



Document A133™ – 2009

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

AGREEMENT made as of the day of in the year 2016
(In words, indicate day, month and year.)

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

Clackamas Community College
19600 Molalla Avenue
Oregon City, OR 97045

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

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

DeJardin Science Addition/CCC Transit Center
Clackamas Community College
Oregon City, OR

The Architect:
(Name, legal status and address)

Mahlum Architects
1231 NW Hoyt, Suite 102
Portland, Oregon 97209

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

inici Group, Inc.
5100 SW Macadam Avenue, Suite 330
Portland, OR 97329

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

ADDITIONS AND DELETIONS:

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

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

AIA Document A201™–2007, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

ELECTRONIC COPYING of any portion of this AIA® Document to another electronic file is prohibited and constitutes a violation of copyright laws as set forth in the footer of this document.



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



The Owner and Construction Manager agree as follows.



TABLE OF ARTICLES

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

EXHIBIT A GUARANTEED MAXIMUM PRICE AMENDMENT

EXHIBIT B SUBCONTRACTOR RELATIONS

ARTICLE 1 GENERAL PROVISIONS

§ 1.1 The Contract Documents

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to the execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract and are as fully a part of the Contract as if attached to this Agreement or repeated herein. Upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, the Contract Documents will also include the documents described in Section 2.2.3 and identified in the Guaranteed Maximum Price Amendment and revisions prepared by the Architect and furnished by the Owner as described in Section 2.2.8. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern.

§ 1.2 Relationship of the Parties

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

§ 1.3 General Conditions

For the Preconstruction Phase, AIA Document A201™–2007, General Conditions of the Contract for Construction, shall apply only as specifically provided in this Agreement. For the Construction Phase, the general conditions of the contract shall be as set forth in A201–2007, which document is incorporated herein by reference. The term

"Contractor" as used in A201–2007 shall mean the Construction Manager. The terms 'AIA Document A201™-2007' and 'A201-2007' mean AIA Document A201-2007, General Conditions of the Contract for Construction, as modified by Owner.

ARTICLE 2 CONSTRUCTION MANAGER'S RESPONSIBILITIES

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

§ 2.1 Preconstruction Phase

§ 2.1.1 The Construction Manager shall provide evaluation and documentation deliverables of the Owner's schedule, project phasing, contract documents and construction budget requirements, each in terms of the other, as defined in the RFP for Construction Manager services including the specific services listed at 2.3.1 of the RFP and at least the following:

- .1 The Construction Manager will provide in deliverables writing and acceptable to Owner; (1) a detailed evaluation of the construction costs for the project, Project schedule and and phasing of bid packages, if any, including estimate of construction costs savings; (2) a review of information provided by the Owner and the Architect and information the Construction Manager obtains from field observations and other sources; (3) a pre-bid cost estimate to determine if probable construction cost estimates will meet or exceed the Project budget; and (4) recommended changes to the Owner's design for the Project that the Construction Manager reasonably expects will reconcile the program, Project budget and Project Schedule or will reduce costs, provide a higher quality Project without exceeding the Project budget or will otherwise benefit Owner.
- .2 If the Construction Manager recommends changes to the Owner's program or its preliminary design, the Construction Manager will explain why the proposed changes, if Owner accepts them, will: (1) reduce costs; (2) provide a higher quality Project without exceeding the Project budget; or (3) otherwise provide benefits to the Owner or the Project.
- .3 The evaluation must also include a contract document review report of any apparent errors, omissions, or inconsistencies contract documents and other information obtained by the Construction Manager from any source, including the Owner, the Architect or the Construction Manager's observations, together with the Construction Manager's recommendations for resolving any apparent errors, omissions, or inconsistencies.
- .4 The Construction Manager shall provide a phasing schedule that provides highest level of competitive bidding coverage, maximizing the benefits of the outreach programs of CCC, least impact to ongoing CCC operations for staff and students, and coordinates with weather conditions for the site.
- .5 Work with CCC in identifying critical elements of the Work that may require special procurement processes, such as prequalification of offers or alternative contracting methods. Administer a process for bringing Subcontractors onto the team early in the Project.
- .6 Provide input to CCC and the Design Team regarding current construction market bidding climate, status of key subcontract markets, and other local economic conditions. Recommend division of work ("Procurement and Subcontracting Plan") to facilitate bidding and award of trade contracts, considering such factors as bidding climate, improving or accelerating construction completion, minimizing trade jurisdictional disputes, and related issues.
- .7 Prepare Cash Flow Forecasts incorporating the entire duration of the Project.

§ 2.1.2 Consultation

The Construction Manager shall schedule and conduct meetings with the Architect and Owner to discuss such matters as procedures, progress, coordination, and scheduling of the Work. The Construction Manager shall advise the Owner and the Architect on proposed site use and improvements, selection of materials, and building systems and equipment based on the design work completed to date. The Construction Manager shall also provide recommendations consistent with the Project requirements to the Owner and Architect on constructability; availability of materials and labor; time requirements for procurement, installation and construction; and factors

related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions.

§ 2.1.3 When Project requirements in Section 3.1.1 have been sufficiently identified, the Construction Manager shall prepare and update a Project schedule at least once a month for the Architect's review and the Owner's acceptance. The Construction Manager shall obtain the Architect's approval for the portion of the Project schedule relating to the performance of the Architect's services. The Project schedule shall coordinate and integrate the Construction Manager's services, the Architect's services, other Owner consultants' services, and the Owner's responsibilities and identify items that could affect the Project's timely completion. Each updated Project schedule shall include the following: submission of the Guaranteed Maximum Price proposal; components of the Work; times of commencement and completion required of each Subcontractor; ordering and delivery of products, including those that must be ordered well in advance of construction; and the occupancy requirements of the Owner, including any portions of the Project having occupancy priority. Each updated Project Schedule will indicate proposed activity sequences and durations, milestone dates for receipt and approval of pertinent information, preparation and processing of shop drawings and samples and proposed date of Substantial Completion. If preliminary Project schedule updates indicate that previously approved schedules may not be met, the Construction Manager will make appropriate recommendations to the Owner and Architect.

§ 2.1.4 Phased Construction

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

§ 2.1.5 Preliminary Cost Estimates

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

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

§ 2.1.6 Subcontractors and Suppliers

The Construction Manager shall develop bidders' interest in the Project. Owner in consultation with Architect may require Construction Manager to inform one or more specific Subcontractors of the Project. See Exhibit B for details of Construction Manager's relations with Subcontractors.

§ 2.1.7 The Construction Manager will prepare, for the Architect's review and the Owner's acceptance, a procurement schedule for long-lead-time items, if any, that must be ordered well in advance of construction to meet the approved Project Schedule. The Construction Manager will submit the procurement schedule for long-lead-time items. The Owner may require the Construction Manager to order and procure long-lead-time items before the Owner accepts the Construction Manager's Guaranteed Maximum Price proposal, pursuant to Drawings and Specifications prepared by the Architect and A201- 2007. The Construction Manager will provide the Owner with a proposal for such procurement that will be for no more than the actual cost of the long-lead-time item, and will identify a restocking charge or charge of a similar nature, if any, payable to the supplier of the long-lead-time item if the Owner cancels the order. The Construction Manager shall incorporate any long-lead-time-items in the Guaranteed Maximum Price proposal. If the Owner accepts the Guaranteed Maximum Price proposal, any long-lead-time items must be included in the Cost of the Work and the Construction Manager will accept compensation under Section 5.1 of this Agreement as compensation for all long-lead-time items. The Owner will provide funds for payment of any amounts that become due for long-lead-time items before commencement of the

Construction Phase, subject to a credit against the Guaranteed Maximum Price. If the Owner cancels the order for a long-lead time item for any reason other than default by the Construction Manager or the supplier, Owner will be responsible for any restocking charge or charge of a similar nature if but only to the extent the Construction Manger disclosed the charge in its proposal. The Construction Manager shall expedite the delivery of long-lead-time items.. Upon the establishment of the Guaranteed Maximum Price, the Owner shall assign all contracts for these items to the Construction Manager and the Construction Manager shall thereafter accept responsibility for them.

§ 2.1.8 Extent of Responsibility

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

§ 2.1.9 Notices and Compliance with Laws

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

§ 2.2 Guaranteed Maximum Price Proposal and Contract Time

§ 2.2.1 At a time to be mutually agreed upon by the Owner and the Construction Manager and in consultation with the Architect, the Construction Manager shall prepare a Guaranteed Maximum Price proposal for the Owner's review and acceptance. The Guaranteed Maximum Price in the proposal shall be the sum of the Construction Manager's estimate of the Cost of the Work, including contingencies described in Section 2.2.4, and the Construction Manager's Fee. By submitting the Guaranteed Maximum Price proposal to the Owner, the Construction Manager warrants that: (1) the Construction Manager has reviewed the Drawings and Specifications and other information provided by the Owner and obtained such additional information from the Owner, direct observation of the site and other sources that the Construction Manager deemed necessary and sufficient to prepare the Guaranteed Maximum Price proposal; (2) the Guaranteed Maximum Price proposal is consistent with the Drawings and Specifications, and (3) the Drawings and Specifications provide sufficient information to commit to a Guaranteed Maximum Price to complete the Work within the Contract Time.

