



REQUEST FOR PROPOSALS

CONSTRUCTION MANAGER/GENERAL CONTRACTOR SERVICES

with a Guaranteed Maximum Price for the CM/GC Construction
of the Belknap Exhibit Center in Crook County, Oregon

PROJECT INFORMATION

<u>To:</u>	Prospective Providers to Crook County
<u>Subject:</u>	Request for Proposal to provide design assistance and construction services for the Belknap Exhibit Center in Crook County, Oregon
<u>Date of Issue:</u>	Friday, February 18, 2022
<u>Issuing County:</u>	Crook County, Oregon
<u>Proposal Due:</u>	March 17, 2022 at 3:00 p.m. PST
<u>Contact:</u>	Commissioner Brian Barney 541-447-6555; brian.barney@co.crook.or.us

REQUEST FOR PROPOSAL

CROOK COUNTY OREGON
CONSTRUCTION MANAGER/GENERAL CONTRACTOR
With a Guaranteed Maximum Price
For the Design and Construction of
the Belknap Exhibit Center in
Crook County, Oregon

TO: Prospective Providers to Crook County

SUBJECT: Request for Proposal for providing design and construction services for the Belknap Exhibit Center in Crook County, Oregon.

ISSUE DATE: February 18, 2022

ISSUED BY: Crook County Oregon (Owner)

CONTACT FOR RFP: Brian Barney
brian.barney@co.crook.or.us

PROPOSALS DUE: March 17, 2022, at 3:00 PM PST

CONSTRUCTION MANAGER/GENERAL CONTRACTOR
For the Design & Construction of the Belknap Exhibit Center in
Crook County, Oregon
Request for Proposals
With a Guaranteed Maximum Price

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I. INTRODUCTION

A. REQUEST FOR PROPOSALS ADVERTISEMENT

CONSTRUCTION MANAGER/GENERAL CONTRACTOR

With a Guaranteed Maximum Price for the
Design & Construction of the new Belknap Exhibit Center Crook County, Oregon

Date of Issue:	February 18, 2022
Mandatory Pre-Proposal Meeting	1:30 PM PST, March 3, 2022
Closing Time and Date:	3:00 PM PST, March 17, 2022

PUBLISHED NOTICE: REQUEST FOR PROPOSAL

The Crook County Court requests proposals from experienced Construction Managers/General Contractors to assist in the design and to construct the planned Belknap Exhibit Center located in Crook County, Oregon (the “Project”). It is the intent of the County Court to enter into a contract with the selected Construction Manager/General Contractor (CM/GC), which will include a Fixed Fee and a Guaranteed Maximum Price for the entire scope of the work. The selected CM/GC shall execute and perform all services required by AIA contracts A133™ and A201™. CM/GCs responding to this request will be evaluated based upon their qualifications, prior experience, proposed schedule and plan for completing the work, associated fees, local knowledge, and other relevant factors.

The Crook County Court will hold a public hearing at its regular County Court meeting on March 2, 2022, at 9 AM PST; 320 NE Court Street, Prineville, Oregon 97754 (WebEx 1-408-418-9388; code 1265386281); for the purpose of taking comments on the draft findings for an exemption from the competitive bidding requirement under ORS 279C.335. Copies of the draft notice are available to the public by calling the Crook County Administration Office (541) 447-6555.

The Project will include the design and construction of the planned Belknap Exhibit Center and the development of all required on and off-site improvements to meet local codes and accommodate Project program requirements. Copies of the Request for Proposal document may be obtained by calling the Crook County Administration Office (541) 447-6555 or in person at 203 NE Court Street, Prineville, OR 97754. There will be a mandatory pre-proposal meeting March 3, 2022 at 1:30 PM PST at 301 NE 3rd Street, Suite 200 in Prineville or join remotely via WebEx 1-408-418-9388, code 25540925608, followed by a voluntary site visit at the Project location.

Proposals are due prior to 3:00 PM PST, March 17, 2022, and must be enclosed in a sealed envelope and either mailed to Crook County Courthouse, Administration Office, 300 N.E. Third Street, Prineville, Oregon 97754, or hand delivered to Crook County Administration Office, 203 NE Court Street on or before the deadline. Proposals received after the specified time will not be considered. The Court may interview one or more of the top finalists, which are tentatively scheduled for March 24, 2022. The Crook County Court anticipates selecting the highest-ranked proposal on April 6, 2022.

All proposers must be registered with the Oregon Construction Contractors Board prior to submitting proposals. Failure to register will be sufficient cause to reject proposals as non-responsive. For the construction phase of this project, the provisions of ORS 279C.800 through 279C.870, relative to prevailing wage rates, shall be complied with by the Contractor and subcontractors.

This solicitation does not obligate Crook County to pay any costs incurred by proposers or to select any proposer who responds. The County reserves the right to reject any proposal not in compliance with all prescribed requirements and may reject for good cause any or all proposals upon a written finding that it is in the public interest to do so.

Published by and on February 18, 2022.

B. PROJECT OVERVIEW

The project will include the Design and Construction of the County's new Belknap Exhibit Center, a structure envisioned to appear as a replica to Dr. Belknap's historic home, but function as an open exhibit center, located in Prineville and the development of all required on and off-site improvements to accommodate local codes and County program requirements.

Architect

Steele Associates Architects – Bend, OR

County's Project Manager

Jerry Milstead

C. REPRESENTATIONS

The undersigned certifies the proposal is offered by an independent contractor as defined in ORS 670.600.

The proposer, if an individual, is of lawful age; is the only one interested in this proposal; and no person, firm, or corporation, other than that named, has any interest in the proposal or in the proposed contract.

The proposal, if submitted by a joint venture, is in the name of the joint venture and all parties have examined this RFP including all requirements and contract terms and conditions thereof, and, if successful, the joint venture shall execute a contract, which incorporates the stated requirements, proposal response and terms and conditions.

By submitting a response, the proposer certifies that no relationship exists between the proposer and the County that interferes with fair competition or is a conflict of interest, and no relationship exists between the proposer and another person or firm that constitutes a conflict of interest.

The proposer has examined all parts of this RFP, including all requirements and contract terms and conditions thereof, and, if successful, the proposer shall execute a contract which incorporates the stated requirements, proposal response, and terms and conditions.

The proposer fully understands and submits its proposal with specific knowledge that in the event the proposer's proposal is accepted and receives all necessary approvals, the proposal will be incorporated into a contract containing general terms and conditions as provided in the RFP.

The undersigned hereby certifies to the truth and accuracy of all statements, answers, and data contained in this proposal and application, and hereby authorizes the County to make any necessary examinations or inquiries in order to make a determination as to the qualifications and responsibility of the proposer. The undersigned has examined all parts of this RFP and understands that it is completely discretionary with the Selection Committee whether to accept, reject, or negotiate its proposal submitted pursuant thereto.

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II. SELECTION PROCESS

A. SELECTION OVERVIEW

The Crook County Court will consider findings to exempt the County from competitive bidding and use the Construction Manager/General Contractor (CM/GC) method of contracting to design and construct the Belknap Exhibit Center. The County Court is considering this approach over the more traditional design-bid-build due to the need for logistics, to accelerate the work, and assure budget control. This process allows for additional cost savings and it may be the opinion of the County Court that the project budget and the safety of the public can best be achieved by this approach. The County Court will meet on March 2, 2022, to consider a detailed list of findings during a public meeting.

The Request for Proposal competitive procurement approach has been utilized on numerous public projects. The selection process will be conducted in a fair and impartial manner, where several qualified individuals will evaluate proposals and presentations. The selection has three major parts: 1) proposal evaluation and ranking; 2) interviews and selection; and 3) contract negotiation.

Work is divided into two stages: Phase I is Design Assistance, and Phase II is Post-GMP Construction. The date for substantial completion of the project is currently estimated to be May 2, 2023. At the conclusion of the design development phase, the CM/GC must provide a Guaranteed Maximum Price (GMP) for the construction of the Project with detailed backup that is consistent with this budget and a construction schedule that meets the County's requirement. If an acceptable GMP can be agreed upon, the County will enter into a contract with the CM/GC for Phase II. If no agreement can be reached, the CM/GC will be compensated for the Phase I effort, and the County may enter negotiations with the next highest ranked firm.

During Phase I, the CM/GC will work with and become a part of the Project Team, and the work will be performed on a not-to-exceed fee basis. Following submittal of the GMP, it is the intention of the County to enter into a final contract with the CM/GC, which will include a fixed fee based on a percentage of direct costs, for all work through construction and completion of the project.

If the County is unable to successfully agree upon contract terms for the entire project with the CM/GC, the County reserves the right, in the exercise of its sole discretion, to re-open the selection process by entering into a Contract with the next ranking finalists. The County reserves the right to reject any or all proposals.

A proposer may file a written protest or make a written request that the County Administration change any RFP procedure, provision, or specification. ANY PROTEST OR REQUEST FOR CHANGE MUST BE DELIVERED IN WRITING TO JOHN EISLER, COUNTY ASSISTANT LEGAL COUNSEL, AT 300 NE THIRD STREET, PRINEVILLE, OREGON 97754 ON OR BEFORE March 7, 2022, AT 3:00 PM PST. The purpose of this protest/request for change procedure is to permit the County time to correct, prior to the submission of proposals, specifications or procedures that may be improvident, unlawful, or which may unnecessarily restrict competition. This requirement is intended to eliminate, by permitting corrections prior to the submission of proposals, the waste of resources and delay that may result from the untimely detection of errors in the RFP, possible protests, and possible rejection of proposals. The County will consider each protest or request, amend the RFP accordingly, if warranted, and will notify in writing, each prospective proposer of any change. No amendment of this RFP shall be effective unless made in writing and signed by the County Court.

