

**NOTICE OF REQUEST FOR PROPOSALS FOR
CONSTRUCTION MANAGER/GENERAL CONTRACTOR (“CM/GC”) SERVICES**

**This is a
REQUEST FOR PROPOSALS
by
UMATILLA SCHOOL DISTRICT
FOR CM/GC SERVICES
IN RELATION TO THE 2016 BOND ISSUE**

The Umatilla School District invites sealed written proposals for CM/GC services associated with the construction of the work related to the District’s 2016 Bond Project. The scope of services may include, but is not necessarily limited to pre-construction services and construction services.

This RFP is for a public works subject to the state prevailing wage requirements specified in ORS 279C.800 to 279C.870.

Prospective proposers may obtain a copy of the RFP, including the terms and conditions of the agreement to provide the requested services, by visiting the District’s web-page (www.umatilla.k12.or.us/announcements).

One (1) original and five (5) hard copies of the Proposal and supporting documentation as described in this RFP must be delivered to Heidi Sipe, at the Umatilla School District, 1001 6th Street, Umatilla, OR 97882 no later than 3:00 p.m., Pacific Daylight Time, on September 1, 2017. Proposers shall also provide one courtesy copy of the Proposal in PDF format on a USB storage or similar flash storage device. All packages and envelopes must be marked clearly with the note: “RFP—CM/GC Services, 3:00 p.m., September 1, 2017.”

NO ORAL, TELEPHONIC, ELECTRONIC, OR FACSIMILE PROPOSALS WILL BE ACCEPTED.

Please direct any questions regarding this RFP in writing only to Earl Eastman, Alliance Management & Construction Services, 59009 E. Main PR SE, Benton City, WA 99320.

Proposers should request clarification or additional information concerning this RFP in writing as soon as possible, but in no event will such requests be received by the District later than 3:00 p.m., Pacific Standard Time, on August 18, 2017. All questions will be answered by written addenda only, which will be posted on the District’s web-page (www.umatilla.k12.or.us/announcements).

**TERMS AND CONDITIONS OF THE UMATILLA SCHOOL DISTRICT’S REQUEST
FOR PROPOSALS FOR CM/GC SERVICES**

I. GENERAL INFORMATION

A. INTRODUCTION

By way of this Request for Proposals (“RFP”), the Umatilla School District (“District”) is requesting proposals (“Proposals”) from qualified contractors (“Proposers”) for CM/GC services (“Services”) associated with the construction of the work related to the District’s 2016 Bond Project, which is set out in Appendix A (the “Project”). The Project consists of safety, security, and facility repairs, renovations and additions to the District’s three schools: McNary Heights Elementary School, Clara Brownell Middle School, and Umatilla High School. Services to be provided include, but are not necessarily limited to, pre-construction services and construction services. The Project’s estimated construction cost is approximately \$9,438,750. The Services described in this RFP will be performed beginning in the fall of 2017. Construction will begin as soon as design allows. The Services described in this RFP will end after construction is completed.

This RFP is intended to provide Proposers with the opportunity to present their qualifications and approach clearly and succinctly, while providing the District with comparable information from each Proposer.

B. PROPOSED SCHEDULE

RFP Release:	August 11, 2017
Mandatory Pre-Proposal Conference:	August 17, 2017 (1:00 p.m. PDT)
Deadline for Requests for Clarification/Protests:	August 25, 2017 (3:00 p.m. PDT)
Proposals Due/Opening of Proposals:	September 1, 2017 (3:00 p.m. PDT)
Interviews (if any):	September 8, 2017
Notice of Intent to Award:	September 9, 2017
Deadline for Protests of Notice of Intent to Award:	September 12, 2017 (3:00 p.m. PDT)
District Board of Education Contract Approval:	September 19, 2017
Deadline for Unsuccessful Proposers to Request Meeting:	September 25, 2017

The District may, in its sole discretion, revise these dates. This proposed schedule is intended to allow prospective Proposers sufficient time for requests for information, objections to the requirements of this RFP, and preparation of Proposals. Prospective Proposers who believe that the schedule is unreasonable should notify the District immediately. If the District receives a substantial number of adverse comments, the District will consider extending the schedule of events by issuing an addendum.

C. MANDATORY PRE-PROPOSAL CONFERENCE

Prospective Proposers are invited to attend a mandatory pre-proposal conference to be held at the time and date specified in the Propose Schedule, as modified by the District, at the Umatilla High School, 1400 7th Street, Umatilla OR 97882. Attendance at this pre-proposal conference is required.

D. REQUESTS FOR CLARIFICATION OF RFP

Proposers are cautioned not to make any assumptions as to the implied meaning or intent of any part of this RFP. Proposers should request clarification or additional information concerning this RFP in writing as soon as possible, but in no event will such requests be received by the District later than the time and date specified in the Proposed Schedule, as modified by the District. Questions regarding this RFP should be addressed to Earl Eastman, Alliance Management & Construction Services, 59009 E. Main PR SE, Benton City, WA 99320.

ANY CORRECTIONS OR CLARIFICATIONS MADE IN ANY MANNER OTHER THAN BY A WRITTEN ADDENDUM ADDRESSED TO ALL PROPOSERS AND POSTED ON THE DISTRICT'S WEBSITE:

WWW.UMATILLA.K12.OR.US/ANNOUNCEMENTS

WILL NOT BE BINDING ON THE DISTRICT, AND PROPOSERS SHALL NOT RELY THEREON.

E. AMENDMENT OF RFP BY ADDENDA ONLY

If any part of this RFP is amended, addenda will be published on the District's website (www.umatilla.k12.or.us/announcements). Addenda may be downloaded from the District's website. Proposers should frequently check the District's website up to the date and time when Proposals are due, i.e., at least once weekly until the week the Proposals are due and at least once daily the week the Proposals are due. Each Proposer shall provide written acknowledgement of its receipt of all issued Addenda with its Proposal using the form attached as Appendix E.

F. ACCEPTANCE OF CONDITIONS AND CONTRACTUAL REQUIREMENTS

By submitting a Proposal, a Proposer expressly represents that the Proposer has read and understands the terms and conditions contained in this RFP, and that the Proposer agrees to be bound by such terms and conditions, including any and all changes to such terms and conditions contained in all written addenda.

A Proposer further represents that it takes no exception to any terms, conditions, obligations, or requirements of the form of modified AIA A133-2009 Standard Form of

Agreement Between Owner and Construction Manager and Constructor and the exhibits attached thereto (collectively, the “Contract”), a copy of which is attached hereto as Appendix B.

The District may in its sole discretion negotiate any terms, conditions, obligations, or requirements of the Contract or of the form of Contract, but only to the extent the negotiated terms and conditions do not materially conflict with the applicable terms, conditions, obligations, or requirements of the form of Contract.

G. DURATION OF PROPOSALS

Any Proposal submitted shall be irrevocable and open for acceptance until the later of either: (1) the date when the District Board of Education formally approves a Contract for provision of the Services; or (2) the District cancels this RFP. A Notice of Intent to Award the Contract to any Proposer shall not constitute a rejection of any other Proposal.

