauthorized disclosure of Confidential Information to any third party;
- .9 agree to store, access, use, process, maintain and disclose Owner Confidential Information only to fulfill its obligations under the Agreement and for no other purpose. CM/GC will not transmit, send, store, or provide access to any Owner Confidential Information to any locations or persons outside of the United States; and
- .10 promptly return any Confidential Information in its possession, as well as any copies thereof, to the Owner or provide a certificate of destruction signed by an officer of the CM/GC attesting that all Confidential Information has been properly destroyed upon termination of this Agreement or at Owner's request. Notwithstanding the foregoing, CM/GC may keep one copy of the Work for its records as required by CM/GC's record retention policy.

§ 15.4.2 HIPAA. Each party shall comply with all applicable laws regarding the privacy or confidentiality of health information, including but not limited to 42 USC §1320d et seq. and its implementing regulations as currently existing and as amended ("HIPAA"). CM/GC shall execute Owner's form business associate agreement if deemed necessary by Owner. The Parties shall negotiate in good faith any additional agreements or amendments to this Agreement that may become necessary to ensure compliance with HIPAA. If after good faith negotiations the Parties are not able to agree to the terms necessary to comply with HIPAA, either party may terminate this Agreement upon written notice to the other party.

§ 15.4.3 It is mutually understood and agreed that any violation of this Section 15.4 would likely cause irreparable injury to the Owner for which it would have no adequate remedy at law and that, in addition to any other applicable remedies at law or in equity, the Owner shall be entitled to obtain injunctive relief against the threatened breach of this Section 15.4 or the continuation of any such breach, without the necessity of proving actual damages. The obligations set forth in this Section shall survive the termination of this Agreement.

§ 15.5 Representations [Insert as required for scope of Work]. By executing this Agreement CM/GC represents and warrants that:

- .1 It has neither paid, agreed to pay, nor will pay any material sums or any other material consideration to any director, officer, shareholder, partner, manager, member, employee, agent or other representative of any Owner, Owner affiliate, or Indemnitee or any affiliate of any Owner, Owner affiliate, or Indemnitee in connection with the Agreement or any Work, nor has any such payment or agreement for payment been requested or solicited by any such director, officer, shareholder, partner, member, manager, employee, agent or representative. CM/GC hereby acknowledges that it understands that any such payment or agreement would violate Owner's firm and undeviating policy, and that this representation and warranty constitutes a material inducement upon which Owner is relying in entering into and performing the Agreement.

- .2 Neither it nor, to the best of its knowledge, any of its Subcontractors have been convicted of a felony;
- .3 Neither it nor, to the best of its knowledge, any of its Subcontractors providing services have been debarred, suspended, excluded, sanctioned or otherwise disciplined by the U.S. government or any other agency or public entity in connection with CM/GC's participation in any federal program or project;
- .4 It shall conform its business practices with the professional standard of care relative to all applicable laws, statutes, codes, and regulations. CM/GC shall provide Owner with copies of all certificates, registrations and/or licenses required by federal, state, or local laws upon Owner's request.

§ 15.6 Compliance with Laws. CM/GC shall comply with applicable federal, state and municipal legal and regulatory requirements, accreditation standards and ethical and CM/GC standards relating to the Work, and CM/GC has and shall maintain in effect all the licenses, certificates, permissions, authorizations, consents and permits that it needs to carry out its obligations under this Agreement (altogether "Legal Requirements"). CM/GC also agrees to comply with all Owner policies and procedures in the course of performing the Work. CM/GC shall comply with all applicable Legal Requirements relating to the terms and conditions of employment of any person employed in connection with the Work to be performed under this Agreement. CM/GC hereby covenants by and for itself, its heirs, executors, administrators, successors, affiliates, assigns, and all persons claiming under or through CM/GC that, and this Agreement is made and accepted upon and subject to the condition that, with respect to the terms and conditions of employment of any person or entity that is employed in connection with the Work, there shall be no discrimination against or segregation of any person or group of persons on account of age, sex, sexual orientation, marital status, race, color, religion, creed, national origin or ancestry. CM/GC shall comply with any other reasonable non-discrimination and affirmative action requirements required by Owner and its assignees. Additionally, all parties shall abide by the requirements of 41 CFR 60-300.5(a). This regulation prohibits discrimination against qualified protected veterans, and requires affirmative action by covered prime CM/GCs and Subcontractors to employ and advance in employment qualified protected veterans. All parties shall abide by the requirements of 41 CFR 60-741.5(a). This regulation prohibits discrimination against qualified individuals on the basis of disability, and requires affirmative action by covered prime CM/GCs and Subcontractors to employ and advance in employment qualified individuals with disabilities.