The selection process is as follows:

1. Publish notice of the RFP in Daily Journal of Commerce, Bend Bulletin and the Central Oregonian.
2. Convene an Evaluation Committee made up of five to nine qualified members representing the County and the Crook County Historical Society to evaluate all proposals.
3. The Evaluation Committee ranks the proposals and may schedule interviews with the top ranked proposers. Interviews will also bear on the firms' rankings in the selection process, as will data obtained from references. The committee will make a recommendation to the County Court. The Court will select the proposal that best meets the needs of the County. The CM/GC will then serve as a special consultant during Phase I.
4. The CM/GC will develop the GMP for the project. The GMP must be successfully negotiated as a part of the Phase I contract.
5. The Court will attempt to negotiate a satisfactory GMP contract with the top-ranked proposer. If negotiations are not successful, the Court, at its sole discretion, may then negotiate with the second ranked proposer, and so forth. The Court reserves the right to reject any or all GMP proposals that do not satisfy project requirements.

B. SCHEDULE FOR SELECTION

The milestones for the selection process are set forth below. The dates are approximate but will be followed to the extent reasonably possible. The purpose of this schedule is for proposer information only. Required dates for submittals and any other activities are provided elsewhere in this Request for Proposals:

<u>Project Milestone</u>	<u>Completion Date</u>
Advertise RFP	February 18, 2022
RFP document available	February 18, 2022
Mandatory pre-proposal conference	1:30 PM PST, March 3, 2022
Voluntary site visit	3:00 PM PST March 3, 2022
Deadline for questions	3:00 PM PST March 4, 2022
Deadline for proposal protests	2:00 PM PST, March 7, 2022
Final addenda, if any	March 9, 2022
Proposals due	3:00 PM PST, March 17, 2022
Notification of interviews	March 21, 2022
Interviews	March 24, 2022
Notice of Tentative Award	April 6, 2022
Begin pre-GMP services	April 13, 2022
Contractor submits GMP	To be determined (during Design Development)
GMP and contract finalized	No later than 50% Construction Documents
Notice to proceed	Estimated April 13, 2022
Substantial completion	May 2, 2023
Final completion	June 2, 2023

III. SERVICES TO BE PROVIDED

A. DESCRIPTION OF SERVICES

1. General:

The CM/GC will provide the necessary information on which the Project will be built and will coordinate and manage the design and construction process as a member of the Project Team with the Owner, Architect, and other project consultants. The CM/GC should be skilled in developing projects, including developing schedules, preparing construction estimates, performing value engineering, analyzing alternative designs, studying labor conditions, understanding construction methods and techniques, and coordinating and communicating the activities of the Project Team throughout the design and construction stages to all members of the construction team. In addition, the CM/GC must be familiar with the local labor and subcontracting market and be capable of working with subcontractors to generate viable pricing alternatives.

The CM/GC will serve as general contractor for the Project, at risk. Before the end of the Design Development Stage, the CM/GC will provide the County with an estimate of probable cost of the actual construction work. A final GMP will be provided by the CM/GC by 50% Construction Documents. The GMP shall be defined as the Cost of the Work plus the CM/GC's fee. The CM/GC guarantees that the Cost of the Work shall not exceed the GMP. Should the Cost of the Work be less than the GMP, any such positive difference shall be realized as "savings" to the County at the end of the project. Although it is the intention of the County to save money on the Project, if at all possible, the County reserves the right to work with the CM/GC to use the anticipated savings to build additional necessary components of the project which may have been omitted from the original GMP scope and carried as alternates. If the CM/GC is unable to set a GMP within the budget and in the appropriate time, the County reserves the right, at the sole discretion of the County, to cancel the contract with the CM/GC and proceed immediately to negotiate a contract with the firm that was next ranked in this selection process. Should the contract with the initial CM/GC be so terminated, the firm will be compensated for its actual time and expenses.

It is anticipated that the work of the project may involve multiple bid packages. In addition, it is expected that wherever possible, the bid packages will contain separate trade contracts with the CM/GC acting as general contractor to these separate subcontractors.

2. Phase I:

During Phase I, the CM/GC shall serve as a special consultant to the Project Team and will analyze the design and proposed modifications with the goal of providing the County, in the time frame proposed, the highest quality facility within budget. Design related CM/GC activities will include detailed cost estimating, value engineering, constructability review, coordination review, and analysis of alternative materials and systems for the project. Construction related activities of the CM/GC during this Phase will include schedule refinement. Also, during Phase I the CM/GC will develop the GMP Proposal, with detailed backup, for County consideration.

3. Phase II:

During Phase II, the CM/GC shall provide and pay for all materials, tools, equipment, labor, and professional and non-professional services, and shall perform all other acts and supply all other items necessary to fully and properly perform and complete the Work, as required by the Contract Documents.

B. SPECIAL REQUIREMENTS

In order to implement the CM/GC method of procurement, the County will impose some special requirements to ensure a fair level of competition.

Proposers should note the following requirements concerning management of this CM/GC project:

1. A detailed description of items that make up the GMP is required from the CM/GC. A complete copy of the GMP estimate, including all details, must be provided to the County, the County's Project Manager, and the Architect by the CM/GC.
2. The CM/GC will be required to document good faith efforts to develop business opportunities for local trade contractors as well as report the results of these efforts.
3. The processes used to award contracts by the CM/GC are to be monitored by the County's Project Manager and reported on a regular basis. The following minimum requirements apply:
 - a. The CM/GC shall solicit competitive bids from subcontractors, with the final selection approved by the County Court.
 - b. When there are single fabricators of materials, special packaging requirements for subcontractor work, or work to be performed by the CM/GC, advance approval by the County's Representative is required.
 - c. The CM/GC must obtain at least three competitive bids for each particular work sub-component to be completed, including work components which the CM/GC may be interested in self-performing.
 - d. The solicitation of subcontractors will be made pursuant to the following procedures:
 - 1) All bids are required to be received electronically or sealed, written, and submitted to a specific location at a specific time.
 - 2) If less than three bids are submitted for any work component, approval by the County's Representatives is required to accept the bid.
 - 3) Solicitations will be advertised at least ten days in advance in the Daily Journal of Commerce, Central Oregonian newspaper, and/or the Bend Bulletin newspaper.
 - e. For this contract, the prevailing wage rates and all other standard terms and conditions of State of Oregon Public Work Contracts apply.
 - f. The County may allow the CM/GC to perform some of the trade work if the CM/GC competes competitively with trade subcontractors for that work. In such cases, bids will need to be submitted to the County or an independent third party.

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C. SPECIFIC SERVICES DESCRIPTION

1. Phase I Services:

Consult with the County and the Design Team (Architect and Engineering consultants) to determine location and design criteria; such consultation will include evaluation of alternatives from functional, performance, time, and cost perspectives.

Consult with the County in refining the project construction budget and establishing and maintaining a detailed cost model for the work as the design evolves.

Assist in life cycle value analysis from drawings, specifications, other design criteria, and alternative designs as may be requested by the County.

Cost management and control services shall be provided to assist in keeping development costs within the project budget. These services shall include the following:

1. The analysis, review and recommendation for all Project contracts; and
2. Preparation of at least two detailed estimates for probable construction cost (one at the end of Design Development and GMP at 50% Construction Documents).

With the Design Team, develop a strategy for obtaining permits in a timely fashion. Meet with building and other regulatory officials as appropriate. Attend all meetings pertaining to permitting, as required. It is anticipated that these functions will continue throughout all phases of the Project.

Prepare a detailed milestone schedule identifying the work to be performed by the Design Team, the County, and the CM/GC during this Phase. The CM/GC shall report progress bi-weekly against this schedule.

Review the plans and specifications on a continuous basis and advise the Design Team and the County whenever the estimated construction costs are tending to exceed line items from the model budget. In a timely fashion, provide the Design Team with alternatives that will bring the project cost within budget, without compromising the scope agreed to in the outline specification. Continually update the project cost.

Review architectural, civil, mechanical, electrical, and structural plans as they are developed and make value engineering and constructability recommendations.

Review all design and specification documents for completeness, proper details, compliance with program and master plan requirements and adherence to codes or applicable agency requirements, reporting deficiencies, conflicts, and/or clarification questions identified to the Project Team.

2. Phase II Services:

Continue all reporting as described above.

Implement an accounting system for effective fiscal control, including a bi-weekly detailed cost estimate and a monthly status report with budget recommendations. The monthly status report will include full schedule reporting as well as a summary of all major outstanding issues with proposed solutions. The cost of preparing the monthly reports is to be included within the CM/GC's fee.

Prepare and put out to bid early bid packages as determined appropriate by the Team.

Prepare all bid packages, according to the contractual requirements and County procedures. Ensure that all bid packages, including those for early procurement, are within budget. It is the responsibility of the CM/GC to provide the Design Team with sufficient viable options, in a timely fashion, such that the bid packages will be within budget.