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

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

- .1 A list of the Drawings and Specifications, including all Addenda thereto, and the Conditions of the Contract;
- .2 A list of the clarifications and assumptions made by the Construction Manager in the preparation of the Guaranteed Maximum Price proposal, including assumptions under Section 2.2.2, to supplement the information provided by the Owner and contained in the Drawings and Specifications;
- .3 A statement of the proposed Guaranteed Maximum Price, including a statement of the estimated Cost of the Work organized by trade categories or systems, allowances, contingency, and the Construction Manager's Fee;
- .4 The anticipated date of Substantial Completion upon which the proposed Guaranteed Maximum Price is based; and
- .5 A date by which the Owner must accept the Guaranteed Maximum Price, which will be no less than twenty (20) days from the date of the written statement..

§ 2.2.4 In preparing the Construction Manager's Guaranteed Maximum Price proposal, the Construction Manager shall include its contingency for the Construction Manager's to cover those costs considered reimbursable as the Cost of the Work but not included in a Change Order. The amount shall be approved by the Owner. The Owner shall be allowed to review the Contingency expenditures and reject those not in the best interest of the Project.

§ 2.2.5 The Construction Manager shall meet with the Owner and Architect to review the Guaranteed Maximum Price proposal. If the Owner or Architect discovers any apparent inconsistencies or inaccuracies in the information included in the Guaranteed Maximum Price proposal or between that information and the Plans and Specifications, they will promptly notify the Construction Manager, who will make appropriate adjustments to the Guaranteed Maximum Price proposal, its basis, or both, to the extent necessary to reconcile such apparent inconsistencies or inaccuracies to the Owner's satisfaction.

§ 2.2.6 The Owner will review the Guaranteed Maximum Price proposal and accept, reject or request modification of the Guaranteed Maximum Price proposal by written notice to the Construction Manager. If the Owner requests modification of the Guaranteed Maximum Price proposal, the Owner and the Construction Manager shall cooperate with each other to arrive at and agree upon such modification as expeditiously as possible, provided, however, that the Owner may at any time elect to reject the Guaranteed Maximum Price proposal, as presented or as may be later modified, and terminate this Agreement for convenience pursuant to A201-2007.

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

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

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

If Owner accepts the Construction Manager's Guaranteed Maximum Price proposal, the Owner and Construction Manager will execute a Guaranteed Maximum Price Amendment amending this Agreement, a copy of which Owner will provide to the Architect. The Guaranteed Maximum Price Amendment will be substantially in the form attached to this Agreement as Exhibit A and set forth the agreed upon Guaranteed Maximum Price with the information and assumptions upon which it is based.

§ 2.3 Construction Phase

§ 2.3.1 General

§ 2.3.1.1 For purposes of Section 8.1.2 of A201-2007, the date of commencement of the Work shall mean the date of commencement of the Construction Phase.

§ 2.3.1.2 The Construction Phase will commence when the Owner's issues a Notice to Proceed.

§ 2.3.2 Administration

§ 2.3.2.1 Those portions of the Work that the Construction Manager does not customarily perform with the Construction Manager's own personnel shall be performed under subcontracts or by other appropriate agreements with the Construction Manager. 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 and shall deliver such bids to the Architect. The Owner shall then determine, with the advice of the Construction Manager and the Architect, which bids will be accepted. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection documented in writing.

§ 2.3.2.2 If the Guaranteed Maximum Price has been established and when a specific bidder (1) is recommended to the Owner by the Construction Manager, (2) is qualified to perform that portion of the Work, (3) has submitted a bid

that conforms to the requirements of the Contract Documents without reservations or exceptions and (4) the Owner or Architect has not objected to the bidder in accordance with the Contract Documents, but the Owner requires that another bid be accepted, then the Construction Manager may require that a Change Order be issued to adjust the Contract Time and the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Construction Manager and the amount and time requirement of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

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

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

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

§ 2.3.2.6 Upon the execution of the Guaranteed Maximum Price Amendment, the Construction Manager shall prepare and submit to the Owner and Architect a construction schedule for the Work and submittal schedule in accordance with Section 3.10 of A201–2007, which must be consistent with the Guaranteed Maximum Price proposal accepted by Owner.

§ 2.3.2.7 The Construction Manager shall record the progress of the Project. On a monthly basis, or otherwise as agreed to by the Owner, the Construction Manager shall submit written progress reports to the Owner and Architect, showing percentages of completion and other information required by the Owner. The Construction Manager shall also keep, and make available to the Owner and Architect, a daily log containing a record for each day of weather, portions of the Work in progress, number of workers on site, identification of equipment on site, problems that might affect progress of the work, accidents, injuries, and other information required by the Owner.

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

§ 2.4 Professional Services

Section 3.12.10 of A201–2007 shall apply to both the Preconstruction and Construction Phases.

§ 2.5 Hazardous Materials

Section 10.3 of A201–2007 shall apply to both the Preconstruction and Construction Phases.

ARTICLE 3 OWNER'S RESPONSIBILITIES

§ 3.1 Information and Services Required of the Owner

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

(Paragraph deleted)

§ 3.1.2 [INTENTIONALLY OMITTED]

§ 3.1.3 [INTENTIONALLY OMITTED]

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

§ 3.1.4.1 The Owner shall furnish tests, inspections and reports in its possession, if any, such as geotechnical reports, structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

§ 3.1.4.2 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site.

§ 3.1.4.3 The Owner, when such services are requested, shall furnish services of geotechnical engineers, which may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, with written reports and appropriate recommendations.

§ 3.1.4.4 The Owner may, in its discretion, provide the Construction Manager access to Owner's records that may contain information about the Project site and adjacent land and improvements, where such information was not collected specifically for the Project. The Owner makes no representations as to the relevance, accuracy or completeness of information in the Owner's records made available to the Construction Manager.

§ 3.2 Owner's Designated Representative

The Owner shall identify a representative authorized to act on behalf of the Owner with respect to the Project. The Owner's representative shall render decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the Construction Manager. Except as otherwise provided in Section 4.2.1 of A201-2007, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

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

§ 3.3 Architect

The Owner shall retain an Architect to provide services, duties and responsibilities as described in AIA Document B103™-2007, Standard Form of Agreement Between Owner and Architect, including any additional services requested by the Construction Manager that are necessary for the Preconstruction and Construction Phase services under this Agreement.

ARTICLE 4 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

§ 4.1 Compensation

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

§ 4.1.2 Owner will pay Construction Manager a not-to-exceed sum of _____ for Preconstruction Phase Services described in Sections 2.1 and 2.2, plus the following Reimbursable Expenses:

- .1 Owner-authorized special computer studies and video or digital images

The Construction Manager will include the not-to-exceed sum for Preconstruction Phase Services including Reimbursable Expenses to be incurred in the Preconstruction Phase in its Guaranteed Maximum Price proposal. For Reimbursable Expenses, the compensation will be the actual expenses incurred by the Construction Manager without mark-up.

§ 4.1.3 The Construction Manager will accept compensation under Section 4.1.2 as payment for all services rendered and Reimbursable Expenses incurred during the Preconstruction Phase, except as may otherwise be specifically agreed to by the Owner in writing.

(Paragraph deleted)

§ 4.2 Payments

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

§ 4.2.2 Payments are due and payable 40 days after Owner's receipt of the invoice. Amounts unpaid after 40 days will bear interest in accordance with ORS 279C.570.

(Paragraph deleted)

ARTICLE 5 COMPENSATION FOR CONSTRUCTION PHASE SERVICES

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

§ 5.1.1 The Construction Manager's Fee:

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

§ 5.1.2 Not used

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

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

§ 5.1.5 Unit prices, if any:

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

Item	Units and Limitations	Price per Unit (\$0.00)
<input type="text"/>	<input type="text"/>	<input type="text"/>

§ 5.2 Guaranteed Maximum Price

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

(Paragraphs deleted)

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

§ 5.3 Changes in the Work

§ 5.3.1 The Owner may, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions. The Owner shall issue such changes in writing. The Architect may make minor changes in the Work as provided in Section 7.4 of AIA Document A201-2007, General

Conditions of the Contract for Construction. The Construction Manager shall be entitled to an equitable adjustment in the Contract Time as a result of changes in the Work.

