



**REQUEST FOR PROPOSALS**  
**CONSTRUCTION MANAGER|GENERAL CONTRACTOR**

Redmond School District  
145 SE Salmon Avenue  
Redmond, OR 97756  
October 5, 2022



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**REQUEST FOR PROPOSAL**

**for**

**REDMOND SCHOOL DISTRICT**

**REDMOND HIGH**

**SCHOOL**

TO: Prospective Construction Managers|General Contractors

SUBJECT: Request for Proposal ("RFP")

ISSUE DATE: October 5, 2022

ISSUED BY: ("the Owner")

CONTACT FOR RFP: Chad Franke, Program Manager (Owner's Project Manager)  
HMK Company  
[chad.franke@hmkco.org](mailto:chad.franke@hmkco.org)  
Phone: 503-508-7522

REQUEST FOR  
PROPOSALS DUE: November 2, 2022  
2:00 PM Local Time  
Redmond School District  
Attn: Chad Franke, Program Manager  
145 SE Salmon Avenue  
Redmond, OR 97756



**I. INTRODUCTION**

**A. REQUEST FOR PROPOSAL**

REQUEST FOR PROPOSAL

CONSTRUCTION MANAGER|GENERAL CONTRACTOR

**REDMOND SCHOOL DISTRICT**

**REDMOND HIGH SCHOOL**

**("the Project")**

**Date of Issuance:** October 5, 2022

**Closing Time and Date:** November 2, 2022  
2:00 PM Local Time  
Redmond School District  
Attn: Chad Franke, Program Manager  
145 SE Salmon Drive  
Redmond, OR 97756



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**B. REQUEST FOR PROPOSAL ADVERTISEMENT**

**REDMOND SCHOOL DISTRICT  
REDMOND HIGH SCHOOL  
Proposals Due 2:00 PM, November 2, 2022  
REQUEST FOR PROPOSAL**

**NOTICE IS HEREBY GIVEN:** The Redmond School District (“the Owner”) Requests Proposals from experienced Construction Manager|General Contractors (CM|GC) for the construction of the Redmond High School Project. Proposers shall provide one (1) electronic copy of their proposal on a flash drive in a sealed envelope. Proposals will be accepted by Chad Franke, Program Manager, HMK Company, at the Redmond School District Office, located at 145 SE Salmon Drive, Redmond, OR 97756, until **2:00 PM Local Time on November 2, 2022**, after which time no further Proposals will be received.

**A MANDATORY** Pre-Proposal Conference will be held on **October 13, 2022 at 2:00 PM** at the Redmond School District Office, located at 675 SW Rimrock Drive, Redmond, OR 97756

**Project Scope of Work:** The project consists of replacement of all hydronic piping from the central plant to each mechanical room, replacement of pump/piping systems for boiler plant, replacement of mechanical equipment, renovation of HVAC systems for Science, CTE and Gym spaces including controls. Modifications to lighting and roof replacement.

The complete Request for Proposal may be reviewed and obtained from <http://hmkco.org/bid-documents/>

The CM|GC firms responding to this RFP will be evaluated based upon company overview, firm experience, similar project history, and other criteria identified in this RFP.

This solicitation does not obligate the Owner to pay any costs incurred in preparation of Proposals. The Owner reserves the right to reject any Proposal that is not in compliance with all prescribed requirements. For good cause, the Owner may reject any or all Proposals upon a written finding that it is in the public interest to do so.

**ANY PROTEST OR REQUEST FOR CHANGE MUST BE DELIVERED IN WRITING to** David McKay, Principal in Charge, HMK Company, at PO Box 1176, Albany, OR 97321, ON OR BEFORE SEVEN (7) DAYS PRIOR TO THE DUE DATE FOR PROPOSALS.

October 5, 2022

Chad Franke, Program Manager  
HMK Company  
on behalf of  
Redmond School District



### **C. OVERVIEW OF PROPOSAL**

The Owner has published the notice of the RFP in the Oregon “Daily Journal of Commerce” (DJC) as well as the “Bend Bulletin”.

If, after receiving the RFP, you have inquiries, please contact Chad Franke, Program Manager, at [chad.franke@hmkco.org](mailto:chad.franke@hmkco.org).

Proposals are due by **2:00 PM Local Time on November 2, 2022**. Proposals received after the specified time will not be considered.

This solicitation does not obligate the Owner to pay any costs incurred in preparation of Proposals. The Owner reserves the right to reject any Proposal that is not in compliance with all prescribed requirements. For good cause, the Owner may reject any or all Proposals upon a written finding that it is in the public interest to do so.

### **D. PROJECT OVERVIEW**

The project consists of replacement of all hydronic piping from the central plant to each mechanical room, replacement of pumpining systems for boiler plant, replacement of mechanical equipment, renovation of HVAC systems for Science, CTE and Gym spaces including controls. Modifications to lighting and roof replacement.

## **II. SELECTION PROCESS**

### **A. SELECTION OVERVIEW**

The Owner is seeking a qualified Construction Manager|General Contractor (the CM|GC) with current relevant experience in the construction of school buildings.

In accordance with Oregon Administrative Rules 137-049-0620 and 137-049-0645, the Owner will use a “Construction Manager|General Contractor” (CM|GC) Request for Proposal (RFP) to select and enter into a contract with the CM|GC. In accordance with those rules and ORS 279C.335, the Owner has obtained an exemption from applicable competitive bidding requirements (Exemption Order dated March 16, 2022).

The District has established the CM|GC RFP approach through the exemption process and by filing Findings supporting the use of this approach. The RFP approach was established in lieu of the more traditional Design-Bid-Build and the corresponding Invitation to Bid (ITB) in order to realize the maximum benefit by including the CM|GC during the design phase. The basis for the RFP approach is addressed in greater detail in the Exemption Order mentioned above.



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The selection process under this RFP will be conducted in a fair and impartial manner, whereby several qualified individuals will evaluate all responsive Proposals.

The selection pursuant to the RFP will have three (3) major parts:

1. Evaluation of Qualifications;
2. Proposal evaluation and initial ranking;
3. Interviews (if deemed applicable), reference checks, final ranking and selection;

The Owner will review all Proposals to ensure that each Proposer meets the minimum qualifications required.

The Owner will convene an evaluation committee made up of three to five qualified members, representing the Owner, Stakeholders or the general public to evaluate all Proposals.

**B. SELECTION PROCESS SCHEDULE**

- |    |                                 |                  |
|----|---------------------------------|------------------|
| 1. | Request for Proposals Issued    | October 5, 2022  |
| 2. | Mandatory Pre-Proposals Meeting | October 13, 2022 |

A MANDATORY Pre-Proposals Meeting and Project Orientation will be held at 2:00 PM on Date at the Redmond School District Office, located at 675 SW Rimrock Drive, Redmond, OR 97756. Attendees will then visit the project site. Statements made at the pre-proposal meeting will not be binding on the District unless confirmed by written addenda. Potential Contractors may obtain additional information about the project and overall District goals at this time.

- |    |                                      |                  |
|----|--------------------------------------|------------------|
| 3. | Deadline, Request for Clarifications | October 26, 2022 |
|----|--------------------------------------|------------------|

Inquiries for clarification or additional information, if any, must be received by 2:00 PM.

- |    |                                  |                  |
|----|----------------------------------|------------------|
| 4. | Solicitation Protest Period Ends | October 26, 2022 |
|----|----------------------------------|------------------|

Protests to the RFP, the Contract or any aspect of the selection process as set out in Section II must be received by David McKay, Principal in Charge at HMK Company by 2:00 PM.

- |    |                             |                  |
|----|-----------------------------|------------------|
| 5. | Proposals Response Due Date | November 2, 2022 |
|----|-----------------------------|------------------|



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Responses must be received by the District no later than 2:00 PM. Responses submitted after this time will be subject to rejection.

6. Review Responses by District November 10, 2022

7. Notify Firms Selected for Interviews 5:00 PM, November 11, 2022

8. Interviews November 16, 2022

Contractor shall be available for possible interviews (at the District's sole discretion) on November 16, 2022, no other dates will be held.

9. Notification of Selected Contractor November 18, 2022

Contractor will be selected, if at all and sent a selection notice. The unsuccessful contractors will be sent a copy of the selection notice.

10. Selection Protest Period Ends November 25, 2022

Any protests of the selection decision must be received 7 days after contractor selection by District. Any hearing on a protest will be scheduled as soon as reasonably possible.

11. Board Action to Award Contract November 30, 2022

12. Contracts Issued December 1, 2022

13. Contracts Executed No Later Than December 8, 2022

The District intends to enter into a Contract with the selected Consultant within 7 days of award.

14. Design September, 2022 – December 2022

15. Construction June 2023 – September 2023

The schedule of events in this Section is intended to allow prospective Contractors sufficient time for requests for information, objections to the requirements of this RFP, and preparation of responses. Prospective Consultants who think that the schedule is unreasonable should notify the District immediately. If the District receives a substantial number of adverse comments, the District will consider extending the schedule of events by issuing an addendum.

### **III. SERVICES TO BE PROVIDED**

#### **A. DESCRIPTION OF SERVICES**





## **1. PRECONSTRUCTION PHASE SERVICES**

Preconstruction Phase Services will be provided under the terms of the Contract, as it may be modified by Supplemental General Conditions or Amendment, and will be paid for on a cost-reimbursement basis up to the maximum not-to-exceed amount set in the Contract. Preconstruction Phase Services are anticipated to include the following:

- a. Furnish cost estimates to the Owner for review and approval at 50% construction documents.
- b. Conduct thorough constructability review of the construction documents.
- c. Develop and implement a plan to actively generate interest from local sub-contractors and material suppliers as well as solicitation of bids.
- d. Submit a Guaranteed Maximum Price (GMP) proposal and GMP Supporting Documents to the Owner in conformance with Contract requirements.
- e. Upon Owner authorization (and execution of an Early Work Amendment and issuance of a Notice to Proceed for the Early Work), undertake early material procurement, site preparation and advance construction Work, including investigative demolition.

## **2. SCOPE OF CONSTRUCTION PHASE SERVICES**

It is anticipated that the GMP will be established at approximately 100% completion of the Construction Documents. The established GMP will be the maximum amount paid for Construction Phase Services, unless scope changes are requested by Owner. Acceptance of the GMP by execution of the GMP Amendment will mark the beginning of the Construction Phase Services for the Project. At the time of execution of the GMP Amendment, the CM|GC will be required to submit a performance bond and payment bond for the completion of the Project in the full amount of the GMP. In the event that the CM|GC is unable to furnish an acceptable GMP, the Owner retains the option, in its sole discretion, to cancel the Contract and start a new process for the construction of the Project, or terminate the Contract and award a replacement contract to the next highest rated Proposer from this solicitation.

In general, Construction Phase Services provided by the CM|GC are to include the following:

- a. Provide and pay for all materials, tools, equipment, labor, and professional and non-professional services, and perform all other



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acts and supply all other items necessary to fully and properly perform and complete the Work as described in the Contract Documents.

- b. Solicit sealed bids or quotes from Subcontractors. Ensure that all bids, including those deemed necessary for early procurement, are within budget.
- c. Implement an accounting system for effective fiscal control, including monthly cost estimate and status report with budget recommendations. The cost of preparing the monthly status report to Owner is to be included in the CM|GC Fee.
- d. Coordinate the work of all special inspections, Subcontractors, and Vendors. Provide regular and on-going quality inspection and assistance to the Architect in assuring the Work meets the Contract requirements and applicable laws, codes, and ordinances.
- e. Review all Change Order requests, both within the GMP and involving a change to the GMP.
- f. Maintain all Project Records, including permits, construction documents, as-built records, meeting records, submittals, inspection reports, invoices, delivery receipts, daily activity logs, Request for Information (RFI), Architect Supplemental Instructions (ASI), Change Order (CO) etc.
- g. Meet established Project schedule deadlines.

**B. SPECIAL REQUIREMENTS**

In order to implement the RFP method of CM|GC selection, the Owner will impose some special requirements to ensure an adequate level of competition. Potential CM|GCs shall note the following requirements concerning management of this Project:

- 1. The selected CM|GC will be required to document good faith efforts to develop business opportunities for Minority Owned, Women Owned, and Emerging Small Business Enterprises, as required by ORS Chapter 200.
- 2. The selected CM|GC will be required to comply with the applicable Oregon prevailing wage rates.
- 3. The selected CM|GC will be required to document good faith efforts to include participation of subcontractors and suppliers in bidding process within 25-mile radius of Redmond, Oregon.

**IV. REQUIREMENTS FOR PROPOSALS**



**A. SUBMITTAL REQUIREMENTS**

**1. DATE, LOCATION, AND DELIVERY METHOD**

- a. Interested CM|GCs must submit their Proposals no later than **2:00 PM Local Time on November 2, 2022**. Any Proposal received after 2:00 PM shall be considered late and rejected.
- b. Proposals shall be addressed to:  
  
Redmond School District  
Attn: Chad Franke, HMK Company, Program Manager  
145 SE Salmon Avenue  
Redmond, OR 97756
- c. Proposals must be mailed or delivered to the address above. **NO FAX OR E-MAIL TRANSMITTED PROPOSALS WILL BE ACCEPTED.**

**2. FORM OF PROPOSAL**

A Proposer's submitted proposal:

- a. Shall include one (1) electronic copy on a flash drive in a sealed envelope.
- b. Shall be tabulated in separate sections with separator pages in relation to the detailed response requirements set forth in Section IV.D of this RFP. Any additional information deemed appropriate should be submitted as a separate document on the same flash drive.
- c. Shall be in PDF format, 8 1/2" x 11" paper size, with font type no smaller than 11-point.
- d. Shall be limited to 30 pages of content (i.e. 30 single-sided pages or 15 double-sided pages). Total page count includes the cover letter, but NOT front and back cover, section dividers provided they do not convey information requested in the RFP, the résumés or other forms and attachments required to be submitted.
- e. Shall be submitted in the following order and structure:
  1. Cover Letter (counts as number of pages submitted)
  2. Proposal Response (counts as number of pages submitted)
  3. Résumés (not counted in number of pages submitted)



4. Completed Attachments (not counted in number of pages submitted)

### 3. BONDING CAPACITY

Each potential CM|GC must be capable of providing a 100% performance bond and 100% payment bond for the Project in the full amount of the Contract.

### B. PUBLIC RECORDS

1. This RFP and one (1) copy of each Proposal, together with copies of all documents pertaining to the award of a Contract, shall be kept by the Owner and made a part of a file or record, which shall be open to public inspection. **If a Proposal contains any information that is considered a Trade Secret under ORS 192.345, each sheet of such information shall be marked with the following disclosure in bold, red text:**

**"This information constitutes a trade secret under ORS 192.345 and shall not be disclosed except in accordance with the Oregon Public Records Law, ORS Chapter 192."**

2. The Oregon Public Records Law exempts from disclosure only bona fide trade secrets, and the exemption from disclosure applies only "unless the public interest requires disclosure in the particular instance", ORS 192.345. Therefore, nondisclosure of documents or any portion of a document submitted as part of a Proposal may depend upon official or judicial determinations made pursuant to the Public Records Law.
3. The above restriction may not include fee schedule or price information, which shall be open to public inspection.
4. Identifying the Proposal in total as a trade secret is not acceptable. Failure to identify a portion of the Proposal as a trade secret shall be deemed a waiver of any future claim of that information as a trade secret.

### C. THE DISTRICT IS AN EQUAL OPPORTUNITY EMPLOYER.

The Owner is committed to achieving a workforce that represents the diversity of Oregon and being a leader in providing fair and equal employment opportunity for all interested applicants and employees.

### D. DETAILED RESPONSE REQUIREMENTS

**Proposals must reply to each of the following items. Responses must be in the same order listed below. Concise and direct answers are encouraged.**

By listing individuals in the Proposal, the firm guarantees that these individuals will be available to work on the Project at the approximate percentages shown. The Owner reserves the right to approve or reject any changes to the proposed



personnel. The Owner further reserves the right to request a substitution of personnel if deemed to be in the best interest of the Owner.

**1. Cover Letter**

**2. Company Overview:**

a. Provide an overview of your company including years in business, office locations, and general work history answering the following questions:

- 1) How long has your organization been in business in Oregon as a CM|GC under your present business name and license number?
- 2) Please confirm that you hold an Oregon Contractors License that is current, valid, and in good standing with the Oregon Construction Contractors Board (CCB). Has the license been suspended or revoked in the past fifteen years? If so, please explain.
- 3) Have you, your responsible managing individual, or any partner, or officer or member ever been licensed in Oregon under a different name or license number? If yes, please list all the name(s) and license number(s).
- 4) Is your organization connected with other organizations as a subsidiary, parent, holding or affiliate? If so, please explain.
- 5) How many new and or renovated public school construction projects of at least 3 Million dollars in hard construction cost has your organization completed in the past five (5) years? Please list all.
- 6) Has your organization ever failed to enter into a contract after being selected for a new school construction or modernization project? If so, please explain.
- 7) Has your organization ever failed to complete a new school construction or modernization contract in the past ten (10) years? If so, please explain.
- 8) Has your organization ever failed to complete a contract in the past ten (10) years within the authorized contract time? If so, please explain.



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- 9) Has your firm been assessed liquidated damages in the past ten (10) years? If so, please explain.
- 10) Has your organization ever been disqualified from submitting a proposal or a bid on a State of Oregon project, school district project, or other public work project? If so, please explain.
- 11) What is your current total bonding capacity? A letter from your bonding company may be required to verify bonding capacity.
- 12) What is your current available bonding capacity?
- 13) Has your organization been unable to obtain a bond or been denied a bond for a contract in the past ten (10) years? If so, please explain.
- 14) Has your organization ever defaulted on a contract forcing a surety to suffer a loss? If so, please explain.
- 15) Has your organization declared bankruptcy or been placed in receivership in the past ten (10) years? If so, please explain.
- 16) Has your organization received a Notice of Default, or Notice of Intent to Terminate on a public works project in the last ten (10) years? If so, please explain.
- 17) Has your organization's contract on a Public Works project been terminated or canceled by the public entity owner in the last ten (10) years? If so, please explain.
- 18) Is your organization currently involved in Dispute Resolution defined as Mediation, Arbitration or Litigation related to a construction project? If so, please explain.
- 19) Has your organization been involved in Dispute Resolution defined as Mediation, Arbitration or Litigation in the past ten (10) years related to a construction project? If so, please explain.
- 20) Are there currently any liens/stop notices for labor and/or materials filed against your organization? If so, please explain.



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- 21) How many liens, bond claim, or enforcement lawsuits against your organization have been lost or settled by the organization in the past ten (10) years? Please explain.
- 22) How many construction-related claims, complaints, and/or cross-complaints has your organization filed in court in the last ten (10) years? Please explain.
- 23) How many construction-related claims has your organization mediated or arbitrated in the last ten (10) years? Please explain.
- 24) In the past three (3) years, how many unresolved change orders resulted in a claim filed by your organization? Please explain.
- 25) Has any employee, individual, or entity filed a complaint in the past ten (10) years against your organization with the Oregon Construction Contractors Board (CCB)? If so, how many were filed and how were the complaints resolved?
- 26) Has there been any occasion during the last ten (10) years on which your firm was required to pay either back wages or penalties for your own firm's failure to comply with the federal or state prevailing wage laws? If so, please explain.
- 27) In the past three (3) years, has any action or administrative proceeding for back wages, penalties or other sanctions been filed against your organization for failure to pay state or federal prevailing wages or for failure to comply in any way with the state or federal prevailing wage laws? If so, please explain.
- 28) In the last five (5) years, has any insurance carrier, for any form of insurance, refused to renew the insurance policy for your firm? If so, please explain.
- 29) Has your firm or any of its owners, officers, or partners ever been found liable in a civil suit, or found guilty in a criminal action, for making any false claim or material misrepresentation to any public agency or entity? If so, please explain.
- 30) Has your firm or any of its owners, officers, or partners ever been convicted of a crime involving any federal, state, or local law related to construction? If so, please explain.