§ 15.7 Publicity. Any publicity, press releases, advertising, printed materials, or display materials with respect to Owner, the Project and the Property shall be under the sole direction and control of Owner, and no contact or discussions by CM/GC or its Subcontractors or consultants regarding the Property shall be had with the public press or media representatives without Owner's prior written consent, which may be withheld in Owner's sole discretion.

§ 15.8 Owner's Security and Site Access Requirements. CM/GC shall comply with all reasonable security requirements of Owner, its assignees, or any affiliate thereof, and shall use its best efforts to schedule and conduct the Work to be rendered under this Agreement so as not to interfere with Owner's normal operations at any place of business of Owner that CM/GC may visit in performance of the Work to be rendered under the Agreement.

§15.9 Employee Background Checks [Insert where required for scope of Work]. CM/GC represents that it will perform a sufficient background check on any person(s) proposed for performing services under this Agreement that will have access to Owner's premises or assets and, as a result of such background check, exclude any person(s) from employment or placement in any area performing services for Owner in the following situations:

- .1 the person has a felony or misdemeanor for crimes involving dishonesty, breach of trust, insurance related offense, or violence in any county or state in which the person has resided or worked within the United States in the last seven (7) years. Crimes involving dishonesty and/or breach of trust could include arson, bribery, burglary, carjacking, crimes against children or vulnerable adults, criminal impersonation or solicitation, fraud, extortion, forgery, fraudulent use of credit or debit card, insurance fraud, issuing a bad check, kidnapping, making false statements to obtain worker's compensation benefits, perjury, possession of forged instruments, receiving stolen property, robbery, sale or distribution of controlled substance, sexual abuse, theft by deception, theft of property or services, witness/evidence tampering and more. (See 18 U.S.C. § 1033(e)).
- .2 the person is a registered sex offender as per Sex Offender Registry Check.
- .3 the person has not satisfactorily passed a FACIS (Fraud and Abuse Control Information Systems) Level 3 Search.

CM/GC shall conduct such background checks for person(s) performing services under the Agreement on a regular basis as to ensure compliance with this Section. CM/GC shall require all Subcontractors to comply with this Section.

§15.9.1 Driving Record Background Check. CM/GC warrants, upon executing this Agreement that it and its Subcontractors' employees have or maintains a valid driver's license, and do not have a felony driving conviction as per a Department of Motor Vehicle (DMV) driving record background check, if the CM/GC and its Subcontractors' employees will be driving a vehicle to provide services to or on behalf of Owner.

§ 15.10 Anti-Bribery/Corruptions Obligations. CM/GC shall at all times conduct its business in an ethical manner in compliance with all applicable laws and regulations (including, without limitation, all laws and regulations relating to corruption and bribery, importing and exporting, competition, privacy, product and consumer safety, environmental compliance, gaming, labor, wages, and worker health and safety). CM/GC acknowledges and understands that Owner is subject to laws prohibiting Owner, or those who perform services for Owner, from offering or paying any bribe or giving gifts or hospitality to anyone for the purpose of obtaining an improper business advantage. CM/GC also understands that these laws may apply regardless of where the activity occurs. Accordingly, CM/GC shall not, directly or indirectly through a third party, offer, pay, promise or authorize the offer or payment of, any financial or other benefit or advantage, or anything of value, to any person or entity: (i) to improperly obtain a business advantage or to obtain or retain business; (ii) induce the person to perform any function or activity improperly, or to provide a reward for doing so; or (iii) to corruptly influence, directly or indirectly, any act or decision of any government or official, employee, candidate for public office, council member, government or government controlled entity, or political party. CM/GC agrees to annually certify in writing upon request its compliance with this Section, and report to Owner immediately any actual or suspected violations. CM/GC shall, upon request of Owner, make its managers, representatives, or employees reasonably available to complete any training regarding bribery laws and gift policies. Owner or its auditors or representatives may at any time audit CM/GC's compliance with this Section, and CM/GC shall cooperate fully with any audit, or investigation of suspected violations.

§ 15.11 Warranty Walk Through. A warranty walk through will be conducted by the Owner and CM/GC at **11 months** [22 months] after the date of Substantial Completion.