H. WITHDRAWAL OR MODIFICATION OF PROPOSALS

The District takes the proposal process seriously, and it is its intent to solicit Proposals that are accurate and that each Proposer intends to honor. Proposers are expected to submit Proposals that are accurate, complete, and responsive to the requirements set forth in this RFP. If after submitting a Proposal, the Proposer finds changes are necessary, the Proposer may change or withdraw their Proposal by delivering a written request to the District at any time prior to the time set for opening Proposals. The request shall be executed by a duly authorized representative of the withdrawing Proposer. However, **AFTER THE OPENING, A PROPOSAL MAY NOT BE WITHDRAWN, CHANGED, OR ALTERED IN ANY WAY.** If accepted, a Proposal is considered non-cancellable and the Proposer will be expected to honor a binding contract. If for any reason the Proposer does not perform, the District can be expected to take whatever action it believes appropriate, including, but not limited to, the disqualification of that Proposer from future public contracts.

I. PUBLIC RECORDS

This RFP, including all addenda, and one copy of each Proposal received in response to it, together with copies of all documents pertaining to the award of a contract, shall be kept by the District and made part of a file or record. Pursuant to ORS 279C.107, that file or record will not be disclosed and will not be made a part of the public record until after the District and the successful Proposer have executed the Contract. Said files including the evaluation report will then be available for public review. Furthermore, the District will open Proposals so as to avoid disclosing the contents of Proposals to competing Proposers during the negotiation process provided for in Section V.4.

If a Proposal contains any information that is considered a trade secret under ORS 192.501(2), each sheet of such information shall be marked with the following caption:

“This data constitutes a trade secret under ORS 192.501(2), and shall not be disclosed except in accordance with the Oregon Public Records Law, ORS Chapter 192.”

Sheets identified as containing trade secret information shall not contain non-trade secret material. A violation of this requirement shall result in the entire sheet being subject to public disclosure. The District shall have no liability for the disclosure of trade secret material and especially so when the material is not properly marked or separated from non-trade secret material.

J. PROTESTING CONTENTS OF RFP

Any prospective Proposer who contends that the terms and conditions of this RFP, including but not limited to the Contract, or any aspect of the selection process: (1) will encourage favoritism in the award of the Contract; (2) will substantially diminish competition; (3) will violate any other statute, regulation (including, but not limited to, OAR Chapter 137), policy, or law of any kind; and/or (4) is ambiguous, insufficient, or unfair for any reason, must file a written protest to this RFP consistent with the procedures provided for in OAR 137-049-0260, as modified in this RFP. Protests must set forth the basis of the protest or request for clarification along with any proposed changes to the RFP provisions, specifications, or Contract terms. Any protest that does not meet these requirements will not be considered. Protests must be received by the District no later than the time and date specified in the Proposed Schedule, as modified by the District. Protests must be submitted to Heidi Sipe, 1001 6th Street, Umatilla, OR 97882. Failure to file a protest by the above-noted deadline will be deemed a waiver of any claim by a Proposer that the selection process violates any of the items (1)-(4) of the foregoing sentence.

The District will issue a written disposition of each such protest no less than three (3) business days before Proposals are due. If the District upholds the protest, in whole or in part, the District may, in its sole discretion, issue an addendum reflecting its disposition or take other appropriate action.

K. PREVAILING WAGE RATES

The Contract resulting from this RFP solicitation procurement process will be a Contract for a public work subject to the state prevailing rates of wage under ORS 279C.800 to 279C.870. By submitting a proposal, a Proposer agrees, if awarded the Contract for this Project, to be bound by and will comply with the prevailing wage provisions. No proposal will be received or considered unless the Proposer so agrees to be bound. A copy of the Prevailing Wage Rate Book may be accessed at:

http://www.oregon.gov/BOLI/WHD/PWR/Pages/January_2017_Index.aspx

L. RESERVATION OF RIGHTS

The District reserves the right, in its sole discretion:

- 1.** to amend this RFP, including making such changes or corrections in plans, specifications or quantities as it may deem necessary or desirable prior to the Proposal due date;
- 2.** to extend the deadline for submitting Proposals;
- 3.** to determine whether a Proposal does or does not substantially comply with the requirements of this RFP;
- 4.** to waive any minor irregularity, informality, or nonconformance with this RFP;
- 5.** to obtain information from or provide information to other public agencies, upon request, regarding the Proposer's performance;
- 6.** to consider the competency and responsibility of Proposers and of their proposed suppliers, subcontractors, and subconsultants in making the award;
- 7.** to determine which, if any, Proposers will be interviewed;
- 8.** to seek clarifications regarding any Proposer's Proposal or request additional information necessary to evaluate, rank, and select a Proposer;
- 9.** to permit a Proposer to submit supplemental information;
- 10.** to determine whether the Evaluation Team should reconvene and collectively review the scoring, making changes as the Evaluation Team deems appropriate;
- 11.** to determine whether to negotiate with any Proposer or multiple Proposers in any manner necessary to serve the best interests of the District;
- 12.** at any time prior to the Contract execution (including after announcement of the apparent awardee):
 - (a)** to reject any Proposal that fails to substantially comply with all prescribed RFP requirements and procedures and/or the prescribed public contracting procedures and requirements, including, but not limited to, the requirement to demonstrate the Proposer's responsibility under ORS 279C.375; and/or
 - (b)** to reject all Proposals received and cancel this RFP upon a finding by the District that there is good cause therefore and that such cancellation would be in the best interests of the District;
- 13.** to hold meetings, exchange correspondence, and obtain data from any source or party, including a Proposer, to seek an improved understanding and evaluation of the Proposals;
- 14.** to negotiate the terms and conditions of the Contract, including, but not limited to, the Contract price, the construction schedule, and the quantities of supplies and materials to be provided in connection with the Services, in order to meet the District's expectations and in the best interest of the District;
- 15.** to make the award based on the District's best judgment as to which Proposal best meets the District's expectations of a program of the highest quality and innovation;
- 16.** in the event any Proposer or Proposers to whom the contract is awarded shall default in executing said formal contract or in furnishing satisfactory insurance coverage within the time and in the manner hereinafter specified, to re-award the contract to another Proposer or Proposers;

17. to cancel the contract upon written notice at any time the District in its sole discretion determines that the provider is not meeting the needs of the District; and
18. to make any and all amendments to the Contract within the scope of the Services solicited in this RFP.

ALL PROPOSERS WHO SUBMIT A RESPONSE TO THIS RFP UNDERSTAND AND AGREE THAT THE DISTRICT IS NOT OBLIGATED TO AWARD A CONTRACT TO ANY PROPOSER. THE DISTRICT HAS NO FINANCIAL OBLIGATION TO ANY PROPOSER. IN ADDITION, EACH PROPOSER UNDERSTANDS AND AGREES THAT THE DISTRICT SHALL NOT BE RESPONSIBLE FOR ANY DAMAGES, EXPENSES, AND COSTS INCURRED IN SUBMITTING A PROPOSAL IN RESPONSE TO THIS RFP, ATTENDING ANY INTERVIEWS, AND NEGOTIATING A CONTRACT. EACH PROPOSER WHO SUBMITS A PROPOSAL IN RESPONSE TO THIS RFP DOES SO SOLELY AT THE PROPOSER'S OWN COST AND EXPENSE.