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- 31) Has your firm or any of its owners, officers, or partners ever been convicted of a federal or state crime of fraud, theft, or any other act of dishonesty? If so, please explain.
- 32) During the last ten (10) years, has your firm ever been denied bond credit by a surety company, or has there ever been a period of time when your firm had no surety bond in place during a public construction project when one was required? If so, please explain.

- b. In addition, please provide a description of your company's general construction experience.

**3. Similar Project History:**

- a. Provide a description of your company's recent experience in the construction of at least five (5) K-12 Building projects of like size and type within the past seven (7) years.
- b. Provide reference contact name, phone and email address for each listed project, as well as the date the project was completed.

**4. Safety:**

Provide a general description of your company's safety programs, as well as your most recent Workers Compensation Insurance experience modifier answering the following questions:

- a. How often do you require documented safety meetings to be held for construction employees and field supervisors during the course of a project?
- b. List your firm's Experience Modification Rate (EMR) (Oregon workers' compensation insurance) for each of the past three (3) premium years:  
Current year: \_\_\_\_\_  
Previous year: \_\_\_\_\_  
Year prior to previous year: \_\_\_\_\_

**5. Firm Experience:**

- a. Provide a listing, in chronological order, of your company's most recent completed projects within the last seven (7) years (of like size and type) of 3 Million Dollars or more. Provide a list of at least five (5) projects. Information on these projects should include the following:





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- 1) Name of the owner, contact person, and **current phone number and email address**
  - 2) The Architect, contact person, and **current phone number and email address**
  - 3) Location of the project and completion date
  - 4) A brief description of the job
  - 5) Amount of contract award or negotiated GMP (if applicable)
  - 6) Final contract amount and total amount of change orders
  - 7) Total project claims going to mediation/arbitration/litigation and their disposition
- b. Provide a listing, in chronological order, of your company's public construction contracts, regardless of amount.

**6. Staffing & Staff Qualifications:**

- a. Provide a Project organization chart showing your proposed staff for this Project, including project management, corporate oversight and administration, estimating and onsite construction supervision. Detail whether each person is an employee or sub-contractor.
- b. Include résumés for all individuals listed in the chart. Indicate the proposed percentage that each person will work on this Project during the Construction Phase. The résumés must include each individual's education, work history, length of tenure with the company, prior work experience with similar projects and any experience working with public sector projects.
- c. For those individuals who are not full-time, describe how and when they will work on the Project. Additionally, describe the prior experience, if any, of the team members working with each other on projects (please be specific) and what roles they will fill on the proposed team for this Project.

**7. Fees**

- a. State the total Construction Phase fee as a percentage of the cost of work for services described in the RFP.
- b. State your Payment and Performance Bond Rate as a percentage of the construction cost of work for services described in the RFP.



- c. State your Insurance Rate of the construction cost of work for services described in the RFP.
- d. State your Pre-Construction Services hourly rate. Note: Pre-Construction fees will be negotiated based upon an agreed scope of work.

**8. General Conditions**

- a. Proposer's are required to complete a table indicating estimated General Condition Work costs associated with the CM|GC RFP and submit the completed table with their Proposal. These costs will be considered as part of the evaluation to select the apparent successful Proposal, and, when finally negotiated, will become part of the final contract with the selected CM|GC. The District reserves the right to negotiate the cost of individual items of General Condition Work. Included in Attachment G is a list of allowable General Conditions. Proposers should use this format when submitting their response.
- b. Provide hourly rate for Senior Project Manager, Project Manager, Project Engineer, and Project Superintendent. Labor rate to include all burdens and mark ups.

**9. Other Services**

- a. Cost Estimating: Describe your process for cost estimating at each of the design phases. Provide an example of a construction document cost estimate for a similar project in scope and size.
- b. Value Engineering: Demonstrate a history of Value Engineering of K-12 School Projects. Explain your approach to the Value Engineering process as well as the analysis used when reviewing products and systems. Describe the difference between Value Engineering and Cost Cutting. Provide examples of Value Engineering reports provided for previous projects.
- c. Constructability Review: Demonstrate a history of Constructability / QA/QC practices during the Construction Document phase to enhance "biddability" and "buildability." Describe and provide a copy of your Constructability Review process / program and detail how you integrate this process into the bidding phase of the Project. Identify staff or team members who will be assigned to assist with Constructability / QA/QC as a part of this Project. Provide résumés of staff and detail out their unique skill sets as it pertains to Constructability / QA/QC. Provide examples.



- d. Subcontractor and Supplier Outreach: Provide an outreach and solicitation plan for attracting qualified sub-contractors and material suppliers. Recognizing that the region is presently experiencing extreme market saturation, provide a plan that maximizes the number of subcontractors and suppliers that will submit bids to the Project.
- e. Provide an outreach and recruitment plan for inclusion of local sub-contractors and material suppliers, defined as within a 25-mile radius of Redmond, Oregon.

## E. EVALUATION CRITERIA

Potential CM|GCs not submitting all required information or documents in their Proposals may be considered non-responsive, and the Owner at its option may decide not to consider their Proposals. Each Proposal shall contain the desired information in the format specified.

Responsive Proposals will be evaluated in accordance with the following:

Reference numbers below are from Section IV - Requirements for Proposals, Subsection D - Detailed Response Requirements, which indicates the scope of each criterion. Points listed below are the total possible points which can be awarded for each criterion.

CRITERIA	POINTS	REFERENCE
1. Cover Letter .....	P/F .....	1
2. Company Overview .....	35 .....	2 a & b
3. Similar Project History .....	15 .....	3 a & b
4. Safety .....	10 .....	4 a & b
5. Firm Experience .....	15 .....	5 a & b
6. Staffing and Staff Qualifications .....	20 .....	6 a - c
7. Fee .....	10 .....	7 a - d
8. General Conditions .....	5 .....	8 a & b
9. Other Services .....		9 a - e
a. Cost Estimating .....	10	
b. Value Engineering .....	10	
c. Constructability Review .....	10	



- d. Subcontractor/Supplier Recruitment, general .. 5
- e. Subcontractor/Supplier Recruitment, local ..... 5

TOTAL POSSIBLE SCORE 150

## F. SELECTION

Based on the evaluation criteria set forth. Proposals will be scored identifying the top CM|GCs that are most qualified for the Project. Interviews may be held with the top ranked firms. The number of firms to be interviewed will be at the sole discretion of the Selection Committee. The interview process may be used to supplement and clarify information contained in the proposal. The results of the interview may bear on the firm's final ranking.

The invited firms will be given notice as to the time and place of the interview. Interviews will be conducted on November 16, 2022. No alternate dates will be provided.

Should your firm be invited to interview, questions will be directed to the proposed key Project Staff. Those members invited to the interview are Project or Corporate Executive dedicated to the Project, the Project Manager, the Project Superintendent, and Project Estimator as well as the key individual responsible for preconstruction services shall be in attendance. The length and format for the interview will be provided to the short-listed firms.

## V. PROTEST PROCEDURE

- A. All responses will become part of the public record for this Project, without liability to the District. The District reserves the right to reject any or all responses received as a result of this RFP and, if doing so would be in the public interest, cancel this solicitation. The District reserves the right to consider a response or responses in whole or in part, and to determine the responsiveness of a proposal by reference to the response taken as a whole. CM|GC Contractors will be held to the terms submitted in their responses.
  - 1. A potential CM|GC may file a written protest or make a written request that the Owner change an RFP specification or term. **ANY PROTEST OR REQUEST FOR CHANGE MUST BE DELIVERED IN WRITING TO David McKay, Principal in Charge, HMK Company** at PO Box 1176, Albany, OR 97321, ON OR BEFORE SEVEN (7) DAYS PRIOR TO THE DUE DATE FOR PROPOSALS. The purpose of this protest/request for change procedure is to permit the Owner to correct, prior to the submission of Proposals, any specifications or terms that may be improvident, unlawful or which may unnecessarily restrict competition. This requirement is intended to eliminate, by permitting corrections prior to the submission of Proposals, the waste of resources and delay that may result from the untimely detection of errors in the RFP, possible protests, and possible rejection of Proposals. The Owner will consider each protest or request,



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amend the RFP accordingly if warranted, and will notify in writing each potential CM|GC of any change. No amendment of this RFP shall be effective unless made in writing.

- B.** All potential CM|GCs that submit Proposals in response to this RFP will be notified in writing of the potential CM|GCs who are deemed most qualified. Any potential CM|GC that submitted a Proposal and is not deemed most qualified may submit to the Owner a written protest of the Owner's decision to exclude the potential CM|GC from the list of most qualified potential CM|GCs. **Any protest of the selection process shall be directed to David McKay, Principal in Charge, HMK Company, at PO Box 1176, Albany, OR 97321.** Protests by adversely affected or aggrieved potential CM|GCs must be in writing and must specify the grounds upon which the protest is based and must be delivered to the Owner within five (5) calendar days after the date of issuance of the notice of selection of most qualified potential CM|GCs. No protest of or challenge to the selection of most qualified potential CM|GCs will be considered after that time period.
- C.** In order to be considered, a protest shall be in writing and shall include:
1. The name and address of the aggrieved person;
  2. The contract title under which the protest is submitted;
  3. A detailed description of the specific grounds for protest and any supporting documentation; and
  4. The specific ruling or relief requested. In addition, in the event the protesting party asserts another proposer's lack of responsibility as a ground for protest, it must address in detail each of the matters in its written protest.
  5. The written protest shall be mailed or delivered to HMK Company, David McKay, Principal in Charge, PO Box 1176, Albany, Oregon 97321
  6. And shall be labeled: "Protest".
- D.** Upon receipt of a written protest, the District shall promptly consider the protest. The District may give notice of the protest and its basis to other persons, including Consultants involved in or affected by the protest; such other persons may be given an opportunity to submit their views and relevant information. If the protest is not resolved by mutual agreement of the aggrieved person and the District, the District will promptly issue a decision in writing stating the reasons for the action taken. A copy of the decision shall be mailed by certified mail, return receipt requested, or otherwise promptly furnish to the aggrieved person and any other interested parties. The District's decision may be appealed to the Superintendent by written notice together with all supportive evidence, received at the address set forth in Section V.C.5 not more than two (2) working days after receipt of the decision. The Superintendent's decision shall be final and conclusive.



- E. Strict compliance with the protest procedures set forth herein is essential in furtherance of the public interest. Any aggrieved party that fails to comply strictly with these protest procedures is deemed, by such failure, to have waived and relinquished forever any right or claim with respect to alleged irregularities in connection with the solicitation or award. No person or party may pursue any action in court challenging the solicitation or award of this contract without first exhausting the administrative procedures specified herein and receiving the District's final decision.

## **VI. NEGOTIATION**

After selection of a successful Proposer, District may enter into Contract negotiations with the successful Proposer. By submitting a Proposal, Proposer agrees to comply with the requirements of the RFP, including the terms and conditions of the Sample Contract (Attachment F - H), with the exception of those terms listed below for negotiation.

Proposer shall review the attached Sample Contract and note exceptions. Proposer must submit those exceptions to District during the Questions / Requests for Clarification period set forth in Section II.B. above. Unless District agrees to modify any of the terms and conditions, District intends to enter into a Contract with the successful Proposer substantially in the form set forth in Sample Contract (Attachment F - H).

It may be possible to negotiate some provisions of the final Contract; however, District is not required to make any changes and many provisions cannot be changed. Proposer is cautioned that the District believes modifications to the standard provisions constitute increased risk and increased cost to the District. Therefore, District will consider the Scope of requested exceptions in the evaluation of Proposal.

Any subsequent negotiated changes are subject to prior approval of District's Board of Directors.

District is willing to negotiate all items, except those listed below:

- Choice of law
- Choice of venue
- Constitutional requirements
- Requirements of applicable federal and State law
- Requirements of applicable Board policy

In the event that the parties have not reached mutually agreeable terms within 30 calendar days, District may terminate Negotiations and commence Negotiations with the next highest-ranking Proposer.

## **VII. NO CONTACT WITH DISTRICT PERSONNEL**

Proposers are cautioned to not have any contact with District personnel during the proposal and evaluation period. Violation of this rule may be cause for disqualification. All questions and contact are to be through the designated HMK Company Project Manager



**VIII. ATTACHMENTS**

- A. Signature Page **(MUST BE SIGNED AND RETURNED WITH PROPOSAL)**
- B. Certifications / Residency **(MUST BE SIGNED AND RETURNED WITH PROPOSAL)**
- C. Certificate of Compliance with Tax Laws **(MUST BE SIGNED AND RETURNED WITH PROPOSAL)**
- D. Insurance Requirements
- E. Schedule & Key Milestone
- F. Draft AIA A133 - 2019 Standard Form of Agreement between Owner and Construction Manager
- G. Draft AIA A133 – 2019 Exhibit A
- H. Draft AIA A201 - 2017 General Conditions of the Contract for Construction
- I. General Conditions - Cost of Work Matrix

**END OF REQUEST FOR PROPOSAL**



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**ATTACHMENT A  
SIGNATURE PAGE**

SIGNATURE OF FIRM'S DULY AUTHORIZED REPRESENTATIVE FOR THIS PROPOSAL MUST BE SIGNED IN INK BY AN AUTHORIZED REPRESENTATIVE OF THE FIRM; ANY ALTERATIONS OR ERASURES TO THIS PROPOSAL MUST BE INITIALED IN INK BY THE UNDERSIGNED AUTHORIZED REPRESENTATIVE.

The undersigned agrees and certifies that (s)he:

1. Has read and understands all Proposal instructions, specifications, and terms and conditions contained herein;
2. Is an authorized representative of the Firm, that the information provided in this Proposal is true and accurate, and that providing incorrect or incomplete information may be cause of Proposal rejection or contract termination;
3. Is bound by and will comply with the provisions of 279C.838, 279C.840 or 40 U.S.C. 3141 to 3148.
4. Is bound by and will comply with all requirements, specifications, contract and terms and conditions contained herein; and
5. Will furnish the designated item(s) and/or service(s) in accordance with the contract if awarded to Firm.
6. The Firm will provide its Federal Tax Identification number with Proposal submission.

Company Name: \_\_\_\_\_

Name (printed) & Title: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Email: \_\_\_\_\_

Federal Tax Identification Number: \_\_\_\_\_





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**ATTACHMENT B  
CERTIFICATIONS / RESIDENCY**

**CERTIFICATION OF UNDERSTANDING OF REQUEST FOR PROPOSALS**

The undersigned offers and agrees to furnish all material, supervision and personnel to the Redmond School District for Construction Manager | General Contractor (CM|GC) Services in accordance with this Request for Proposal.

Acknowledgement of Addendum: \_\_\_\_\_

The undersigned further certifies that he/she has read, understands and agrees to abide by all terms and conditions of this Request for Proposals and if awarded the contract to furnish the CM|GC Services to the District as delineated by this Request for Proposal.

The Proposer certifies that it does not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, handicap, financial ability, age or other non-job-related factors as per ORS 659a and 42 U.S.C. § 2000e et seq.

**RESIDENCY STATEMENT**

Pursuant to ORS 279A.120, Oregon's reciprocal Preference Law, public contracting agencies shall, for the purposes of determining the lowest responsible bidder/proposer and the awarding of a contract, add a percent increase on the bid of a non-resident bidder/proposer equal to the percent, if any, of the preference given to that bidder/proposer in the state in which the bidder/proposer resides.

As defined in ORS 279A.120, "Resident Bidder/Proposer" means a bidder/proposer that has paid unemployment taxes or income taxes in this state in the twelve calendar months immediately preceding submission of the bid, has a business address in this state, and has stated in the bid whether the bidder/proposer is a "Resident Bidder/Proposer". A "non-resident Bidder/Proposer" is a bidder/proposer who does not meet the definition of a "Resident Bidder/Proposer" as stated above.

The undersigned hereby states their resident status is as follows, RESIDENT: YES \_\_\_\_ NO \_\_\_\_

\_\_\_\_\_  
Legal Name of Proposing Firm

\_\_\_\_\_  
Date

By: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_

Telephone: \_\_\_\_\_

Email: \_\_\_\_\_

State of Incorporation, if Corporation: \_\_\_\_\_

\_\_\_\_\_  
Signature of Proposer

\_\_\_\_\_  
Printed Name of Proposer



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**EXHIBIT C**  
**CERTIFICATE OF COMPLIANCE WITH TAX LAWS**

I, the undersigned, being first duly sworn, hereby certify under penalty of perjury that I am authorized to act on behalf of \_\_\_\_\_ [insert Firm's name] and to the best of my knowledge, \_\_\_\_\_ [insert Firm's name] is not in violation of any Oregon Tax Laws. For purposes of this Certificate, "Oregon Tax Laws" are those laws and programs listed in ORS 305.380(4), namely ORS Chapters 118, 314, 316, 317, 318, 320, 321 and 323 and Sections 10 to 20, Chapter 533, Oregon Laws 1981, as amended by Chapter 16, Oregon Laws 1982 (first special session); the elderly rental assistance program under ORS 310.630 to 310.706; and any local tax laws administered by the Oregon Department of Revenue under ORS 305.620.

Business Designation (check one):

\_\_\_\_\_ Corporation    \_\_\_\_\_ Governmental/Non-Profit    \_\_\_\_\_ Sole Proprietorship  
\_\_\_\_\_ Partnership    \_\_\_\_\_ Limited Liability Company

Federal Tax Identification Number: \_\_\_\_\_

(Above information must be provided with the Proposal. If awarded the contract, this information will be reported to the Internal Revenue Service under the name and taxpayer I.D. number submitted. Information not matching IRS records could subject the Firm to 31 percent backup withholding.)

Legal Name of Proposing Firm: \_\_\_\_\_

Address: \_\_\_\_\_

City, State, Zip: \_\_\_\_\_

Phone: \_\_\_\_\_

Fax: \_\_\_\_\_

Email: \_\_\_\_\_

Name (printed) & Title: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_



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**EXHIBIT D**  
**INSURANCE REQUIREMENTS**

See Exhibit B following the Draft AIA A133 - 2019



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**ATTACHMENT E**  
**SCHEDULE & KEY MILESTONES**

<b>Project Schedule for Redmond High School 2022</b>	
<b><u>Activity</u></b>	<b><u>Deadline</u></b>
Design Development mechanical information to Design Team	September 16th
Design Development submission to Owner and Cost Estimator	October 7th
Design Development discussion and approval	October 21st
100% CD mechanical information to Design Team	November 18th
100% CD information from Design Team to MFIA	December 2nd
Submit information for permit review and to owner for bidding	December 9th

# DRAFT AIA® Document A133™ – 2019

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

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

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

« Redmond School District »  
« Charan Cline, Superintendent »  
« 145 SE Salmon Avenue »  
« Redmond, Oregon 97756 »

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

« To Be Determined »  
« »  
« »

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

« Redmond High School Project »  
« Redmond High School »  
« 675 SW Rimrock Drive »  
« Redmond, Oregon 97556 »

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

« MFIA, Inc. »  
« Scott Miller P.E., Principal »  
« 2007 SE Ash Street »  
« Portland, Oregon 97214 »

The Owner and Construction Manager agree as follows.

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

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

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

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1	INITIAL INFORMATION
2	GENERAL PROVISIONS
3	CONSTRUCTION MANAGER'S RESPONSIBILITIES
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5	COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES
6	COMPENSATION FOR CONSTRUCTION PHASE SERVICES
7	COST OF THE WORK FOR CONSTRUCTION PHASE
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14	MISCELLANEOUS PROVISIONS
15	SCOPE OF THE AGREEMENT

### ARTICLE 1 INITIAL INFORMATION

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

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

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

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

« »

§ 1.1.2 The Project's physical characteristics:

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

« Redmond High School »  
« 675 SW Rimrock Drive »  
« Redmond, OR 97756 »

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

*(Provide total and, if known, a line item breakdown.)*

« »

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User Notes:

(1246639479)

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

.1 Design phase milestone dates, if any:

« Design Deveolpment: October 21, 2022 »  
« Construction Documents: December 9, 2022 »

.2 Construction commencement date:

« June 2023 »

.3 Substantial Completion date or dates:

« To be Determinded »

.4 Other milestone dates:

« »

§ 1.1.5 The Owner's requirements for accelerated or fast-track scheduling, or phased construction, are set forth below:  
(Identify any requirements for fast-track scheduling or phased construction.)