§ 5.3.2 Adjustments to the Guaranteed Maximum Price on account of changes in the Work subsequent to the execution of the Guaranteed Maximum Price Amendment may be determined by any of the methods listed in Section 7.3.3 of AIA Document A201–2007, General Conditions of the Contract for Construction.

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

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

§ 5.3.5 Deadband. The total fee for this Construction Manager will be set based on the contracted GMP and the agreed to cost of work. The total fee amount will not be adjusted with cost changes to the project and GMP unless the conditions defined in 5.3.6 take place.

5.3.6 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 of over 10% of the GMP over or under, that application of the adjustment provisions of Section 5.1.2 will cause substantial inequity to the Owner or Construction Manager, the Construction Manager's Fee shall be equitably adjusted on the same basis that was used to establish the Fee for the original Work, and the Guaranteed Maximum Price shall be adjusted accordingly.

ARTICLE 6 COST OF THE WORK FOR CONSTRUCTION PHASE

§ 6.1 Costs to Be Reimbursed

§ 6.1.1 The term Cost of the Work means costs necessarily incurred by the Construction Manager in the proper performance of the Work. Such costs shall be at rates not higher than those stated in the Guaranteed Maximum Price Proposal or, if not stated, the fair market value at the place of the Project, except with Owner's prior written consent, which the Owner may grant or deny in the Owner's sole discretion. The Cost of the Work includes only the items set forth in Sections 6.1 through 6.7.

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

§ 6.2 Labor Costs

§ 6.2.1 Wages of construction workers directly employed by the Construction Manager to perform the construction of the Work at the site or, with the Owner's prior written approval, at off-site workshops. The Work to be performed under this Contract is subject to prevailing rates of wage under Oregon law. The applicable rates will be those in effect at the time the Owner and Construction Manager execute the Guaranteed Maximum Price Amendment. A copy of those rates, or a link to where they may be found online, will be provided to the Construction Manager and will be incorporated into the Contract Documents by reference.

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

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

§ 6.2.4 Costs paid or incurred by the Construction Manager for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Sections 6.2.1 through 6.2.3. Bonus reimbursement is not allowed.

(Paragraph deleted)

§ 6.3 Subcontract Costs

Payments made by the Construction Manager to Subcontractors in accordance with the requirements of the Contract Documents.

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

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

§ 6.4.2 Costs of materials described in the preceding Section 6.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold by the Construction Manager. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

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

§ 6.5.1 Costs of transportation, storage, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site and fully consumed in the performance of the Work. Costs of materials, supplies, temporary facilities, machinery, equipment and 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.

§ 6.5.2 Subject to Owner's prior written approval, 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 costs of transportation, installation, minor repairs, dismantling and removal. The total rental cost of any Construction Manager-owned item may not exceed the purchase price of any comparable item. Rates of Construction Manager-owned equipment and quantities of equipment shall be subject to the Owner's prior written approval.

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

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

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

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

§ 6.6 Miscellaneous Costs

§ 6.6.1 Premiums for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to this Contract. Self-insurance for either full or partial amounts of the coverages required by the Contract Documents, with the Owner's prior written approval.

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

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

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

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

(Paragraph deleted)

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

(Paragraph deleted)

§ 6.6.9 [INTENTIONALLY OMITTED].

§ 6.7 Other Costs and Emergencies

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

§ 6.7.2 Costs incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property, as provided in Section 10.4 of AIA Document A201–2007.

§ 6.7.3 Costs of repairing or correcting damaged or nonconforming Work executed by the Construction Manager, Subcontractors or suppliers, provided that such damaged or nonconforming Work was not caused by negligence or failure to fulfill a specific responsibility of the Construction Manager, as determined by the Owner, and only to the extent that the cost of repair or correction is not recovered by the Construction Manager from insurance, sureties, Subcontractors, suppliers, or others.

§ 6.7.4 The costs described in Sections 6.1 through 6.7 shall be included in the Cost of the Work, notwithstanding any provision of AIA Document A201–2007 or other Conditions of the Contract which may require the Construction Manager to pay such costs, unless such costs are excluded by the provisions of Section 6.8.

§ 6.8 Costs Not To Be Reimbursed

§ 6.8.1 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 6.2, or as may be provided in Article 11;
- .2 Expenses of the Construction Manager's principal office and offices other than the site office;
- .3 Overhead and general expenses, except as may be expressly included in Sections 6.1 to 6.7;
- .4 The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work;
- .5 Except as provided in Section 6.7.3 of this Agreement, costs due to the negligence or failure of the Construction Manager, Subcontractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable to fulfill a specific responsibility of the Contract;
- .6 Any cost not specifically and expressly described in Sections 6.1 to 6.7;
- .7 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded;
- .8 Costs for services incurred during the Preconstruction Phase;

- .9 Rental/lease payments, expenses or allowances related to vehicles for individuals including the foreperson, superintendent and project managers other than mileage reimbursement for travel in furtherance of the Work pursuant to Section 6.5.5;
- .10 Amounts the Contract Documents specifically require the Construction Manager to pay including deductible amounts payable by the Construction Manager under any policy of insurance the Construction Manager is required to provide.

Any fines, penalties, sanctions, levied against Contractor or Owner due to Construction Manager (or any Subcontractor and their subs) violation of any OSHA regulations or other federal, state, or local laws, regulation or ordinances shall be paid by Construction Manager.

Any liquidated damages provided for under this Agreement.

§ 6.9 Discounts, Rebates and Refunds

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

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

§ 6.10 Related Party Transactions

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

§ 6.10.2 If any of the costs to be reimbursed arise from a transaction between the Construction Manager and a related party, 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, 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 Sections 2.3.2.1, 2.3.2.2 and 2.3.2.3. If the Owner fails to authorize the transaction, the Construction Manager shall procure the Work, equipment, goods or service from some person or entity other than a related party according to the terms of Sections 2.3.2.1, 2.3.2.2 and 2.3.2.3.

§ 6.11 Accounting Records

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

ARTICLE 7 PAYMENTS FOR CONSTRUCTION PHASE SERVICES

§ 7.1 Progress Payments

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

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

§ 7.1.3 Provided that an Application for Payment is received by the Architect by the 25th of each month and the Architect certifies the application for payment, the Owner shall make payment of the certified amount to the Construction Manager not later 40 days after the Architect receives the Application for Payment.

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

§ 7.1.5 Each Application for Payment shall be based on the most recent schedule of values submitted by the Construction Manager in accordance with the Contract Documents. The schedule of values shall allocate the entire Guaranteed Maximum Price among the various portions of the Work, except that the Construction Manager's Fee shall be shown as a single separate item. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Construction Manager's Applications for Payment.

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

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

- .1 Take that portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 7.3.9 of AIA Document A201-2007;
- .2 Add that portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work, or if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing;
- .3 Add the Construction Manager's Fee, less retainage of five percent (5 %). The Construction Manager's Fee shall be computed upon the Cost of the Work at the rate stated in Section 5.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, shall be an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- .4 Subtract retainage of five percent (5 %) from that portion of the Work that the Construction Manager self-performs;
- .5 Subtract the aggregate of previous payments made by the Owner;
- .6 Subtract the shortfall, if any, indicated by the Construction Manager in the documentation required by Section 7.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and

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

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

§ 7.1.9 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 stored at the site.

§ 7.1.10 In taking action on the Construction Manager’s Applications for Payment, the Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Construction Manager and shall not be deemed to represent that the Architect has made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Section 7.1.4 or other supporting data; that the Architect has made exhaustive or continuous on-site inspections; or that the Architect has made examinations to ascertain how or for what purposes the Construction Manager has used amounts previously paid on account of the Contract. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner’s auditors acting in the sole interest of the Owner.

§ 7.2 Final Payment

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

- .1 the Construction Manager has fully performed the Contract except for the Construction Manager’s responsibility to correct Work as provided in Section 12.2.2 of AIA Document A201–2007, and to satisfy other requirements, if any, which extend beyond final payment;
- .2 the Construction Manager has submitted a final accounting for the Cost of the Work and a final Application for Payment; and
- .3 a final Certificate for Payment has been issued by the Architect.
has provided final lien waivers by all subcontractors and their sub and suppliers.