II. SCOPE OF WORK

A. OVERVIEW OF SERVICES REQUIRED

1. Scope of the Services. The Scope of Services is set out in the Contract.

III. PROPOSAL SPECIFICATIONS

A. PROPOSAL SPECIFICATIONS

1. Formatting Requirements. The following items explain the formatting requirements for Proposals. The District reserves the right to eliminate from consideration any Proposal received that does not follow this format.
 - a. Proposals must be printed, computer generated, or typewritten on 8.5" x 11" paper, using both sides of the paper. All pages must be numbered. Margins must be at least 1/2" on all sides. Font size can be no smaller than 12-point type. Any pages failing to comply with these requirements will be counted as two pages for purposes of the page limit specified below.
 - b. The submitted proposal shall include, but not be limited to, a divided and tabbed response to each of the items listed in Section IV, Part A, Sub-Part 2. This required format will provide the Proposers the best opportunity to compile their Proposal in a format that will be most easily understood and reviewed by the Evaluation Committee.
 - c. Proposals must be limited to 10 (ten) pages. One side of a double-sided page counts as one page for purposes of this 10 (ten) page limit. The Proposer's cover letter, the front and back covers, section dividers, table of contents (if included), all forms

requested by this RFP, and detailed resumes are exempt from the ten (10) page limit.

2. Other Requirements.

- a. Proposals must be submitted in the name of the legal entity registered with the State of Oregon, Corporations Division, to do business in the State of Oregon or an independent contractor.
- b. Proposals must include a title page that lists the Proposer's contact information.
- c. The original Proposal must bear an original signature signed in ink and dated by the Proposer or a representative legally authorized by the Proposer, further defined as follows:
 - i. In the case of an individual Proposer, by such individual Proposer.
 - ii. In the case of a partnership or limited liability partnership, the name of the partnership or limited liability partnership must appear on such Proposal and it shall be signed in the name of such partnership or limited liability partnership by at least one partner. In addition to such signature, the names of all partners shall be stated in the Proposal.
 - iii. In the case of a limited liability company, the name of the limited liability company must appear on such Proposal and it shall be signed in the name of such limited liability company by at least one member or manager. In addition to such signature, names of all members (and at least one manager, if applicable) shall be stated in the Proposal.
 - iv. In the case of a corporation, the corporate name must appear on such Proposal and it shall be signed by the president or other authorized officer, and there shall be set forth under the signature of such officer the name of the office he or she holds or the capacity in which he or she acts for such corporation.

"E-signed" Proposals may be rejected for failure to comply with this provision. The signature must clearly indicate the Proposer's intent to be bound by the terms and conditions specified in this RFP and its Proposal.

3. Means of Submission. One (1) original and five (5) hard copies of the Proposal must be submitted in sealed packages or envelopes to Heidi Sipe, at the Umatilla School District, 1001 6th Street, Umatilla, OR 97882. All packages and envelopes must be marked clearly with the note: "RFP—CM/GC Services, 3:00 p.m., September 1, 2017." Proposers shall also provide one courtesy copy of the Proposal in PDF format on a USB storage or similar flash storage device.

NO ORAL, TELEPHONIC, ELECTRONIC, OR FACSIMILE PROPOSALS WILL BE ACCEPTED.

4. Deadline for Submission of Proposals. Proposals must be received by the time and date specified in the Proposed Schedule, as modified by the District. Late Proposals or modifications will not be accepted.
5. Prohibition of Alterations. Proposals that are incomplete, or that contain any erasures, alterations, or that contain irregularities of any kind, or that are not in conformity with the law may be rejected by the District in its sole discretion or receive a lower rating in the evaluation process. A Proposer may not make its Proposal conditional or contingent upon the District's acceptance of any terms and conditions other than those contained in this RFP.

IV. PROPOSAL CONTENTS AND EVALUATION PROCESS

A. PROPOSAL CONTENTS

In addition to the specifications listed above, and in order to enable the District to determine a Proposer's ability to perform satisfactorily the Services, Proposals must include, at minimum, the following information relevant to the District's determination of the Proposer's responsibility, as set forth in ORS 279C.375, and the Proposer's qualifications:

1. Certifications and Acknowledgements
 - a. Proposals must include a certification by the Proposer of nondiscrimination in obtaining any required subcontractors in accordance with ORS 279A.110(4) (see Appendix C).
 - b. Proposals must include a statement as to whether the Proposer is a resident proposer as defined in ORS 279A.120 (see Appendix D).
 - c. Proposals must include written acknowledgement of Proposer's receipt of all issued addenda, unless the District otherwise specifies in the addenda (see Appendix E).
 - d. Proposals must include written acknowledgement of Proposer's agreement to be bound by the state prevailing rates of wage under ORS 279C.800 to 279C.870 (see Appendix F).
2. Description of Qualifications

Each Proposal must contain a narrative description that conveys, at a minimum, the following information:

- a. Firm's Background: Prior Experience (if Proposer is a joint venture, provide this information for each of the firms involved)
 - i. Provide your firm's name, address, phone and fax numbers.

- ii. Provide the name of the contact person submitting the Proposal.
 - iii. Provide a brief overview of your firm, including number of years in continuous operation, your annual gross dollar volume of work for last three (3) years, anticipated volume of work for this year, current company construction capabilities (types of work in which firm specializes, preferred range of job size, etc.) and names of all persons with an ownership interest in the firm. List primary bank, insurance underwriters, accounting firm and legal firm references currently used by company.
 - iv. Provide the names and addresses of any of your firm's clients or any other persons or entities who have made claims against your firm within the last five (5) years alleging that your firm breached a contract for services, was negligent in performance of services, or otherwise caused harm or damage to the claimant. Describe the nature and current status of the claims. Claims should be fully disclosed regardless of whether they involved litigation, arbitration or other formal or informal dispute resolution process. The disclosures required under this provision also apply to any claims arising out of services of any principal or officer of your firm or any member of the project team regardless of whether the person was associated with your firm at the time of the claim.
 - v. Indicate whether your firm or any personnel have been involved in any litigation, arbitration or mediation, either as defendant or plaintiff, over the five (5) years immediately preceding the closing date of the RFP. If your firm or any personnel has been involved in any such litigation, arbitration or mediation, provide a general description of the cause or nature and status of each case or claim, and the identity of the client.
 - vi. Indicate whether your firm has ever been terminated from a project. If so, include the name(s) and address(es) of the client(s) and the nature of the termination.
- b. Project Team and Staffing
- i. Describe current work load and priority of providing the Services as it relates to overall work load.
 - ii. Provide a chart showing all proposed preconstruction and construction phase staff for the Project (down to the Superintendent level). Indicate your company's commitment to assign these personnel to the Project through its completion.
 - iii. For each individual listed on your proposed organizational chart, provide a resume and include at least two client references (including name and current telephone number) for the proposed individuals.
 - iv. State whether your firm is capable of performing all Services described in this RFP and other Services recommended in the Proposal. If your firm intends to subcontract any of the Services to other consultants, the Proposal

shall identify those consultants and describe the consultants' experience in providing the type of Services covered by this RFP

- v. If your firm has multiple locations, please identify the offices in which the various components will originate.
- vi. State as a percentage the approximate amount of time the project manager and superintendent will devote to this Project (i.e., 50%, 100%, etc.). Additionally provide a staffing plan indicating how you will manage and supervise this Project.

c. Related Experience

- i. Provide an overview of up to five (5) school projects recently completed. If your project history does not include many school projects, list and briefly describe up to five (5) projects of comparable size to the proposed Project. For each of the five (5) projects provide information as follows:
 - 1. Brief description of the project;
 - 2. Brief description of preconstruction services provided, if any;
 - 3. Owner's name and the name of an individual employed by the owner, along with his or her current contact information;
 - 4. Architect's name and current telephone number;
 - 5. Name and role of personnel proposed for this Project that were involved with the past project;
 - 6. Location of the project and completion date;
 - 7. Final contract amount and total amount of Change Orders;
 - 8. Originally scheduled and final completion dates; and
 - 9. Total value of project claims that were litigated or arbitrated.
- ii. Briefly discuss your firm's experience completing projects with a similar schedule for completion as this Project. Describe what specific challenges you faced and how you dealt with them.
- iii. Provide a listing of all of your firm's lost or discontinued accounts in the State of Oregon within the last five (5) years.

d. Proposer Integrity

- i. Indicate whether your firm, or any person having influence or control over your firm, has committed a violation of state environmental laws; has previously made false certifications made to a Contracting Agency; or has been convicted of any offenses related to obtaining or attempting to obtain a contract or subcontract or in connection with the Proposer's performance of a contract or subcontract.
- ii. Review of and determinations regarding your firm's integrity will be made pursuant to the process set forth in OAR 137-049-0370.