« »

§ 1.1.6 The Owner's anticipated Sustainable Objective for the Project:  
(Identify and describe the Owner's Sustainable Objective for the Project, if any.)

« »

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

« »

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

« HMK Company »  
« David McKay, Principal in Charge »  
« PO Box 1176 »  
« Albany, OR 97321 »

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

« »

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

.1 Geotechnical Engineer:

« To Be Determined »

**.2 Civil Engineer:**

« To Be Determined »

**.3 Other, if any:**

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

« »

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

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

« MFIA, Inc. »

« Scott Miller P.E., Principal »

« 2007 SE Ash Street »

« Protland, OR 97214 »

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

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

« To Be Determined »

« »

« »

« »

« »

« »

**§ 1.1.13 The Owner's requirements for the Construction Manager's staffing plan for Preconstruction Services, as required under Section 3.1.9:**

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

« »

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

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

« »

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

« »

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

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

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

- (a) Describe the methods the Construction Manager will use to qualify and select subcontractors. The methods shall be competitive and provide prospective subcontractors with a reasonable opportunity to participate in the Construction Manager's qualification and selection process.



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

## **ARTICLE 2 GENERAL PROVISIONS**

### **§ 2.1 The Contract Documents**

The Contract Documents consist of this Agreement, Conditions of the Contract (General Conditions-AIA Document A201-2017 (as modified), Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement, and Modifications and Exhibits issued after execution of this Agreement, all of which form the Contract and are as fully a part of the Contract as if attached to this Agreement or repeated herein. Upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, the Contract Documents will also include the documents described in Section 3.2.3 and identified in the Guaranteed Maximum Price Amendment and revisions prepared by the Architect and furnished by the Owner as described in Section 3.2.8. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern. In addition, the State of Oregon Model Rules related to Public Contracts for Construction Services (OAR 137-049) apply to this Contract, and if anything in the Contract Documents is inconsistent with the Model Rules, the Model Rules shall govern. An enumeration of the Contract Documents, other than a Modification, appears in Article 15.

### **§ 2.2 Relationship of the Parties**

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

### **§ 2.3 General Conditions**

**§ 2.3.1** For the Preconstruction Phase, AIA Document A201™-2017, General Conditions of the Contract for Construction, shall apply. The term "Contractor" as used in A201-2017 shall mean the Construction Manager. The Owner and Construction Manager may agree, in consultation with the Architect, for the Construction Phase to commence prior to completion of the Preconstruction Phase, in which case, both phases will proceed concurrently.

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

### **ARTICLE 3 CONSTRUCTION MANAGER'S RESPONSIBILITIES**

The Construction Manager's Preconstruction Phase responsibilities are set forth in Sections 3.1 and 3.2, and in the applicable provisions of A201-2017 referenced in Section 2.3.1. The Construction Manager's Construction Phase responsibilities are set forth in Section 3.3. The Owner and Construction Manager may agree, in consultation with the Architect, for the Construction Phase to commence prior to completion of the Preconstruction Phase, in which case, both phases will proceed concurrently. The Construction Manager shall identify a representative authorized to act on behalf of the Construction Manager with respect to the Project.

#### **§ 3.1 Preconstruction Phase**

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

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

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

##### **§ 3.1.3 Consultation**

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

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

§ 3.1.3.3 The Construction Manager shall assist the Owner and Architect in establishing building information modeling and digital data protocols for the Project, using Architect-established standards for the development, use, transmission, and exchange of digital data.

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

documents, Construction Manager shall also provide a detailed, complete and accurate logistics plan, updated monthly, identifying the sequencing of all elements of the Work during construction of the Project.

#### **§ 3.1.4 Project Schedule**

**§ 3.1.4.1** Promptly after its delivery to Construction Manager, Construction Manager shall review the initial Project Schedule(s) sent by the Owner. When Project requirements in Section 4.1.1 have been sufficiently identified to the Owner's and Architect's satisfaction, the Construction Manager, in cooperation with the Owner and Architect, shall prepare and periodically update a Project schedule for the Architect's review and the Owner's acceptance. The Construction Manager shall obtain the Architect's approval for the portion of the Project schedule relating to the performance of the Architect's services. The Project schedule shall coordinate and integrate the Construction Manager's services, the Architect's services, other Owner consultants' services, and the Owner's responsibilities; and identify items that affect the Project's timely completion. The updated Project schedule shall include the following: submission of the Guaranteed Maximum Price proposal; components of the Work; times of commencement and completion required of each Subcontractor; ordering and delivery of products, including those that must be ordered in advance of construction; and the occupancy requirements of the Owner. Thereafter, Construction Manager shall revise and update the Project Schedule every other week to show the progress of design and construction of the Project. Construction Manager shall also make formal submissions of the Project Schedule with each Application for Payment delivered to Owner. In addition to achieving Substantial Completion and Final Completion by the dates required herein, if the Project Schedule provides for Owner's access to the Project prior to Substantial Completion for the purpose of Owner's installation of furniture, fixtures, cabling, equipment or other items, the Construction Manager shall achieve sufficient completion of the Work prior to Substantial Completion so that Owner has such access as scheduled. The Project Schedule shall not exceed the required dates for Substantial Completion and Final Completion.

**§ 3.1.4.2** The Project Schedule shall be prepared by Construction Manager in a detailed precedence-style critical path method (CPM) in Primavera P6 and in format otherwise acceptable to Owner and Architect which shall (in accordance with industry CPM standards):

- (a) provide a graphic representation of all activities and events (including obtaining all necessary permits and/or approvals) that will occur during performance of the Work;
- (b) identify each phase of construction and occupancy (including commencement and completion dates of each stage of the Work of each Trade), and include detailed work tasks in accordance with the work breakdown structure, to produce a Level 3 CPM schedule;
- (c) identify deadlines for electing alternates under Trade Agreements;
- (d) set forth Construction Manager's estimated monthly cash flow projection for Requisitions during the period reflected in such Project Schedule;
- (e) prior to the time a subcontractor starts Work, depict in detail the time for such subcontractor's Work and showing week by week progress for each trade in a manner consistent with the most recent cash flow projection;
- (f) identify major equipment orders and delivery deadlines.
- (g) resource-load all activities.

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

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

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

### § 3.1.5 Phased Construction

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

### § 3.1.6 Cost Estimates

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

§ 3.1.6.2 As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall prepare and update, at appropriate intervals agreed to by the Owner, Construction Manager and Architect, an estimate of the Cost of the Work with increasing detail and refinement. The Construction Manager shall include in the estimate those costs to allow for the further development of the design, price escalation, and market conditions, until such time as the Owner and Construction Manager agree on a Guaranteed Maximum Price for the Work. Such estimates shall be provided for the review by Architect and Owner's cost consultants, and for the Owner's approval. If the Owner or Architect procure the services of an independent cost consultant, the Construction Manager shall align its estimate format with that cost consultant's estimate format. The Construction Manager shall cooperate to reconcile Construction Manager's cost estimates to those of Owner's cost consultant. The Construction Manager shall inform the Owner and Architect in the event that the estimate of the Cost of the Work and Fee exceeds the latest Owner's MACC, and make recommendations for corrective action. At each stage of design, Construction Manager shall provide value engineering services towards keeping the cost of Architect's design within the parameters of the MACC. Toward this end, Construction Manager shall periodically identify alternatives to the Project design and make timely recommendations for cost saving options, and respond promptly to Architect's and Owner's recommendations regarding cost saving options.

§ 3.1.6.3 If the Architect is providing cost estimating services as a Supplemental Service, and a discrepancy exists between the Construction Manager's cost estimates and the Architect's cost estimates, the Construction Manager shall work together with the Architect to reconcile the cost estimates.

§ 3.1.6.4 After its preparation, Owner shall deliver to Construction Manager Owner's initial Project Budget(s) including the latest MACC. The initial Project Budget(s) may be in the alternative, until Owner has selected either option. Promptly after the date of this Agreement, Construction Manager shall provide detailed comments on that Project Budget(s), covering all categories of construction cost, cost evaluations of alternate construction methods and systems (including the phasing and sequencing of the Work), consideration of alternative components, communications and data requirements and (if applicable) salvage or re-use of Owner's existing equipment. Each version of the Project Budget shall be in form (and shall include documentation) satisfactory to Owner.

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

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

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

shall submit updates of the cash flow projection with each update of the Project Budget, showing changes in requirements and amounts previously paid.

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

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

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

§ 3.1.10 If the Owner identified a Sustainable Objective in Article 1, the Construction Manager shall fulfill its Preconstruction Phase responsibilities as required in the Contract Documents.

**§ 3.1.11 Subcontractors and Suppliers**

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

§ 3.1.11.2 The Construction Manager shall develop subcontractor and supplier bidding interest in the Project.

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

**§ 3.1.12 Procurement**

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

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

**Basic Requirements:**

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

- (A) Absent a written justification prepared by the Construction Manager and approved by the Owner as more particularly provided for in this section, the Construction Manager's Subcontractor selection process must be "competitive", meaning that the process must include publicly-advertised subcontractor solicitations and be based on a low-bid competitive method, a low-quote competitive method for contracts in a specified dollar range agreeable to the Owner, or a method whereby both price and qualifications of the subcontractors are evaluated in a competitive environment, consistent with the RFP and Contract requirements;
- (B) When the Subcontractor selection process for a particular Work package will not be "competitive" as provided for in this section, the process must meet the following requirements:



- (i) The Construction Manager must prepare and submit a written justification to the Owner, explaining the project circumstances that support a non-competitive Subcontractor selection process for a particular Work package, including, but not limited to, Emergency circumstances, the Construction Manager's need to utilize a key Subcontractor member of the Construction Manager's project team consistent with the Construction Manager's project Proposal, the need to meet other specified Contract requirements, the continuation or expansion of an existing Subcontractor agreement that was awarded through a "competitive process" along with facts supporting the continuation or expansion of the Subcontractor agreement, or a "sole source" justification;
  - (ii) For a "sole source" selection of a subcontractor to proceed, the Owner must evaluate the written justification provided by the Construction Manager and must find that critical project efficiencies require utilization of labor, services or materials from one subcontractor; that technical compatibility issues on the project require labor, services or materials from one subcontractor; that particular labor, services or materials are needed as part of an experimental or pilot project or as part of an experimental or pilot aspect of the project; or that other project circumstances exist to support the conclusion that the labor, services or materials are available from only one subcontractor;
  - (iii) The Construction Manager must provide an independent cost estimate for the Work package that will be subject to the non-competitive process, if required by the Owner;
  - (iv) The Construction Manager must fully respond to any questions or comments submitted to the Construction Manager by the Owner; and
  - (v) The Owner must approve the Construction Manager's use of the non-competitive Subcontractor selection process prior to the Construction Manager's pursuit of the non-competitive process.
- (C) If approved in advance by Owner, a competitive selection process may be preceded by a publicly advertised subcontractor pre-qualification process, with only those subcontractors meeting the pre-qualification requirements being invited to participate in the later competitive process through which the Construction Manager will select the subcontractor to perform the construction Work described in the selection process.
- (D) As used herein, "Affiliate" means a subsidiary of or a person or entity that, directly or indirectly through one or more intermediaries, controls, is controlled by or is under common control with Construction Manager or an Affiliate of Construction Manager. If the Construction Manager or an Affiliate will be included in the subcontractor selection process to perform particular construction Work on the project, the Construction Manager must disclose that fact in the selection process documents and announcements. The Construction Manager must establish to Owner and follow an objective, independent review and opening of bids or proposals for the elements of Work involved, by a representative of the Owner or another independent third party acceptable to Owner.
- (E) Subcontractor Approvals and Protests. The procedures and reporting mechanisms related to the resolution of subcontractor and supplier protests are established in the Additional Requirements below, including the Construction Manager's roles and responsibilities in this process and whether the Construction Manager's subcontracting records are considered to be public records. The Owner retains the right to monitor the subcontracting process in order to protect the Owner's interests and to confirm the Construction Manager's compliance with the Contract and with applicable statutes, administrative rules and other legal requirements.
- (F) Construction Manager Self-Performance or Performance by Construction Manager Affiliates Without Competition. Consistent with the requirements of ORS 279C.337(3)(c), these Basic Requirements and the Additional Requirements establish the conditions under which the Construction Manager or an Affiliate of the Construction Manager may perform elements of the construction Work without competition from subcontractors, including, for example, job-site GC Work. Other than for GC Work, in order for the Construction Manager or an Affiliate of the Construction Manager to perform elements of the construction Work without competition from subcontractors, the Construction Manager must provide, or must have included in the Construction Manager's RFP Proposal to perform Construction Manager Services for the project, a detailed proposal for performance of the Work by the Construction Manager or an Affiliate of the Construction Manager. If required by the Owner,

the Construction Manager's proposal to perform the construction Work must be supported by at least one independent cost estimate prior to the Work being included in the Contract.

- (G) Unsuccessful Subcontractor Briefing. ORS 279C.337(3)(e) is designed to allow a subcontractor who was not selected by the Construction Manager to perform a particular element of the construction Work to obtain specific information from the Construction Manager, and meet with the Construction Manager to discuss the subcontractor qualification and selection process involved and the Construction Manager's subcontractor selection decisions, in order to better understand why the subcontractor was not successful in being selected to perform the particular element of the Work and to improve the subcontractor's substantive qualifications or the subcontractor's methods in competing for elements of the Work for the particular project involved, or for future projects. The briefing meetings may be held with individual subcontractors or, if the subcontractors agree, in groups of subcontractors, with those groups established by bid package or other designation agreed to by the contracting agency and the Construction Manager. Nevertheless, the Construction Manager is not obligated to provide this briefing opportunity unless the Construction Manager receives a written request from a subcontractor to discuss the subcontractor qualification and selection process involved. Unless the Owner and the Construction Manager agree on a different schedule:
- (i) Subcontractor will be allowed 60 days from the Construction Manager's notice of award of a subcontract for a particular Work package to request, in writing, a post-selection meeting with the Construction Manager under this section; and
  - (ii) The Construction Manager shall set a meeting with the subcontractor under this section within 45 days of the subcontractor's written request. The Construction Manager shall maintain written minutes of such meeting and shall deliver a copy of such minutes to Owner within 10 days after each such meeting.

#### **Additional Requirements:**

1. The Construction Manager shall review the Contract Documents and verify, prior to bidding, that they are ready for subcontract and supplier bidding. The Construction Manager shall perform constructability review of each Bid Package prior to bidding.
2. If the documents are not ready for bidding, prior to bidding the Construction Manager shall notify the Owner and Architect, specifying the perceived deficiency, and thereafter shall work with the Architect to complete the documents.
3. The Construction Manager shall divide the portions of the Work (other than general supervisory and "general conditions" type work of the Construction Manager) into components suitable for bidding ("Work Components"). The Construction Manager shall deliver a list of proposed Work Components to the Owner's Representative for comment prior to preparation of the Requests for Proposal.
4. The Construction Manager shall prepare a template form of Request for Proposal for Work Component procurement. The Construction Manager shall deliver a copy of such template to the Owner's Representative for review and comment before use. The Request for Proposals shall identify the scope of Component Services with reasonable specificity, the minimum qualifications of prospective bidders, and the deadline for bid submissions. The Construction Manager shall deliver a copy of each Request for Proposal to the Owner's Representative concurrent with publication.
5. The procurement by the Construction Manager of all labor and materials costing more than \$100,000 per contract, but excluding those items covered in the general conditions, will normally be publicly advertised. However, should circumstances arise where public advertisement is not practical or appropriate, and with the Owner's prior written approval, the Construction Manager may forego public advertisement, provided however, that it must attempt to obtain at least three written bids/quotes (with public opening) for the particular work to be done. At least three competitive quotes must be attempted to be solicited for all contracts between \$10,000 and \$100,000. With the Owner's concurrence, the Construction Manager/General Contractor must accept the quote that is most advantageous to the Owner. This normally would be the lowest quote from a responsible firm. Competitive quotes are encouraged but are not required for contracts less than \$10,000. Except as otherwise allowed under this Contract, The Construction Manager shall obtain at least three competitive bids for each particular Work component to be complete, including work

components which the Construction Manager may be interested in self-performing, unless the Owner approves in writing the obtaining of fewer bids for the Work Component. The solicitation of Subcontractors will be made pursuant to the following procedures:

- a. All bids are required to be sealed, written, and submitted to a specific location at a specific time, each as approved in writing by the Owner's Representative.
- b. If less than three (3) bids are submitted for any work component, authorization by the Owner's Representative is required to accept the bid. When there are single fabricators of materials or special packaging requirements for subcontractor work, or work is otherwise proposed to be sole-sourced, Construction Manager shall be responsible for explaining in writing to Owner the grounds for such procurement, and advance approval by the Owner's representative is required.
- c. Solicitations will be advertised at least ten (10) days in advance in the Daily Journal of Commerce and at least one other newspaper specifically targeted to reach minority, women, and emerging small business audiences.
- d. The prevailing wage rates and all other standard terms and conditions of State of Oregon Public Works contracts shall apply to subcontracts at all tiers.

6. Except for "general conditions" type work, the compensation for which is included in the Construction Manager's Fee and General Conditions Maximum Charge, the Construction Manager shall identify to the Owner as required in the Basic Requirements and in advance of bidding, in writing, any work that the Construction Manager proposes be performed by the Construction Manager or any Affiliate, including, without limitation, Work Components, or procurement or rental of services, equipment or materials. Such writing shall include a detailed statement of the proposed work, and a statement of qualifications. The Owner may allow a Construction Manager or a related party to perform such work if such party competes competitively with subcontractors or other suppliers for that work and enters into a subcontract for the work in accordance with the procedures of this Section. Neither Construction Manager nor any related party shall perform work or provide services except in accordance with such procedures, unless waived in writing by Owner's Representative. In all cases where Construction Manager or a related party is proposed for provision of work or services, the unopened bids for that work (including that of the Construction Manager Party) will be submitted directly to the Owner's Representative at least 2 hours in advance of bid opening, for opening by Owner's staff or an independent third party approved by the Owner.

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

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

9. All addendums, if any, shall be provided to the Construction Manager by the Owner. The Construction Manager shall, in turn, verify that all known potential bidders have received all addendums to incorporate in their bids.

10. The Construction Manager shall open all Subcontractor bids and proposals for self-performed work in the presence of the Owner's Representative, which opening may occur at Construction Manager's office in compliance with the rest of this Section. The Owner's Representative shall be given advance notice of and the opportunity to observe all bid openings. The Owner's Representative is not obligated, however, to attend a bid opening nor to ensure the Construction Manager's compliance with the required bidding procedures. All bid openings shall be by the Owner's Representative, Owner's staff or an independent third party approved by the Owner.

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

- (a) the name and address of the Subcontractor;
- (b) a description of the portion of the Work and type of activity to be performed by such Subcontractor;
- (c) a brief summary of the Subcontractor's past experience in performing services or producing products similar to those to be performed or produced by the Subcontractor in connection with the Work (including number of years in business and recent major projects);



- (d) evidence that the Subcontractor has sufficient capacity (staff and/or plant) and financial resources to perform or produce the Work;
- (e) any documents or materials required under applicable laws regarding the qualifications of the Subcontractor to be accepted for work under this Contract; and
- (f) any ownership or other financial affiliations between Construction Manager and the proposed subcontractor
- (g) such other evidence of the Subcontractor's fitness and responsibility as Owner may reasonably request.

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

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

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

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

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

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

18. The Construction Manager may not waive the competitive process described in this Section for any Work Component, including any proposed self-performed work, without (i) identifying to the Owner's Representative in advance the Work Component at issue and the Construction Manager's proposed alternative procurement method for such Work Component, through a proposed Addendum to this Agreement and (ii) procuring written approval of the waiver by Owner's Representative, including the Owner's Representative's approval of an agreed alternative procurement method. The Construction Manager shall comply with such agreed alternative procurement methodology in procurement of such Work Component.