It is reasonable to assume that the CM/GC will issue multiple bid packages with multiple trade contracts within each bid package.

Fully coordinate the work of all subcontractors and vendors. Provide regular and on-going quality inspection and assistance to the Design Team in ensuring that the work meets all specifications and applicable codes.

Review and expedite all change order requests, both included within the GMP and involving a change to the GMP.

Monitor compliance with the payment of prevailing wages on all contracts and subcontracts, per ORS 279C.800 thru 870.

Maintain in a current condition all Project Records, including permits, construction documents, as-built records, meeting records, submittals, inspection reports, invoices, delivery receipts, daily activity logs, RFIs, ASIs, COs, etc.

IV. PROPOSAL REQUIREMENTS

A. SUBMITTAL REQUIREMENTS

1. Date, time, and location:

Interested firms must submit their proposals no later than **3:00 PM PST, March 17, 2022**. Proposals shall be delivered to:

Hand Delivery
Crook County Administration
Attn: Commissioner Barney
203 NE Court Street
Prineville, OR 97754

Mailing Address
Crook County Administration
Attn: Commissioner Barney
300 NE Third Street
Prineville, OR 97754

No Facsimile (FAX) or electronic transmitted proposals will be accepted.

2. Late submission:

A proposal shall be considered late if received at any time after 3:00 PM PST March 17, 2022. Proposals received after the specified time will be rejected.

3. Number and Form:

Proposers shall submit Five (5) copies of their proposals to the above location. The proposals shall be tabulated in separate sections in response to the detailed proposal requirements. All materials shall be in an 8 ½" by 11" format, bound vertically (11" side). Proposals are limited to twenty (20) pages single

sided and minimum size 12 font print (**not** including a cover letter, proposal section dividers, resumes of proposed personnel, and Attachment A). No other material should be submitted.

4. Proposal Certification Statement:

A proposal certification statement (Attachment A) shall be filled out and signed and accompany each proposal. The certification shall bind the proposer to perform the services for the fees stated in their proposal and to complete the project within the scheduled dates proposed. Failure to submit a signed proposal certification form will result in disqualification of the proposing firm.

5. Modification or Withdrawal of Proposal:

Prior to the date and time designated for receipt of proposals, any proposal may be modified or withdrawn by notice to the party receiving proposals at the place designated for receipt of proposals. Such notice shall be in writing over the signature of the proposer and shall be delivered on or before the date and time set for receipt of proposals.

6. Written Questions and Addenda:

Questions regarding the information contained in this request for proposal must be submitted to Brian Barney, Crook County Commissioner at brian.barney@co.crook.or.us. All questions must be submitted in writing and received by the specified date and time. No oral questions will be accepted other than at the pre-proposal conference. All questions received will be answered by addenda to this RFP. Anonymity of the source of the specific questions will be maintained in the written responses.

7. Pre-Proposal Conference:

A **mandatory** pre-proposal conference will be held at 1:30 PM PST, March 3, 2022, in the Crook County Legal Conference Room at 301 NE 3rd Street, Ste. 200, Prineville, Oregon or join remotely via WebEx 1-408-418-9388, code 25540925608, followed by a voluntary site visit at the Project location. The pre-proposal meeting will be the proposers' main opportunity to discuss the project with the County, Architect, and Project Manager. An addendum may be issued following the meeting to formalize any County responses to proposer questions.

B. DETAILED PROPOSAL REQUIREMENTS

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

By listing individuals in the proposal, the firm guarantees that these individuals will be available to work on the project at the approximate percentages shown. The County reserves the right to approve or reject any changes to the proposed personnel. The County further reserves the right to request a substitution of personnel if deemed to be in the best interest of the County.

1. Background

- a. Provide a brief description of your firm's history and its capabilities. Include annual volume figures for the past five years.
- b. Provide a general description of your firm's safety and drug and alcohol programs, as well as your most recent Workers Compensation Insurance experience modifier.

2. Experience

- a. Provide a listing, in chronological order and in chart format, of your firm's last completed Public CM/GC projects of \$1,000,000 or more (provide a list of at least two). Information on these projects should include the following:
- 1) Name of the Owner, contact person, and current phone number
 - 2) The architect, contact person, and current phone number
 - 3) Location of the project and completion date
 - 4) A brief description of the job
 - 5) Final contract amount and total amount of change orders
 - 6) Total project claims going to litigation/arbitration
- b. Provide a listing, in chronological order and in chart format, of your firm's experience with public building construction. Information about the project should follow the format and include the same information required by 2a. above.
- c. Provide a listing of experiences with similar Public CM/GC projects requiring a GMP for the public sector. The listing should follow the format described in 2.a, but should include both the GMP, and the final Cost of the Work. (If the proposer's public GMP experience is limited, experience with pure CM, or CM/GC GMP for the private sector may be discussed.)
- d. Describe your firm's methodology and experience with Value Engineering including particularly successful experiences and/or unique services in this area. Identify the project for each experience described. Outline a plan for performing this service within the Project Team.

3. Staffing

- a. Provide a project organization chart showing your proposed staff for this project, including all professional staff in the following areas: project management; corporate oversight and administration; engineering and estimating; and onsite construction supervision. Complete the Proposal Certification Statement (Attachment A).
- b. Include resumes for all individuals listed in the chart. State the proposed percentage that each person will work on this project during Phase I - Design Assistance and Phase II - Project Construction. The resumes must include each individual's education, work history, length of tenure with the firm, and prior experience with similar projects and any experience working with public or private sector Construction Manager/General Contractor GMP projects.
- c. For those individuals that are not full time, describe how and when they will work on the project, as well as which other project responsibilities fill their time. Additionally, describe the prior experience, if any, of the team members working with each other on projects (please be specific) and what roles they will fill on the proposed team for this project.

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4. Approach

- a. Describe how your firm will approach the construction management aspect of this project. How will you ensure that the County's needs are adequately met? Describe your management information controls, forms, and/or procedures proposed for this project.
- b. Describe your firm's overall plan to complete the project within schedule. At a minimum, discuss your firm's planning, scheduling, phasing, and project monitoring skills and processes.
- c. Describe your firm's job costing procedure and how you will keep the County apprised of project costs. Describe your firm's process for managing change orders and claims, including efforts to minimize both.

5. Local Conditions

- a. Describe your firm's knowledge and experience with the labor market and building conditions in Central Oregon.
- b. Describe your approach to promoting participation of local firms.

6. Fees and Compensation

- a. Provide a not-to-exceed price and a breakdown of hourly rates for personnel involved in Phase I services. Also supply a list of reimbursables that would be charged and a not-to-exceed price for these for Phase I. This information shall become the basis for the agreement of Phase I services. Should the County enter into a contract for Phase II with your firm, will this cost for Phase I become a part of your fee quoted in 6b. Refer to the sample contract for guidelines on items permitted within the Phase I fee maximum.
- b. State the fee, as a percentage of the GMP, for which your firm would contract to perform this project. For clarification of what is included in the fee, please list personnel time included as cost-of-work and personnel included within the fee. Refer to the sample contract for definition of items included within the fee. The fee shall be shown as follows:
 - i) Profit and Corporate Expenses _____ %
 - ii) CM/GC general conditions _____ fixed cost.
 - iii) Payment Bond / Liability Insurance _____ %
- c. Based on the staffing described in Section 4a, provide a detailed estimate of the cost of your firm's staffing, not included in the fee that will be included within the GMP for managing and performing the construction. Based on a construction cost of \$1,000,000 and an assumed fourteen (14) month construction time, provide an estimated cost of **TOTAL** General Conditions. The **TOTAL** General Conditions shall contain the following if not included in the fee:
 - Personnel assigned to the project on or off site.
 - All temporary facilities including but not limited to temporary utilities, temporary access roads, etc.
 - All costs for safety program on or off site.

- All clean up including but not limited to construction debris removal.
- Site office including furniture and equipment

This **TOTAL** will be used to establish a line-item GMP for General Conditions.

7. References

Provide five professional references from at least three similar projects, including the project name, the name of the design team members for whom this reference is relevant, a contact name and phone number. At least one of these references shall be subcontractors. At least one of these references shall be owners. At least one of these references must be the respective projects' architects. Every key project team member listed in 3b above must be represented in at least one of these references.

C. INTERVIEW INFORMATION

Interview(s) of the top ranked firm(s) will be held, if required, on March 24, 2022. The firms will be notified of the time and place for interviews on March 21, 2022. The project manager and onsite superintendent listed in the proposal must be present at the interview. Interview criteria will be provided to the firms being selected for an interview at least 24 hours prior to interview. At the time of notification, any required supplemental information will be provided to the firm(s). The proposer must address any exceptions at the time of interview.

D. RESERVATIONS

Crook County expressly reserves the following rights:

1. To reject all proposals.
2. To reject any proposal or proposals not in compliance with all prescribed public bidding procedures and requirements.
3. To reject any proposal or proposals not meeting the specifications set forth herein.
4. To waive any or all irregularities in proposals submitted.
5. To consider the competency and responsibility of proposers in making any award.
6. To award all projects to a single proposer, award single projects to a proposer, or a subset of the projects to a single proposer or proposers as the County deems appropriate.
7. In the event any proposer or proposers to whom a contract is awarded shall default in executing said formal contract or in furnishing a satisfactory performance bond within the time and in the manner hereinbefore specified, to re-award the contract to another proposer or proposers.
8. To make the award based on their best judgment as to which merchandise or services comply with the specifications.
9. To not award contracts for any of the individual projects if deemed in the best public interest.