- e. Overall Project Approach
 - i. State what Project cost control, quality control and schedule control mechanisms you intend to use on this Project. Discuss your plans to address safety issues if work is performed while school is in session.
 - ii. If your firm believes there are additional services not identified in this RFP that are necessary for successful completion of the Project, your firm's Proposal should include a description of the additional services recommended by your firm, describe how the additional services would benefit the District, describe your firm's ability to provide the additional services, and propose a cost for providing the additional services.
 - iii. Identify those portions of the Services, if any, your firm intends to self-perform.
 - f. Availability to and Familiarity with the District Locale
 - 1. Describe your firm's experience with CM/GC services that are unique to the Project location, including but not limited to; soil conditions, climate, and weather-related considerations and how you will use that experience to benefit this Project.
 - 2. Provide information regarding your firm's knowledge of the local area and the unique aspects of the region and community that will influence your process.
 - 3. Discuss any previous experience your firm has providing CM/GC services in Eastern Oregon and/or Eastern Washington and how that experience will influence your approach to this Project.
 - g. References
 - i. Provide a listing of all school districts, if any, and entities in the state of Oregon for whom your firm currently provides CM/GC services. This listing must include a contact name and phone number.
 - ii. Provide contact information for each any other project appropriate for use as a reference.
 - h. Cost of Services
 - i. Present (1) a proposed fee for providing the preconstruction services described in Article 2 of the Contract and (2) a proposed "Contractor's Fee" percentage amount as that term is defined in the Contract. The fee proposal shall be submitted on the form set forth as Appendix G.
3. Proof of CCB Registration. Proposers must provide with their response to this RFP proof of current registration with the Oregon Construction Contractor's Board ("CCB"). **FAILURE TO PROVIDE THE INFORMATION CALLED FOR IN THIS PARAGRAPH MAY, AT DISTRICT'S DISCRETION, CAUSE THE**

CONTRACTOR'S PROPOSAL TO BE REJECTED. Note: Proposers must actually be registered with the CCB and must not be listed by the CCB as disqualified from holding a contract for a public improvement at the time of submitting their Proposals. THE DISTRICT MAY NOT RECEIVE OR CONSIDER A PROPOSAL UNLESS THE PROPOSER IS LICENSED BY THE CONSTRUCTION CONTRACTORS BOARD.

4. Surety Letter of Intent. Proposers must submit a letter of intent to issue performance and payment bonds in the form set forth as Exhibit D to the Contract to the Proposer from a surety. The letter shall confirm the Proposer's ability to secure bonds for with a penal sum of not less than \$10,000,000. The letter of intent may be submitted by a third-party representative of the surety so long as the Proposer includes with the letter of intent evidence of the third party's authority to make the representations on behalf of the surety.
5. Proposers must clearly indicate within their Proposal any exceptions or recommended adjustments to the requested time frames or to the statement of services.

B. EVALUATION

1. Opening of Proposals. Proposals received in response to this RFP will be opened by the District at the District Administration Office, 1001 6th Street, Umatilla, OR 97882, at the time and date specified in the Proposed Schedule, as modified by the District. Proposers who wish to be present at that time will be informed of the number and names of Proposers. No other information will be made available at that time.
2. Evaluation Process. Each Proposal will be subjectively evaluated by an evaluation team appointed by the District (the "Evaluation Team"). The Evaluation Team will score the Proposal based on its assessment of the requested Proposal contents. Those Proposals submitted that do not meet mandatory requirements outlined in this RFP may, in the District's sole discretion, be rejected or receive a lower rating in the evaluation process. A Proposal submitted by a Proposer determined to be not responsible shall be rejected.

The District may request supplemental information from a Proposer concerning the Proposer's ability to perform the Services. If a Proposer fails to provide supplemental information promptly after receiving a written request from the District, the District may, in its sole discretion, refuse to consider the Proposer's proposal.

The role of the committee shall include a complete review of all Proposals submitted and may include conferring with references provided by the Proposer(s). It may also involve interviews with selected Proposer(s) to review and discuss their Proposals and the Services. The Umatilla School District Board of Education ("Board of Education") will make the final decision about which firm will be awarded the Contract.

In the event the District receives two or more Proposals that are identical in terms of fitness, availability, and quality, preference will be given to Proposers residing in Oregon

in accordance with ORS 279A.120. In the event that this does not resolve the tie among Proposers, the Evaluation Committee may reconvene and review the scoring, making changes as the Evaluation Committee deems appropriate until a candidate is selected.

3. Scoring System. Proposals will be evaluated using the categories and scoring indicated below. The final score will be calculated by computing an average of the total Evaluation Team's scores.
 - a. Background (5 Points)
 - b. Project Team & Staffing (15 Points)
 - c. Related Experience (15 Points)
 - d. Proposer Integrity (5 Points)
 - e. Overall Project Approach (15 Points)
 - f. Approach to Schedule and Budget (5 Points)
 - g. Availability to and Familiarity with the District Locale (20 Points)
 - h. References (5 Points)
 - i. Cost of Services (15 Points)
4. Interviews. Proposers may receive a request for an interview that may be conducted as scheduled by the District. The District retains sole discretion to determine which Proposers, if any, will be interviewed and the number of interviews, if any, to be conducted. Interviews, if conducted, will not be scored; however, the Evaluation Team may reconvene and re-evaluate any interviewed Proposers and adjust the ranking of the Proposals as warranted. There is no guarantee of an interview for any one Proposer or all Proposers.
5. Investigation of References. The District reserves the right to investigate the references and past performance of any Proposer with respect to its successful completion of similar projects, compliance with contractual obligations and specifications, and lawful payments of suppliers, contractors, and workers. The District may postpone the award or execution of the Contract after the announcement of the apparent successful Proposer in order to complete the investigation.
6. Applicable Preferences. In its evaluation of Proposals, the District will apply preferences for: Oregon goods and services, as required by ORS 279A.120; the use of recycled materials, as required by ORS 279A.125; and the performance within the state of public printing, binding, and stationery work, as required by ORS 282.210.
7. Price. The District retains the right to negotiate price and terms with top-ranked Proposers. Any unspecified costs shall be borne by the Proposer.
8. No Communications with Evaluation Team. Evaluation Team members may not be contacted or solicited by any firm or individual submitting Proposals, with the exception of the communications expressly authorized in this RFP for purposes of seeking clarification or submitting a protest.