19. Bidding is proceeding under special rules applicable to public Construction Manager/General Construction Manager contracts, and statutory formal bidding procedures for public contracts are not applicable to subcontractor and supplier bids. While Owner's approval is required for all bid awards, the Construction Manager's subcontracting records (including without limitation any bid dispute documentation) are not public records. The Owner retains the right to monitor the entire subcontracting and bid dispute process in order to protect Owner's interests. The Owner retains the right to require Construction Manager re-bidding of any Work Component, at Owner's discretion.

20. Construction Manager shall comply with the socio-economic programs described herein or in the RFP, in connection with subcontractor and supplier bidding ("Hiring Programs"). During the course of bidding, Construction Manager shall deliver written reports to the Owner documenting Construction Manager's compliance with the Hiring Programs. The Owner is not responsible for Construction Manager's compliance with the Hiring Programs, but may at any time, by written notice to the Construction Manager, require Construction Manager's compliance with the Hiring Programs (including rebidding as applicable) and bring action to enforce such compliance.

21. Firms responding to the Construction Managers bid documents may submit a request for change of particular solicitation provisions, specifications and conditions (including comments on any requirement that a firm believes limits competition) to the Construction Manager, with a copy to the Owner's Representative, no later than noon on the bid deadline date. Such requests for change shall include reason for the request and proposed changes to the solicitation provisions, specifications and conditions. Any such proposed changes, if accepted by Owner, will be provided in the form of an addendum, to all requesting the bid information.

22. Any firm responding to the bid who claims to have been adversely affected or aggrieved by the selection of a competing firm shall have five calendar days after notification of the selected firm to submit a written protest to the Construction Manager, identifying with specificity the grounds for dispute, with a copy to the Owner's Representative. Failure to timely submit such protest shall bar the claim. For timely submitted bid disputes, the Construction Manager shall be solely and exclusively responsible for resolving the dispute, at the Construction Manager's sole expense. The entire bid dispute and resolution file, including minutes of all conversations, will be delivered by Construction Manager to the Owner upon request. Resolution of the dispute shall not increase the Guaranteed Maximum Price. Statutory bid dispute procedures for public contracts are not applicable unless and then only to the extent Owner requires in writing that such procedures be used. Construction Manager is not acting as the Owner's representative in this process. Aggrieved or selected subcontractors and suppliers are not intended third-party beneficiaries of this bid dispute provision.

23. The Construction Manager shall use good faith efforts to reach out to Local Subcontractors and Suppliers (defined as having their head office within a 25 mile radius of the center of the District) for participation in the Project. Construction Manager shall include a narrative of its outreach program, after approval by Owner, in the Exhibit A GMP amendment, and shall, both midway and after full bid procurement, provide to Owner a written report of such outreach efforts and their effect, in form acceptable to Owner.

24. Pursuant to Oregon Revised Statute (ORS) Chapter 200, the Owner encourages the participation of small businesses, certified by the Oregon Certification Office for Business Inclusion and Diversity ("COBID") in all contracting opportunities. This includes certified small businesses in the following categories: disadvantaged business enterprise, minority-owned business, woman-owned business, a business that a service-disabled veteran owns or an emerging small business. The Owner also encourages joint ventures or subcontracting with certified small business enterprises.

### § 3.1.13 Compliance with Laws

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

### § 3.1.14 Other Preconstruction Services

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

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

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## § 3.2 Guaranteed Maximum Price Proposal

§ 3.2.1 Within 30 days after written request by the Owner, given at any time that Owner has determined that design has progressed past the Design Development stage, the Construction Manager shall prepare a Guaranteed Maximum Price proposal for the Owner's and Architect's review, and the Owner's acceptance in the form of Exhibit A. The Guaranteed

Maximum Price in the proposal shall be the sum of the Construction Manager's estimate of the Cost of the Work, the Construction Manager's contingency described in Section 3.2.4, and the Construction Manager's Fee described in Section 6.1.2.

**§ 3.2.2** To the extent that the Drawings and Specifications are anticipated to require further development, the Guaranteed Maximum Price includes the costs attributable to such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include such things as changes in scope, systems, kinds and quality of materials, finishes, or equipment, all of which, if required, shall be incorporated by Change Order. Construction Manager will identify and notify the Owner of the proposed Guaranteed Maximum Price increase or decrease resulting from a change in the Drawings or Specifications within 10 days after receipt of the same, or any such claim for a Guaranteed Maximum Price increase shall be barred. Notwithstanding any provision of the Contract Documents seemingly to the contrary, the Guaranteed Maximum Price shall not be increased without a concomitant increase to the scope defined at the time of establishment of the Guaranteed Maximum Price or the most recent Guaranteed Maximum Price amendment. Reductions in scope shall result in a concomitant reduction in the Guaranteed Maximum Price.

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

- .1 A list of the Drawings and Specifications, including all Addenda thereto, and the Conditions of the Contract;
- .2 A list of the clarifications and assumptions made by the Construction Manager in the preparation of the Guaranteed Maximum Price proposal, including assumptions under Section 3.2.2, to supplement the information provided by the Owner and contained in the Drawings and Specifications;
- .3 A statement of the proposed Guaranteed Maximum Price, including a statement of the estimated Cost of the Work organized by trade categories or systems, including allowances; the Construction Manager's contingency set forth in Section 3.2.4; and the Construction Manager's Fee;
- .4 The dates of Substantial Completion and Final Completion upon which the proposed Guaranteed Maximum Price is based, if not stated in this A133 Contract;
- .5 A schedule of values breaking down the Guaranteed Maximum Price Proposal by task and trade, and including a copy of any bids or subcontractor estimates, in accordance with the Procurement Requirements; and
- .6 A date by which the Owner must accept the Guaranteed Maximum Price.

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

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

**§ 3.2.6** If the Owner notifies the Construction Manager that the Owner has accepted the Guaranteed Maximum Price proposal in writing before the date specified in the Guaranteed Maximum Price proposal, the Guaranteed Maximum Price proposal shall be deemed effective without further acceptance from the Construction Manager. Following

acceptance of a Guaranteed Maximum Price, the Owner and Construction Manager shall execute the Guaranteed Maximum Price Amendment amending this Agreement (using the form of Exhibit A), a copy of which the Owner shall provide to the Architect. The Guaranteed Maximum Price Amendment shall set forth the agreed upon Guaranteed Maximum Price with the information and assumptions upon which it is based, which shall be consistent with the Procurement Requirements.

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

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

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

§ 3.2.10 Unless Owner directs otherwise, the Construction Manager shall not charge more than an amount stated in the Guaranteed Maximum Price Amendment, for the Cost of the Work of all “general conditions” items of Construction Manager listed in Exhibit F, which general conditions items shall be set forth as a not-to-exceed sum in the Guaranteed Maximum Price Amendment (“General Conditions Maximum Charge”).

§ 3.2.11 Prior to execution of the Guaranteed Maximum Price Amendment, Construction Manager shall not commence demolition or construction of any aspect of the Work unless Owner directs in writing to proceed on a time-and-materials basis, or unless Owner and Construction Manager have agreed upon a not-to-exceed price for such aspect of the Work.

§ 3.2.12 The Guaranteed Maximum Price Amendment may include allowance amounts within the Guaranteed Maximum Price for the items of work identified in the Guaranteed Maximum Price Amendment (“Allowances”). If the costs of any item to which an Allowance applies shall be greater than the amount of the Allowance, Construction Manager shall so notify Owner and if Owner authorizes the Allowance Work, the Construction Cost and Guaranteed Maximum Price shall be increased by such difference without adding any additional Construction Fee. If the cost of any item to which an Allowance applies shall be less than the amount of the Allowance, the Construction Cost and Guaranteed Maximum Price shall be decreased by the amount of such difference. Work covered under an Allowance shall be accounted for on the same basis as extra work (i.e., the same percentages for overhead and profit and general conditions that apply for extra work would be applicable to Allowance Work).

§ 3.2.13 Any Construction Manager or subcontractor proposals referenced as part of the Contract Documents (whether herein, in the Guaranteed Maximum Price Amendment, or any other amendment or change order) are incorporated solely for: (i) any statement of fees and schedule that is otherwise consistent with the terms of this Agreement and (ii) any statement of services and scope of Work that is consistent with the remainder of this Agreement, or that provides additional Work without adjustment to the Contract Sum or Contract Time. No other provisions of any proposal are part of this Agreement, including without limitation any purported limitation on liability. To the extent that a proposal term otherwise conflicts with the other terms of this Agreement, such proposed conflicting terms are void and are expressly and wholly subject to the terms of this Agreement. In the event of overlap or inconsistency between the provisions of such proposals and the other terms of this Agreement, the provision that provides a better quality or quantity of service to Owner shall control.

#### § 3.2.14 Alternates.

§ 3.2.14.1 The Construction Manager, Owner, and Architect shall agree on appropriate bid alternates for every bid package such that if the Cost of the Work in connection with the Guaranteed Maximum Price is less than (or more than) the Guaranteed Maximum Price, the Owner shall have the opportunity to authorize additive (or deductive) alternates, as appropriate. It is understood that the Owner and Construction Manager may choose to defer the award of alternates in order to ensure the successful outcome of later bid packages.



§ 3.2.14.2 Bid alternates for subcontractor packages, authorized by the Owner under the above provisions, shall be performed by the Construction Manager with no increase to the Guaranteed Maximum Price, with no time extension, and with no increase in Construction Manager's fee, unless both the Owner and the Construction Manager agree in writing at the time of the designation of alternates that awarding of the alternates will result in an increase in fee, and/or time extension.

§ 3.2.14.3 If the Construction Manager and Owner agree to the execution of alternates outside of the parameters described in this document, such that the Guaranteed Maximum Price is not exceeded, then the Construction Manager shall not be eligible for an increase in fee. However, the Construction Manager may be eligible for a time extension, if such extension is determined to be warranted.

§ 3.2.14.4 If the Construction Manager and Owner agree to the execution of alternates outside of the parameters described in this document, such that the Guaranteed Maximum Price will be exceeded, then the Construction Manager shall be entitled to an increase in fee, for the increase in the Cost of the Work above the Guaranteed Maximum Price, and as described in this document.

§ 3.2.14.5 Certain add and deduct alternates and the prices therefor (each, an "Alternate") may be set forth in the Guaranteed Maximum Price Amendment. Owner at its option may choose to have Construction Manager perform or delete the Work set forth in any such Alternate, in which case the Construction Cost and Guaranteed Maximum Price shall be increased or decreased, as the case may be, in the amount shown. Any Alternates listed in the Guaranteed Maximum Price Amendment shall represent the firm total amount by which the Construction Cost and Guaranteed Maximum Price will be increased or decreased upon the election of such Alternate and such Alternates shall be inclusive of all direct and indirect costs (including insurance and bonds), overhead, profit and fee.

### § 3.3 Construction Phase

#### § 3.3.1 General

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

§ 3.3.1.2 The Construction Phase shall commence upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal or the Owner's issuance of a Notice to Proceed for Early Work, whichever occurs earlier.

§ 3.3.1.3 In the event the District determines, in its discretion, to authorize Work in advance of mutual agreement on the Guaranteed Maximum Price Amendment ("Early Work"), the Construction Manager shall not proceed with such Early Work without mutual execution of an amendment to this Contract stating the specifications, timing and price (including the applicable Construction Manager Fee) of such Early Work ("Early Work Amendment"). Permissible Early Work shall be limited to early procurement of materials and supplies, early release of bid or proposal packages for site development and related activities, and any other advance Work related to important components of the Project for which performance prior to establishment of the GMP will materially and positively affect the development or completion of the Project. Except in the event of emergency as approved in advance by Owner, no Early Work or Owner-directed Change Order work will proceed except on a lump-sum or not-to-exceed basis.

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

#### § 3.3.2 Administration

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

**§ 3.3.2.2** Upon the execution of the Guaranteed Maximum Price Amendment, the Construction Manager shall prepare and submit to the Owner and Architect a construction schedule for the Work (consistent with the required Substantial Completion and Final Completion Dates with appropriate time contingencies) and a submittal schedule in accordance with Section 3.10 of A201–2017.

**§ 3.3.2.3 Monthly Report**

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

**§ 3.3.2.4 Daily Logs**

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

**§ 3.3.2.5 Cost Control**

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

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

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

**§ 3.3.2.8** Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement, and shall not be awarded on the basis of cost plus a fee without the prior consent of the Owner. If the Subcontract is awarded on a cost-plus a fee basis, the Construction Manager shall provide in the Subcontract for the Owner to receive the same audit rights with regard to the Subcontractor as the Owner receives with regard to the Construction Manager in Section 6.11 below. Subcontracts shall provide that the Subcontractor shall correct defective or nonconforming Work at no additional charge.

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

**§ 3.3.2.10** In addition to the meetings set forth above and any other obligations of Construction Manager, Construction Manager shall assist Owner in dealing and working with the neighborhood groups, government agencies and/or funding sources (public or private) for the Project, attend meetings with such entities, if applicable or requested by Owner, assist Owner in completing forms and applications, organizing information, and assembling documents and materials, and generally assist Owner as necessary in connection with its financing, permitting, and approval activities for the Project. Construction Manager shall assemble such documents and materials as may be appropriate for the anticipated

discussion at such meetings, and shall make presentations regarding the Project to such entities as applicable and as requested by Owner. Construction Manager shall receive no extra compensation for attending such meetings or making such presentations.

§ 3.3.2.11 Construction Manager shall assign all extended manufacturer's warranties to Owner and shall cooperate with the Owner's pursuit of warranties and warranty claims. The Construction Manager acknowledges that Owner retains the right to assign Construction Manager's warranties and any manufacturer's warranties for each Phase to the purchaser of such Phase, and shall execute such documents as are requested by Owner to further evidence such assignment.

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

#### **ARTICLE 4 OWNER'S RESPONSIBILITIES**

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

§ 4.1.1 To the extent not already identified in the Request for Proposals, the Owner shall provide information with reasonable promptness, regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, constraints, and criteria, including schedule, space requirements and relationships, flexibility and expandability, special equipment, systems, sustainability and site requirements.

##### **§ 4.1.2 DELETED**

§ 4.1.3 The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the MACC for the Cost of the Work as defined in Article 7 with Fee, (2) the Owner's other costs, and (3) reasonable contingencies related to all of these costs. If the Owner significantly increases or decreases the Owner's MACC for the Cost of the Work, the Owner shall notify the Construction Manager and Architect. The Owner and the Architect, in consultation with the Construction Manager, may thereafter agree to a corresponding change in the Project's scope and quality.

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

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

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

§ 4.1.4.3 The Owner, if such services are required under this Contract, shall furnish services of geotechnical engineers, which may include, but are not limited to, at Owner's discretion, test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

§ 4.1.5 During the Construction Phase, the Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness.

## § 4.2 Owner's Designated Representative

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

**§ 4.2.1 Legal Requirements.** The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests. Owner is not responsible for providing legal, insurance or accounting services to or for Construction Manager.

## § 4.3 Architect

The Owner shall retain an Architect to provide services, duties and responsibilities as described in AIA Document B133™–2019, Standard Form of Agreement Between Owner and Architect, Construction Manager as Constructor Edition, including the changes herein and any additional services requested by the Construction Manager that are necessary for the Preconstruction and Construction Phase services under this Agreement. The Owner shall provide the Construction Manager with a copy of the scope of services in the executed agreement between the Owner and the Architect, and any further modifications to the Architect's scope of services in the agreement. Owner may elect to have any duty or right of the Architect under the Contract Documents (other than those required by law to be performed by a licensed design professional) instead to be performed by Owner's Representative.

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

## ARTICLE 5 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

### § 5.1 Compensation

**§ 5.1.1** For the Construction Manager's Preconstruction Phase services described in Sections 3.1 and 3.2, the Owner shall compensate the Construction Manager as follows (only services performed after the date of mutual signature of this Agreement are compensable):

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

«Documented Direct Personnel Expense of the Preconstruction Phase Services, plus Construction Manager's Fee percentage on such Direct Personnel Expense, but not exceeding \$ \_\_\_\_\_,000.»

**§ 5.1.2** For the purposes of Section 5.1.1, the hourly billing rates for Preconstruction Phase services of the Construction Manager and the Construction Manager's Consultants and Subcontractors, if any, are set forth below.

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

« »

Individual or Position

Rate

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



§ 5.1.3 If the Preconstruction Phase services covered by this Agreement have not been completed within « » ( « » ) months of the date of mutual execution of this Agreement, through no fault of the Construction Manager, and Owner does not terminate this Agreement, the Construction Manager's compensation for Preconstruction Phase services shall be equitably adjusted.

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

## § 5.2 Payments

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

§ 5.2.2 Payments are due and payable after presentation of the Construction Manager's invoice in accordance with ORS 279C.570, and amounts unpaid when required under that statute shall bear interest at the rate stated in the statute.

## ARTICLE 6 COMPENSATION FOR CONSTRUCTION PHASE SERVICES

### § 6.1 Contract Sum

§ 6.1.1 The Owner shall pay the Construction Manager the Contract Sum in current funds for the Construction Manager's performance of the Contract after execution of the Guaranteed Maximum Price Amendment. The Contract Sum is the Cost of the Work as defined in Article 7 plus the Construction Manager's Fee, not exceeding the Guaranteed Maximum Price.

§ 6.1.2 The Construction Manager's Fee:

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

«The Construction Manager's Fee shall be established as \_\_\_\_% of the estimated Cost of the Work as established at the time of the Guaranteed Maximum Price Amendment, except no fee shall be calculated on Fee Exclusion Items. The Construction Manager's Fee shall be stated as a lump sum in the Guaranteed Maximum Price Amendment. The Construction Manager's Fee is inclusive of all profit, overhead and all other indirect and non-reimbursable costs, and is inclusive of costs of preparation of, and response to inquiries relating to, Construction Manager's required monthly reports to Owner.

No Fee shall be applied to the following items: [Insurance, Bond Charges, LIST OTHERS] »

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

« \_\_\_\_% of the net increase or decrease to the Cost of the Work resulting from the change, subject to Section 7.5 of the A201 General Conditions. "Contractor's Change Fee" for the purposes of the A201 shall mean the Construction Manager's Fee of \_\_\_\_%.»

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

«See Section 7.5 of the A201 General Conditions»

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

§ 6.1.5.1 Unit prices, if any, shall be identified in the Guaranteed Maximum Price Amendment.

§ 6.1.6 Liquidated damages, if any:

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

#### § 6.1.6.1 Liquidated Damages

The Contractor acknowledges that the Owner will incur significant damages if the Project is not completed within the Contract Time, including without limitation, damages in the form of inability to use the Project and all related facilities ("Loss of Use"); which are in addition to other damages such as delay costs for completion of portions of the Project or

related projects to be constructed by the Owner or the Owner's separate contractors; or costs of extended services of the Owner's project management staff, outside construction management firms, Architect, any separate contractors and consultants, and others performing work or services related to the Project. In consideration of the factors set out in this Section 11.5, the Contractor acknowledges and agrees that time is particularly of the essence in the Contractor's performance of the Work in accordance with the agreed date of commencement of the Work, the agreed dates of Substantial Completion and Final Completion of the Work, and the approved Construction Schedule. The Owner will incur serious and substantial special, incidental and consequential damages if completion of the Work does not occur within the required Contract Time. It would be difficult if not impossible to determine the amount of Loss of Use damages. Consequently, provisions for liquidated damages as a reasonable estimate of loss are included in the Contract Documents. Such liquidated damages are a reasonable estimate of actual damages from Loss of Use delay and are not a penalty. The Owner's right to liquidated damages for delay is not affected by partial completion, occupancy, or beneficial occupancy. If the Work is to be performed in phases, with separate dates set forth elsewhere in the Contract Documents, then the liquidated damages of this Section shall apply separately to each such phase. The liquidated damages provisions herein are intended to be in addition to every other remedy enforceable at law, equity, or under this Contract, including without limitation additional Owner costs related to the Project, and the right to collect consequential damages in any case where liquidated damages are unenforceable or otherwise unavailable. The provisions shall not relieve or release the Contractor from liability for any and all damage or damages suffered by the Owner due to other breaches of the Contract or suffered by separate contractors or under the indemnification and warranty provisions of this Contract, or other damages that are not expressly covered by liquidated damages.