E. PROPOSAL EVALUATION CRITERIA

<u>Criteria</u>	<u>Weight</u>	<u>Reference</u>
1. Firm's construction experience and qualifications	15%	1a, b, & 2a
2. Qualifications, experience, and commitment of proposed personnel	25%	3a, b, & c
3. Public Construction experience	10%	2b
4. Experience in CM/GC & value engineering	15%	2c & d
5. Proposed approach	10%	4a & b
6. Local knowledge	10%	5a & b
7. Fee and cost	<u>15%</u> 100%	6a, b, & c

Reference checks shall not be scored individually but will be used to supplement the scoring considerations of all categories.

F. FINAL SELECTION

1. The top ranked firm, or up to three firms if the scoring is very close, may be invited to interview. The interview process will be used to supplement and clarify the information contained in the proposal. Based upon the proposal scoring, as modified by the interview, and the results of reference checks, the firms will be given final ranking by the Evaluation Committee.

2. The County reserves the right to modify the interview criteria during the course of this process. If such modification occurs, each firm being interviewed will be notified at least 24 hours prior to the interview of the revised criteria.

G. PROTEST OF CONTRACTOR SELECTION, CONTRACT

1. Notice of Award.

The County's written notice of contract award shall constitute a final decision of the County to award the contract or proceed with the purchase if no written protest of the contractor selection or contract award is filed with the County Counsel's Office within seventy-two (72) hours following issuance of the award documents. If a protest of contractor selection or contract award is timely filed by an actual aggrieved proposer, the award documents shall constitute a final decision of the County only upon issuance to the protesting proposer of a written decision denying the protest and affirming the selection or the award.

2. Right to Protest.

Any actual proposer who is adversely affected or aggrieved by the County's grounds upon which the protest is based may submit a written protest. In order to be an adversely affected or aggrieved proposer with a right to submit a written protest, a proposer must itself claim to be eligible for award of the

contract as the best proposer and must be next in line for award, i.e., the protestor must claim that *all* better proposals are ineligible for award because their proposals were non-responsive or as a result of the County committing a material violation of a solicitation provision or of an applicable procurement statute or administrative rule, the protestor was unfairly evaluated and would have, but for such material violation, been the highest-ranked proposer. The County shall not entertain a protest submitted after the time period provided in the County's solicitation.

3. Authority to Resolve Protests.

The County Court or the County Court's designee shall have the authority to settle or resolve a written protest.

4. Decision.

After the County Administrative Officer or his/her designee issues a response, an aggrieved proposer may seek judicial review in the manner provided in ORS 279B.415.

BIDDER CERTIFICATE

THIS CERTIFICATION MUST BE COMPLETED, SIGNED, AND RETURNED.
FAILURE TO DO SO WILL RESULT IN BID DISQUALIFICATION.

TO: Crook County, Oregon

Date: _____

The undersigned hereby proposes to furnish, within the time specified, the several items hereinbefore listed, to be delivered in accordance with the foregoing specifications hereto attached, for the amount proposed.

Proposer's Federal Identification Number: _____

LAWFUL OPERATION

Bidder will obtain all necessary operating permits and licenses to do the work and will carry insurance as required by Crook County. Bidder will obtain all necessary building permits.

Moreover, Bidder certifies conformance with all federal, state, and local laws, regulations, executive orders, and ordinances applicable to the work under the Contract Documents, including without limitation:

- Titles VI and VII of the Civil Rights Act of 1964 as amended;
- The Americans and Disabilities Act of 1990 as supplemented by ORS 659A.103;
- The Health Insurance Portability & Accountability Act of 1996;
- The Age Discrimination in Employment Act of 1967, as amended, and the Age Discrimination Act of 1975, as amended;
- The Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended;
- All federal and state laws and regulations concerning Affirmative Action toward equal employment opportunities;
- All regulations and administrative rules established pursuant to the foregoing laws; and
- All other applicable requirements of federal and state civil rights.

These laws, regulations, and executive orders are incorporated by reference herein to the extent that they are applicable to the contract and required by law to be so incorporated.

PUBLIC CONTRACTING LAWS AND PREVAILING WAGES

Bidder has reviewed and is familiar with and agrees to abide by the terms and provisions required by Crook County Code Chapter 3.12 for public improvement and public works contracts and ORS Chapter 279C. Bidder further agrees that all of the applicable provisions of Oregon law relating to public contracts are, by this reference, incorporated in and made a part of this invitation.

Bidder will comply with ORS 279C.838, 279C.840 or 40 USC 3141 to 3148 regarding Davis-Bacon.

CONSTRUCTION CONTRACTORS BOARD (CCB)

Bidder is in compliance with requirements for construction contracts and is licensed and bonded with the Construction Contractors Board as follows:

CCB Registration No.: _____ Expiration Date: _____

RESIDENT BIDDER

A "resident bidder" is a bidder that has paid unemployment taxes or income taxes in Oregon during the 12 calendar months immediately preceding submission of this bid and has a business address in Oregon.

CHECK ONE: Bidder [☐] is [☐] is not a resident bidder.

If a resident bidder, enter your Oregon business address: _____

_____.

If a non-resident bidder, enter your state of residency: _____.

NON-DISCRIMINATION

ORS 279A.110(1) states: "A bidder . . . may not discriminate against a subcontractor in the awarding of a subcontract because the subcontractor is a minority, women or emerging small business enterprise certified under ORS 200.055." Subsection (4) states "A bidder ... shall certify ... that the bidder ... has not discriminated and will not discriminate, in violation of subsection (1)."

CHECK ONE: Bidder states that it:

☐ Has discriminated or will discriminate against minorities, women, or emerging small business enterprises in obtaining any required subcontracts.

☐ Has not discriminated and will not discriminate against minorities, women, or emerging small business enterprises in obtaining any required subcontracts.

OREGON TAX LAWS

For purposes of this certificate, "Oregon Tax Laws" means those programs listed in ORS 305.380(4), which is incorporated herein by this reference. Examples include the state inheritance tax, personal income tax, withholding tax, corporation income and excise taxes, amusement device tax, timber taxes, cigarette tax, other tobacco tax, 9-1-1 emergency communications tax, the homeowners and renters property tax relief program and local taxes administered by the Department of Revenue (Lane Transit District Employer Payroll Tax, The County Metropolitan Transit District of Oregon "Tri-Met" Employer Payroll Tax, and Tri-Met Self-Employment Tax).

CHECK ONE: Bidder states that it:

☐ Has authority and knowledge regarding the payment of taxes, and that Contractor is, to the best of its knowledge, not in violation of any Oregon tax laws.

☐ Does not have authority and knowledge regarding the payment of taxes, and that Contractor is, to the best of its knowledge, not in violation of any Oregon tax laws.

DRUG TESTING

ORS 279C.505(2) requires that all public improvement contracts require contractors to demonstrate that it has an employee drug-testing program in place that applies to all employees, and will maintain a drug testing program at all times during the performance of the Contract awarded. Failure to maintain a program shall constitute a material breach of contract.

Bidder certifies that:

- The bidder will have a drug testing policy in place at time of contract award; and
- The bidder shall maintain the drug testing policy for the duration of the contract; and
- The bidder shall require each subcontractor providing labor to this contract to comply with the drug testing requirements.

CHECK ONE: Bidder states that it:

☐ Does comply with ORS 279C.505(2).

☐ Does not comply with ORS 279C.505(2).

INSURANCE

The successful bidder will be required to carry public liability insurance and worker's compensation insurance at all times. The successful bidder will, not later than the date of execution of the contract, and prior to the commencement of the work, deliver to the County certificates of insurance as evidence of compliance with the insurance provisions set forth in the bid documents and construction contract.

CHECK ONE: Bidder states that it:

☐ Can and will deliver to the County certificates of insurance as evidence of compliance with the insurance provisions set forth in the bid documents and construction contract.

☐ Cannot or will not deliver to the County certificates of insurance as evidence of compliance with the insurance provisions set forth in the bid documents and construction contract.

PUBLIC WORKS BOND

Bidder certifies it is in compliance with ORS 279C.836 Statutory Public Works Bond for contractor and all subcontractors.

ADDENDA

Receipt is hereby acknowledged of Addenda _____ through _____.

STATEMENT REGARDING CERTIFICATIONS

Bidder understands and acknowledges that the above representations are material and important and will be relied on by the Crook County Court in awarding the contract for which this proposal is submitted. The bidder understands that any misstatement in these certifications is and shall be treated by the Crook County Court as fraudulent concealment of the true facts relating to the submission of proposals for the contract.

I, the undersigned, a duly authorized representative of the Bidder, hereby certify that the answers to the foregoing Bidder Certificate questions and all statements therein contained are true and correct.