V. SELECTION AND PROTEST OF AWARD

1. Selection of Award. Based on the Evaluation Team's scoring, a recommendation regarding the award of the Contract will be made to the Board of Education. The final decision regarding award of the contract will be made by the Board of Education. The Contract will be awarded to the Proposer who submitted the proposal that the District determines to be the most advantageous to the District based on the evaluation process and the evaluation factors described in this RFP.
2. Notification of Non-Acceptance. All Proposers not initially selected will be notified of the District's decision by receiving a copy of the Notice of Intent to Award sent to the selected Proposer. After the District and the successful Proposer have executed the Contract, any Proposer may review the evaluation documentation, except for information that the District determines to be exempt from disclosure under ORS 192.501 or 192.502. In the event an unsuccessful Proposer requests a meeting to discuss the procurement no later than the time and date specified in the Proposed Schedule, as modified by the District, the District will meet with the unsuccessful Proposer within ten (10) days of receiving the Proposer's request.
3. Protest of Award. If there are disagreements with the outcome or questions regarding the selection process, adversely-affected or aggrieved Proposers must submit protests in writing to Heidi Sipe, 1001 6th Street, Umatilla, OR 97882. Such protests must be received by the District no later than the time and date specified in the Proposed Schedule, as modified by the District.

Protest procedures are set forth in OAR 137-049-0450 and this RFP. Such protests shall specify the grounds for the protest to be considered by the District. To be an adversely-affected or aggrieved Proposer, the Proposer must demonstrate that but for the District's (a) error in failing to reject a non-responsive higher-ranked Proposal, (b) substantial violation of a provision in the RFP or applicable procurement statute or administrative rule, or (c) error in evaluating and scoring the protesting party's Proposal, the protesting party would have been awarded the Contract. No protest of the award of the Contract shall be considered if submitted after the deadline established for submitting such protest. At the request of the protester, a hearing will be conducted before the District staff within seven (7) calendar days after submission of the written protest. The District will either uphold or deny the protest, and a written response will be issued for all properly submitted protests. All such rulings shall be final. If the protest is denied, the District will proceed to award the Contract.

During the resolution of the protest, the District has the right and ability to continue negotiations with the selected Proposer, though contract execution may be delayed until resolution of the protest. If the protest is not resolved at the time when the contract is ready to be executed, the Superintendent may authorize the execution of interim 30-day letter agreements for a limited scope of the services with the selected Proposer.

The District will not consider a protest of award submitted after the protest submission deadline.

4. Negotiation and Final Award. Final award will be subject to execution of the Contract. Negotiation of the Contract may, at the District's discretion and to the fullest extent permitted by law, include any aspect of the Proposal, this RFP, or the Contract. The District reserves the right to negotiate a final Contract that is in the best interest of the District. Award of the Contract may be withdrawn if the Contract negotiations are not concluded in time to execute a Contract by 60 days after the closing date.

If the District and the Proposer initially selected are unable to negotiate a Contract, the District reserves the right to select another Proposer and negotiate a Contract with that Proposer.

Attachments:

List of Bond Projects (Appendix A)

Form of the Agreement (Appendix B)

Certificate of Nondiscrimination (Appendix C)

Proposer Residency Statement (Appendix D)

Acknowledgement of Addenda (Appendix E)

Acknowledgement of Prevailing Wage Rates (Appendix F)

Form of Fee Proposal (Appendix G)

Appendix A

LIST OF BOND PROJECTS

2016 CONSTRUCTION BOND PROJECTS

Project	Location	Cost
Entry and office remodeling to improve building security	MHES	\$200,000
	CBMS	\$150,000
	UHS	\$200,000
Plumbing, electrical, HVAC, window, flooring and bleacher replacement	CBMS	\$5,950,000
Cafeteria/multi-purpose and learning space addition	MHES	\$2,378,750
HVAC DDC controls at MHES and UHS	MHES	\$250,000
	UHS	\$210,000
Cooling tower replacement	UHS	\$100,000
Total		\$9,438,750

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 ____ day of _____ in the year 2017
(In words, indicate day, month and year.)

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

Umatilla School District
1001 6th Street
Umatilla, OR 97882

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

[Entity]
[Address]
Contact:
Phone:

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

2016 Bond Project
Umatilla, Oregon

The Architect:
(Name, legal status and address)

[Entity]
[Address]
Contact:
Phone:

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

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

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The Architect'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.

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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 BINDING DISPUTE RESOLUTION
- 10 TERMINATION OR SUSPENSION
- 11 MISCELLANEOUS PROVISIONS
- 12 SCOPE OF THE AGREEMENT

ARTICLE 1 GENERAL PROVISIONS

§ 1.1 The Contract Documents

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to the execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement. A "Modification" is (1) a written amendment to the Contract signed by both parties, (2) a Change Order signed by both parties or (3) a construction change directive issued by Owner (a "Construction Change Directive") or (4) a written order for a minor change in the Work issued by the Architect. 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 Documents form the Contract for Construction (the "Contract") and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior and contemporaneous negotiations, representations or agreements, either written or oral. Any conflicts, inconsistencies, discrepancies or ambiguities between or among the Contract Documents will be resolved as set forth in Sections 1.2.4 and 1.2.5 of the General Conditions.

§ 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 and approve, in a timely manner, information required by the Construction Manager and to make payments to the Construction Manager in accordance with the requirements of the Contract Documents.

§ 1.3 The Owner's Reliance on the Construction Manager and the Subcontractors

The Owner and Construction Manager acknowledge and agree that (1) all Work performed by the Construction Manager and Subcontractors at all tiers shall be performed in the interests of the Owner and for its benefit, (2) the Construction Manager and Subcontractors at all tiers are authorized by the Owner to exercise their own independent, professional and trade judgments in performing their contractual obligations pursuant to this Section 1.3 on behalf of

the Owner, (3) the Owner will be relying on the Construction Manager and Subcontractors at all tiers to perform their obligations consistent with this Section 1.3, and (4) as a result, the Construction Manager and Subcontractors at all tiers shall owe a duty to the Owner to exercise reasonable care and to avoid negligence in performing their obligations under the Contract and on the Project. The Construction Manager shall incorporate and shall cause to be incorporated into all subcontracts with Subcontractors a provision equivalent to this Section 1.3.

§1.4 General Conditions

The general conditions of the Contract shall be as set forth in A201–2007, as modified (the “General Conditions”), which document is incorporated herein by reference. The term “Contractor” as used in the General Conditions shall mean the Construction Manager.

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. The Construction Manager’s Representative shall not be replaced without the consent of the Owner. If the Owner approves replacement of the Construction Manager’s Representative, the Owner shall have the right to approve the replacement Construction Manager’s Representative. The Owner shall have the right, which shall be exercised in a reasonable fashion, to require replacement of the Construction Manager’s Representative.

§ 2.1 Preconstruction Phase

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

§ 2.1.2 Consultation

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

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

§ 2.1.4 Phased Construction

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

§ 2.1.5 Preliminary Cost Estimates

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

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

§ 2.1.6 Subcontractors

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

§ 2.1.6.1 The Construction Manager shall be responsible to the Owner for acts and omissions of the Construction Manager's employees, Subcontractors at all tiers, design professionals performing services on behalf of the Construction Manager or Subcontractors, and their respective agents and employees, and other persons or entities performing portions of the Work for or on behalf of the Construction Manager or any of its Subcontractors. The Construction Manager shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect in its administration of the Contract, or by tests, inspections or approvals required or performed by persons other than the Construction Manager.

§ 2.1.6.2 The Construction Manager shall enter into written contracts with Subcontractors as provided in Section 5.2 of the General Conditions.

§ 2.1.7 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 is not required to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Construction Manager shall promptly report in writing to the Architect and Owner any nonconformity discovered by or made known to the Construction Manager as a request for information in such form as the Architect may require.