#### § 6.1.6.2 Loss of Use Liquidated Damages

§ 6.1.6.2.1 The Owner and Contractor acknowledge and agree that if Substantial Completion of the Work is not achieved by the Contract Time for Substantial Completion, the amount of the Owner's actual Loss of Use damages (as described in Section 11.5.1 above) will be difficult, impractical or impossible to determine. Accordingly, the parties agree that if Substantial Completion is not achieved by the agreed date of Substantial Completion as may be adjusted pursuant to the Contract Documents, the Contractor shall pay to the Owner as liquidated damages for the Loss of Use of the Project the following amounts: the sum of **One Thousand Dollars (\$1,000.00)** for each partial day or full day of delay beyond the deadline for Substantial Completion.

[ADJUST FOR PHASED COMPLETION IF LIQUIDATED DAMAGES ARE PER PHASE]

§ 6.1.6.2.2 The parties further acknowledge and agree that the Contractor's obligation to pay liquidated damages under this Section 11.5 shall be in lieu of the obligation to pay actual delay damages for the Loss of Use damages. The parties agree that the daily rate agreed to above is reasonable in comparison to the approximate scope of actual delay damages for Loss of Use that the parties anticipate as of the time of execution of this Agreement, and that the payment of such liquidated damages is not intended to be a penalty or forfeiture. The parties further acknowledge that these liquidated damages are meant to reimburse the Owner only for such Loss of Use delay damages and that the Owner reserves the right to claim other types of damages against Contractor resulting from delays, including but not limited to other delay damages.

« »

#### § 6.1.7 Other:

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

«100% of all Savings accrue to the Owner. As used in this section, "Savings" means any positive difference between a fixed price, the Guaranteed Maximum Price or other maximum price set forth in the Contract Documents and the actual Cost of the Work and Fee, including all costs for which Owner reimburses Construction Manager and Construction Manager's fees or profits the Construction Manager earns.»

#### § 6.2 Guaranteed Maximum Price

The Construction Manager guarantees that the Contract Sum shall not exceed the Guaranteed Maximum Price set forth in the Guaranteed Maximum Price Amendment, subject to additions and deductions by Change Order as provided as it is amended from time to time. To the extent the Cost of the Work and Fee exceeds the Guaranteed Maximum Price, the Construction Manager shall bear such costs in excess of the Guaranteed Maximum Price and Fee without reimbursement or additional compensation from the Owner. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Construction Manager without reimbursement by the Owner.

### § 6.3 Changes in the Work

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

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

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

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

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

§ 6.3.5 Subject to Article 15 of AIA Document A201-2017, if no specific provision is made in Section 6.1.3 for adjustment of the Construction Manager’s Fee in the case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment provisions of Section 6.1.3 will cause substantial inequity to the Owner or Construction Manager, the Construction Manager’s Fee shall be equitably adjusted on the same basis that was used to establish the Fee for the original Work, and the Guaranteed Maximum Price shall be adjusted accordingly.

## ARTICLE 7 COST OF THE WORK FOR CONSTRUCTION PHASE

### § 7.1 Costs to Be Reimbursed

§ 7.1.1 The term Cost of the Work shall mean only costs necessarily incurred by the Construction Manager in the proper performance of the Work in accordance with this Article 7 and Article 8. The Cost of the Work shall include only the items set forth in Sections 7.1 through 7.7. As to change work, in the event of conflict between the provisions of this Article 6 and Section 7.5 of the A201 General Conditions, the provision more favorable to Owner (including any identification of chargeable costs) shall take precedence.

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

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

### § 7.2 Labor Costs

§ 7.2.1 Wages or salaries of construction workers directly employed by the Construction Manager to perform the construction of the Work at the site or, with the Owner’s prior approval, at off-site workshops, calculated as follows and with only the following components:

- .1 Basic wages: The hourly wage (without markup, fringe benefits or labor burden) not to exceed that specified in the applicable “Intent to Pay Prevailing Wage” for the laborers, apprentices, journeymen, and foremen performing and/or directly supervising the changed Work on the site. The premium portion of overtime wages is not included unless pre-approved by the Owner.
- .2 Fringe benefits: Fringe benefits paid by the Construction Manager as established by the Oregon Bureau of Labor and Industries or contributed to labor trust funds as itemized fringe benefits, whichever is applicable. Costs paid or incurred by the Construction Manager for vacations, per diem, bonuses, stock options, or discretionary payments to employees are not reimbursable.
- .3 Workers’ insurances: Direct contributions to the State of Oregon as industrial insurance; medical aid; and supplemental pension by class and rates established by the Oregon Bureau of Labor and Industries.

- 4 Federal insurances: Direct contributions required by the Federal Insurance Compensation Act (FICA); Federal Unemployment Tax Act (FUTA); and State Unemployment Compensation Act (SUCA).

§ 7.2.2 Wages or salaries of the Construction Manager's supervisory and administrative personnel when stationed at the site, or with the Owner's prior written approval, offsite while working exclusive on the Project.

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

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

« »

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

§ 7.2.5 If agreed rates for wages and salaries under Sections 7.2.2 through 7.2.4 in lieu of actual costs, are provided in this Agreement (or in a separate Construction Manager proposal that the Owner has accepted), those rates shall apply and the rates shall remain unchanged throughout the duration of this Agreement, unless the parties execute a Modification.

§ 7.2.6 If applicable prevailing wage rates for personnel are actually higher than as provided above, Construction Manager shall pay or cause to be paid the difference, and the difference shall not be a Cost of the Work.

### § 7.3 Subcontract Costs

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

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

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

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

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

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

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

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

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

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

## **§ 7.6 Miscellaneous Costs**

**§ 7.6.1** Premiums for that portion of insurance and Construction Manager payment and performance bonds required by the Contract Documents that can be directly attributed to this Contract at the following fixed rates:

**§ 7.6.2** Sales, use, or similar taxes, imposed by a governmental authority, that are related to the Work and for which the Construction Manager is liable. The Oregon Corporate Activity Tax under HB 3427, (also known as the "Student Success Act" or the "Gross Receipts Tax") is excluded from the Cost of the Work and is not otherwise recoverable from the Owner.

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

**§ 7.6.4** Fees of laboratories for tests required by the Contract Documents; except those related to defective or nonconforming Work for which reimbursement is excluded under Article 13 of AIA Document A201–2017 or by other provisions of the Contract Documents, and which do not fall within the scope of Section 7.7.3.

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

**§ 7.6.5.1** The cost of defending suits or claims for infringement of patent rights arising from requirements of the Contract Documents, payments made in accordance with legal judgments against the Construction Manager resulting from such suits or claims, and payments of settlements made with the Owner's consent, unless the Construction Manager had reason to believe that the required design, process, or product was an infringement of a copyright or a patent, and the Construction Manager failed to promptly furnish such information to the Architect as required by Article 3 of AIA Document A201–2017. The costs of legal defenses, judgments, and settlements shall not be included in the Cost of the Work used to calculate the Construction Manager's Fee or subject to the Guaranteed Maximum Price.

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

**§ 7.6.7** Legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between or among the Owner and Construction Manager, or its subcontractors or suppliers, reasonably incurred by the Construction Manager after the execution of this Agreement in the performance of the Work and with the Owner's prior approval, which shall not be unreasonably withheld.

## **§ 7.7 Other Costs and Emergencies**

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

**§ 7.7.2** Costs incurred in taking action to prevent threatened damage, injury, or loss, in case of an emergency affecting the safety of persons and property, as provided in Article 10 of AIA Document A201–2017, that do not arise from the negligence of Construction Manager, its subcontractors or suppliers.

**§ 7.7.3** Costs of repairing or correcting damaged Work executed by the Construction Manager, Subcontractors, or suppliers prior to Final Completion, provided that such damaged Work was not caused by the negligence of, or failure



to fulfill a specific responsibility by, the Construction Manager, or its subcontractors or suppliers and only to the extent that the cost of repair or correction is not recovered or recoverable by the Construction Manager from insurance, sureties, subcontractors, suppliers, or others. Costs of repairing work damaged after Final Completion, and costs of repair or correction of nonconforming Work whether before or after Final Completion, are not recoverable.

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

#### § 7.8 Related Party Transactions

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

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

#### § 7.9 Costs Not To Be Reimbursed

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

- .1 Salaries and other compensation of the Construction Manager’s personnel stationed at the Construction Manager’s principal office or offices other than the site office, except as specifically provided in Section 7.2, or as may be provided in Article 14;
- .2 Bonuses, profit sharing, incentive compensation, and any other discretionary payments, paid to anyone hired by the Construction Manager or paid to any Subcontractor or vendor, unless the Owner has provided prior approval;
- .3 Expenses of the Construction Manager’s principal office and offices other than the site office;
- .4 Overhead and general expenses, except as may be expressly included in Sections 7.1 to 7.7;
- .5 The Construction Manager’s capital expenses, including interest on the Construction Manager’s capital employed for the Work;
- .6 Except as provided in Section 7.7.3 of this Agreement, costs due to the negligence of, or failure to fulfill a specific responsibility of the Contract by, the Construction Manager, Subcontractors, and suppliers, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable;
- .7 Any cost not specifically and expressly described in Sections 7.1 to 7.7;
- .8 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded; and
- .9 Costs for services incurred during the Preconstruction Phase.
- .10 Data processing or software costs related to the Work.
- .11 Any cost incurred by Construction Manager, including bond costs in response to any lien, stop notice, bonded stop notices or other such claims, unless the cost incurred by Construction Manager is solely the result of Owner's failure to make a payment to Construction Manager when due and payable with respect to the Work in question.
- .12 Costs to correct nonconforming work or to perform warranty work following Final Completion.
- .13 Travel, lodging, food, or relocation expenses.
- .14 Bonuses, profit sharing, incentive compensation, or other discretionary payments.
- .15 Costs of preparation of, and response to inquiries relating to, Construction Manager’s required monthly reports to Owner.
- .16 Corporate Activity Tax.
- .17 Any other cost or expense not expressly included in the definition of Cost of the Work.

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

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

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

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

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

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

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

## **ARTICLE 10 ACCOUNTING RECORDS**

### **§ 10.1 Accounting Records**

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

§ 10.1.2 The Construction Manager's system of cost control for the Work shall be in accordance with industry standards for projects of this scope, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The Construction Manager shall identify variances between actual and

estimated costs and report the variances to the Owner and Architect at regular intervals, using Construction Manager's job-cost tracking system.

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

## **ARTICLE 11 PAYMENTS FOR CONSTRUCTION PHASE SERVICES**

### **§ 11.1 Progress Payments**

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

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

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

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

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

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

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

§ 11.1.5.3 When the Construction Manager allocates costs from a contingency to another line item in the schedule of values (unless objected to by the Architect or the Owner), the Construction Manager shall submit supporting documentation to the Architect using the process (including supporting documentation) required for change orders (AIA 201 7.5), and such allocations must be approved in writing prior to the submission of the applicable Application for Payment.

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



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

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

- .1 That portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the most recent schedule of values. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 7.3 of AIA Document A201-2017;
- .2 That portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction or, if approved in writing in advance by the Owner, suitably stored off the site at a location agreed upon in writing;
- .3 That portion of Construction Change Directives that the Owner determines to be reasonably justified; and
- .4 The Construction Manager's Fee, computed upon the Cost of the Work described in the preceding Sections 11.1.7.1.1 and 11.1.7.1.2 at the rate stated in Section 6.1.2 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work included in Sections 11.1.7.1.1 and 11.1.7.1.2 bears to a reasonable estimate of the probable Cost of the Work upon its completion.

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

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

## § 11.1.8 Retainage

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

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

«five percent (5%) of the entire amount of each progress payment »

§ 11.1.8.1.1 The following items are not subject to retainage:

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

« None »

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

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

« None »

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

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

«To the fullest extent allowed by law, full retainage shall be held by the Owner until Final Completion»

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

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

§ 11.1.11 In accordance with ORS 279C.570, the Owner and the Construction Manager shall endeavor to agree upon a mutually acceptable procedure for review and approval of payments to Subcontractors, and the percentage of retainage held on Subcontracts, and the Construction Manager shall execute subcontracts in accordance with those agreements. Unless otherwise agreed in writing with the Owner or otherwise required by law, The Contractor agrees to withhold as retainage from each first-tier Subcontractor five percent of the amount of each progress payment to such first-tier Subcontractor, until completion of the entire Work (not just the Subcontract Work), and to otherwise apply such retainage in accordance with the applicable Subcontract to protect the interests of the Owner.

§ 11.1.12 In taking action on the Construction Manager's Applications for Payment the Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Construction Manager provided this does not exonerate the Architect from Owner claims if the Architect discovers or has reason to know that inaccurate or incomplete information has been provided. Examinations, audits, and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

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

## § 11.2 Final Payment

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

- .1 the Construction Manager has fully performed the Contract, except for the Construction Manager's responsibility to correct Work as provided in Article 12 of AIA Document A201–2017, and to satisfy other requirements, if any, which extend beyond final payment;
- .2 the Construction Manager has submitted a final accounting for the Cost of the Work and a final Application for Payment;
- .3 a final Certificate for Payment has been issued by the Architect in accordance with Section 11.2.2.2; and
- .4 **All other conditions to Final Payment in the Contract Documents have been fulfilled.**

§ 11.2.2 The Owner's auditors will review and report in writing on the Construction Manager's final accounting after delivery of the final accounting to the Architect by the Construction Manager. Based upon such Cost of the Work as the Owner's auditors report to be substantiated by the Construction Manager's final accounting, and provided the other conditions of Section 7.2.1 have been met, the Architect will, within seven days after receipt of the written report of the Owner's auditors, either issue to the Owner a final Certificate for Payment with a copy to the Construction Manager, or notify the Construction Manager and Owner in writing of the Architect's reasons for withholding a certificate as provided in Section 9.5.1 of the AIA Document A201–2017. The time periods stated in this Section supersede those stated in Section 9.4.1 of the AIA Document A201–2017.

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

§ 11.2.2.2 Within seven days after receipt of the written report described in Section 11.2.2.1, or receipt of notice that the Owner will not conduct an audit, and provided that the other conditions of Section 11.2.1 have been met, the Architect will either issue to the Owner a final Certificate for Payment with a copy to the Construction Manager, or notify the Construction Manager and Owner in writing of the Architect's reasons for withholding a certificate as provided in Article 9 of AIA Document A201–2017. The time periods stated in this Section 11.2.2 supersede those stated in Article

9 of AIA Document A201–2017. The Architect is not responsible to the Contractor for verifying the accuracy of the Construction Manager’s final accounting.

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

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

§ 11.2.4 If, subsequent to final payment and at the Owner’s request, the Construction Manager incurs costs to correct defective or nonconforming Work, the Owner shall not reimburse the Construction Manager such costs, and such costs are not Cost of the Work. If it incurs any costs in connection therewith and the Construction Manager has participated in savings as provided in Section 5.2.1, the amount of such savings shall be recalculated and appropriate credit given to the Owner in determining the net savings amount to be paid by the Owner to the Construction Manager.

### § 11.3 Interest

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

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

Payments shall be made, and interest shall be payable, in accordance with the Oregon Prompt Payment Act, ORS 279C.570.

« » % « »

## ARTICLE 12 DISPUTE RESOLUTION

### § 12.1 Binding Dispute Resolution

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

*(Check the appropriate box.)*

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

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

## ARTICLE 13 TERMINATION OR SUSPENSION

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

§ 13.1.1 If the Owner and the Construction Manager do not reach an agreement on the Guaranteed Maximum Price, the Owner may terminate this Agreement upon not less than seven days’ written notice to the Construction Manager, and the Construction Manager may terminate this Agreement, upon not less than seven days’ written notice to the Owner.

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

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

§ 13.1.4 In the event of termination of this Agreement pursuant to Section 13.1.3, the Construction Manager shall be equitably compensated for Preconstruction Phase services and Work performed prior to receipt of a notice of termination. In no event shall the Construction Manager's compensation under this Section exceed the compensation set forth in Section 5.1.

§ 13.1.5 If the Owner terminates the Contract pursuant to Section 13.1.3 after the commencement of the Construction Phase but prior to the execution of the Guaranteed Maximum Price Amendment, the Owner shall pay to the Construction Manager an amount calculated as follows, which amount shall be in addition to any compensation paid to the Construction Manager under Section 13.1.4:

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

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

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

§ 13.1.6.2 If the Construction Manager terminates the Contract after execution of the Guaranteed Maximum Price Amendment, the amount payable to the Construction Manager shall not exceed the amount the Construction Manager would otherwise have received under this Section 13, except that the Construction Manager's Fee shall be calculated proportionate to the Cost of the Work for Work actually completed.

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

### § 13.2.1 Termination

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

### § 13.2.2 Termination by the Owner for Cause

§ 13.2.2.1 If the Owner terminates the Contract for cause as provided in Article 14 of AIA Document A201–2017, the amount, if any, to be paid to the Construction Manager under Article 14 of AIA Document A201–2017 shall not cause

the Guaranteed Maximum Price to be exceeded, nor shall it exceed the lesser of the amount identified in Article 14 of AIA document A201-2017, or an amount calculated as follows:

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

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

### § 13.3 Suspension

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

## ARTICLE 14 MISCELLANEOUS PROVISIONS

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

### § 14.2 Successors and Assigns

§ 14.2.1 The Owner and Construction Manager, respectively, bind themselves, their partners, successors, assigns and legal representatives to covenants, agreements, and obligations contained in the Contract Documents. Except as provided in Section 14.2.2 of this Agreement, and in Section 13.2.2 of A201-2017, the Construction Manager shall not assign the Contract as a whole without written consent of the Owner. If the Construction Manager attempts to make an assignment, the Construction Manager shall nevertheless remain legally responsible for all obligations under the Contract.

§ 14.2.2 The Owner may, without consent of the Construction Manager, assign the Contract to a lender providing construction financing for the Project. The Construction Manager shall execute all consents reasonably required to facilitate the assignment.

### § 14.3 Insurance and Bonds

#### § 14.3.1 Provision

The Construction Manager shall provide bonds not later than the time required under applicable Oregon law, and proof of insurance coverages required under the Agreement not later than any entry onto the Project site.

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



§ 14.3.3 The Construction Manager shall provide certificates of insurance to the Owner that evidence compliance with the requirements in this Section 14.3

§ 14.3.4 If an owner-controlled (DSIP) or contractor-controlled insurance program for the Project is permitted under ORS 737.602 or other applicable law, the District may require such program for the Project. If so, this Contract shall identify (1) anticipated cost savings from reduced premiums, claims reductions and other factors, (2) the allocation of cost savings, and (3) safety responsibilities, incentives or both safety responsibilities and incentives, and Article 11 of the AIA A201 shall be modified in a manner acceptable to the Owner to reflect the owner-controlled or contractor-controlled program and reduced charges from Contractor and subcontractors for their own insurance. In the event the Owner chooses to proceed with an owner-controlled or contractor-controlled program, Construction Manager shall, and shall cause its subcontractors to, comply with all requirements of such insurance program as necessary for coverage. Notwithstanding any provision of the Contract Documents to the contrary, if such program is put in place, neither Construction Manager nor any subcontractor shall charge or pass through, directly or indirectly any of its insurance costs or deductibles to Owner, as Cost of the Work part of the Fee, or otherwise.