Signature:_____

Date:_____

By:_____

Title:_____

Firm:_____

Phone:_____

IN THE COUNTY COURT OF THE STATE OF OREGON
FOR THE COUNTY OF CROOK

**IN THE MATTER OF GRANTING AN EXEMPTION
FROM COMPETITIVE BIDDING, AUTHORIZING
THE CONSTRUCTION OF THE BELKNAP EXHIBIT
CENTER BY MEANS OF THE CONSTRUCTION
MANAGER/ GENERAL CONTRACTOR METHOD OF
CONTRACTING AND AUTHORIZING SELECTION
BY REQUEST FOR PROPOSALS**

ORDER 2022-07

WHEREAS, the Crook County Court is the Local Contract Review Board for Crook County and in that capacity has authority to exempt certain contracts from competitive bidding requirements of Oregon Revised Statute (ORS) 279C, and

WHEREAS, the Court has determined that the construction project of the Justice Center should be constructed by a CONSTRUCTION MANAGER/ GENERAL CONTRACTOR (CM/GC) pursuant to ORS 279C.337; and

WHEREAS, the “Findings of Fact” (attached as Exhibit A hereto) reflect that an exemption from competitive bidding for the project complies with the requirements of ORS 279C.335(2) and the Attorney General’s Model Contract Rules 137-049-0630(2) for exemption of the project from competitive bidding.

NOW, THEREFORE, the Crook County Court **ORDERS** as follows:

A contract for the construction of the Belknap Exhibit Center is exempted from competitive bidding, and the CM/GC Team shall be selected by the Request-for-Proposals method in accordance with the Attorney General’s Model Contract Rules and the process described in the attached Findings of Fact and ORS 279C.337.

DATED this 2nd day of March 2022.

Seth Crawford
County Judge

Jerry Brummer
County Commissioner

Brian Barney
County Commissioner

Exhibit A

FINDINGS OF FACT FOR THE USE OF THE CONSTRUCTION MANAGER / GENERAL CONTRACTOR FORM OF CONTRACTING FOR THE DEVELOPMENT AND CONSTRUCTION OF THE BELKNAP EXHIBIT CENTER AND ASSOCIATED INFRASTRUCTURE

Before the Crook County Court

FINDING OF FACTS AND CONCLUSIONS OF LAW

The Oregon Revised Statutes require that all public improvement contracts be based upon competitive bids. Any exception to competitive bids must be justified by “findings” as stated in ORS 279C.330 and ORS 279C.335. The Crook County Court’s findings regarding the Belknap Exhibit Center (the “Project”) are as follows.

FUNDING SOURCE

1. **Finding:** The sources of funding for the Project are donations and grants made to the Crook County Historical Society (Society) for the purposes of constructing this Project. This Project would not be a public improvement contract but for the contractual arrangement between County and Society wherein the property for the Project is Society’s to use as a museum for as long as it is used as a museum, with a reversionary interest back to the County.

WILL NOT SUBSTANTIALLY DIMINISH COMPETITION OR ENCOURAGE FAVORITISM

2. **Finding:** The Construction Manager / General Contractor (CM/GC) will be selected through a competitive process in accordance with a Request for Proposals authorized by the County Court. Pursuant to ORS 279C.360, a CM/GC solicitation will be advertised in the trade publication entitled Daily Journal of Commerce, Bend Bulletin, and Central Oregonian to maximize exposure. The CM/GC proposals and interviews will be rated based on a predetermined list of criteria as required by ORS 279C.337 and the Attorney General’s Model Contract Rules. County will enter contract negotiations with the highest-ranking firm. Should negotiations fail, the County will have the right to negotiate with the second highest-ranking firm.

COST SAVINGS

1. **Finding:** The CM/GC will participate in the design phase of the work and thereby be able to obtain a complete understanding of the County’s and the proposed occupant’s needs, the architect’s design intent, the scope of the project, and the operational needs of the County’s staff. This will alleviate some of the financial risk to the County and reduced risk will likely result in cost savings. In making this finding, ORS 279C.335 (2)(b) requires the following issues be considered:

(A) How many persons are able to bid;

Many contractors within Central Oregon are able and qualified to bid the planned work; the only limitation is the number of qualified persons in the region.

(B) The construction budget and the projected operating costs for the completed public improvement;

The difference in operating costs will not be significant whether the project is competitively bid or the CM/GC process is used for contracting. However, the CM/GC process will incorporate the contractor with the design team and that will help ensure that the budget is maintained by use of the contractor's knowledge and expertise as to materials and equipment.

(C) Public benefits that may result from granting the exemption;

Early selection of the CM/GC allows for a more informed contractor. The CM/GC will be part of the design team and will have a better understanding of the financial requirements and other project needs. This should result in better decision making by the project construction team, thereby saving time and money. Also, the project site is in the middle of the downtown area of Prineville and all public ways will need to be maintained at all times; with the CM/GC on board early in the process, all safety requirements of working within this area can be fully explained to the CM/GC. The public benefits will thus include increased safety and cost savings, as well as greater assurance of completion on the desired date.

(D) Whether value engineering techniques may decrease the cost of the public improvement;

The CM/GC team will become a part of the project team with the responsibility of leading the value engineering process. The selected CM/GC should have considerable experience in construction and design; therefore, that experience will be of great importance in determining the best use of the budget available. When the contractor participates, the team can render the most comprehensive evaluation of all factors that affect the cost, quality, and schedule of the project.

(E) The cost and availability of specialized expertise that is necessary for the public improvement;

The functions that are planned to be within this building are a bit unique—designed to appear like a historical residential dwelling but function as an open exhibit center. It is beneficial that those selected to be part of the CM/GC team have experience in the design, construction, and functional requirements of public facilities of this type. This experience will assist the project team in determining the best and safest process to pursue. This process will allow the County to solicit local expertise to participate.

(F) Any likely increases in public safety;

The CM/GC team will work with the project team to develop the overall construction plan that integrates the needs of the County and the planned occupants to help ensure public safety is integrated in the design. Also, the CM/GC will assist in determining necessary precautions while working on the site.

(G) Whether granting the exemption may reduce risks to the contracting agency or the public that are related to the public improvement;

Including the contractor in the planning process increases safety and, thereby, reduces risk. CM/GC contracts reduce risk to the County by allowing for coordination and evaluation of constructability ahead of final project design; the contract will include a not-to-exceed cost thereby reducing the risk of budget overruns.

Including the contractor in the design process results in a design that is within the project budget, which also reduces risk. This process is not available under the Design-Bid-Build method of contracting.

(H) Whether granting the exemption will affect the sources of funding for the public improvement;

The exemption will have no effect on the funding source.

(I) Whether granting the exemption will better enable the contracting agency to control the impact that market conditions may have on the cost of and time necessary to complete the public improvement;

The County's ability to accurately estimate the cost of these projects is complicated by the multitude of construction market conditions that exist today in Oregon (e.g., competition of other projects, shortages and supply chain disruptions from the COVID-19 pandemic, shortage of qualified craftsman, etc.), as well as the difficulty in establishing the best work sequence. Because the project has a limited budget, it is essential to reduce the risk of cost overruns.

The CM/GC process allows for more control over these market forces because the CM/GC can assist in developing design documents and a work plan that best accommodate both the County and contractor/subcontractors; identifying the best grouping of bid packages will help ensure better trade coverage; designing the most efficient construction staging area on the property; charting the most cost effective route through the site for the various utilities; and adjusting the work plan when needs change along the way.

(J) Whether granting the exemption will better enable the contracting agency to address the size and technical complexity of the public improvement;

The CM/GC method controls the design and construction of the project thereby controlling the budget. This should allow the project to meet the demands of the County's proposed occupants and the budget.

(K) Whether the public improvement involves new construction or renovates or remodels an existing structure;

The public improvement will most likely be new construction.

(L) Whether the public improvement will be occupied or unoccupied during construction;

Occupation of the building will occur after all construction is complete and a Certificate of Occupancy is issued.

(M) Whether the public improvement will require a single phase of construction work or multiple phases of construction work to address specific project conditions;

The present plan calls for the CMGC's work to be done in two phases; Phase I is design assistance up to the GMP and Phase II continues to completed construction.

(N) Whether the contracting agency has retained under contract, and will use contracting agency or state agency personnel, consultants and legal counsel that have necessary expertise and substantial experience in alternative contracting methods to assist in developing the alternative contracting method that the contracting agency will use to award the public improvement contract and to help negotiate, administer and enforce the terms of the public improvement contract;

The County has legal counsel that is familiar with Oregon construction and public contracting law as well as an employee who has many years of experience administering alternative contracting method contracts.

CONCLUSIONS OF LAW

The above "Findings" show that the CONSTRUCTION MANAGER / GENERAL CONTRACTOR process for the construction of the Belknap Exhibit Center complies with the requirements of ORS 279C.335(2) for exemption of the project from competitive bidding.

Exhibit C

DRAFT AIA® Document A133™ – 2009

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

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

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

« Crook County, a political subdivision of the State of Oregon - »
« 300 NE Third St. - »
« Prineville, OR 97754 »

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

« » « »
« »

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

« Bellknapp Exhibit Center - »
« »

The Architect:
(Name, legal status and address)

« Steele Associates Architects LLC - »
« 1567 SW Chandler Ave., Suite 203 »
« Bend, OR 97703 - »

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

« County Commissioner Brian Barney »
« 300 NE Third St. - »
« Prineville, OR 97754 »
« »
« »
« »

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.