§ 2.1.9 Notices and Compliance with Laws

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

§ 2.2 Guaranteed Maximum Price Proposal and Contract Time

§ 2.2.1 The Construction Manager will provide the Owner with a Guaranteed Maximum Price proposal for the entire scope of the Project at the end of the Design Development phase. The Guaranteed Maximum Price proposal will be provided in writing with all back-up line item costs attached supporting the proposed Guaranteed Maximum Price. The Guaranteed Maximum Price proposal shall be reviewed and agreed to by the Owner and the Architect for final acceptance. The proposed Guaranteed Maximum Price shall include all fees and percentages as well as the costs for General Conditions and all work required to complete the Project satisfactorily.

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

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

- .1 A list of the Drawings and Specifications, including all Addenda thereto, and the Conditions of the Contract;
- .2 A list of the clarifications and assumptions made by the Construction Manager in the preparation of the Guaranteed Maximum Price proposal, including assumptions under Section 2.2.2, to supplement the information provided by the Owner and contained in the Drawings and Specifications;
- .3 A statement of the proposed Guaranteed Maximum Price, including a statement of the estimated Cost of the Work organized by trade categories or systems, allowances, contingency, and the Construction Manager's Fee;
- .4 The anticipated date of Substantial Completion specified in Section 5.4.3, upon which the proposed Guaranteed Maximum Price is based; and
- .5 A date by which the Owner must accept the proposed Guaranteed Maximum Price.

§ 2.2.4 In preparing the Construction Manager's Guaranteed Maximum Price proposal, the Construction Manager shall include its contingency for the Construction Manager's exclusive use to cover those costs considered reimbursable as the Cost of the Work but not included in a Change Order. In no event shall Construction Manager's contingency exceed five percent (5%) of the estimated Cost of the Work.

§ 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, within ten (10) days from the date of such notification.

§ 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 using the form attached hereto as Exhibit A, a copy of which the Owner shall provide to the Architect. The Guaranteed Maximum Price Amendment shall set forth the agreed upon Guaranteed Maximum Price with the information and assumptions upon which it is based.

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

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

§ 2.2.9 The Construction Manager shall include in the Guaranteed Maximum Price all sales, consumer, use and similar taxes, if any, required. Taxes 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 the General Conditions, the date of commencement of the Work shall mean the date of commencement of the Construction Phase.

§ 2.3.1.2 The Construction Phase shall commence upon the earlier of the Owner's authorization of the Construction Managers performance of specified early work or Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal.

§ 2.3.2 Administration

§ 2.3.2.1 Solicitation and Selection of Subcontractors

§2.3.2.1.1 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.

§ 2.3.2.1.2 Absent a written justification prepared by the Construction Manager and approved by the Owner, the Construction Manager's subcontractor selection process should include publicly-advertised subcontractor solicitations and be based on a low-bid competitive method, a low-quote competitive method for contracts in a specified dollar range agreeable to Owner, or a method whereby both price and qualifications of the subcontractors are evaluated in a competitive environment consistent with the requirements of the Contract and the Request for Proposals to which the Construction Manager responded.

§ 2.3.2.1.2.1 If the Construction Manager or a bidder that may be considered a "related party" according to Section 6.10 will be included in the subcontractor selection process to perform particular construction Work on the Project, the Construction Manager must disclose that fact in the selection process documents and announcements. In such an event, the Construction Manager shall also notify the Owner in writing of its intent to submit a bid, and the Owner shall assume responsibility for selecting the successful bidder for that particular construction Work on the Project.

§ 2.3.2.1.3 The Construction Manager shall be primarily responsible for soliciting and selecting prospective subcontractors and resolving any protests in connection with such solicitations and selections. The Construction Manager shall implement protest procedures substantially similar to those set forth in the Request for Proposals to which the Construction Manager responded. All records of the Construction Manager in connection with the solicitation and selection of prospective subcontractors will be public records subject to disclosure under ORS §§ 192.410 to 192.505. Notwithstanding the foregoing the Owner reserves the right to monitor the subcontracting process in order to protect the Owner's interests and to confirm the Construction Manager's compliance with the Contract and the applicable statutes, administrative rules and other legal requirements. Furthermore, the Owner shall have final authority to approve all subcontract awards, but the Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection.

§ 2.3.2.1.4 The Construction Manager will, upon written request within sixty (60) days of the foregoing date of notification, meet with an unsuccessful bidder consistent with the requirements of OAR 137-049-0690(n). Such meeting must be held within forty-five (45) days of the Construction Manager's receipt of the request.

§ 2.3.2.1.5.1 If Construction Manager intends to perform a non-competitive selection process for a particular portion of the Work, the Construction Manager must prepare and submit a written justification to the Owner explaining the circumstances that support the proposed non-competitive selection process, including, but not limited to, emergency circumstances, the Construction Manager's need to utilize a key subcontractor member of the Construction Manager's project team consistent with the Construction Manager's proposal, the need to meet other specified Contract requirements, the continuation or expansion of an existing subcontractor agreement that was awarded through a competitive process consistent with Section 2.3.2.1.2 along with facts supports the continuation or expansion of the subcontractor agreement, or a sole source justification.

§ 2.3.2.1.5.1 The Construction Manager must (1) provide an independent cost estimate for the portion of the Work that will be subject to a non-competitive process, and (2) fully respond to any questions or comments submitted by the Owner.

§ 2.3.2.1.5.2 The Construction Manager shall not pursue a non-competitive procurement without first securing Owner's approval.

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

person or entity recommended to the Owner by the Construction Manager and the amount and time requirement of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

§ 2.3.2.3 Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement, and shall not be awarded on the basis of cost plus a fee without the prior consent of the Owner. If the Subcontract is awarded on a cost-plus a fee basis, the Construction Manager shall provide in the Subcontract for the Owner to receive the same audit rights with regard to the Subcontractor as the Owner receives with regard to the Construction Manager in Section 6.11 below. As provided in Section 3.11 of the General Conditions, Construction Manager shall maintain current copies of such subcontracts or other agreements at the Project site for the Owner's and Architect's review. Construction Manager shall notify Owner of any amendments to such subcontracts or other agreements.

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

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

§ 2.3.2.6 Upon the execution of the Guaranteed Maximum Price Amendment, the Construction Manager shall prepare and submit to the Owner and Architect a construction schedule for the Work and submittal schedule in accordance with Section 3.10 of the General Conditions (the "Construction Schedule").

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

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

§ 2.3.3 In no event shall the Construction Manager be authorized to self-perform any portion of the Work unless it provides to Owner a detailed proposal for performance of the Work, which is supported by at least one independent cost estimate prior to the Work being included in the Contract.

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 at the Owner's option 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 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.

§ 3.1.3 Structural and Environmental Tests, Surveys and Reports. During the Preconstruction Phase, the Owner shall furnish the following information or services with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information

or services. The Construction Manager shall be entitled to rely on the accuracy of information and services furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

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

§ 3.1.3.2 The Owner shall furnish to the Construction Manager, after receipt of written request, surveys describing known 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 Contract shall confirm indicated dimensions and other aspects of existing conditions at the Project site as necessary for the proper performance of the Work.

§ 3.1.3.2.1 Notwithstanding the provisions of Section 3.1.4.2, the Construction Manager shall be responsible for determining, prior to commencement of the Work, the locations of all underground utility lines, cables, pipelines and similar such underground public service installations within and serving the Project site, utilizing utility locating services or other means permitted by law. The Construction Manager shall coordinate with utility and other involved third-party representatives regarding utility locations and related issues, and shall hand excavate or otherwise take special precautions so as to perform the Work in such a manner as to avoid damaging or interrupting the operation of all utility lines, cables, pipelines and similar public service installations within and serving the Project site, whether above ground or underground.