## ARTICLE 15 SCOPE OF THE AGREEMENT

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

§ 15.2 The following documents comprise the Agreement:

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

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

☐ ☐

[ ☐ ] Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages

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

Exhibit "A" Form of GMP Amendment  
Exhibit "B" Insurance Requirements  
Exhibit "C" Form of Claim Waiver  
Exhibit "D" Request for Proposal and Addenda  
Exhibit "E" Construction Manager's Proposal  
Exhibit "F" Construction Manager's General Conditions Charges  
Exhibit "G" Payment and Performance Bond Forms

Exhibit "H" Provisions from Oregon Public Contracting Code and Public Contracting Rules  
Exhibit "I" District Access Standards

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

**REDMOND SCHOOL DISTRICT**

**OWNER** *(Signature)*

Charan Cline  
Superintendent

**CONSTRUCTION MANAGER**

**CONSTRUCTION MANAGER** *(Signature)*

*(Printed name and title)*

# DRAFT AIA® Document A133™ – 2019

## Exhibit A

### Guaranteed Maximum Price Amendment

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

« Redmond High School Project »  
« Redmond High School »  
« 675 SW Rimrock Drive »  
« Redmond, Oregon 97556 »

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

« Redmond School District »  
« 145 SE Salmon Avenue »  
« Redmond, OR 97756 »

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

« To be Determined »  
« »  
« »  
« »

#### ARTICLE A.1

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

Pursuant to Section 2.2.6 of the Agreement, the Owner and Construction Manager hereby amend the Agreement to establish a Guaranteed Maximum Price. As agreed by the Owner and Construction Manager, the Guaranteed Maximum Price is an amount that the Contract Sum shall not exceed. The Contract Sum consists of the Construction Manager's Fee plus the Cost of the Work, as that term is defined in Article 6 of this Agreement.

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

§ A.1.1.2 Itemized Statement of the Guaranteed Maximum Price. Provided below is an itemized statement of the Guaranteed Maximum Price organized by trade categories, allowances, contingencies, alternates, the Construction Manager's Fee, and other items that comprise the Guaranteed Maximum Price.  
(Provide below or reference an attachment.)

« »

§ A.1.1.3 The Guaranteed Maximum Price is based on the following alternates, if any, which are described in the Contract Documents and are hereby accepted by the Owner:  
(State the numbers or other identification of accepted alternates. If the Contract Documents permit the Owner to accept other alternates subsequent to the execution of this Amendment, attach a schedule of such other alternates showing the amount for each and the date when the amount expires.)

#### ADDITIONS AND DELETIONS:

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

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

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



<< >>

§ A.1.1.4 Allowances included in the Guaranteed Maximum Price, if any:

Item	Price

§ A.1.1.5 Assumptions, if any, on which the Guaranteed Maximum Price is based:

<< >>

§ A.1.1.6 The Guaranteed Maximum Price is based upon following Supplementary or other Conditions of the Contract:

Document	Title	Date	Pages

§ A.1.1.7 The Guaranteed Maximum Price is based upon the following Specifications:  
(Either list the Specifications here, or refer to an exhibit attached to this Agreement.)

<< >>

Section	Title	Date	Pages

§ A.1.1.8 The Guaranteed Maximum Price is based upon the following Drawings:  
(Either list the Drawings here, or refer to an exhibit attached to this Agreement.)

<< >>

Number	Title	Date

§ A.1.1.9 The Guaranteed Maximum Price is based upon the following other documents and information:  
(List any other documents or information here, or refer to an exhibit attached to this Agreement.)

<< >>

## ARTICLE A.2

§ A.2.1 The date of Substantial Completion established by this Amendment:

<< >>

**REDMOND SCHOOL DISTRICT**

**CONSTRUCTION MANAGER**

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

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

<< >><< >>

\_\_\_\_\_  
(Printed name and title)

<< >><< >>

\_\_\_\_\_  
(Printed name and title)



## EXHIBIT B INSURANCE REQUIREMENTS

Contractor will at all times specified herein, and prior to any entry onto the job site, provide and maintain for itself and require the Subcontractors to provide and maintain the following types and the following minimum limits of insurance written on an occurrence basis by a company or companies rated A/IX or better in the most recent edition of "Best's Insurance Guide" (or such lesser rating as may be approved by Owner in writing) and authorized to do business in the state where the Project is located. Continued compliance with these requirements is a condition precedent to payment.

### A. **Workers' Compensation and Employer's Liability:**

- (i) Workers Compensation, with limits as required by applicable law.
- (ii) Employers Liability:
  - \$1,000,000 Each Accident
  - \$1,000,000 Disease, Policy Limit
  - \$1,000,000 Disease, Each EmployeeCoverage will be carried for the duration of the applicable statute of repose or for ten (10) years after Final Completion, whichever is longer.

### B. **Commercial General Liability (Occurrence Form):**

- (i) Combined Bodily Injury and Property Damage:
  - \$1,000,000 Each Occurrence
  - \$1,000,000 Personal and Advertising Injury
  - \$2,000,000 General Aggregate
  - \$2,000,000 Products/Completed Operations Aggregate
  - \$300,000 Fire Damage Legal Liability
  - \$10,000 Medical Expenses Per Person
- (ii) The scope of coverage must meet the following:
  - (1) Premises Operations must be included.
  - (2) Elevators and Escalators must be included.
  - (3) Coverage for Independent Contractors and work performed on Contractor's behalf by Subcontractors must be included.
  - (4) Contractual Liabilities must be included (including the contract obligations specified in the indemnification paragraph(s) of the Contract)
  - (5) The Products and Completed Operations Insurance will be maintained for the duration of the applicable statute of repose or for ten (10) years after Final Completion, whichever is longer.
  - (6) There can be no exclusions for subsidence, collapse, explosion or underground property damage.
  - (7) There can be no insured vs. insured cross-suit exclusion. The policies will provide for cross-liability coverage as would be achieved under the standard Insurance Services Office "separation of insureds" clause.



- (8) The limits will not be eroded or wasted by defense costs.
- (9) The policy will be endorsed to be primary and non-contributory with any insurance maintained by Owner, its affiliates, subsidiaries, members, directors, officers, employees and agents. (This endorsement must be shown on the insurance certificate provided to Contractor)
- (10) Maximum deductible will be \$10,000. Contractor shall pay all deductibles without reimbursement from Owner.
- (11) Contractor will secure Pollution Liability coverage with limits not less than \$1,000,000 per occurrence. Contractor's Pollution Liability coverage will include insurance covering the Contractor's liability for a third-party bodily injury and property damage arising from pollution conditions caused by the Contractor while performing operations under the contract. The insurance coverage also shall apply to sudden and accidental pollution events. Any coverage restriction as to time limit for discovery of a pollution incident and/or a time limit for notice to the insurer must be expressly accepted, in writing, by the Owner. The insurance coverage shall also respond to cleanup cost. The policy's limits shall not be less than \$1,000,000 each loss / \$1,000,000 aggregate. The policy shall be endorsed to state that the general aggregate limit of liability shall apply separately to this contract.

**C. Commercial Business Auto:**

- (i) Combined Bodily Injury and Property Damage  
\$1,000,000 Each Accident
- (ii) The following coverages must be included:
  - (1) Owned Automobiles
  - (2) Non-Owned and Hired Automobiles

Will be maintained for the duration of the applicable statute of repose or for ten (10) years after Final Completion, whichever is longer.

**D. Excess/Umbrella Liability Coverage:**

- (i) \$10,000,000 Each Occurrence
- (ii) \$10,000,000 Aggregate
- (iii) Coverage will be at least as broad as all liability policies described above.
- (iv) Coverage will be carried for the duration of the applicable statute of repose or for ten (10) years after Final Completion, whichever is longer.
- (v) The policy must provide that coverage will be triggered by exhaustion of the General Liability, Commercial Business Auto, Employer's Liability policies above only and not any other policies; exhaustion of the applicable policies above will be achieved by reasonable compromise for amounts less than the full limits of such applicable policies.

**E. Professional Liability Insurance.** Covering performance of professional services by the Contractor or any Subcontractor or professional firm at any tier (e.g. for bidder-design or design-build components), whether or not performed by a licensed architect or engineer,



with policy limits of not less than (\$1,000,000) per claim and (\$2,000,000) in the aggregate.

- F. Certificates and Certified Copies of Policies.** Certificates of insurance for Contractor's and Subcontractors' insurance along with copies of all endorsements necessary to evidence compliance with all insurance requirements will be filed with Owner and be acceptable to Owner prior to commencement of the Work. For those insurance coverages that are required to remain in force after Final Completion, additional certificate evidencing continuation of such coverage will be submitted as part of the application for final payment and upon each annual renewal for the duration of coverage required. Upon Owner's request at any time, Contractor will immediately provide an actual certified copy of its insurance policies. Provision of the certificates and copies of policies as required herein will be a condition precedent to payment.
- G. Notice of Cancellation, Reduction or Expiration.** The insurance policies required by this Exhibit will be endorsed to include a covenant that coverages or limits afforded under the policies will not be canceled, reduced or allowed to expire until at least 30 days' prior written notice has been given to Owner. In addition, Contractor and subcontractors will give immediate written notice to Owner immediately upon learning that their coverages may be cancelled, reduced or their limits impaired by claims. Information concerning cancellation or reduction of limits on account of claims paid or to be paid will be furnished by the Contractor to Owner not more than three (3) business days of when Contractor learns that revised or reduced limits are likely. When Contractor becomes aware of cancellation, expiration or reduction in coverage or available limits, Contractor within ten (10) business days will procure other policies of insurance that meet all requirements of this Exhibit.
- H. Owner's Right to Terminate or Cure.** Failure of Contractor or a Subcontractor to secure and maintain insurance with the coverages and limits required by this Exhibit will be a material breach of the Contract entitling Owner, in its discretion and without waiving any other remedies, to (i) withhold payments or recoup payments already made to Contractor for work on the Project, (ii) terminate the Contractor for cause, and (iii) purchase any additional insurance it deems reasonable necessary to protect itself at the expense of the Contractor. Contractor consents to Owner procuring replacement insurance in Contractor's name and will cooperate in all respects with Owner's efforts in procuring additional or replacement insurance. Owner will have the discretion to purchase an Owner's protective policy or other similar policy that affords to Owner coverages and limits providing reasonably equivalent protections as Owner would have received if Contractor and Subcontractors maintained the insurance required by this Exhibit. Owner's costs incurred in finding replacement insurance or an Owner's protective policy will either be reimbursed directly by Contractor or may be offset against amounts owed by Owner to Contractor on the Project or other projects. These requirements will remain enforceable for the duration of the applicable statute of repose or for ten (10) years after Final Completion, whichever is longer.
- I. Insurance in Excess of Requirements.** In the event Contractor or any Subcontractor(s) purchase insurance in excess of the coverages or limits required under this Exhibit, such excess coverages or limits will apply to the Project and inure to the benefit of Owner.



**J. No Waiver by Owner.** The insurance requirements under this Exhibit can only be waived or modified by Owner by an express written instrument signed by Owner acknowledging the reduced coverages or limits. No other act or omission by Owner or its agents, including but not limited to (i) implicit or verbal acceptance or approval of reduced coverages or limits or (ii) failure to require proof of compliant insurance, will amount to Owner's waiver of the insurance requirements of this Exhibit.

**K. Subcontractor Insurance.** All Subcontractors' insurance will meet all insurance requirements of Contractor as provided in this Exhibit, including, but not limited to, the types of insurance, extent and durations of coverages, and notice requirements, except that the limits of insurance for Subcontractors will be no less than the following:

*Design Professional:*

- (i) Workers' Compensation and Employer's Liability: same as above except for the following limits for Employer's Liability:
  - \$500,000 Each Accident
  - \$500,000 Disease, Policy Limit
  - \$500,000 Disease, Each Employee
- (ii) Commercial General Liability (Occurrence Form): Combined Bodily Injury and Property Damage:
  - \$1,000,000 Each Occurrence
  - \$1,000,000 Personal and Advertising Injury
  - \$2,000,000 General Aggregate
  - \$2,000,000 Products/Completed Operations Aggregate
- (iii) Business Auto: same as above.
- (iv) Excess/Umbrella Liability Coverage: none required.
- (v) Professional Liability (\$1,000,000) per claim and (\$2,000,000) in the aggregate.

*Sub Contractor:*

- (i) Workers' Compensation and Employer's Liability: same as Contractor
- (ii) Commercial General Liability (Occurrence Form): Combined Bodily Injury and Property Damage:
  - \$1,000,000 Each Occurrence
  - \$1,000,000 Personal and Advertising Injury
  - \$2,000,000 General Aggregate
  - \$2,000,000 Products/Completed Operations Aggregate
- (iii) Business Auto: same as above.
- (iv) Excess/Umbrella Liability Coverage: \$4,000,000.
- (v) Pollution Liability and Hazardous Materials Liability
  - \$1,000,000 Each Occurrence
  - \$1,000,000 General Aggregate



- L. Waiver of Subrogation.** All of Contractor's and Subcontractors' liability insurance policies, including worker's compensation, will contain a waiver of subrogation against Owner, its affiliates, subsidiaries, directors, officers, employees and agents.
- M. Additional Insureds.** All of Contractor's and Subcontractors' liability insurance policies will be endorsed to expressly name Owner, its affiliates, subsidiaries, directors, officers, employees and agents (including but not limited to those listed below) as additional insureds. The coverage under the additional insured endorsement will (i) be primary and noncontributory with respect to any insurance of the additional insureds, (ii) provide the same coverages and limits to the additional insured as are afforded to the primary insured as required by this Exhibit, and will not be limited to vicarious liability, (iii) not be limited to on-going operations, and include completed operations (iv) be maintained for the same durations as the coverages afforded to the primary insured as required by this Exhibit and blanket endorsements will not be acceptable. The following persons or entities affiliated with Owner will be expressly named as Additional Insured: Owner Project Manager HMK Company, BBT Architects.
- N. Builder's Risk Insurance.**
- (1)** The Owner shall purchase and maintain builders risk insurance or its equivalent with such terms and coverages as the Owner determines. Upon the Contractor's request, Owner will provide a copy of the policy to the Contractor. The Contractor shall, and shall cause all Subcontractors to, cooperate with the Owner in the investigation, prosecution and settlement of claims.
  - (2) Insured Loss.** The owner shall have sole power and authority to adjust and settle a loss with insurers. A loss insured under the Builder's Risk Insurance or any Builder's Risk Installation Floater shall be adjusted by the Owner and any payments or settlements shall be made payable to the Owner for the insureds, as their interests may appear. The Owner shall be entitled to full payment of its loss from the insurance proceeds before payment of the remainder to any other beneficiaries of the policy. The Contractor shall pay Subcontractors their just share of remaining insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors make payments to the Sub-subcontractors in similar manner.
  - (3) Deductible.** Payment of the deductible on the Builders Risk policy claims, up to \$50,000 per claim, is the responsibility of the Contractor and is not subject to reimbursement by the Owner. The Contractor promptly shall pay such deductible (or if the claim is less than the deductible, the amount of the claim) promptly and without offset or deduction. If the Contractor does not do so, the Owner may, in addition to other remedies, deduct and offset the amount of the deductible from the Contract Sum.

**Exhibit C – Lien Waiver Forms**

From: \_\_\_\_\_  
(Name of Firm Giving Release)

\_\_\_\_\_  
(Business Address)

\_\_\_\_\_  
(City, State, Zip Code)

Contact Person: \_\_\_\_\_

Contact Telephone: \_\_\_\_\_

Project: \_\_\_\_\_  
(Project Name)

\_\_\_\_\_  
(Project Address)

\_\_\_\_\_  
(City, State, Zip Code)

Project Manager: \_\_\_\_\_

Project Telephone: \_\_\_\_\_

**CONDITIONAL WAIVER AND RELEASE – PROGRESS PAYMENT**

The undersigned does hereby acknowledge that upon receipt by the undersigned of a check from (Name of Firm writing check:) \_\_\_\_\_ in the sum of \$\_\_\_\_\_ and when the check has been properly endorsed and has been paid by the institution upon which it was drawn, this document shall become effective to waive and release pro tanto any and all Claims which the undersigned has or may now have on the above referenced job, the Owner of the Project. This release covers all payment for labor, services, equipment or materials furnished and/or other claims through and for work forward through (date) \_\_\_\_\_, including changes if any, but does not cover the right to payment of unreleased retention or items furnished after that date. Before any recipient of this document relies on it said party should verify evidence of payment to the undersigned. The undersigned represents and warrants that this waiver and release is effective to waive and release all Claims of persons or entities providing labor, services, equipment, or materials furnished to the below-referenced job by or on behalf of the undersigned company, or its subcontractors or suppliers at any tier. As used herein "Claims" includes claims of any nature, known or unknown, including without limitation all suits, debts, demands, stop notice rights, causes of action and claims for payment, claims on bonds, claims under the laws or statutes of the municipality, state or federal government, rights under prompt payment statutes, claims of negligence, breach of contract, time, delay or impact claims, and any claim of or right to lien under municipal, state or federal laws or statutes relating to construction or mechanics' liens with respect to and on the above referenced Project and the improvements thereon. "Claims" does not include claims against an insurance company on an insurance policy.

In consideration of the foregoing, the undersigned agrees to indemnify, defend and hold harmless Owner and any upper-tier contractor ("Upper-Tier Contractors") from any Claims made by the undersigned and/or its subcontractors, suppliers, laborers, employees, materialmen, or other assigns of such persons against Owner, Upper-Tier Contractors or the Project. The undersigned further agrees to indemnify and reimburse all persons so relying on this release and acknowledgment for any and all sums, including attorney fees and costs that may be incurred as a result of such claims.

This instrument shall constitute a full, final, and complete release of all claims, rights, and demands of the undersigned arising out of or relating to the above Project for the period ending on the above-referenced date, subject to any express exceptions herein.

NOTICE: THIS DOCUMENT WAIVES RIGHTS CONDITIONALLY AND STATES THAT YOU HAVE BEEN PAID FOR GIVING UP THOSE RIGHTS.

I CERTIFY UNDER PENALTY OF PERJURY UNDER LAWS OF THE STATE OF OREGON THAT THE ABOVE IS A TRUE AND CORRECT STATEMENT.

IN WITNESS WHEREOF, Contractor has executed this Conditional Waiver and Release and final discharge as of this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
(Company)

By: \_\_\_\_\_

Title: \_\_\_\_\_

**Exhibit C – Lien Waiver Forms**

From: \_\_\_\_\_  
(Name of Firm Giving Release)

\_\_\_\_\_  
(Business Address)

\_\_\_\_\_  
(City, State, Zip Code)

Contact Person: \_\_\_\_\_

Contact Telephone: \_\_\_\_\_

Project: \_\_\_\_\_  
(Project Name)

\_\_\_\_\_  
(Project Address)

\_\_\_\_\_  
(City, State, Zip Code)

Project Manager: \_\_\_\_\_

Project Telephone: \_\_\_\_\_

**UNCONDITIONAL WAIVER AND RELEASE – PROGRESS PAYMENT**

The undersigned does hereby acknowledge that the undersigned has received progress payments in the sum of \$ \_\_\_\_\_ for labor, services, equipment or materials furnished to the above referenced job and does hereby waive and release pro tanto any and all Claims which the undersigned has or may have on the above referenced job. This release covers all payment for labor, services, equipment or materials furnished and/or other claims to the above referenced job through and for work forward through (date) \_\_\_\_\_, including changes if any, but does not cover the right to payment of unreleased retention or items furnished after that date. The undersigned represents and warrants that this waiver and release is effective to waive and release all Claims of persons or entities providing labor, services, equipment, or materials furnished to the below-referenced job by or on behalf of the undersigned company, or its subcontractors or suppliers at any tier. As used herein "Claims" includes claims of any nature, known or unknown, including without limitation all suits, debts, demands, stop notice rights, causes of action and claims for payment, claims on bonds, claims under the laws or statutes of the municipality, state or federal government, rights under prompt payment statutes, claims of negligence, breach of contract, time, delay or impact claims, and any claim of or right to lien under municipal, state or federal laws or statutes relating to construction or mechanics' liens with respect to and on the above referenced Project and the improvements thereon. "Claims" does not include claims against an insurance company on an insurance policy.