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)

« [Adam Stephen](#) »
« [Steele Associates Architects LLC](#) »
« [1567 SW Chandler Ave., Suite 203](#) »
« [Bend, OR 97703](#) »
« »
« »

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

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. Other than requirements of State or Federal law, if anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern.

§ 1.2 Relationship of the Parties

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

§ 1.2.1 The service or services to be rendered under this contract are those of an independent contractor who is not an officer, employee, or agent of County as those terms are used in ORS 30.265, and will be so deemed for all purposes. This Agreement is not intended to entitle the Construction Manager to any benefits generally granted to Owner's employees.

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User Notes:

(3B9ADA36)

§ 1.2.2 Contractor is solely liable for any workers' compensation coverage, social security, unemployment insurance or retirement payments, and federal or state taxes due as a result of payments under this Agreement. Any subcontractor hired by the Construction Manager shall be similarly responsible.

§ 1.3 General Conditions

For the Preconstruction Phase, AIA Document A201™-~~2007~~2017, General Conditions of the Contract for Construction, shall apply only as specifically provided in this Agreement and as follows: Section 1.5, Ownership and Use of Documents; Section 1.7, Digital Data Use and Transmission; Section 1.8, Building Information Model Use and Reliance; Section 3.7.2, Oregon Public Improvement Contract Requirements; Section 3.12.10, Professional Services; Section 10.3, Hazardous Materials; Section 13.1, Governing Law. For the Construction Phase, the general conditions of the contract shall be as set forth in A201-~~2007~~2017, which document is incorporated herein by reference. The term "Contractor" as used in A201-~~2007~~2017 shall mean the Construction Manager. For the purposes of this Agreement, "A201-2017" shall mean the modified AIA Document A201-2017, General Conditions of the Contract for Construction.

ARTICLE 2 CONSTRUCTION MANAGER'S RESPONSIBILITIES

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

§ 2.1 Preconstruction Phase

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

§ 2.1.2 Consultation

The Construction Manager shall schedule and conduct meetings with the Architect and Owner to discuss such matters as procedures, progress, coordination, and scheduling of the Work. The Construction Manager shall advise the Owner and the Architect on proposed site use and improvements, selection of materials, and building systems and equipment. The Construction Manager shall also provide recommendations consistent with the Project requirements to the Owner and Architect on constructability; availability of materials and labor; time requirements for procurement, installation and construction; and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions.

§ 2.1.3 When Project requirements in Section 3.1.1 have been sufficiently identified, the Construction Manager shall prepare and periodically update a Project schedule for the Architect's review and the Owner's acceptance. The Construction Manager shall obtain the Architect's written approval for the portion of the Project schedule relating to the performance of the Architect's services. The Project schedule shall coordinate and integrate the Construction Manager's services, the Architect's services, other Owner consultants' services, and the Owner's responsibilities and identify items that could affect the Project's timely completion. The updated Project schedule shall include the following: submission of the Guaranteed Maximum Price proposal; components of the Work; times of commencement and completion required of each Subcontractor; ordering and delivery of products, including those that must be ordered well in advance of construction; and the occupancy requirements of the Owner.

§ 2.1.4 Phased Construction

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

§ 2.1.5 Preliminary Cost Estimates

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

Architect or Construction Manager suggests alternative materials and systems, the Construction Manager shall provide cost evaluations of those alternative materials and systems.

§ 2.1.5.2 As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall prepare and update, at appropriate intervals agreed to by the Owner, Construction Manager and Architect, written estimates of the Cost of the Work of increasing detail and refinement. The Construction Manager shall include in the estimate those costs to and allowing for the further development of the design, price escalation, and market conditions until such time as the Owner and Construction Manager agree on a Guaranteed Maximum Price for the Work. Such estimates shall be provided for the 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 written recommendations for corrective action.

§ 2.1.6 Subcontractors and Suppliers

The Construction Manager shall develop bidders' interest in the Project.

§ 2.1.7 Procurement

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

§ 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 or as otherwise provided in this Agreement. The Construction Manager is not required to ascertain that the Drawings and Specifications, prepared by others, 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 written 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, including those in A201-2017, Section 3.7.2, fully incorporated herein.

§ 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 described in Section 5.1.1.

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

§ 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, and any allowances used in the calculation of the GMP, 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, General Conditions, General Requirements, 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 and the identity of all Subcontractors of any tier.

§ 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 actual amount of this contingency will be determined by the Construction Manager and Owner at the time the final Guaranteed Maximum Price is established. The initial Guaranteed Maximum Price shall be modified, up or down, to account for changes in the scope of work or as otherwise provided in the Contract Documents. Together with each application for payment, the Construction Manager shall provide an itemized accounting of all items charged against the Construction Manager's contingency.

§ 2.2.5 The Construction Manager shall meet with the Owner and Architect to review the Guaranteed Maximum Price proposal. In the event that the Owner and Architect discover any inconsistencies or inaccuracies in the information presented, they shall promptly notify the Construction Manager, who shall make appropriate adjustments to the Guaranteed Maximum Price proposal, its basis, or both. The Construction Manager agrees to provide the Construction Phase Services described herein for an amount not to exceed the amount set forth in Article 5.

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

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

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

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

§ 2.3 Construction Phase

§ 2.3.1 General

§ 2.3.1.1 For purposes of Section 8.1.2 of A201-~~2007~~2017, the date of commencement of the Work shall mean the date of commencement of the Construction Phase.

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

§ 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 Owner and Architect. The Owner shall then determine, with the advice of the Construction Manager and the Architect, which bids will be accepted. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection.

§ 2.3.2.2 Except for project management, general conditions, general requirements, and other portions of the Work approved in advance by the Owner pursuant to this Section, the Construction Manager shall obtain and submit to the Owner competitive bids for all portions of the Work.

- (1) The Construction Manager must seek to obtain at least three competitive bids for each particular portion of the Work, including any portion of the Work which the Construction Manager is interested in self-performing. All bids shall be in a lump-sum, with alternates if appropriate. When there are single sources of particular materials or equipment, specialized requirements for the particular Work, or other circumstances in which such bidding is not practical, appropriate or in the interest of the Project, with the Owner's prior written approval, designated portions of the Work may be performed by the Construction Manager or a Subcontractor or supplier without competitive bidding.
- (2) Unless otherwise approved in advance by the Owner, all bids shall be publicly advertised and solicited in advance in the Daily Journal of Commerce.
- (3) The bid process shall conform to the requirements of ORS 279C.365, 279C.337(3), and OAR 137-049-0690(5)(k).
- (4) For portions of the Work which the Construction Manager is interested in self-performing, the following shall apply:
 - (a) Bid solicitations shall state the Construction Manager's intent to bid on the particular portion of the Work.
 - (b) All bids, including the bid of the Construction Manager, shall be lump sum amounts with alternates, if appropriate, and shall be written, signed and submitted in a sealed envelope to the Owner's Representative. The Construction Manager's bid must be submitted to the Owner's Representative at least two (2) hours in advance of the date and time set for the receipt of competing bids.
 - (c) The bids shall be publicly opened and read aloud by the Owner's Representative at the specified location and specified time.
 - (d) Subject to the Owner's right to reject any or all bids, each particular portion of the Work will be awarded to the responsible bidder with the lowest responsive bid.
 - (e) The Owner will evaluate the Construction Manager's bid for self-performed work in accordance with the criteria set forth in sub-paragraph (5) (b) below.
- (5) For portions of the Work which the Construction Manager is not interested in self-performing, the following shall apply:
 - (a) All bids shall be in writing, signed and submitted to the Construction Manager with the Owner's Representative present, either in a sealed envelope or by facsimile, at a specified location and specified time. The Construction Manager shall assure that bids are not made known to any potential bidders prior to the specified time.
 - (b) The bids received by the specified time shall be reviewed and evaluated by the Construction Manager, with the Owner having full access to the bid review, and evaluation based on the following criteria and scoring scheme:

Base bid (low bid)	50 points possible
Workers' Compensation safety rating	5 points possible
Bonding ability and references	5 points possible
Available manpower dedicated to the	

Project/ performance history	20 points possible
Project management & supervisory experience of those assigned to the project & performance history	15 points possible
Company claims history	5 points possible
TOTAL POSSIBLE SCORE	100 points

§ 2.3.2.32 If the Guaranteed Maximum Price has been established and when a specific bidder (1) is recommended to the Owner by the Construction Manager, (2) is qualified to perform that portion of the Work, and (3) has submitted a bid that conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Construction Manager may require that a Change Order be issued to adjust the Contract Time 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.

§ 2.3.2.43 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 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.

§ 2.3.2.54 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.

§ 2.3.2.65 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.

§ 2.3.2.76 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~~2017.

§ 2.3.2.87 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. The log shall always be available to the Owner and Architect upon request.

§ 2.3.2.98 The Construction Manager shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The Construction Manager shall identify variances between actual and estimated costs and report the variances to the Owner and Architect and shall provide this information in its monthly reports to the Owner and Architect, in accordance with Section 2.3.2.~~87~~ above.