The Owner’s final payment to the Construction Manager shall be made no later than 40 days after the issuance of the Architect’s final Certificate for Payment, or as follows:

§ 7.2.2 The Owner’s auditors will review and report in writing on the Construction Manager’s final accounting within 30 days after delivery of the final accounting to the Architect by the Construction Manager. Based upon such Cost of the Work as the Owner’s auditors report to be substantiated by the Construction Manager’s final accounting, and provided the other conditions of Section 7.2.1 have been met, the Architect will, within seven days after receipt of the written report of the Owner’s auditors, either issue to the Owner a final Certificate for Payment with a copy to the Construction Manager, or notify the Construction Manager and Owner in writing of the Architect’s reasons for withholding a certificate as provided in Section 9.5.1 of the AIA Document A201–2007. The time periods stated in this Section supersede those stated in Section 9.4.1 of the AIA Document A201–2007. The Architect is not responsible for verifying the accuracy of the Construction Manager’s final accounting.

§ 7.2.3 If the Owner’s auditors report the Cost of the Work as substantiated by the Construction Manager’s final accounting to be less than claimed by the Construction Manager, the Construction Manager shall be entitled to request mediation of the disputed amount without seeking an initial decision pursuant to Section 15.2 of A201–2007. A request for mediation shall be made by the Construction Manager 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.

§ 7.2.4 If, subsequent to final payment and at the Owner’s request, the Construction Manager incurs costs described in Section 6.1.1 and not excluded by Section 6.8 to correct defective or nonconforming Work, the Owner shall reimburse the Construction Manager such costs and the Construction Manager’s Fee applicable thereto on the same

basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price. If the Construction Manager has participated in savings as provided in Section 5.2.1, the amount of such savings shall be recalculated and appropriate credit given to the Owner in determining the net amount to be paid by the Owner to the Construction Manager.

ARTICLE 8 INSURANCE AND BONDS

For all phases of the Project, the Construction Manager and the Owner shall purchase and maintain insurance, and the Construction Manager shall provide bonds as set forth in Article 11 of AIA Document A201–2007.

(Paragraph deleted)

Type of Insurance or Bond	Limit of Liability or Bond Amount (\$0.00)
Performance bond	100% of the Cost of the Work
Payment bond	100% of the Cost of the Work
General commercial liability insurance	In the form and amount identified in Section 1.24 of the RFP (1617-01 ITC/Barlow Lot)
Automobile insurance	In the form and amount identified in Section 1.24 of the RFP (1617-01 ITC/Barlow Lot)
Errors & Omissions insurance	In the form and amount identified in Section 1.24 of the RFP (1617-01 ITC/Barlow Lot)
Workers compensation insurance	Statutory amount
BOLI bond	Statutory amount
Builders risk insurance	OWNER WILL PROVIDE

ARTICLE 9 DISPUTE RESOLUTION

§ 9.1 Any Claim between the Owner and Construction Manager shall be resolved in accordance with the provisions set forth in this Article 9 and Article 15 of A201–2007. However, for Claims arising from or relating to the Construction Manager’s Preconstruction Phase services, no decision by the Initial Decision Maker shall be required as a condition precedent to mediation or binding dispute resolution, and Section 9.3 of this Agreement shall not apply.

§ 9.2 For any Claim subject to, but not resolved by mediation pursuant to Section 15.3 of AIA Document A201–2007, the method of binding dispute resolution shall be as follows:

(Paragraph deleted)

- Arbitration pursuant to Section 15.4 of AIA Document A201–2007
- Litigation in a court of competent jurisdiction
- Other: *(Specify)*

§ 9.3 Initial Decision Maker

The Architect will serve as the Initial Decision Maker pursuant to Section 15.2 of AIA Document A201–2007 for Claims arising from or relating to the Construction Manager’s Construction Phase services, unless the parties appoint below another individual, not a party to the Agreement, to serve as the Initial Decision Maker.

(Paragraphs deleted)

ARTICLE 10 TERMINATION OR SUSPENSION

§ 10.1 Termination Prior to Establishment of the Guaranteed Maximum Price

§ 10.1.1 Prior to the execution of the Guaranteed Maximum Price Amendment, the Owner may terminate this Agreement upon not less than seven days’ written notice to the Construction Manager for the Owner’s convenience and without cause, and the Construction Manager may terminate this Agreement, upon not less than seven days’ written notice to the Owner, for the reasons set forth in Section 14.1.1 of A201–2007.

§ 10.1.2 In the event of termination of this Agreement pursuant to Section 10.1.1, the Construction Manager shall be equitably compensated for Preconstruction Phase services performed prior to receipt of a notice of termination. In no event shall the Construction Manager’s compensation under this Section exceed the compensation set forth in Section 4.1. Such compensation will not include anticipated profits.

§ 10.1.3 If the Owner terminates the Contract pursuant to Section 10.1.1 after the commencement of the Construction Phase but prior to the execution of the Guaranteed Maximum Price Amendment, the Owner shall pay to the Construction Manager an amount calculated as follows, which amount shall be in addition to any compensation paid to the Construction Manager under Section 10.1.2:

- .1 Take the Cost of the Work incurred by the Construction Manager to the date of termination;
- .2 Add the Construction Manager's Fee computed upon the Cost of the Work to the date of termination at the rate stated in Section 5.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion; and
- .3 Subtract the aggregate of previous payments made by the Owner for Construction Phase services.

The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager which the Owner elects to retain and which is not otherwise included in the Cost of the Work under Section 10.1.3.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a condition of receiving the payments referred to in this Article 10, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders. All Subcontracts, purchase orders and rental agreements entered into by the Construction Manager will contain provisions allowing for assignment to the Owner as described above.

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

§ 10.2 Termination Subsequent to Establishing Guaranteed Maximum Price

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

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

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

§ 10.3 Suspension

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

ARTICLE 11 MISCELLANEOUS PROVISIONS

§ 11.1 Terms in this Agreement shall have the same meaning as those in A201-2007.

§ 11.2 Ownership and Use of Documents

Section 1.5 of A201–2007 shall apply to both the Preconstruction and Construction Phases.

§ 11.3 Governing Law

Section 13.1 of A201–2007 shall apply to both the Preconstruction and Construction Phases.

§ 11.4 Assignment

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

§ 11.5 Other provisions:

ARTICLE 12 SCOPE OF THE AGREEMENT

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

§ 12.2 The following documents comprise the Agreement:

- .1 AIA Document A133–2009, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price
- .2 AIA Document A201–2007, General Conditions of the Contract for Construction
- .3 The _____, 2016 RFP documents issued by the Owner, including all exhibits and all addenda to the RFP.
- .4
- .5 Other documents:
 - Exhibit A – GMP Amendment
 - Exhibit B – Subcontractor Relations

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

OWNER (Signature)

CONSTRUCTION MANAGER (Signature)

(Printed name and title)

(Printed name and title)

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

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

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 13:01:39 on 10/14/2016.

PAGE 1

AGREEMENT made as of the ___ day of _____ in the year 2016

...

Clackamas Community College
19600 Molalla Avenue
Oregon City, OR 97045

...

ITC/Barlow Lot
Clackamas Community College
Oregon City, OR

...

Opsis Architecture LLP
920 NW 17th Ave
Portland, Oregon 97209

...

inici Group, Inc.
5100 SW Macadam Avenue, Suite 330
Portland, OR 97329

PAGE 3

EXHIBIT A GUARANTEED MAXIMUM PRICE AMENDMENT
EXHIBIT B SUBCONTRACTOR RELATIONS

...

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; furnish the Construction Manager's services, experienced personnel and perform the Work with the skill and care of a sophisticated Construction Manager and general contractor with experience in projects similar to the Project; 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.

...

For the Preconstruction Phase, AIA Document A201™-2007, General Conditions of the Contract for Construction, shall apply only as specifically provided in this Agreement. For the Construction Phase, the general conditions of the contract shall be as set forth in A201-2007, which document is incorporated herein by reference. The term "Contractor" as used in A201-2007 shall mean the Construction Manager. The terms 'AIA Document A201™-2007' and 'A201-2007' mean AIA Document A201-2007, General Conditions of the Contract for Construction, as modified by Owner.