§15.12 CM/GC shall not cause or permit, except as required by the Specifications or other Contract Documents, the presence, use, generation, release, discharge, storage, or disposal of any Hazardous Materials on, under, in or about, or the transportation of any Hazardous Materials to or from the Project, except in strict accordance with all applicable laws and regulations.

§ 15.13 Site Contamination [Include if there is or may be site remediation – otherwise delete]

The Work includes or may include handling and disposal of contaminated soils and debris, and proper analysis and treatment of contaminated groundwater at the Site. This portion of the Work will be completed in accordance with the CM/GC's Protocols regarding Site Contamination. The following provisions are applicable to this Work and take precedence over any inconsistent or contradictory provisions in the Contract Documents. However, notwithstanding any other provisions, CM/GC shall fully comply with all applicable permit requirements.

§ 15.13.1 CM/GC makes the following representations upon execution of Work containing Site Contamination:

§ 15.13.1.1 CM/GC has examined and carefully studied the Contract Documents (including the Addenda) and is fully aware of the existence of any Contaminants on the Site noted therein.

§ 15.13.1.2 CM/GC has visited the Site and become familiar with and is satisfied as to the general, local and Site conditions that may affect cost, progress, performance or furnishing of the remediation of known contaminants on the Site.

§ 15.13.1.3 CM/GC is familiar with and has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or contiguous to the Site and all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site that have been identified or made available by Owner and (2) reports and drawings of Hazardous Environmental Conditions at the Site which have been identified or made available by Owner.

§ 15.13.1.4 CM/GC is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Remediation as indicated in the Contract Documents.

§ 15.13.1.5 CM/GC is qualified and certified pursuant to Federal and State laws and regulations to work around or near Hazardous Materials, and to perform work associated with Hazardous Materials. CM/GC certifies that every person on the Site (including without limitation, CM/GC's employees, employees of Subcontractors, laborers, and materialmen) that may be exposed to site contaminants are properly trained under 29 CFR 1910.120 and applicable state laws and regulations regarding health and safety training.

§ 15.13.1.6 CM/GC has correlated the information known to CM/GC, information and observations obtained from visits to the Site, reports and drawings identified in the Contract Documents and all additional examinations, investigations, explorations, tests, studies and data with the Contract Documents and has given Owner written notice of all conflicts, errors, ambiguities or discrepancies that CM/GC has discovered in the Contract Documents and written resolutions thereof by Owner, if any, are acceptable to CM/GC.

§ 15.13.1.7 The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Remediation.

§ 15.13.2 The following defined terms will have the following defined meaning with reference to any Work relating to Site Remediation:

§ 15.13.2.1 *Contaminant* – Any substance or material that is regulated by Laws or Regulations to protect the public health or the environment due to its characteristics or as a result of its quantity or both. A contaminant may include, but is not limited to the following: Asbestos, Hazardous Substances, Hazardous Wastes, PCBs, Petroleum, or Radioactive Materials.

§ 15.13.2.2 *Hazardous Substance* - Unless otherwise defined in the Supplementary Conditions the term Hazardous Substance shall have the meaning provided in Section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. Section 9601(14)), applicable equivalent State and Local acts, and under the Model Toxics Control Act, as amended.

§ 15.13.2.3 *Hazardous Waste* - Unless otherwise defined in the Supplementary Conditions, the term Hazardous Waste shall have the meaning provided in Section 1004 of the Solid Waste Disposal Act (42 U.S.C. Section 6903), as amended and any applicable equivalent State and Local laws.

§ 15.13.2.4 *PCBs* - Polychlorinated biphenyls.

§ 15.13.2.5 *Petroleum* - Petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), such as oil, fuel oil, oil sludge, oil refuse, gasoline, kerosene, and oil mixed with other non-Hazardous Wastes.

§ 15.13.3 Owner represents that it has fully disclosed to CM/GC any information that Owner knows or has reason to suspect concerning the existence of Contaminants at the Project Site. Owner will be responsible for the additional cost to remediate any existing condition encountered at the Site that was not identified in the Contract Documents to be within the scope of the Remediation.

§ 15.13.3.1 Owner and CM/GC acknowledge that each may have legal obligations with respect to public health and safety and will cooperate with each other to help ensure compliance with these obligations.

§ 15.13.3.2 If CM/GC discovers or identifies conditions for which it reasonably believes that the Owner is legally required to provide notice to a public agency, it shall so advise Owner immediately.