§ 3.1.3.3 The Owner, when such services are required, 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.

§ 3.1.3.4 During the Construction Phase, the Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services. The Construction Manager shall make its requests for such information or services so as to allow the Owner a reasonable time to respond without delaying the performance of the Work.

§ 3.1.3.5 The Owner shall make a good faith attempt to deliver promptly to the Construction Manager copies of notices of right to a lien received by the Owner from parties purporting to be performing or furnishing Work under the Contract or on the Project. However, the Construction Manager agrees that the Owner shall have no obligation to deliver copies of notices or right to a lien received by the Owner from parties purporting to be performing or furnishing Work under the Contract or on the Project, and that the Owner's failure to deliver copies of such notices to the Construction Manager shall have no effect on the obligations of the Construction Manager to hold harmless and indemnify the Owner for mechanics', material suppliers', and/or design professionals' construction or similar liens as required by the Contract or applicable law.

§ 3.2 Owner's Authorized Representative

The Owner's Authorized Representative shall have the authority to act on behalf of the Owner with respect to the Project. Changes to the Contract involving modification to the Contract Time or Contract Sum must be signed by the Owners Authorized Representative. Neither the Architect nor the Owner's Project Manager has such authority. The Owner's Authorized Representative shall render decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the Construction Manager. The term "Owner" means the Owner or the Owner's Authorized Representative.

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

§ 3.3 **The Owner's Project Manager.**

Earl Eastman
Alliance Management & Construction Solutions
59009 E. Main PR SE
Benton City, WA 99320

509.222.9800
earl@alliancemcs.com

§ 3.3.1 The Owner's Project Manager shall represent the Owner's interest throughout the Project. The Owner's Project Manager shall not have the authority to bind Owner regarding any matter relating to the Contract.

§ 3.4 **Architect**

The Owner shall retain an Architect to provide services, duties and responsibilities as described in the agreement between Owner and Architect, including any additional services requested by the Construction Manager that are necessary for the Preconstruction and Construction Phase services under this Agreement. The Owner shall provide the Construction Manager a copy of the executed agreement between the Owner and the Architect, and any further modifications to the agreement.

ARTICLE 4 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

§ 4.1 **Compensation**

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

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

« »

§ 4.1.3 If the Preconstruction Phase services covered by this Agreement have not been completed by May 31, 2018, through no fault of the Construction Manager, the Construction Manager's compensation for Preconstruction Phase services shall be equitably adjusted.

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

§ 4.2 **Payments**

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

§ 4.2.2 Payments are due and payable upon certification by Architect and approval by Owner of the Construction Manager's invoice. Amounts unpaid «fifteen» («15») days after certification and approval shall bear interest at the rate entered below:

Three times the discount rate on 90-day commercial paper in effect on the Progress Payment Due Date at the Federal Reserve Bank in the Federal Reserve district that includes Oregon, up to a maximum rate of thirty percent (30 %).

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 for the Construction Manager's performance of the

Contract. 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.)

« » % of the Cost of the Work not-to-exceed, inclusive of profit, overhead, and all other direct or non-reimbursable costs not included in the Cost of the Work and approved by Owner.

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

The same rate specified in Section 5.1.1.

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

Ten percent (10%), overhead, and five percent (5%) profit

§ 5.1.4 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.)

«In the event the sum of the final Contract Sum shall be less than the final Guaranteed Maximum Price, the savings shall devolve one hundred percent (100%) 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; no oral changes shall be binding on the Owner. The Architect may make minor changes in the Work as provided in Section 7.4 of the General Conditions. The Construction Manager shall be entitled to an equitable adjustment in the Contract Time as a result of changes in the Work.

§ 5.3.2 Adjustments to the Guaranteed Maximum Price on account of changes in the Work subsequent to the execution of the Guaranteed Maximum Price Amendment may be determined by any of the methods listed in Section 7.3.3 of the General Conditions.

§ 5.3.3 In calculating adjustments to subcontracts (except those awarded with the Owner's prior consent on the basis of cost plus a fee), the terms "cost" and "fee" as used in Section 7.3.3.3 of the General Conditions and the term "costs" as used in Sections 7.3.7 of the General Conditions shall have the meanings assigned to them in the General Conditions and shall not be modified by Sections 5.1, 5.2, 6.1 through 6.7, or 6.9 of this Agreement. Adjustments to subcontracts awarded with the Owner's prior consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.

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

§ 5.3.5 A Change Order shall be based upon a prior written agreement between Owner and Construction Manager. A Construction Change Directive requires written direction by Owner and may or may not be agreed to by Construction Manager. In order to be binding upon Owner, all Change Orders and Construction Change Directives must be properly completed in writing before commencement of the altered or additional Work, and before Construction Manager incurs any additional time or expense. Owner will not be responsible for additional costs, fees, or time associated with any altered or additional Work unless a corresponding Change Order or Construction Change Directive is properly and timely prepared and executed as required by the Contract Documents in advance of the extra or different Work. Construction Manager hereby waives any argument that Owner’s conduct (including, but not limited to, orally approving changes or extras) amounts to a waiver of the prior written change requirements of the Contract Documents.

§ 5.4 Date of Commencement and Substantial Completion

§ 5.4.1 The date of commencement of the Work shall be the date of this Agreement.

§ 5.4.2 The Contract Time shall be measured from the date of commencement.

§ 5.4.3 The Construction Manager shall achieve Substantial Completion of the entire Work not later than March 31, 2019, as that date may be amended as provided in the Contract Documents, and shall achieve Final Completion of the entire Work within thirty (30) days after the date required for achievement of Substantial Completion.

§ 5.4.4 The Construction Manager shall prosecute the Work diligently and continuously consistent with the Construction Schedule prepared and approved pursuant to the General Conditions.

§ 5.5 Liquidated Damages

§ 5.5.1 The Construction Manager acknowledges that the Owner will incur significant damages if the Project is not completed within the Contract Time, including without limitation, damages in the form of: inability to use the Project and all related facilities (i.e. “loss of use”); delay costs for completion of portions of the Project or related projects to be constructed by the Owner or the Owner’s separate contractors; or costs of extended services of the Owner’s project management staff, outside construction management firms, Architect, any separate contractors and consultants, and others performing work or services related to the Project. In consideration of the factors set out in this Section 5.5.1, the Construction Manager acknowledges and agrees that time is particularly of the essence in the Construction Manager’s performance of the Work in accordance with the agreed date of commencement of the Work, the agreed dates of Substantial Completion and Final Completion of the Work, and the approved Construction Schedule.

§ 5.5.2 Loss of Use Liquidated Damages

§ 5.5.2.1 The Owner and Construction Manager acknowledge and agree that if Substantial Completion of the Work is not achieved by the Contract Time for Substantial Completion, the amount of the Owner’s actual loss of use damages (as described in 5.5.1 above) will be difficult, impractical or impossible to determine. Accordingly, the parties agree that if Substantial Completion is not achieved by the agreed date of Substantial Completion as may be adjusted pursuant to the Contract Documents, the Construction Manager shall pay to the Owner as liquidated damages for the loss of use of the Project the following amounts: the sum of two hundred fifty dollars (\$250) for each partial day or full day of delay beyond the deadline for Substantial Completion.