PAGE 4

§ 2.1.1 The Construction Manager shall provide a preliminary evaluation of the Owner's program, schedule evaluation and documentation deliverables of the Owner's schedule, project phasing, contract documents and construction budget requirements, each in terms of the other, of the other, as defined in the RFP for Construction Manager services including the specific services listed at 2.3.1 of the RFP and at least the following:

- .1 The Construction Manager will provide in deliverables writing and acceptable to Owner: (1) a detailed evaluation of the construction costs for the project, Project schedule and and phasing of bid packages, if any, including estimate of construction costs savings; (2) a review of information provided by the Owner and the Architect and information the Construction Manager obtains from field observations and other sources; (3) a pre-bid cost estimate to determine if probable construction cost estimates will meet or exceed the Project budget; and (4) recommended changes to the Owner's design for the Project that the Construction Manager reasonably expects will reconcile the program, Project budget and Project Schedule or will reduce costs, provide a higher quality Project without exceeding the Project budget or will otherwise benefit Owner.
- .2 If the Construction Manager recommends changes to the Owner's program or its preliminary design, the Construction Manager will explain why the proposed changes, if Owner accepts them, will: (1) reduce costs; (2) provide a higher quality Project without exceeding the Project budget; or (3) otherwise provide benefits to the Owner or the Project.
- .3 The evaluation must also include a contract document review report of any apparent errors, omissions, or inconsistencies contract documents and other information obtained by the Construction Manager from any source, including the Owner, the Architect or the Construction Manager's observations, together with the Construction Manager's recommendations for resolving any apparent errors, omissions, or inconsistencies.
- .4 The Construction Manager shall provide a phasing schedule that provides highest level of competitive bidding coverage, maximizing the benefits of the outreach programs of CCC, least impact to ongoing CCC operations for staff and students, and coordinates with weather conditions for the site.
- .5 Work with CCC in identifying critical elements of the Work that may require special procurement processes, such as prequalification of offers or alternative contracting methods. Administer a process for bringing Subcontractors onto the team early in the Project.
- .6 Provide input to CCC and the Design Team regarding current construction market bidding climate, status of key subcontract markets, and other local economic conditions. Recommend division of work ("Procurement and Subcontracting Plan") to facilitate bidding and award of trade contracts, considering such factors as bidding climate, improving or accelerating construction completion, minimizing trade jurisdictional disputes, and related issues.
- .7 Prepare Cash Flow Forecasts incorporating the entire duration of the Project.

...

The Construction Manager shall schedule and conduct meetings with the Architect and Owner to discuss such matters as procedures, progress, coordination, and scheduling of the Work. The Construction Manager shall advise the Owner and the Architect on proposed site use and improvements, selection of materials, and building systems and ~~equipment~~ equipment based on the design work completed to date. The Construction Manager shall also provide recommendations consistent with the Project requirements to the Owner and Architect on constructability;

availability of materials and labor; time requirements for procurement, installation and construction; and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions.

§ 2.1.3 When Project requirements in Section 3.1.1 have been sufficiently identified, the Construction Manager shall prepare and ~~periodically~~ update a Project schedule at least once a month for the Architect's review and the Owner's acceptance. The Construction Manager shall obtain the Architect's approval for the portion of the Project schedule relating to the performance of the Architect's services. The Project schedule shall coordinate and integrate the Construction Manager's services, the Architect's services, other Owner consultants' services, and the Owner's responsibilities and identify items that could affect the Project's timely completion. ~~The Each~~ updated Project schedule shall include the following: submission of the Guaranteed Maximum Price proposal; components of the Work; times of commencement and completion required of each Subcontractor; ordering and delivery of products, including those that must be ordered well in advance of construction; and the occupancy requirements ~~of the Owner.~~ of the Owner, including any portions of the Project having occupancy priority. Each updated Project Schedule will indicate proposed activity sequences and durations, milestone dates for receipt and approval of pertinent information, preparation and processing of shop drawings and samples and proposed date of Substantial Completion. If preliminary Project schedule updates indicate that previously approved schedules may not be met, the Construction Manager will make appropriate recommendations to the Owner and Architect.

PAGE 5

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

...

The Construction Manager shall develop bidders' interest in the Project. Owner in consultation with Architect may require Construction Manager to inform one or more specific Subcontractors of the Project. See Exhibit B for details of Construction Manager's relations with Subcontractors.

§ 2.1.7 The Construction Manager ~~shall~~ will prepare, for the Architect's review and the Owner's acceptance, a procurement schedule for ~~items long-lead-time items, if any,~~ that must be ordered well in advance of ~~construction.~~ The Construction Manager shall expedite and coordinate the ordering and delivery of materials that must be ordered well in advance of construction. If the Owner agrees to procure any items prior to the establishment of the Guaranteed Maximum Price, the Owner shall procure the items on terms and conditions acceptable to the Construction Manager- construction to meet the approved Project Schedule. The Construction Manager will submit the procurement schedule for long-lead-time items. The Owner may require the Construction Manager to order and procure long-lead-time items before the Owner accepts the Construction Manager's Guaranteed Maximum Price proposal, pursuant to Drawings and Specifications prepared by the Architect and A201- 2007. The Construction Manager will provide the Owner with a proposal for such procurement that will be for no more than the actual cost of the long-lead-time item, and will identify a restocking charge or charge of a similar nature, if any, payable to the supplier of the long-lead-time item if the Owner cancels the order. The Construction Manager shall incorporate any long-lead- time-items in the Guaranteed Maximum Price proposal. If the Owner accepts the Guaranteed Maximum Price proposal, any long-lead-time items must be included in the Cost of the Work and the Construction Manager will accept compensation under Section 5.1 of this Agreement as compensation for all long-lead-time items. The Owner will provide funds for payment of any amounts that become due for long-lead-time items before commencement of the Construction Phase, subject to a credit against the Guaranteed Maximum Price. If the Owner cancels the order for a long-lead time item for any reason other than default by the Construction Manager or the supplier, Owner will be responsible for any restocking charge or charge of a similar nature if but only to the extent the Construction Manger disclosed the charge in its proposal. The Construction Manager shall expedite the delivery of long-lead-time items.. Upon the establishment of the Guaranteed Maximum Price, the Owner shall assign all

contracts for these items to the Construction Manager and the Construction Manager shall thereafter accept responsibility for them.

PAGE 6

§ 2.2.1 At a time to be mutually agreed upon by the Owner and the Construction Manager and in consultation with the Architect, the Construction Manager shall prepare a Guaranteed Maximum Price proposal for the Owner's review and acceptance. The Guaranteed Maximum Price in the proposal shall be the sum of the Construction Manager's estimate of the Cost of the Work, including contingencies described in Section 2.2.4, and the Construction Manager's Fee. By submitting the Guaranteed Maximum Price proposal to the Owner, the Construction Manager warrants that: (1) the Construction Manager has reviewed the Drawings and Specifications and other information provided by the Owner and obtained such additional information from the Owner, direct observation of the site and other sources that the Construction Manager deemed necessary and sufficient to prepare the Guaranteed Maximum Price proposal; (2) the Guaranteed Maximum Price proposal is consistent with the Drawings and Specifications, and (3) the Drawings and Specifications provide sufficient information to commit to a Guaranteed Maximum Price to complete the Work within the Contract Time.

...

- .5 A date by which the Owner must accept the Guaranteed Maximum Price. Price, which will be no less than twenty (20) days from the date of the written statement.

§ 2.2.4 In preparing the Construction Manager's Guaranteed Maximum Price proposal, the Construction Manager shall include its contingency for the Construction Manager's ~~exclusive use~~ to cover those costs considered reimbursable as the Cost of the Work but not included in a Change Order. The amount shall be approved by the Owner. The Own shall be allowed to review the Contingency expenditures and reject those not in the best interest of the Project.

§ 2.2.5 The Construction Manager shall meet with the Owner and Architect to review the Guaranteed Maximum Price proposal. ~~In the event that the Owner and Architect discover any inconsistencies or inaccuracies in the information presented, they shall~~ If the Owner or Architect discovers any apparent inconsistencies or inaccuracies in the information included in the Guaranteed Maximum Price proposal or between that information and the Plans and Specifications, they will promptly notify the Construction Manager, who shall will make appropriate adjustments to the Guaranteed Maximum Price proposal, its basis, or both or both, to the extent necessary to reconcile such apparent inconsistencies or inaccuracies to the Owner's satisfaction.

§ 2.2.6 ~~If the Owner notifies the Construction Manager that the Owner has accepted the Guaranteed Maximum Price proposal in writing before the date specified in the Guaranteed Maximum Price proposal, the Guaranteed Maximum Price proposal shall be deemed effective without further acceptance from the Construction Manager. Following acceptance of a Guaranteed Maximum Price, the Owner and Construction Manager shall execute the Guaranteed Maximum Price Amendment amending this Agreement, a copy of which the Owner shall provide to the Architect. The Guaranteed Maximum Price Amendment shall set forth the agreed upon Guaranteed Maximum Price with the information and assumptions upon which it is based. The Owner will review the Guaranteed Maximum Price proposal and accept, reject or request modification of the Guaranteed Maximum Price proposal by written notice to the Construction Manager. If the Owner requests modification of the Guaranteed Maximum Price proposal, the Owner and the Construction Manager shall cooperate with each other to arrive at and agree upon such modification as expeditiously as possible, provided, however, that the Owner may at any time elect to reject the Guaranteed Maximum Price proposal, as presented or as may be later modified, and terminate this Agreement for convenience pursuant to A201-2007.~~

PAGE 7

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

...