In consideration of the foregoing, the undersigned agrees to indemnify, defend and hold harmless Owner and any upper-tier contractor ("Upper-Tier Contractors") from any Claims made by the undersigned and/or its subcontractors, suppliers, laborers, employees, materialmen, or other assigns of such persons against Owner, Upper-Tier Contractors or the Project. The undersigned further agrees to indemnify and reimburse all persons so relying on this release and acknowledgment for any and all sums, including attorney fees and costs that may be incurred as a result of such claims.

This instrument shall constitute a full, final, and complete release of all claims, rights, and demands of the undersigned arising out of or relating to the above Project for the period ending on the above-referenced date, subject to any express exemptions herein.

NOTICE: THIS DOCUMENT WAIVES RIGHTS UNCONDITIONALLY AND STATES THAT YOU HAVE BEEN PAID FOR GIVING UP THOSE RIGHTS. THIS DOCUMENT IS ENFORCEABLE AGAINST YOU IF YOU SIGN IT, EVEN IF YOU HAVE NOT BEEN PAID. IF YOU HAVE NOT BEEN PAID, USE A CONDITIONAL RELEASE FORM.

I CERTIFY UNDER PENALTY OF PERJURY UNDER LAWS OF THE STATE OF OREGON THAT THE ABOVE IS A TRUE AND CORRECT STATEMENT.

IN WITNESS WHEREOF, Contractor has executed this Unconditional Waiver and Release and final discharge as of this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
(Company)

By: \_\_\_\_\_

Title: \_\_\_\_\_



**Exhibit C – Lien Waiver Forms**

From: \_\_\_\_\_  
(Name of Firm Giving Release)

\_\_\_\_\_  
(Business Address)

\_\_\_\_\_  
(City, State, Zip Code)

Contact Person: \_\_\_\_\_

Contact Telephone: \_\_\_\_\_

Project: \_\_\_\_\_  
(Project Name)

\_\_\_\_\_  
(Project Address)

\_\_\_\_\_  
(City, State, Zip Code)

Project Manager: \_\_\_\_\_

Project Telephone: \_\_\_\_\_

**UNCONDITIONAL WAIVER AND RELEASE ON FINAL PAYMENT**

The undersigned does hereby acknowledge that the undersigned has been paid and has received total payments in the sum of \$\_\_\_\_\_ for, labor, services, equipment or materials furnished to the above-referenced job, and does hereby unconditionally waive and release any and all Claims which the undersigned has or may have on the above-referenced job. The undersigned represents and warrants that this waiver and release is effective to waive and release all Claims of persons or entities providing labor, services, equipment, or materials furnished to the below-referenced job by or on behalf of the undersigned company, or its subcontractors or suppliers at any tier, and that all such persons and entities have been paid in full for their work on the below-referenced job. As used herein "Claims" includes claims of any nature, known or unknown, including without limitation all suits, debts, demands, stop notice rights, causes of action and claims for payment, claims on bonds, claims under the laws or statutes of the municipality, state or federal government, rights under prompt payment statutes, claims of negligence, breach of contract, time, delay or impact claims, and any claim of or right to lien under municipal, state or federal laws or statutes relating to construction or mechanics' liens with respect to and on the above referenced Project and the improvements thereon. "Claims" does not include claims against an insurance company on an insurance policy.

In consideration of the foregoing, the undersigned agrees to indemnify, defend and hold harmless Owner and any upper-tier contractor ("Upper-Tier Contractors") from any Claims made by the undersigned and/or its subcontractors, suppliers, laborers, employees, materialmen, or other assigns of such persons against Owner, Upper-Tier Contractors or the Project. The undersigned further agrees to indemnify and reimburse all persons so relying on this release and acknowledgment for any and all sums, including attorney fees and costs that may be incurred as a result of such claims.

This instrument shall constitute a full, final, and complete release of all claims, rights, and demands of the undersigned arising out of or relating to the above Project.

NOTICE: THIS DOCUMENT WAIVES RIGHTS UNCONDITIONALLY AND STATES THAT YOU HAVE BEEN PAID FOR GIVING UP THOSE RIGHTS. THIS DOCUMENT IS ENFORCEABLE AGAINST YOU IF YOU SIGN IT, EVEN IF YOU HAVE NOT BEEN PAID.

I CERTIFY UNDER PENALTY OF PERJURY UNDER LAWS OF THE STATE OF OREGON THAT THE ABOVE IS A TRUE AND CORRECT STATEMENT.

IN WITNESS WHEREOF, Contractor has executed this Unconditional Waiver and Release and final discharge as of this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
(Company)

By: \_\_\_\_\_

Title: \_\_\_\_\_



## PAYMENT BOND

Bond No. \_\_\_\_\_

The undersigned, \_\_\_\_\_ as Principal and \_\_\_\_\_ as Surety, a corporation organized and existing under the laws of the state of \_\_\_\_\_, are held and bound unto Redmond School District and its heirs, executors, administrators, and assigns as Obligee, for the use and benefit of all persons or entities that provide labor, materials, equipment or supplies for use under the Contract described below, in the penal sum of \_\_\_\_\_ Dollars (\$\_\_\_\_\_), lawful money of the United States of America, for the payment of which Principal and Surety bind themselves and their heirs, executors, administrators, successors and assigns, jointly and severally.

WHEREAS Principal has entered into a Construction Contract ("Contract") dated \_\_\_\_\_, 2022 with Obligee for the Redmond High School Project ("Project"), which Contract is made a part hereof as if fully incorporated herein.

NOW, THEREFORE, THE CONDITIONS OF THIS OBLIGATION are such that if Principal shall promptly make payment to all persons or entities that provide labor, material, equipment or supplies for use under said Contract, then this obligation shall be null and void; otherwise, it shall remain in full force and effect. In the event that Principal shall be, and declared by Obligee to be in default under the Contract, the Surety, at the request of the Obligee, shall promptly remedy the default in a manner acceptable to the Owner.

In any event, this obligation shall remain in full force and effect for the applicable period of limitations or repose, whichever is longer.

Surety acknowledges that Obligee does not owe any duty to Surety to advise, notify or consult with Surety on any matters relating to the Principal or the Project, including, but not limited to, Principal's payments to Architect, Subcontractors or Principal's use of Project funds.

Principal and Surety hereby jointly and severally agree that any person or entity that provides labor, material, equipment or supplies for use under said Contract and has not been paid in full, and any other party entitled to make claim on the bond under ORS 279C, if notice is given within the applicable time period set forth in ORS 279C.605 may sue on this bond for the use of such person or entity, prosecute the suit to final judgment for such sums as may be justly due and owing claimant and have execution thereon. Obligee shall not be liable for the payment of any damages, costs or expenses (including attorney fees) awarded in any such suit.

No prepayment or delay in payment and no change, extension, assignment, addition or alteration of any provision of said Contract and no forbearance on the part of Obligee shall operate to relieve Surety from liability on this bond, and Surety hereby consents to any such changes, extensions, additions and alterations without further notice to or consent by Surety.

In the event arbitration, litigation or any other proceeding is brought upon this bond by Obligee and judgment or award is entered in Obligee's favor, Surety shall pay all of Obligee's costs incurred in such arbitration, litigation or other proceeding, including any attorney and expert witness fees.



**Nonpayment of the bond premium will not invalidate this bond, nor shall any Obligee be obligated for the payment of any premiums**

**This bond is given and received under authority of ORS Chapter 279C, the provisions of which hereby are incorporated into this bond and made a part hereof.**

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

\_\_\_\_\_  
**PRINCIPAL**

\_\_\_\_\_  
Title

\_\_\_\_\_  
Address

\_\_\_\_\_  
**SURETY**

\_\_\_\_\_  
Title

\_\_\_\_\_  
Address

**COUNTERSIGNED:**

\_\_\_\_\_  
Resident Agent

\_\_\_\_\_  
Address



## PERFORMANCE BOND

Bond No. \_\_\_\_\_

The undersigned, \_\_\_\_\_ as Principal and \_\_\_\_\_ as Surety, a corporation organized and existing under the laws of the state of \_\_\_\_\_, are held and bound unto Redmond School District and its heirs, executors, administrators, and assigns as Obligees, in the penal sum of \_\_\_\_\_ Dollars (\$\_\_\_\_\_), lawful money of the United States of America, for the payment of which Principal and Surety bind themselves and their heirs, executors, administrators, successors and assigns, jointly and severally.

WHEREAS Principal has entered into a Construction Contract ("Contract") dated \_\_\_\_\_, 2022 with Obligees for Redmond High School Project ("Project"), which Contract is made a part hereof as if fully incorporated herein.

NOW, THEREFORE, THE CONDITIONS OF THIS OBLIGATION are such that if Principal shall faithfully, punctually and completely perform and abide with the covenants, terms, conditions and provisions of said Contract and any extensions thereof in all respects and within the time prescribed therein, including, but not limited to, the terms of any warranty and guarantee required under the said Contract; shall pay all laborers, mechanics, subcontractors, material and equipment suppliers and all persons supplying to Principal or its subcontractors and suppliers at any tier labor, materials, supplies or equipment for the prosecution of the work or any part thereof; shall fully defend, indemnify and hold Obligees harmless from all cost and damage that Obligees may suffer by reason of Principal's failure to do so; and shall in all respects perform said Contract according to applicable law, then this obligation shall be null and void; otherwise, it shall remain in full force and effect. In the event that Principal shall be, and declared by Obligees to be in default under the Contract, the Surety, at the request of the Obligees, shall promptly remedy the default in a manner acceptable to the Owner.

In any event, this obligation shall remain in full force and effect for the applicable period of limitations or repose, whichever is longer.

Surety acknowledges that Obligees does not owe any duty to Surety to advise, notify or consult with Surety on any matters relating to the Principal or the Project, including, but not limited to, Principal's payments to Subcontractors or Contractor's use of Project funds.

No prepayment or delay in payment and no change, extension, assignment, addition or alteration of any provision of said Contract and no forbearance on the part of Obligees shall operate to relieve Surety from liability on this bond, and Surety hereby consents to any such changes, extensions, additions and alterations without further notice to or consent by Surety.

In the event arbitration, litigation or any other proceeding is brought upon this bond by Obligees and judgment or award is entered in Obligees's favor, Surety shall pay all of Obligees's costs incurred in such arbitration, litigation, or other proceeding, including any attorney and expert witness fees.

In the event there is an arbitration clause in said Contract, Surety agrees to participate in and to be bound by any such arbitration to the same extent Principal is bound.



REDMOND SCHOOL DISTRICT  
REDMOND HIGH SCHOOL  
CONSTRUCTION MANAGER|GENERAL CONTRACTOR  
PERFORMANCE BOND  
SECTION 00 6613

**Nonpayment of the bond premium will not invalidate this bond, nor shall any Obligee be obligated for the payment of any premiums.**

**This bond is given and received under authority of ORS Chapter 279C, the provisions of which hereby are incorporated into this bond and made a part hereof.**

Executed this \_\_\_\_ day of \_\_\_\_\_, 2022.

\_\_\_\_\_  
**PRINCIPAL**

\_\_\_\_\_  
Title

\_\_\_\_\_  
Address

\_\_\_\_\_  
**SURETY**

\_\_\_\_\_  
Title

\_\_\_\_\_  
Address

**COUNTERSIGNED:**

\_\_\_\_\_  
Resident Agent

\_\_\_\_\_  
Address



**EXHIBIT H**  
**PROVISIONS FROM THE OREGON PUBLIC CONTRACTING CODE AND**  
**PUBLIC CONTRACTING RULES**

1. GENERAL

1.1 INCORPORATION OF ALL CONTRACT PROVISIONS. The Contract hereby incorporates all contract provisions that are required to be incorporated into contracts with public entities pursuant to (a) the Public Contracting Code (ORS Chapters 279A, 279B and 279C), (b) the Attorney General Model Public Contracting Rules (which are referred to in this Exhibit as the "Rules") or (c) other applicable law. The provisions incorporated into the Contract under the preceding sentence include, without limitation, any provisions or amendments to provisions that become required after the Contract is executed.

1.2 DISCLAIMER REGARDING ANY UNLISTED CONTRACT PROVISIONS. The provisions listed in this Exhibit are not necessarily an exhaustive list of provisions that are required under the Public Contracting Code, the Rules or other applicable law, and the fact that this Exhibit does not list a provision that is required by the Public Contracting Code, the Rules or other applicable law will not (i) prevent or otherwise diminish the incorporation of that unlisted provision into the Contract or (ii) negate or otherwise diminish Contractor's obligation to comply with applicable laws.

2. PAYMENT.

2.1 PROMPT PAYMENT. Contractor shall promptly pay all of its obligations arising out of or in connection with the Work, including, but not limited to, payments (1) to all persons, as due, supplying to Contractor labor, equipment, services or material for the performance of the Work, (2) of all contributions or amounts due the Industrial Accident Fund from Contractor or the Subcontractors incurred in the performance of the Work, and (3) to the Department of Revenue of all sums withheld from employees under ORS 316.167.

2.2 CONTRACTOR'S OBLIGATIONS TO FIRST-TIER SUBCONTRACTOR. Contractor shall pay each first-tier Subcontractor for satisfactory performance under its subcontract within 10 days out of amounts the Owner pays to the Contractor under the Contract. Contractor shall provide a first-tier Subcontractor with a standard form that the first-tier Subcontractor may use as an application for payment or as another method by which the Subcontractor may claim a payment due from the Contractor. Contractor shall use this same form and regular administrative procedures for processing payments during the entire term of the Subcontract. Contractor may change the form or the regular administrative procedures the Contractor uses for processing payments if the Contractor notifies the Subcontractor in writing at least 45 days before the date on which the Contractor makes the change and includes with the written notice a copy of the new or changed form or a description of the new or changed procedure.

2.3 PROMPT PAYMENT POLICY. It is the policy of the State of Oregon that all payments due on a public improvement contract and owed by a contracting agency shall be paid promptly. No public contracting agency is exempt from the provisions of ORS 279C.570.

2.4 CONTRACTOR'S FAILURE TO MAKE PROMPT PAYMENT. If the Contractor has failed, neglected or refused to pay promptly a person's claim for labor, equipment, services or materials that the person provides to the Contractor or a Subcontractor in connection with the Project as such claim becomes due, the Owner may pay such claim to the person that provides the labor, equipment, services or materials and charge the amount of the payment against funds due or to become due the Contractor under the Contract. Owner reserves the right to make payments





directly or by multiple-payee check and Contractor hereby consents to such direct and multiple-payee check payments. Upon Owner's request, Contractor shall furnish to Owner the information required to facilitate such payments with each application for payment, including (1) names, addresses, and telephone numbers of persons making any such claim for labor, equipment, services or material, and (2) a complete listing of outstanding amounts owed to all such persons.

**2.5 CONTRACTOR'S AND FIRST-TIER SUBCONTRACTOR'S FAILURE TO MAKE PAYMENT AFTER PAYMENT FROM OWNER; INTEREST PENALTY.** If the Contractor or a first-tier Subcontractor fails, neglects or refuses to pay a person that provides labor, equipment, services or materials in connection the Contract within thirty (30) days after receiving payment from the Owner or the Contractor, the Contractor or first-tier Subcontractor owes the person the amount due plus interest charges that begin at the end of the 10-day period that payment is due under ORS 279C.580(4) and that end upon final payment, unless payment is subject to a good faith dispute as defined in ORS 279C.580. The rate of interest on the amount due is nine percent per annum. The amount of interest may not be waived.

**2.6 CONSTRUCTION CONTRACTORS BOARD COMPLAINT.** If the Contractor or a Subcontractor fails, neglects or refuses to make payment to a person that provides labor, equipment, services or materials in connection with the Contract, the person may file a complaint with the Construction Contractors Board, unless payment is subject to a good faith dispute as defined in ORS 279C.580.

**2.7 CONTINUING LIABILITY OF CONTRACTOR AND SURETY.** Payment by the Owner of a claim in the manner authorized in this Section 2 does not relieve the Contractor or the Contractor's surety from obligation with respect to any unpaid claims.

**2.8 RETAINAGE.** Retainage shall be subject to the applicable requirements of ORS 279C.550 through 279C.570C.570. The Owner may elect to make early release of some or any portion of the retainage as allowed therein. The Contractor may withhold payment of not more than 5% from the moneys earned by any Subcontractor, provided that the Contractor pays interest to the Subcontractor at the same interest rate it receives from its reserved funds. If requested by the Owner, the Contractor shall specify the amount of the retainage and interest due a Subcontractor.

### 3. PUBLIC WORKS PROJECT.

**3.1 PREVAILING RATE OF WAGE.** The Project is a public works project subject to the prevailing wage rate requirements in ORS 279C.800 to 279C.870. Contractor and the Subcontractors shall comply with ORS 279C.840. Workers in each trade or occupation required for the Work of the Project shall not be paid less than the minimum hourly rate of wage for such workers as detailed in the Specifications for the Contract. For CM/GC contracts, the "prevailing rate of wage" shall mean the prevailing wage rate in effect at the time the CM/GC contract "becomes a public works contract" as defined in OAR 839-025-0020(6), which prevailing rates shall be incorporated by attachment or reference in Guaranteed Maximum Price Amendment or, if applicable, the Early Work Amendment to the CM/GC contract. Pursuant to ORS 279C.840, the Contractor shall keep the prevailing wage rate for the Project posted in a conspicuous and accessible place in or about the Project. Copies of these wage rates are available from the Commissioner of the Bureau of Labor and Industries without charge. The Contractor shall also post a description of provided health and welfare and/or pension plans in the same place. In addition to the description of the plans, the notice shall contain information on how and where to make claims and where to obtain further information. The Contractor shall, and shall cause all subcontractors at all tiers to, timely comply with the requirements of ORS 279C.845. Contractor shall indemnify,



defend, protect and hold harmless the Owner from any violation of or noncompliance with the prevailing wage laws (ORS 279C.800 et seq) by Contractor or any subcontractor at any tier.

3.2 PUBLIC WORKS BOND. Before starting the Work, Contractor and every Subcontractor shall file with the Construction Contractors Board a public works bond in accordance with ORS 279C.836, unless the Contractor or Subcontractor has elected not to file a public works bond under ORS 279C.836(7) or (8) or is exempt under ORS 279C.836(4) or (9). Before permitting a Subcontractor to start the Work, Contractor shall verify that the Subcontractor has filed a public works bond as required by ORS 279C.836, has elected not to file a public works bond under ORS 279C.836(7) or (8) or is exempt under ORS 279C.836(4) or (9). Contractor shall also ensure that each subcontract entered into by a Subcontractor for the Project shall include a clause obligating each Subcontractor to comply with the requirements of this Section 3.2, such that all subcontracts at all tiers include a requirement to comply with this Section 3.2.

4. COMPLIANCE WITH LAWS/TAX LAWS. Contractor shall comply with all applicable federal, state, and local laws, statutes, codes, regulations, rules, orders and rulings as well as all applicable construction industry standards, including without limitation those governing labor, materials, equipment, construction procedures, safety, health, sanitation and the environment. Contractor agrees to indemnify, hold harmless, reimburse, and defend Owner from and against any penalties or liabilities arising out of violations of such obligations by Contractor or its Subcontractors at any tier. Contractor must also comply with all Oregon tax laws and shall submit a certification of such compliance in accordance with ORS 305.385(6).

5. CONTRACTOR'S EMPLOYEES AND SUBCONTRACTORS.

5.1 EMPLOYEE DRUG TESTING PROGRAM. The Contractor shall demonstrate to the Owner, in a manner acceptable to the Owner, that the Contractor has initiated, and shall maintain through the completion of the Work of the Project, an employee drug testing program.

5.2 WORK DAY/WORK WEEK. No person shall be required or permitted to labor more than 10 hours in any one day, or 40 hours in any one week, except in cases of necessity or emergency or when the public policy absolutely requires it, in which event, the person so employed for excessive hours shall receive at least time and a half pay for (1) all overtime in excess of eight hours in any one day or 40 hours in any one week when the work week is five consecutive days, Monday through Friday; or (2) all overtime in excess of 10 hours in any one day or 40 hours in any one week when the work week is four consecutive days, Monday through Friday; and (3) all work performed on Saturday and on any legal holiday specified in ORS 279C.540.