§ 15.13.3.3 CM/GC will take responsibility for management of all Contaminants resulting from remediation activities. This includes but is not limited to generation, handling, storage, transportation, treatment, and arranging for transportation and disposal of waste materials from CM/GC's activities on and off the Site, including but not limited to contaminated soil and debris, contaminated groundwater, soil cuttings, drilling muds, purged ground water, decontamination fluids, disposable sampling equipment, and disposable personal protective equipment, unless CM/GC is advised in writing that such work has been specifically assigned to another entity.

§ 15.13.4 To the fullest extent permitted by law CM/GC shall indemnify and hold harmless Owner, Engineer, and its agents and representatives for, from, and against all claims, costs, losses and damages (including but not limited to

all fees and charges of engineers, Engineers, attorneys and other professionals and all court or arbitration or other dispute resolution costs) arising out of or resulting from any claim against Owner or its agents or representatives arising from (1) CM/GC's violation of any state federal or local laws and regulations relating to environmental and health and safety concerns, and (2) CM/GC's handling, storage, transportation, and disposal of waste materials or contaminated materials relating to CM/GC's activities onsite provided that nothing in this paragraph shall obligate CM/GC to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence or willful misconduct. For the purposes of the foregoing indemnification provision only, and only to the extent necessary to provide Owner with full and complete indemnity from claims made by CM/GC and its employees, CM/GC specifically waives immunity it may be granted under the any applicable worker's compensation or workman's compensation act. To the extent a court of competent jurisdiction determines that this provision is subject to ORS 30.140, it is agreed that any legal limitations on the validity and enforceability of the indemnification obligations such statute are made a part of the indemnification obligations under this section 15.14.4 to the minimum extent necessary to bring this Section into conformity with the requirements of such limitations, and as so modified, the indemnification obligation under this Section 15.14.4 shall continue in full force and effect.

§ 15.13.5 CM/GC shall promptly, and before the conditions are disturbed, give written notice to Owner of: subsurface or latent physical conditions at the Site regarding Contaminates, Hazardous Substances, or Hazardous Waste, which differ materially from those indicated in the Contract Documents, or contaminated areas or contaminated resources not disclosed in the Contract Documents.

§ 15.13.5.1 Owner will investigate the Site conditions promptly after receiving the notice set forth in Section 15.14.5. If (1) the conditions do materially so differ, or (2) there is contamination not disclosed in the Contract Documents, and either (1) or (2) cause an increase or decrease in the CM/GC's cost of performing any part of the Work or the Remediation, an equitable adjustment shall be made to the GMP upon submission of substantiating documentation of the costs, and issuance of an executed Change Order. No request by CM/GC for an increase to the GMP shall be allowed unless CM/GC has given the written notice required. If (1) the conditions do materially so differ, or (2) there is contamination not disclosed in the Contract Documents, and either (1) or (2) cause an increase or decrease in Contract Schedule, an equitable adjustment shall be made to the Schedule upon submission of substantiating documentation, and issuance of an executed Modification. No request by CM/GC for a change to the Schedule shall be allowed unless CM/GC has given the written notice required.

§ 15.13.5.2 All remediation performed by a Subcontractor or Supplier for the CM/GC will be pursuant to an appropriate written subcontract between the CM/GC and the Subcontractor or Supplier which specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract Documents for the benefit of Owner.

§ 15.13.5.3 Failure to follow the written notice requirements set forth in this Section 15.14 with regard to differing site conditions for contamination as set forth in this Section 15.14 shall constitute a complete waiver of CM/GC's Claim(s) related to differing site conditions and/or contamination.

§ 15.13.6 CM/GC shall give all notices and comply with all federal, state and local laws and regulations applicable to performance of the remediation Work, and Owner shall not be responsible for monitoring CM/GC's compliance with any such laws or regulations. If CM/GC performs any Remediation work knowing or having reason to know that it is contrary to Laws or Regulations, CM/GC shall bear all costs arising therefrom.

§ 15.13.7 CM/GC will supply protocols applicable to the remediation Work, which will be incorporated as a Contract Document. CM/GC will ensure that its employees and Subcontractors adhere strictly to those protocols while performing services under this Contract.

§ 15.13.8 CM/GC shall maintain a safe working environment during performance of any and all remediation Work and shall be fully responsible for Site health and safety. CM/GC shall comply, and shall secure compliance by its employees, agents, and Subcontractors, with all applicable federal, state and local health and safety laws and regulations, including without limitation, Federal OSHA (and specifically including 29 CFR 1910.120 and 1926.65) and State of Oregon OSHA/OOSHD (and specifically including OAR Ch. 437 and ORS Ch. 654), and equivalent laws and regulations.