If Owner accepts the Construction Manager's Guaranteed Maximum Price proposal, the Owner and Construction Manager will execute a Guaranteed Maximum Price Amendment amending this Agreement, a copy of which Owner will provide to the Architect. The Guaranteed Maximum Price Amendment will be substantially in the form attached to this Agreement as Exhibit A and set forth the agreed upon Guaranteed Maximum Price with the information and assumptions upon which it is based.

...

~~§ 2.3.1.2 The Construction Phase shall commence upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal or the Owner's issuance of a Notice to Proceed, whichever occurs earlier.~~ will commence when the Owner's issues a Notice to Proceed.

...

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

~~§ 2.3.2.2 If the Guaranteed Maximum Price has been established and when a specific bidder (1) is recommended to the Owner by the Construction Manager, (2) is qualified to perform that portion of the Work, and (3) has submitted a bid that conforms to the requirements of the Contract Documents without reservations or exceptions,~~ exceptions and (4) the Owner or Architect has not objected to the bidder in accordance with the Contract Documents, but the Owner requires that another bid be accepted, then the Construction Manager may require that a Change Order be issued to adjust the Contract Time and the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Construction Manager and the amount and time requirement of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

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

PAGE 8

~~§ 2.3.2.6 Upon the execution of the Guaranteed Maximum Price Amendment, the Construction Manager shall prepare and submit to the Owner and Architect a construction schedule for the Work and submittal schedule in accordance with Section 3.10 of A201-2007.~~ A201-2007, which must be consistent with the Guaranteed Maximum Price proposal accepted by Owner.

...

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

...

§ 3.1.2 Prior to the execution of the Guaranteed Maximum Price Amendment, the Construction Manager may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. Thereafter, the Construction Manager may only request such evidence if (1) the Owner fails to make payments to the Construction Manager as the Contract Documents require; (2) a change in the Work materially changes the Contract Sum, or (3) the Construction Manager identifies in writing a reasonable concern regarding the Owner's ability to make payment when due. The Owner shall furnish such evidence as a condition precedent to commencement or continuation of the Work or the portion of the Work affected by a material change. After the Owner furnishes the evidence, the Owner shall not materially vary such financial arrangements without prior notice to the Construction Manager and Architect.

§ 3.1.2 [INTENTIONALLY OMITTED]

§ 3.1.3 The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1.1, (2) the Owner's other costs, and (3) reasonable contingencies related to all of these costs. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Construction Manager and Architect. The Owner and the Architect, in consultation with the Construction Manager, shall thereafter agree to a corresponding change in the Project's scope and quality. [INTENTIONALLY OMITTED]

PAGE 9

§ 3.1.4.1 The Owner shall furnish tests, inspections and reports required by law and as otherwise agreed to by the parties, such as in its possession, if any, such as geotechnical reports, structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

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

§ 3.1.4.3 The Owner, when such services are requested, shall furnish services of geotechnical engineers, which may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

§ 3.1.4.4 During the Construction Phase, the Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services. The Owner may, in its discretion, provide the Construction Manager access to Owner's records that may contain information about the Project site and adjacent land and improvements, where such information was not collected specifically for the Project. The Owner makes no representations as to the relevance, accuracy or completeness of information in the Owner's records made available to the Construction Manager.

...

The Owner shall retain an Architect to provide services, duties, duties and responsibilities as described in AIA Document B133™ 2014, B103™ 2007, Standard Form of Agreement Between Owner and Architect, Construction Manager as Constructor Edition. The Owner shall provide the Construction Manager a copy of the executed agreement between the Owner and the Architect, and any further modifications to the agreement including any

additional services requested by the Construction Manager that are necessary for the Preconstruction and Construction Phase services under this Agreement.

...

§ 4.1.2 For the Construction Manager's Preconstruction Phase services described in Sections 2.1 and 2.2: Owner will pay Construction Manager a not-to-exceed sum of _____ for Preconstruction Phase Services described in Sections 2.1 and 2.2, plus the following Reimbursable Expenses:
(Insert amount of, or basis for, compensation and include a list of reimbursable cost items, as applicable.)
1
_____ Owner-authorized special computer studies and video or digital images

The Construction Manager will include the not-to-exceed sum for Preconstruction Phase Services including Reimbursable Expenses to be incurred in the Preconstruction Phase in its Guaranteed Maximum Price proposal. For Reimbursable Expenses, the compensation will be the actual expenses incurred by the Construction Manager without mark-up.

§ 4.1.3 If the Preconstruction Phase services covered by this Agreement have not been completed within _____ (____) months of the date of this Agreement, through no fault of the Construction Manager, the Construction Manager's compensation for Preconstruction Phase services shall be equitably adjusted. The Construction Manager will accept compensation under Section 4.1.2 as payment for all services rendered and Reimbursable Expenses incurred during the Preconstruction Phase, except as may otherwise be specifically agreed to by the Owner in writing.

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

PAGE 10

§ 4.2.2 Payments are due and payable upon presentation of the Construction Manager's invoice. Amounts unpaid (____) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Construction Manager. 40 days after Owner's receipt of the invoice. Amounts unpaid after 40 days will bear interest in accordance with ORS 279C.570. (Insert rate of monthly or annual interest agreed upon.)

____ %

...

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

§ 5.1.2 The method of adjustment of the Construction Manager's Fee for changes in the Work: Not used

...

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

...

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

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

PAGE 11

§ 5.3.5 ~~If no specific provision is made in Section 5.1.2 for Deadband.~~ The total fee for this Construction Manager will be set based on the contracted GMP and the agreed to cost of work. The total fee amount will not be adjusted with cost changes to the project and GMP unless the conditions defined in 5.3.6 take place.

5.3.6 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,~~ aggregate of over 10% of the GMP over or under, that application of the adjustment provisions of Section 5.1.2 will cause substantial inequity to the Owner or Construction Manager, the Construction Manager's Fee shall be equitably adjusted on the same basis that was used to establish the Fee for the original Work, and the Guaranteed Maximum Price shall be adjusted accordingly.

...

§ 6.1.1 The term Cost of the Work ~~shall mean~~ means costs necessarily incurred by the Construction Manager in the proper performance of the Work. Such costs shall be at rates not higher than ~~the standard paid at the place of the Project~~ except with prior consent of the Owner. The Cost of the Work shall include those stated in the Guaranteed Maximum Price Proposal or, if not stated, the fair market value at the place of the Project, except with Owner's prior written consent, which the Owner may grant or deny in the Owner's sole discretion. The Cost of the Work includes only the items set forth in Sections 6.1 through 6.7.

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

...

§ 6.2.1 Wages of construction workers directly employed by the Construction Manager to perform the construction of the Work at the site or, with the Owner's prior written approval, at off-site workshops. The Work to be performed under this Contract is subject to prevailing rates of wage under Oregon law. The applicable rates will be those in effect at the time the Owner and Construction Manager execute the Guaranteed Maximum Price Amendment. A copy of those rates, or a link to where they may be found online, will be provided to the Construction Manager and will be incorporated into the Contract Documents by reference.

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

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

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

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

costs are based on wages and salaries included in the Cost of the Work under Sections 6.2.1 through 6.2.3. Bonus reimbursement is not allowed.

~~§ 6.2.5 Bonuses, profit sharing, incentive compensation and any other discretionary payments paid to anyone hired by the Construction Manager or paid to any Subcontractor or vendor, with the Owner's prior approval.~~

Payments made by the Construction Manager to Subcontractors in accordance with the requirements of the ~~subcontracts-Contract Documents.~~

PAGE 12

~~§ 6.5.2 Rental-Subject to Owner's prior written approval, 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 costs of transportation, installation, minor repairs, dismantling and removal. The total rental cost of any Construction Manager-owned item may not exceed the purchase price of any comparable item. Rates of Construction Manager-owned equipment and quantities of equipment shall be subject to the Owner's prior written approval.~~

...

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

...

~~§ 6.6.1 Premiums for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to this Contract. Self-insurance for either full or partial amounts of the coverages required by the Contract Documents, with the Owner's prior written approval.~~

PAGE 13

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

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

~~§ 6.6.8 Legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between the Owner and Construction Manager, reasonably incurred by the Construction Manager after the execution of this Agreement in the performance of the Work and with the Owner's prior approval, which shall not be unreasonably withheld.~~

~~§ 6.6.9 Subject to the Owner's prior approval, expenses incurred in accordance with the Construction Manager's standard written personnel policy for relocation and temporary living allowances of the Construction Manager's personnel required for the Work. [INTENTIONALLY OMITTED].~~

...