5.3 NOTICE OF REQUIRED WORK HOURS. The Contractor and each Subcontractor must give notice to its employees in writing, either at the time of hire or before commencement of Work, or by posting a notice in a location frequented by its employees, of the number of hours per day and days per week that the employees may be required to work.

5.4 CLAIMS FOR OVERTIME. Any worker employed by the Contractor shall be foreclosed from the right to collect for any overtime provided in ORS 279C.540 unless a claim for payment is filed with the Contractor within 90 days from the completion of the Contract, provided the Contractor has: (1) caused a circular clearly printed in boldfaced 12-point type and containing a copy of this Section 5.4 to be posted in a prominent place alongside the door of the timekeeper's office or in a similar place that is readily available and freely visible to any or all workers employed on the Work; and (2) maintained such circular continuously posted from the inception to the completion of the contract on which workers are or have been employed.

5.5 WORKERS' COMPENSATION. All employers, including Contractor, that employ subject workers who work under the Contract in the State of Oregon shall comply with ORS 656.017 and



provide the required Workers' Compensation coverage, unless such employers are exempt under ORS 656.126. Contractor shall ensure that each of its Subcontractors complies with these requirements.

5.6 PROMPT PAYMENT FOR MEDICAL SERVICES. The Contractor shall promptly, as due, make payment to any person, co-partnership, association or corporation furnishing medical, surgical and hospital care services or other needed care and attention, incident to sickness or injury, to the employees of the Contractor, of all sums that the Contractor agrees to pay for the services and all moneys and sums that the Contractor collected or deducted from the wages of employees under any law, contract or agreement for the purpose of providing or paying for the services.

5.7 PROMPT PAYMENT BY SUBCONTRACTORS; INTEREST PENALTY. Contractor shall include in each subcontract entered into by the Contractor (including contracts with material suppliers) the following:

(a) A payment clause that obligates the Contractor to pay the first-tier subcontractor for satisfactory performance under the subcontract within 10 days out of amounts the Owner pays to the Contractor under the Contract.

(b) A clause that requires the Contractor to provide a first-tier subcontractor with a standard form that the first-tier subcontractor may use as an application for payment or as another method by which the subcontractor may claim a payment due from the Contractor.

(c) A clause that requires the Contractor, except as otherwise provided in this paragraph, to use the same form and regular administrative procedures for processing payments during the entire term of the subcontract. The Contractor may change the form or the regular administrative procedures the Contractor uses for processing payments if the Contractor:

(A) Notifies the subcontractor in writing at least 45 days before the date on which the Contractor makes the change; and

(B) Includes with the written notice a copy of the new or changed form or a description of the new or changed procedure.

(d) An interest penalty clause that obligates the Contractor, if the Contractor does not pay the first-tier subcontractor within 30 days after receiving payment from the Owner, to pay the first-tier subcontractor an interest penalty on amounts due in each payment the Contractor does not make in accordance with the payment clause included in the subcontract under paragraph (a) of this Section. The Contractor or first-tier subcontractor is not obligated to pay an interest penalty if the only reason that the Contractor or first-tier subcontractor did not make payment when payment was due is that the Contractor or first-tier subcontractor did not receive payment from the Owner or Contractor when payment was due. The interest penalty:

(A) Applies to the period that begins on the day after the required payment date and that ends on the date on which the amount due is paid; and

(B) Is computed at the rate specified in ORS 279C.515 (Conditions concerning payment of claims by public officers, payment to persons furnishing labor or materials and complaints).

(e) a clause requiring the first-tier subcontractor to include a payment clause and an interest penalty clause that conforms to the standards of this section in each of the first-tier subcontractor's



subcontracts and to require each of the first-tier subcontractor's subcontractors to include such clauses in the first-tier subcontractors' subcontracts with each lower-tier subcontractor or supplier.

5.8 LICENSING WITH CONSTRUCTION CONTRACTORS BOARD AND LANDSCAPE CONTRACTORS BOARD. Before commencing the Work, Contractor shall ensure that the Subcontractors are duly registered with the Oregon State Construction Contractors Board (and the State Landscape Contractors Board, if applicable), and that no Subcontractor has been declared ineligible to work on a public contract.

5.9 FIRST-TIER SUBCONTRACTORS. the Contractor may only engage and substitute first tier subcontractors as permitted by ORS 279C.370, 279C.585, and 279C.590.

5.10 NO DISCRIMINATION. Pursuant to ORS 279A.100 to ORS 279A.110, the Contractor shall not discriminate against minority, women, or emerging small business enterprises in the awarding of subcontracts. The Contractor covenants and agrees not to discriminate against any qualified employee or qualified applicant for employment because of race, creed, color, sex or national origin, and that similar provisions shall also be included by said party in any subcontract. The Contractor shall comply with the prohibition set forth in ORS 652.220 (Prohibition of discriminatory wage rates based on sex). Compliance is a material element of the Contract and a failure to comply is a breach that entitles the Owner to terminate the contract for cause.

5.11 NO PROHIBITION. The Contractor may not prohibit any of the Contractor's employees from discussing the employee's rate of wage, salary, benefits or other compensation with another employee or another person and may not retaliate against an employee who discusses the employee's rate of wage, salary, benefits or other compensation with another employee or another person.

6. MATERIAL SALVAGE. To the extent the scope of the Work for the Contract requires demolition, Contractor must salvage or recycle construction and demolition debris, if feasible and cost-effective.

7. COMPOSTING. To the extent the scope of the Work for the Contract requires lawn and landscape maintenance, the Contractor must compost or mulch yard waste material at an approved site, if feasible and cost-effective.

8. RECYCLED MATERIALS. The Contractor, in performance of the Work, shall give preference to the procurement of goods manufactured from recycled materials.

9. ENVIRONMENTAL AND NATURAL RESOURCES LAWS. Pursuant to ORS 279C.525, the following is a list of Federal, State, and Local agencies that have enacted ordinances, rules or regulations dealing with the prevention of environmental pollution and the preservation of natural resources that may affect the performance of the Contract. The following list may not include all such agencies that have enacted ordinances, rules or regulations relating to the environmental pollution and preservation of natural resources.

Federal Agencies:

Agriculture, Dept. of  
Forest Service  
Natural Resource Conservation Service  
Defense, Dept. of  
Army Corps of Engineers  
Coast Guard  
Environmental Protection Agency



Interior, Dept. of  
U.S. Fish and Wildlife Service  
Bureau of Land Management  
Bureau of Indian Affairs  
Bureau of Reclamation  
Labor, Dept. of  
Occupational Safety and Health Administration  
Transportation, Dept. of  
Federal Highway Administration

State Agencies:

Agriculture, Dept. of  
Consumer and Business Services Dept.  
Oregon Occupational Safety and Health Division  
Environmental Quality, Dept. of  
Fish and Wildlife, Dept. of  
Forestry, Dept. of  
Geology and Mineral Industries, Dept. of  
Human Services, Dept. of  
Land Conservation and Development, Dept. of  
Natural Resources, Dept. of  
State Fire Marshall  
State Lands, Dept. of  
Water Resources Department

Local Agencies:

City Councils  
Circuit Courts  
County Commissioners, Boards of  
Fire Districts  
Planning Commissions

10. CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT

Contractor shall comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act of 1970 (42 U.S.C. 1867 et seq.) and the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.) as amended. Violations shall be reported as required by law.

11. RETAINAGE. The withholding of retainage by the Contractor or Subcontractor shall be in accordance with ORS 279C.550 to ORS 279C.570.

12. LIENS. The Contractor shall not permit any lien or claim to be filed or prosecuted against the state, county, school district, municipality, municipal corporation or subdivision thereof, on account of any labor or material furnished.

13. NONRESIDENT. If the Contractor is a "nonresident bidder" as defined in ORS 279A.120, the Contractor shall comply with the reporting requirements of that statute.

14. NOTICE OF CLAIM ON BOND. The notice of claim required by ORS 279C.600 must be sent by registered or certified mail or hand delivered no later than 180 days after the day the person last provided labor or furnished materials or 180 days after the worker listed in the notice of claim by the Commissioner of the Bureau of Labor and Industries last provided labor. The notice may be sent or delivered to the



REDMOND SCHOOL DISTRICT  
REDMOND HIGH SCHOOL  
CONSTRUCTION MANAGER|GENERAL CONTRACTOR  
EXHIBIT H  
PUBLIC CONTRACTING RULES

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Contractor or Subcontractor at any place the Contractor or Subcontractor maintains an office or conducts business or at the residence of the Contractor or Subcontractor. If the claim is for a required contribution to a fund of any employee benefit plan, the notice required by ORS 279C.600 must be sent or delivered within 200 days after the employee last provided labor or materials. The notice shall be in writing substantially as follows:

To (here insert the name of the Contractor or Subcontractor and the name of the Owner):

Notice hereby is given that the undersigned (here insert the name of the claimant) has a claim for (here insert a brief description of the labor or materials performed or furnished and the person by whom performed or furnished; if the claim is for other than labor or materials, insert a brief description of the claim) in the sum of (here insert the amount) dollars against the (here insert public works bond or payment bond, as applicable) taken from (here insert the name of the principal and, if known, the surety or sureties upon the public works bond or payment bond) for the work of (here insert a brief description of the work concerning which the public works bond or payment bond was taken). Such material or labor was supplied to (here insert the name of the Contractor or Subcontractor).

\_\_\_\_\_ (here to be signed)

[15. ADD ANY NECESSARY CONTRACTOR COMPLIANCE/REPORTING PROVISIONS FOR AGENCY'S WMBE GOALS PROGRAM UNDER ORS 200.090]





**EXHIBIT I**  
**DISTRICT ACCESS STANDARDS**

Contractors working on, in and/or around any properties owned by District shall comply maintain and/or provide the information as described in the Work Agreement. Failure to comply with this agreement could be grounds for termination if the District so Chooses.

**1. Contractor Use of Premises**

- a. General
  - i. District Representative will define work areas, access, staging, storage.
  - ii. Access to locations and schedules will be arranged in advance with the District Representative.
  - iii. All contractors and their employees will be required to submit background information checks as determined by the district and allowed or required by law. These checks may include but not be limited to a nationwide criminal records check by fingerprint.
- b. Existing Buildings
  - i. Contractor personnel are prohibited from undesignated areas.
  - ii. Provision of toilet facilities is typically the Contractor's responsibility. Use of existing facilities is not encouraged. Allowance must be pre-arranged with the District Representative.
  - iii. A room/area may be designated for use as a Field Office if coordinated through the District Representative.
  - iv. Limit/contain smoke, dust, dirt, fumes, volatile organic compounds, and noise (including radios), to immediate work area. Maintain noise levels such that they do not interfere with school while in session.
  - v. Broom-clean work areas daily.
  - vi. Restore existing surfaces where damaged or modified by construction operations to their original condition.

**2. Occupancy Requirements**

- a. Existing Buildings
  - i. Provide for continued occupancy, access, and egress. Existing utilities shall be maintained to the building. Provide minimum 48-hour notice for disruption.
  - ii. Provide safety protection for occupants.

**3. Project Utility Sources**

- a. General
  - i. Contractor shall contact and make arrangements with utility providers and the contact information on the drawings. Contractor shall coordinate utility provider's work and assure that utilities are provided as shown.

**4. Safety Requirements**

- a. The following requirements, as applicable, apply to Work:
  - i. Associated General Contractors of America, Incorporated's Manual of Accident Prevention in Construction.
  - ii. Workmen's Compensation Board's Safety Code for Construction Work.
  - iii. Oregon State Employment Act Safety Requirements.
  - iv. Oregon Occupational Safety and Health Act (OROSHA).

**5. Security Procedures**

- a. Construction/Maintenance Building Security Rules
  - i. No Unsupervised Contact with Students. "Unsupervised contact with students" means contact with students that provides the person opportunity and probability for personal communication or touch when not under direct supervision by the District. The Contractor will ensure that the Contractor, subcontractors and



REDMOND SCHOOL DISTRICT  
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suppliers at any tier, and their officers, agents, and employees will have no direct unsupervised contact with students while on the District's property. The Contractor will work with the District to ensure compliance with this requirement. If the Contractor is unable to ensure through a security plan that none of its and its subcontractors and suppliers officers, agents, or employees will have direct, unsupervised contact with students in a particular circumstance or circumstances ("Unavoidably Unsupervised Workers"), the Contractor shall so notify the District prior to beginning any Work that could result in such contact. The Contractor authorizes the District to conduct a criminal background check of any such officer, agent, or employee. The Contractor also agrees to cause its subcontractors and/or suppliers and all employees, if any, that might have unsupervised contact with students to authorize the District to conduct such background checks, and to identify the same to the District prior to their entry onto the Project. The District shall pay any fees for the background check assessed by the Oregon Department of Education for processing the background check. If fingerprinting is required by law, the Contractor shall arrange for such fingerprinting through local law enforcement agencies and for reporting and recordkeeping of the same as and to the extent required by law, including as required under Oregon SB155, OAR 581-021-0511 and applicable District rules, policies and procedures. If fingerprinting is required the cost will be borne solely by the Contractor without reimbursement. In addition, the Contractor shall comply with all other Oregon Senate Bill 155 requirements and any requirements of the District related to Senate Bill 155, including, but not limited to, providing District requested information for all of the Contractor's or its subcontractors' or supplier's employees, volunteers, or agents, and providing such requested information for new employees, volunteers, or agents before they begin work. The Contractor will discuss any questions or concerns about these requirements with the District's designated Point of Contact before beginning Work. Compliance with this Section 3.4.8 shall not be grounds for any increase in compensation nor extension of the Contract Time. Failure of compliance by the Contractor or any subcontractor or supplier shall be grounds for immediate termination of this Contract by District for cause.

- ii. The Contractor shall enforce strict discipline and good order among the Contractor's employees, Sub-Contractors, and other persons carrying out the contract on District property. The District may require that the Contractor immediately remove, from the project site and District property, any employee or other person carrying out the contract who the District considers objectionable.
- iii. District Personnel (i.e., Building Administrator, Custodian, or a building monitor) should be present when a Contractor is performing work within an existing school facility.
- iv. Only District Personnel will deactivate the security system upon arriving and reactive the system when they leave the facility. (Note: If the responsible District Personnel for a particular day changes during the day, the District Personnel shall coordinate this change in responsibility and advise the Contractor's superintendent.)
- v. Contractor personnel shall not be furnished District security badges and/or access codes to the Building security system.
- vi. The Contractor shall have a responsible party such as a superintendent, foreman, or supervisor on site during any work performed by either their own forces or that of their subcontractors.
- vii. The superintendent shall check in with responsible District Personnel upon arrival and advise when all work is complete, contract personnel have left, and the area is secure.



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- viii. The Contractor's superintendent shall be responsible for security in areas where work is being performed as well as ingress and egress to that area.
  - ix. At the District Representative's discretion, the superintendent may be issued a building key to allow access to areas where work is being performed.
  - x. The superintendent shall maintain a daily log defining what areas within the building were accessed by Contractor personnel, which personnel from their firm were in the building, and which subcontracting firms were in the building.
  - xi. Each of the Contractor's employees, subcontractor's employees, and principals/owners involved at the site may, at the option of the District, be subject to a security check, at any time, by the La Grande Police Department or other venue.
- b. Criminal Background Checks
- i. It is the responsibility of the Contractor to submit the names of all Contractor employees and all Subcontractor employees who will be on the job site for more than one day. These employees shall fill out a criminal history form provided by the District and the Contractor must submit the completed forms to HMK Company (HMKCO). Criminal history checks will be run through the Oregon State Police as provided for in ORS 326.603. The District shall bear the cost of processing such Criminal history checks, with the exception of an employee whom needs to be fingerprinted, for every employee on all projects prior to that employee's admittance to the project site. Once an employee passes the criminal background check, he or she will receive an ID badge and/or a hard hat sticker which they must wear at all times while they are on site. Contractor may be fined up to \$500.00 for every worker working on site without the proper ID badge or hat sticker.
  - ii. Through the signature on the criminal history form, authorization is also given to HMK Company and its representative to investigate this information. Further, with this signature, consent is given to all governmental agencies, public or private companies and individuals to release information regarding the individual to the HMK Company and to their representative. The District shall bear the cost of processing such Criminal history checks.
  - iii. In accordance with ORS 326.603(8) the District is required to terminate the employment or contract status of any individual who refuses to consent to a criminal history check or to be fingerprinted or falsely swears to the non-conviction of any crime.
  - iv. In accordance with ORS 326.603(7)(a) no individual found to have been convicted of any crime listed in ORS 342.143 or of an attempt to commit one of the listed crimes shall be allowed to work on any District site.
  - v. It is vital that employees are instructed to accurately complete criminal history forms. Crimes listed in ORS 342.143 which automatically bar an individual from employment with or contracting with the District are primarily crimes of violence, crimes against children, and sex related crimes. However, falsely swearing that you have not been convicted of a crime obligates the District to terminate employment or contract status even if the crime is not listed in ORS 342.143.
  - vi. No Contractor's employee or subcontractor's employee, or principal/owner who has been convicted of a crime listed in ORS 163.095, 163.115, 163.185, 163.235, 163.355, 163.365, 163.375, 163.385, 163.395, 163.405, 163.408, 163.411, 163.415, 163.425, 163.427, 163.432, 163.433, 163.435, 163.445, 163.465, 163.515, 163.525, 163.547, 163.575, 163.670, 163.675, 163.680, 163.684, 163.686, 163.687, 163.688, 163.689, 164.325, 164.415, 166.005, 166.087, 167.007, 167.008, 167.012, 167.017, 167.057, 167.062, 167.075, 167.080, 167.090, 475.808, 475.810, 475.812, 475.818, 475.820, 475.822, 475.828, 475.830, 475.832, 475.848, 475.852, 475.858, 475.860, 475.862,



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- 475.868, 475.872, 475.878, 475.880, 475.882, 475.888, 475.890, 475.892, 475.904 or 475.906 shall be allowed on District property.
- vii. No Contractor's employee or subcontractor's employee, or principal/owner who has been convicted under ORS 161.405 of an attempt to commit any of the crimes listed in subparagraph (ii) of this paragraph shall be allowed on District property.
  - viii. No Contractor's employee or subcontractor's employee, or principal/owner who has been convicted in another jurisdiction of a crime that is substantially equivalent, as defined by rule, to any of the crimes listed in subparagraphs (ii) and (iii) of this paragraph shall be allowed on District property.
- c. Other
- i. All contractors shall comply with OAR 581.021.0110 and ORS 326.051 regarding Tobacco Use on Public Grounds. Smoking and any use of tobacco products will not be allowed on District property. For the purpose of this document "tobacco" is defined to include any lighted or unlighted cigarette, cigar, pipe, clove cigarette, vape, and any other smoking product, spit tobacco, also known as smokeless, dip, chew, snuff, in any form, nicotine or nicotine delivering devices, chemicals or devices that produce the physical effect of nicotine substances or any other tobacco substitute (e.g., e-cigarettes). This does not include FDA approved nicotine replacement therapy products used for the purpose of cessation. No employee, sub-contractor, material supplier, or project visitor is permitted to smoke, inhale, dip, or chew or sell tobacco at any time, including non-education hours in any building facility, or education facility grounds, athletic grounds, or parking lots. Contractor may be fined up to \$500.00 for each incident of tobacco use within the area of work by the Contractor or Subcontractor. Tobacco is defined in Board Policy GBK/JFCG/GC Tobacco-Free Environment.
  - ii. Firearms shall not be allowed on District property. Law enforcement will be contacted if any Contractor or subcontractor personnel are in possession of a firearm on site. This includes firearms locked in a vehicle.
  - iii. Abusive, inappropriate, and/or foul language is strictly prohibited on active campus projects. Employees who abuse this rule will be asked to leave the project site.