§ 2.3.3 OPERATIONS AND MAINTENANCE MANUALS

As part of the Work, Construction Manager shall submit a preliminary operations and maintenance manual (O&M Manual) which is complete as of the date of its submission for review by the Owner and the Architect when 75% or more of the Work has been completed. The O&M Manual shall contain but not be limited to a complete set of all submittals, all product data as required by the specifications, training information, a telephone list of consultants, manufacturers, installers and suppliers, manufacturer's printed data, recording and shop drawings, schematic diagrams of systems, equipment indexes, warranties and bonds. The Owner's representative shall review and return the O&M Manual. Prior to its submission of its final payment request five complete and approved sets of O&M Manuals shall be delivered by the Construction Manager to the Owner and Architect.

§ 2.3.4 TRAINING SESSIONS

As part of the Work, and prior to the submission of the request for final payment, the Construction Manager shall schedule with the Owner training sessions for all equipment and systems. The scheduling shall be at least two weeks prior to the proposed date(s), which date(s) shall be convenient for the Owner's representatives. Training shall occur only after the particular equipment and/or system is completely installed and is operational in its normal operating environment.

§ 2.3.5 POST PROJECT EVALUATION REPORT

As part of the Work, and prior to the submission of the request for final payment, the Construction Manager shall assist the Owner in developing a post-project evaluation report pursuant to the ORS 279C.355. As part of that process, the Construction Manager shall propose a draft analysis which includes the following information:

- .1 A statement of the actual Project cost as compared with original project estimates, and a statement of the amount of the GMP.
- .2 An analysis of any cost savings attributed to the use of the CM/GC process, including savings due to value engineering, constructability, review and construction below the GMP.
- .3 The number of project change orders, including an identification of the change orders issued by the Owner, and a general explanation of why the change orders were required and the impact on the GMP.
- .4 A narrative description of the successes and failures during design, engineering and construction of the project.
- .5 Any additional information related to the cost savings or time savings attributable to the CM/GC process.

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§ 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.

§ 3.1.2 [REMOVED] ~~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.~~

§ 3.1.3 The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1.1, (2) the Owner's other costs, and (3) reasonable

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

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

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

§ 3.1.4.2 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark. The furnishing of such information shall not relieve the Construction Manager from its duties to inspect the site and surrounding conditions.

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

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

§ 3.2 Owner's Designated Representative

The Owner shall 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~~2017, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative. The Owner may replace its identified representative at any time for any reason. Both Architect and Construction Manager will be given written notice of such change, in writing and at least two (2) weeks prior to the change, or such notice as is possible under the circumstances.

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

§ 3.3 Architect

The Owner shall retain an Architect to provide services, duties and responsibilities as described in AIA Document B101~~33~~TM-2017⁴, Standard Form of Agreement Between Owner and Architect, Construction Manager as Constructor Edition, as modified. The Owner shall provide the Construction Manager a copy of the executed agreement between the Owner and the Architect, and any further modifications to the agreement.

ARTICLE 4 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

§ 4.1 Compensation

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

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

« »

§ 4.1.3 If the Preconstruction Phase services covered by this Agreement have not been completed within « fourteen » (« 14 ») 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.

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

§ 4.2 Payments

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

§ 4.2.2 Payments are due and payable upon presentation of the Construction Manager's invoice. Amounts unpaid « thirty » (« 30 ») days after the invoice date shall bear interest as prescribed by ORS 279C.570. at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Construction Manager.
(Insert rate of monthly or annual interest agreed upon.)

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ARTICLE 5 COMPENSATION FOR CONSTRUCTION PHASE SERVICES

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

§ 5.1.1 The Construction Manager's Fee:

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

« »

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

« »

§ 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 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)
« »		

§ 5.2 Guaranteed Maximum Price

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

« All Savings shall accrue to the Owner. »

§ 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 A201-20072017, General Conditions of the Contract for Construction. The Construction Manager shall be entitled to an equitable adjustment in the Contract Time and/or the Guaranteed Maximum Price 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 A201-20072017, General Conditions of the Contract for Construction. There shall be no fee increase or decrease due or to become due to the Construction Manager related to deductive Change Orders. The Construction Manager's fee increase for additive Change Orders shall be XX% of the Cost of the Change Order Work.

§ 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 A201-20072017 and the term "costs" as used in Section 7.3.7 of AIA Document A201-20072017 shall have the meanings assigned to them in AIA Document A201-20072017 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 A201-20072017 shall mean the Cost of the Work as defined in Sections 6.1 to 6.7 of this Agreement and the term "fee" shall mean the Construction Manager's Fee as defined in Section 5.1 of this Agreement.

§ 5.3.5 If no specific provision is made in Section 5.1.2 for adjustment of the Construction Manager's Fee in the case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment provisions of Section 5.1.2 will cause substantial inequity to the Owner or Construction Manager, the Construction Manager's Fee shall be equitably adjusted on the same basis that was used to establish the Fee for the original Work, and the Guaranteed Maximum Price shall be adjusted accordingly.

ARTICLE 6 COST OF THE WORK FOR CONSTRUCTION PHASE

§ 6.1 Costs to Be Reimbursed

§ 6.1.1 The term Cost of the Work shall mean costs 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 only the items set forth in Sections 6.1 through 6.7.

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

§ 6.2 Labor Costs

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

§ 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.)

§ 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.

§ 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.

§ 6.3 Subcontract Costs

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

§ 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 Rental charges, which shall not exceed published rates of commercial rental companies, 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 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 approval.

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

§ 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 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 A201-20072017 or by other provisions of the Contract Documents, and which do not fall within the scope of Section 6.7.3.

§ 6.6.5 Royalties and license fees paid for the use of a particular design, process or product required by the Contract Documents; the cost of defending suits or claims for infringement of patent rights arising from such requirement of the Contract Documents; and payments made in accordance with legal judgments against the Construction Manager resulting from such suits or claims and payments of settlements made with the Owner's consent. However, such costs of legal defenses, judgments and settlements shall not be included in the calculation of the Construction Manager's Fee or subject to the Guaranteed Maximum Price. If such royalties, fees and costs are excluded by the last sentence of Section 3.17 of AIA Document A201-20072017 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.

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

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

§ 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. Expenses for personnel relocated after the commencement of the Construction Phase shall be included in the Cost of the Work only with the prior written approval of the Owner.

§ 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 A201-20072017.

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

§ 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~~2017 or other Conditions of the Contract which may require the Construction Manager to pay such costs, unless such costs are excluded by the provisions of Section 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; and
- .8 Costs for services incurred during the Preconstruction Phase.

§ 6.9 Discounts, Rebates and Refunds

§ 6.9.1 ~~DCash~~ 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 representative~~ 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. If a post-construction audit of Construction Manager's records or other circumstance reveals any under or over charge, the appropriate party shall promptly repay the amount to the other together with appropriate interest.

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. The Application shall be in a form acceptable to the Owner and shall include an itemization by natural expense categories.

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

« Owner shall make progress payments on the Contract monthly as Work progresses as provided in this agreement. A progress payment shall not be considered acceptance or approval of any Work or waiver of any defects therein. If the Owner determines that an Application for Payment is filled out incorrectly, the Owner shall so notify the Construction Manager within ten (10) days stating the reason or reasons the invoice is defective or improper. A defective or improper invoice, if corrected by the Construction Manager within seven (7) days of being notified by the Owner, shall not cause a payment to be made later than specified in this section. »

§ 7.1.3 Provided that an Application for Payment is received by the Architect not later than the « 25th » day of a month, the Owner shall make payment of the certified amount to the Construction Manager not later than the « 10th working » day of the « following » 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 « fourteen » (« 14 ») working days after the Architect receives the Application for Payment.
(Federal, state or local laws may require payment within a certain period of time.)

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§ 7.1.4 With each Application for Payment, the Construction Manager shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner or Architect to demonstrate that cash disbursements already made by the Construction Manager on account of the Cost of the Work equal or exceed progress payments already received by the Construction Manager, less that portion of those payments attributable to the Construction Manager's Fee, plus payrolls for the period covered by the present Application for Payment. Construction Manager and all Subcontractors shall submit with the Application for Payment waivers of claims for the amount of payments received and conditional waivers for the amounts to be paid (excepting only those specific claims expressly identified and reserved in writing). The Construction Manager and all Subcontractors shall provide certified payroll statements to the extent required by ORS 279C.845 no later than the fifth working day of the month. Payment by the Owner shall not be made until the Owner has received the Certified Payroll report.

§ 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 General Conditions, and General Requirements 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 and/or Owner 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. When the Construction Manager allocates costs from a

contingency to another line item in the schedule of values, the Construction Manager shall submit supporting documentation to the Architect and Owner.

§ 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 In accordance with A201-2017 and sSubject 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~~2017;
- .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~~2017.

§ 7.1.8 Except with the Owner's prior written approval, payments to Subcontractors shall be subject to retainage of five percent (5%). The Owner and Construction Manager shall agree upon (1) a mutually acceptable procedure for review and approval of payments to Subcontractors and (2) the percentage of retainage held on Subcontracts, and the Construction Manager shall execute subcontracts in accordance with those agreements.

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

§ 7.1.10 In taking action on the Construction Manager's Applications for Payment, the Architect and Owner 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 or Owner 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 or Owner 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~~2017 or

elsewhere in the Contract Documents, and to satisfy other requirements, if any, which extend beyond final payment;

- .2 the Construction Manager has submitted a final accounting and submitted or made available supporting documentation for the Cost of the Work and a final Application for Payment; and
- .3 a final Certificate for Payment has been issued by the Architect.