§ 6.7.3 Costs of repairing or correcting damaged or nonconforming Work executed by the Construction Manager, Subcontractors or suppliers, provided that such damaged or nonconforming Work was not caused by negligence or failure to fulfill a specific responsibility of the Construction Manager-Manager, as determined by the Owner, and only to the extent that the cost of repair or correction is not recovered by the Construction Manager from insurance, sureties, Subcontractors, suppliers, or others.

...

- .7 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded; and
- .8 Costs for services incurred during the Preconstruction Phase-Phase;
- .9 Rental/lease payments, expenses or allowances related to vehicles for individuals including the foreperson, superintendent and project managers other than mileage reimbursement for travel in furtherance of the Work pursuant to Section 6.5.5;
- .10 Amounts the Contract Documents specifically require the Construction Manager to pay including deductible amounts payable by the Construction Manager under any policy of insurance the Construction Manager is required to provide.

Any fines, penalties, sanctions, levied against Contractor or Owner due to Construction Manager (or any Subcontractor and their subs) violation of any OSHA regulations or other federal, state, or local laws, regulation or ordinances shall be paid by Construction Manager.

Any liquidated damages provided for under this Agreement.

PAGE 15

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

month.

§ 7.1.3 Provided that an Application for Payment is received by the Architect not later than the day of a month, by the 25th of each month and the Architect certifies the application for payment, the Owner shall make payment of the certified amount to the Construction Manager not later than the day of the month. If an Application for Payment is received by the Architect after the application date fixed above, payment shall be made by the Owner not later than () 40 days after the Architect receives the Application for Payment. (Federal, state or local laws may require payment within a certain period of time.)

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

...

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

PAGE 16

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

§ 7.1.9 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 stored at the site.

...

has provided final lien waivers by all subcontractors and their sub and suppliers.

The Owner's final payment to the Construction Manager shall be made no later than ~~30~~40 days after the issuance of the Architect's final Certificate for Payment, or as follows:

PAGE 17

(State bonding requirements, if any, and limits of liability for insurance required in Article 11 of AIA Document A201-2007.)

...

<u>Performance bond</u>	<u>100% of the Cost of the Work</u>
<u>Payment bond</u>	<u>100% of the Cost of the Work</u>
<u>General commercial liability insurance</u>	<u>In the form and amount identified in Section 1.24 of the RFP (1617-01 ITC/Barlow Lot)</u>
<u>Automobile insurance</u>	<u>In the form and amount identified in Section 1.24 of the RFP (1617-01 ITC/Barlow Lot)</u>
<u>Errors & Omissions insurance</u>	<u>In the form and amount identified in Section 1.24 of the RFP (1617-01 ITC/Barlow Lot)</u>
<u>Workers compensation insurance</u>	<u>Statutory amount</u>
<u>BOLI bond</u>	<u>Statutory amount</u>
<u>Builders risk insurance</u>	<u>OWNER WILL PROVIDE</u>

...

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

...

Litigation in a court of competent jurisdiction

...

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

[Redacted area]

...

§ 10.1.2 In the event of termination of this Agreement pursuant to Section 10.1.1, the Construction Manager shall be equitably compensated for Preconstruction Phase services performed prior to receipt of a notice of termination. In no event shall the Construction Manager's compensation under this Section exceed the compensation set forth in Section 4.1. Such compensation will not include anticipated profits.

PAGE 19

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

...

- .3 AIA Document E201™-2007, Digital Data Protocol Exhibit, if completed, or the following: The _____, 2016 RFP documents issued by the Owner, **including all exhibits and all addenda to the RFP.**

...

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

...

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

Exhibit A – GMP Amendment

Exhibit B – Subcontractor Relations

Exhibit B – Subcontractor Relations

SUBCONTRACTS AND OTHER CONTRACTS

a. General Subcontracting Requirements.

- 1) Notwithstanding any contrary provisions in the Contract Documents, these Exhibit B provisions govern CM/GC's relationships with Subcontractors and its award of Subcontracts.
- 2) Other than Work performed pursuant to paragraphs d) or e) below, CM/GC shall subcontract the Work to Subcontractors other than the CM/GC and its Affiliates. If CM/GC elects to bid on any Work, CM/GC shall inform Owner in writing of its intention to do so 30 days prior to the bid package release date for bidding for that Work.

b. CM/GC's Obligations under Subcontracts.

- 1) No use of a Subcontractor or supplier shall relieve the CM/GC of any of its obligations or liabilities under the Contract. Except as may expressly otherwise be provided in the Contract, the CM/GC shall be fully responsible and liable for the acts or omissions of all Subcontractors and suppliers including persons directly or indirectly employed by them. The CM/GC shall have sole responsibility for managing and coordinating the operations of its Subcontractors and suppliers, including the settlement of disputes with or between the CM/GC and any such Subcontractor or supplier.
- 2) The CM/GC shall include in each subcontract and require each Subcontractor to include in any lower tier subcontract, all provisions necessary to make all of the provisions of the Contract Documents, including the A201-2007 General Conditions (herein "General Conditions"), fully effective as applied to Subcontractors. CM/GC shall indemnify Owner for any additional cost based on a Subcontractor claim which results from the failure of CM/GC to incorporate the provisions of this Agreement in each subcontract. The CM/GC shall provide all necessary Plans, Specifications, regulatory requirements and project instructions to its suppliers and Subcontractors to enable them to properly perform their portions of the Work.
- 3) **Retainage from Subcontractors.** Except with the Owner's prior approval and as allowed under Oregon law, payments to Subcontractors shall be subject to retainage of no more than 5%. The Owner shall review and approve payments and retainage for Subcontractors.

c. Subcontractor Selection.

- 1) All Subcontractors performing Work must be, as legally required or appropriate for the Work they are performing, registered or licensed by one of the following before such Subcontractors commence Work and for the duration of the subcontract:
 - i. The Construction Contractors' Board in accordance with ORS 701.035 to 701.138;

- ii. The State Board of Examiners for Engineering and Land Surveying in accordance with ORS 672.002 to 672.325;
 - iii. The State Board of Architect Examiners in accordance with ORS 671.010 to 671.220;
 - iv. The State Landscape Architect's Board in accordance with ORS 671.310 to 671.459; or
 - v. The State Landscape Contractor's Board in accordance with ORS 671.510 to 671.710.
- 2) The CM/GC shall pay and comply with, and require Subcontractors to pay and comply with State prevailing wage rates in effect at the time of execution of the first Early Work Amendment, or if no Early Work Amendment is executed, at the time the GMP Amendment is executed, as listed in the BOLI publication titled "Prevailing Wage Rates for Public Works Contracts in Oregon", and any amendments thereto. Those rates shall be incorporated in the Contract and shall then apply throughout the remainder of the Project.
- 3) The CM/GC shall provide the owner bid tabulation comparison document documenting all bids and shall work with bidders to clarify submitted bids and document the bids to reduce exclusions, verify and document scope and quantities, equalize the bidder numbers, and seek to minimize work subsequently awarded via the Change Order process.
- 4) Unless otherwise provided in this Exhibit B, the selection of all Subcontractors and suppliers shall be made by competitive bidding in a manner that will not encourage favoritism or substantially diminish competition. While not subject to the competitive procurement requirements of ORS Chapter 279C, the process shall conform to the procedures discussed herein, in general compliance with the open and competitive nature of public procurement, taking into account industry subcontracting practices. The CM/GC shall document the bidding process and steps for owner approval before the first bid.
- 5) CM/GC shall submit to Owner's Authorized Representative its proposed procurement documents for review and comment before they are issued for solicitation. CM/GC shall consider and respond to all Owner comments regarding any proposed procurement packages. As Subcontractor bids are received, CM/GC shall submit to the Owner a bid comparison in a mutually agreeable form together with any specific back-up documentation requested by Owner. The competitive process used to award subcontracts by the CM/GC shall be monitored by the Owner's Authorized Representative; provided that such monitoring shall not excuse CM/GC from compliance with the subcontracting requirements of this Agreement. CM/GC shall cooperate in all respects with Owner's monitoring. The Owner's Authorized Representative shall be advised in advance of and be given the opportunity to be present at bid openings, and CM/GC shall provide him or her with a summary or abstract of all bids in form acceptable to the Owner's Authorized Representative, and copies of particular bids if requested, prior to CM/GC's selection of bids. Prior to opening bids, the CM/GC agrees to disclose in writing to Owner any financial interest it has in any such Subcontractor, supplier or other contracting party whenever such

Subcontractor, supplier or contracting party intends to compete on any Project Work, directly or indirectly, including whether such party is an Affiliate of CM/GC.