§ 15.13.9 CM/GC shall prepare and implement its own Project health and safety plan, based on its health and safety program and all written programs required by Federal, State and local regulations including without limitation, a by

29 CFR 1910.120 and OAR Ch. 437, and shall bear responsibility for the completeness and accuracy of the plan. CM/GC's health and safety plan and required documentation shall be available at the Site for review by Owner, Subcontractor and regulatory personnel.

§ 15.13.10 CM/GC shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. CM/GC shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to: (1) all persons on the Site or who may be affected by the remediation; (2) all Construction and materials and equipment to be incorporated therein, whether in storage on or off the Site; and (3) other property at or adjacent to the Site, including trees, shrubs, lawns, walks, pavements, roadways, structures, utilities and underground facilities not designated for removal, relocation or replacement in the course of Construction.

§ 15.13.11 CM/GC shall comply with applicable laws and regulations for the protection of persons or property from damage, injury or loss; and shall erect and maintain all necessary safeguards for such safety and protection. CM/GC shall notify owners of adjacent property and of underground facilities and utility owners when performance of any remediation work may affect them, and shall cooperate with them in the protection, removal, relocation and replacement of their property.

§ 15.13.12 Any and all damage, injury or loss to any property referred to in Section 15.14 caused, directly or indirectly, in whole or in part, by CM/GC, or CM/GC's Subcontractor or Suppliers, or any other individual or entity directly or indirectly employed by any of them to perform or furnish any of the remediation Work or anyone for whose acts any of them may be liable, shall be remedied by CM/GC; provided that nothing in this paragraph shall waive or otherwise limit any claim that CM/GC may have for contribution, indemnification, reimbursement or additional compensation.

§ 15.13.13 CM/GC shall designate a qualified and experienced safety representative at the Site whose duties and responsibilities shall be the prevention of accidents and the maintaining and supervising of safety precautions and programs associated with the Work.

§ 15.13.14 CM/GC shall be responsible for coordinating any exchange of material safety data sheets or other hazard communication information required to be made available to or exchanged between or among employers at the Site in accordance with Laws or Regulations.

§ 15.13.15 In emergencies affecting the safety or protection of persons or the remediation of property at or adjacent to the Site, CM/GC is obligated to act to prevent threatened damage, injury or loss. CM/GC shall give Owner prompt written notice if CM/GC believes that any significant changes in the remediation Work or variations from the Contract Documents have been caused thereby or are required as a result thereof. If a change in the Contract Documents is required because of the action taken by CM/GC in response to such an emergency, a Change Directive or Change Order will be issued.

ARTICLE 16 ENUMERATION OF CONTRACT DOCUMENTS

§ 16.1 This Agreement represents the entire and integrated agreement between the Owner and the CM/GC 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 CM/GC.

§ 16.1 This Agreement is comprised of the following documents: **revise exhibits as necessary to match project/double check all references to exhibits in A102 and A201**

- .1 AIA Document A102™–2017, Standard Form of Agreement Between Owner and CM/GC
- .2 AIA Document A201™–2017, General Conditions of the Contract for Construction, as revised
- .3 The following Exhibits:

Exhibit A A102™–2017, **Exhibit A**, Insurance and Bonds

Exhibit B Preconstruction Costs and Rates

Exhibit C Drawings and Specifications (to be attached to GMP Amendment)

Exhibit D Initial Overall Project Schedule; GMP Amendment will have a Project Schedule attached that will replace the Initial Project Schedule

Exhibit E Form Notice to Proceed

Exhibit F Responsibility Matrix (updated matrix to be attached to GMP Amendment)

- Exhibit G** GMP Summary, Allowances, Alternates, Bid Packages (to be attached to GMP Amendment)
- Exhibit H** CM/GC Assumptions and Clarifications (to be added to each GMP Amendment)
- Exhibit I** List of Project Superintendent and Personnel
- Exhibit J** Owned and Rented Equipment List/Rates
- Exhibit K** Owner Indemnified Parties
- Exhibit L** CM/GC's Interim Mechanical and Final Lien/Claim Waiver
- Exhibit M** Form Schedule of Values
- Exhibit N** Form GMP Amendment
- Exhibit O** Form Letter of Authorization
- Exhibit P** Site Specific Access
- Exhibit Q** Construction Labor and Salary Rates

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

OWNER *(Signature)*

« »« »

(Printed name and title)

CM/GC *(Signature)*

« »« »

(Printed name and title)