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

« »

§ 7.2.2 The Owner's ~~auditors-Representative~~ 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-Representative's~~ 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-Representative~~, 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~~ A201-2017. The time periods stated in this Section supersede those stated in Section 9.4.1 of the ~~AIA Document A201-2007~~ A201-2017. The Architect is not responsible for verifying the accuracy of the Construction Manager's final accounting. The retainage held by the Owner shall be included in and released to the Construction Manager as part of the final payment of the Contract Sum. The Construction Manager shall notify the Owner in writing when the Construction Manager considers the Work complete and the Owner shall, within fifteen (15) days after receiving the written notice, either accept the Work or notify the Construction Manager of Work yet to be performed on the Contract.

§ 7.2.3 If the Owner's ~~auditors-report finds that~~ 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 a decision of the Initial Decision Maker pursuant to Section 15.2 of A201-2017. A request shall be made by the Construction Manager within 60 days after the Construction Manager's receipt of a copy of the Architect's final Certificate for Payment. Failure to request the decision within this 60-day period shall result in the substantiated amount reported by the Owner's Representative 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. The decision of the Initial Decision Maker does not negate any right of the Owner or the Construction Manager from pursuing Arbitration pursuant to Section 15.4 of A201-2017 and Article 9 of this Contract. ~~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~~ A201-2017 as modified or elsewhere in the Contract Documents. Such insurance shall be written for not less than the following limits, or greater if required by law. There shall be no cancellation or change in any policy, potential exhaustion of limits or intent not to renew without thirty (30) days prior written notice to the Owner.

§ 8.1.1 Workers' Compensation and Employers' Liability meeting statutory limits mandated by state and federal laws. If (1) limits in excess of those required by statute are to be provided, or (2) the employer is not statutorily bound to obtain such insurance coverage or (3) additional coverages are required, additional coverages and limits for such insurance shall be as follows:

Construction Manager shall provide and maintain workers' compensation coverage for its employees, officers and /or partners as required by applicable workers' compensation laws. Employers' Liability limits shall not be less than \$500,000 each accident for bodily injury by accident, \$500,000 each employee for bodily injury by disease, and \$500,000 each accident for bodily injury by disease.

§ 8.1.2 Commercial General Liability including coverage for Premises-Operations, Independent Contractors' Protective, Products-Completed Operations, Contractual Liability (for the Construction Manager's indemnification obligations for third-party bodily injury or property damage), Personal Injury and Broad Form Property Damage (including coverage for Explosion, Collapse and Underground hazards):

Not less than \$2 million	Each Occurrence
Not less than \$4 million	General Aggregate
Not less than \$2 million	Personal and Advertising Injury
Not less than \$2 million	Products-Completed Operations Aggregate
Not less than \$10 million	Excess (Umbrella)

1 The policy shall be endorsed to have the General Aggregate apply to this Project ONLY.

2 Products and Completed Operations insurance shall be maintained for a minimum period of at least five (5) years after either ninety (90) days following Substantial Completion or final payment, whichever is earlier.

3 The Contractual Liability Insurance shall include coverage sufficient to meet the Construction Manager's obligations under A201-2017.

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§ 8.1.3 Automobile Liability (owned, non-owned and hired vehicles) for bodily injury and property damage:

not less than \$2 million	Each Accident
not less than \$2 million	Excess (Umbrella)

§ 8.1.4 Other coverage:

If, before any subcontract is entered into or any Subcontractor commences any Work, Owner and Architect are provided with written notice of a Subcontractor's insurance coverage in accordance with this Article 8, Excess (Umbrella) amounts set forth above may be waived.

§ 8.1.5 General Insurance Clause:

Construction Manager shall maintain policies in force for the duration of this Agreement, or such longer period as may be required elsewhere in the Contract Documents. All policies (except for workers' compensation and professional liability insurance) shall name the Owner, the Architect and their respective officers, agents, directors and employees as additional insureds with respect to work or services performed under this Agreement. Construction Manager's insurance, including coverage for claims against the additional insureds, will be primary over any insurance carried by the Owner, and any policy maintained by the additional insureds shall be non-contributory. These policies shall include a separation of insureds/severability of interests clause for claims against the additional insureds due to the negligence, act, omission or other conduct of the Construction Manager or its Subcontractors, or anyone for whom the Construction Manager or a Subcontractor may be liable. The Construction Manager shall provide the Owner with copies of all policies required under this Agreement, including a copy of the additional insured endorsement, before any work or services commence. The additional insured endorsement shall provide for 30-day prior written notice to the Owner of any cancellation or material change in coverage. Failure to maintain proper insurance after ten-day's written notice of any lapse shall be grounds for immediate termination of this Agreement. All insurance required under this Agreement shall be on forms approved by the Owner.

§ 8.1.6 Subcontractors: The Construction Manager shall require all subcontractors to provide and maintain general liability, auto liability, professional liability (as applicable, such as for design-build elements), and workers'

compensation insurance with coverages equivalent to those required of the general contractor in this contract. The Construction Manager shall require certificates of insurance from all Subcontractors as evidence of coverage.

§ 8.1.7 Exception or Waivers: any exception or waiver of any insurance requirement shall be subject to review and approval by the Owner's Risk Manager. Owner will not waive any subrogation rights or those of its insurers.

§ 8.1.8 The Owner shall provide Builders "All Risk" insurance for the project, covering Construction Manager and all Subcontractors, with no deductible.

§ 8.2 PERFORMANCE BOND AND PAYMENT BOND

§ 8.2.1 The Construction Manager shall furnish bonds covering faithful performance of this Agreement and payment of all obligations arising hereunder. Bonds may be obtained through the Construction Manager's usual source, and the cost thereof shall be included in the Cost of the Work. Any surety shall have the highest rating possible at the time the bond is issued, be acceptable to the Owner and shall be authorized to transact business and issue payment and performance bonds in the State of Oregon. The bonds shall comply with Oregon law including but not limited to the requirements of ORS Chapter 279C. The amount of each bond shall be equal to one hundred percent (100%) of the Contract Sum.

§ 8.2.2 The Construction Manager shall deliver the required bonds to the Owner at least three business days before the commencement of any Construction Phase Work at the Project site.

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

Type of Insurance or Bond	Limit of Liability or Bond Amount (\$0.00)
« »	

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 A201-20072017. 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~~ arbitration, and Section 9.3 of this Agreement shall not apply.

§ 9.2 For any Claim subject to, but not resolved by ~~mediation~~ the Initial Decision Maker pursuant to Section 15.3 of AIA Document A201-20072017, the method of binding dispute resolution shall be as follows:

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

☒ Arbitration pursuant to Section 15.4 of AIA Document A201-20072017

☐ Litigation in a court of competent jurisdiction

☐ Other: (Specify)

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§ 9.3 Initial Decision Maker

The Architect will serve as the Initial Decision Maker pursuant to Section 15.2 of AIA Document A201-20072017 for Claims arising from or relating to the Construction Manager's Construction Phase services, unless the parties appoint below another individual, not a party to the Agreement, to serve as the Initial Decision Maker.

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

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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, ~~or if the Owner and the Construction Manager do not reach an agreement on the Guaranteed Maximum Price,~~ the Owner may terminate this Agreement upon not less than seven days' written notice to the Construction Manager 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~~2017.

§ 10.1.2 In the event of termination of this Agreement pursuant to Section 10.1.1, the Construction Manager shall be equitably compensated for Preconstruction Phase services performed prior to receipt of a notice of termination. In no event shall the Construction Manager's compensation under this Section exceed the compensation set forth in Section 4.1.

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

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

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

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

§ 10.2 Termination Subsequent to Establishing Guaranteed Maximum Price

Following execution of the Guaranteed Maximum Price Amendment and subject to the provisions of Section 10.2.1 and 10.2.2 below, the Contract may be terminated as provided in Article 14 of AIA Document A201-~~2007~~2017.

§ 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~~2017 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 A201–20072017 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~~the most recent agreed upon Guaranteed Maximum Price.

§ 10.3 Suspension

The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–20072017. In such case, the Guaranteed Maximum Price and Contract Time shall be increased as provided in Section 14.3.2 of AIA Document A201–20072017, 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 A201–20072017.

§ 11.2 Ownership and Use of Documents

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

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§ 11.3 Governing Law

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

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§ 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 A201–20072017, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 11.5 Other provisions:

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ARTICLE 12 SCOPE OF THE AGREEMENT

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

§ 12.2 The following documents comprise the Agreement:

- .1 AIA Document A133–2009, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price, ~~as modified~~
- .2 AIA Document A201–20072017, General Conditions of the Contract for Construction, ~~as modified~~
- .3 AIA Document E201™–2007, Digital Data Protocol Exhibit, if completed, or the following:

« »

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

« »

- .5 Other documents:
(List other documents, if any, forming part of the Agreement.)



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

« »
OWNER (Signature)
« Seth Crawford » « Crook County Judge »
(Printed name and title)

« »
OWNER (Signature)
« Jerry Brummer » « Crook County Commissioner »

« »
OWNER (Signature)
« Brian Barney » « Crook County Commissioner »

« »
CONSTRUCTION MANAGER (Signature)
« » « »
(Printed name and title)

FILED