- 6) The following minimum requirements apply to the Subcontract solicitation process:
- i. Solicitations shall be advertised at least ten (10) business days prior to opening in the Daily Journal of Commerce. CM/GC also agrees to advertise in a local community newspaper in the area in which the Project is located, in order to allow for local participation in the solicitation process.
 - ii. Unless specific other prior arrangement has been made with Owner, all bids will be written, and submitted to a specific location at a specific time. CM/GC shall time/date-stamp all bids as received. Subcontractors must be qualified to perform the Work for this Project by being appropriately registered with the State of Oregon Construction Contractors Board.
 - iii. If fewer than three (3) bids are submitted in response to any solicitation (inclusive of any bid submitted by CM/GC), prior written approval by Owner shall be required to accept a bid for the specific scope of work.
 - iv. CM/GC may develop and implement a prequalification process in accordance with Oregon Revised Statutes for competitive bidding for particular solicitations, followed by selection of successful bids among those bidders that CM/GC determines meet the prequalification standards, with Owner's prior written approval of such prequalification process.
 - v. The CM/GC shall comply, and require Subcontractor compliance, with the State of Oregon Bureau of Labor & Industries prevailing wage rate requirements.
 - vi. Owner may at its sole discretion require CM/GC to re-solicit for bids based on the same or modified documents.
 - vii. CM/GC and the Owner, at its' discretion, shall review all bids and shall work with bidders to clarify bids, reduce exclusions, verify scope and quantities, and seek to minimize Work subsequently awarded via the Change Order process.
 - viii. The CM/GC shall document any and all discussions, questions and answers, modifications and responses to from any bidder and ensure that the same are distributed to all bidders, and Owner shall be provided documentation on request.
 - ix. CM/GC shall determine the lowest responsive and responsible bid for each solicitation that meets CM/GC's reasonable performance standards for the components of the Work at issue; provided that if CM/GC determines it is unable to execute a suitable subcontract with such bidder, CM/GC may, with Owner's prior approval, execute a

subcontract with the second-lowest Subcontractor bidder pursuant to paragraph c.9) below.

- 7) Under special circumstances and only with prior written authorization by Owner, Work may be subcontracted on other than a low price basis, including without limitation, through competitive negotiation. As a condition to its authorization, Owner may require CM/GC's agreement to establish and implement qualification and performance criteria for bidders, including a scoring system within requests for proposals. Examples include: where there are single fabricators of materials; systems that intergrate with Owners existing systems, special packaging requirements for Subcontractor Work; design-build work or, where an alternative contracting method can be demonstrated to clearly benefit Owner. Such alternative procurements may, at the sole determination of the Owner, be subject to the Owner's procurement policies.
- 8) When the Subcontractor selection process for a particular Work package will not be "competitive" as provided for in paragraph c.5), the process must meet the following requirements:
 - i. The CM/GC 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 CM/GC's need to utilize a key Subcontractor member of the CM/GC's project team consistent with the CM/GC'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 Contracting Agency must evaluate the written justification provided by the CM/GC 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. If required by the Owner, the CM/GC must provide an independent cost estimate for the Work package that will be subject to the non-competitive process.
 - iv. The CM/GC must fully respond to all Owner questions or comments pertaining to a proposed or completed non-competitive selection process or associated Work package.

- v. The Owner must approve in writing the CM/GC's use of the non-competitive Subcontractor selection process prior to the CM/GC's pursuit of the non-competitive process.
- 9) 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 CM/GC will select the Subcontractor to perform the construction Work described in the selection process;
 - 10) If the CM/GC or an Affiliate or subsidiary of the CM/GC will be included in the subcontractor selection process to perform particular construction Work on the project:
 - i. the CM/GC must disclose that fact in the selection process documents and announcements.
 - 11) CM/GC shall notify Owner in writing in advance before award of any proposed Subcontract, which notice shall include summaries in a form acceptable to Owner of all bidders received for the Subcontract at issue.
 - 12) Owner reserves the right to disapprove any proposed Subcontractors, suppliers and Subcontract or supply contract awards, based on legal standards of responsibility.
 - 13) The CM/GC shall notify the Owner in the event that it receives an objection or protest in response to Subcontractor selection. The Owner must approve the CM/GC's proposed resolution to any such objections or protests, prior to the CM/GC implementing the resolution.
 - 14) Briefings for Unsuccessful Subcontractors. Unsuccessful subcontractors will be allowed 60 days from the CM/GC's notice of award of a subcontract for a particular Work package to request, in writing, a post-selection meeting with the CM/GC. The CM/GC shall hold such meetings within 45 days of the subcontractor's written request.
 - 15) CM/GC's subcontracting records shall not be considered public records; provided, however, that Owner and other agencies of the State shall retain the right to inspect, audit and monitor the subcontracting process in order to protect the Owner's interests.
- d. CM/GC Field Work.**
- 1) The CM/GC or its Affiliate(s) may provide general conditions Work ("GC Work") required to complete the Project with its own forces, without the necessity of subcontracting such Work.

- 2) Except as provided in paragraph 11..d.1), any other portion of the Work proposed to be performed by CM/GC or any Affiliate, including without limitation provision of any materials, equipment, or supplies, shall be subject to the provisions of paragraph 11..e.

e. Subcontracting by CM/GC.

- 1) Except to the extent otherwise approved in advance in writing by Owner's Authorized Representative, the CM/GC or its Affiliates may submit a bid in accordance with paragraph c) to do Work with its own forces, provided at least 80% of the labor by such work unit is performed by employees of the CM/GC or such Affiliate. If CM/GC is selected to perform the Work, the overhead and markup paid to CM/GC shall be limited to its CM/GC Fee percentage and the markups otherwise applicable to Change Order Work or subcontracted Work set forth in the Contract Documents shall not apply. The CM/GC shall clearly identify any Work for which it was the winning bidder in the supporting documentation and invoicing for payments so it can be easily determined that the Work was provided within CM/GC's bid price.
- 2) For those items for which the CM/GC or any of its Affiliates intends to submit a bid, such intent must be publicly announced with the solicitation for bidders required by paragraph c), and Owner must be notified in writing 30 days in advance of release of bid package. All bids for this Work, including the CM/GC, shall be delivered to Owner and publicly opened by Owner at an announced time, date, and place. An appointed Owner representative will provide objective, independent review and opening of bids or proposals for the elements of Work on which CM/GC bids.
- 3) CM/GC or an Affiliate of the CM/GC may only perform elements of the construction Work without competition from subcontractors when:
 - i. The work is job-site GC Work, or
 - ii. The CM/GC proposed to self-perform certain elements of the Work in response to the Owner's CM/GC RFP and the Owner accepted these portions of the proposal in its contract negotiations with the CM/GC, or
 - iii. The CM/GC provides the Owner a detailed written proposal to self-perform the work, showing that such self-performance is cost effective, the Owner accepts the written proposal and the proposal is supported by at least one independent cost estimate prior to Work being included in the Contract. The Owner will review the documentation and complete an approval process required by their procurement rules.

- f. Change of Subcontractors.** Once a subcontract has been accepted by the Owner and executed by the CM/GC and Subcontractor, CM/GC shall not terminate or substitute the Subcontractor without prior written approval of the Owner. In the event a change to the

subcontract assignment is made, CM/GC shall initiate a new bid package consistent with this Agreement to procure a new Subcontractor.

g. Definitions. For the purposes of this Exhibit and the Contract Documents, the following definitions apply:

- 1) **General Conditions Work.** General Conditions Work (“GC Work”) shall mean:
 - i. that portion of the Work required to support construction operations that is not included within overhead or general expense but is called out as GC Work in the RFP matrix or agreed to in writing between Owner and CM/GC, and
 - ii. any other specific categories of Work approved in writing by the Owner as forming a part of the GC Work. GC Work shall mean customary layout, clean up, supervision, and portions of the Work of a minor nature and not feasibly part of the subcontracted Work due to: exclusions by the Subcontractor not resolved through the process described in paragraph c), undeveloped design owing to deviations in Work performed or materials delivered by Subcontractors or suppliers that do not represent defective or nonconforming Work, a breach or failure to perform by the Subcontractor or supplier, complexity of coordination of the Work, and other similar reasons typically providing cause for “pick-up” or GC Work under industry standards; provided, however, that:
 - (a) the CM/GC has reasonably determined that doing such portion of the Work itself is in the best interests of Owner, including cost comparison or schedule advantages;
 - (b) such Work is identified as GC Work in monthly billings; and
 - (c) CM/GC receives prior approval of the Owner as to the scope of such GC Work.
- 2) **CM/GC** has the same meaning as the term Construction Manager in the A133-2009 Agreement.
- 3) **Affiliate.** Affiliate shall mean any subsidiary of CM/GC and any other entity in which CM/GC has a financial interest or which has a financial interest in CM/GC (including without limitation parent companies, related businesses under the same holding company, or any other business controlled by, under common control with, or which controls CM/GC).