§ 5.5.2.2 The parties further acknowledge and agree that the Construction Manager’s obligation to pay liquidated damages under this Section 5.5 shall be in lieu of the obligation to pay actual delay damages for the loss of use damages. The parties agree that the daily rate agreed to above is reasonable in comparison to the approximate scope of actual delay damages for loss of use that the parties anticipate as of the time of execution of this Agreement, and that the payment of such liquidated damages is not intended to be a penalty or forfeiture. The parties further acknowledge that these liquidated damages are meant to reimburse the Owner only for loss of use delay damages and that Owner reserves the right to claim other types of damages against Construction Manager resulting from delays, including but not limited to the other delay damages described in Paragraph 5.5.1.

§ 5.5.3 Withholding of Liquidated Damages

Owner may withhold liquidated damages from any progress or final payment.

§ 5.6 Acceleration of Work

In the event the Contractor, at any time, is behind the schedule for the completion of the Work, the Owner shall have the right to accelerate the completion date of the Work, as provided in Sections 3.10.4 and 3.10.5 of the General Conditions.

ARTICLE 6 COST OF THE WORK FOR CONSTRUCTION PHASE

§ 6.1 Cost of the Work

§ 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 written consent of the Owner. The Cost of the Work shall include only the items set forth in this Article 6 if they are included in the Guaranteed Maximum Price Amendment.

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

§ 6.2 Labor Costs

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

§ 6.2.2 With the Owner's approval, wages or salaries of the Construction Manager's supervisory and administrative personnel when stationed at the site, or at the home office to the extent working on the Project.

§ 6.2.3 Wages or 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 written approval.

§ 6.3 Subcontract Costs

Payments made by the Construction Manager to Subcontractors in accordance with the requirements of the subcontracts, purchase orders and similar agreements.

§ 6.4 Costs of Materials and Equipment Incorporated in 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 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, fuel and lubrication, minor repairs, maintenance, replacements, insurance thereon, and dismantling and removal. Rates of Construction Manager-owned equipment and quantities of equipment shall be subject to the Owner's prior approval.

§ 6.5.2.1 Rates for rental equipment owned by the Construction Manager or by affiliated or associated firms or companies, including but not limited to firms or companies owned or controlled by officers, members or partners of the Construction Manager, shall be no higher than eighty-five percent (85%) of the market rental rates for Construction Manager-owned equipment in the location of the Project. Rates for rental equipment owned by third-parties shall be the Construction Manager's actual costs to rent such equipment provided such costs are reasonable in relation to market rental rates for such equipment in the locate of the Project.

§ 6.5.2.2 In no event shall the rental charges paid for any item pursuant to Section 6.5.2 exceed the market-rate cost to purchase such item.

§ 6.5.3 Costs of removal and proper disposal 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, water, electricity and other utility service at the site and reasonable petty cash expenses of the site office.

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

§ 6.5.6 Costs of safety programs and drug, alcohol and controlled substances testing specific to the Project.

§ 6.6 Miscellaneous Costs

§ 6.6.1 Premiums for that portion of the cost of insurance and bonds required by the Contract Documents that are directly attributed to this Contract and required or permitted by its terms. 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 specifically related to the Work and for which the Construction Manager is liable.

§ 6.6.3 Fees and assessments for the permits and other governmental licenses for which the Construction Manager is required by the Contract Documents to pay, provided that such fees and taxes shall be excluded from the Cost of the Work for purposes of determining the Construction Manager's Fee.

§ 6.6.4 Fees for tests and inspections required by the Contract Documents or governmental agencies and related to defective or nonconforming Work, but only to the extent Section 6.7.3 applies.

§ 6.6.4.1 Fees for tests, inspections and approvals of the Work that are not required (not referenced in Section 13.5 of the General Conditions) but nonetheless are ordered by the Construction Manager, except to the extent such tests, inspections and approvals are related to defective or nonconforming Work and the costs of repairing or correcting such defective or nonconforming Work is not reimbursable under Section 6.7.3.

§ 6.6.5 Royalties and license fees paid for the use of a particular design, process, product or document required by the Contract Documents; the cost of defending suits or claims for infringement of patent rights and copyrights 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 General Conditions or other provisions of the Contract Documents, then they shall not be included in the Cost of the Work.

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

§ 6.6.7 Deposits lost for causes other than the Construction Manager's fault 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 the negligence or fault of the Construction Manager (or those for whom it is responsible) or from disputes between the Owner and the 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 written approval.

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

§ 6.6.10 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.

§ 6.7 Other Costs and Emergencies

§ 6.7.1 Other costs incurred in the performance of the Work if, and to the extent, (1) approved in advance in writing as a Cost of the Work by the Owner, or (2) expressly identified as a Cost of the Work in the General Conditions.

§ 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 the General Conditions, to the extent not the result of negligence or fault of Construction Manager or its Subcontractors at any tier.

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

§ 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;
- .2 Expenses of the Construction Manager's principal office and site offices;
- .3 Overhead and general expenses, except as may be expressly included in Article 6;
- .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, costs due to the negligence or failure of the Construction Manager or Subcontractors 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 Article 7;
- .7 Cost of parking or related access; and
- .8 Costs, other than costs included in Change Orders or Modifications approved in writing by the Owner, that would cause the Guaranteed Maximum Price to be exceeded.

§ 6.8.1.1 The Cost of the Work shall not include costs incurred before the Owner's written approval thereof, when such prior approval is required by the Contract Documents, and costs incurred in excess of the Owner's limitations or contrary to the Owner's limitations or instructions, when such limitations or instructions are imposed by the Owner pursuant to the Contract Documents.

§ 6.8.1.2 The Cost of the Work shall not include Costs expressly excluded from the Cost of the Work by the Contract Documents.

§ 6.8.1.3 The Cost of the Work shall not include Fees and costs of business licenses and contractor, design professional and other licenses or registrations.

§ 6.9 Discounts, Rebates and Refunds

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

§ 6.9.1.1 The Construction Manager agrees to inform the Owner and Architect in a timely manner of opportunities for cash discounts under Section 6.9.1 in excess of One Thousand Dollars (\$1,000.00).

§ 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 (10%) 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 Section 2.3.2. 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 Section 2.3.2. If the Construction Manager fails to notify the Owner of a related party transaction and/or the Owner does not authorize a related party transaction, the costs incurred in connection with such related party transaction shall not be included as a cost to be reimbursed by the Owner. In no event shall a related party be authorized to perform any portion of the Work unless the Construction Manager provides to Owner a detailed proposal for performance of the Work, which is supported by at least one independent cost estimate prior to the Work being included in the Contract

§ 6.11 Accounting Records

§ 6.11.1 The Construction Manager shall keep full and detailed records and accounts related to the cost of the Work, including but not limited to those records necessary to clearly document (1) its performance; and (2) any claims arising from or relating to its performance under the Contract. The Construction Manager shall exercise such controls as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner’s auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Construction Manager’s records and accounts, including complete documentation supporting accounting entries, books, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor’s proposals, purchase orders and similar agreements, vouchers, memoranda and other data relating to this Contract. The Construction Manager shall preserve these records for a period of three (3) years after final payment, or for such longer period as may be required by law. The term “Owner’s accountants” as used in this Contract shall mean, at the Owner’s discretion, “Owner’s accountants”, “Owner’s internal audit department”, or “Owner’s Authorized Representative”.

§ 6.11.2 The Owner shall have the right to conduct an independent audit of the Construction Manager's records, books and other documents referenced in Section 6.11.1 at any time during the performance of the Work and thereafter until the end of the period referenced in Section 6.11.1. If such audit determines that the Construction Manager has submitted Applications for Payment for more than the amount actually due under the Contract Documents or has been paid pursuant to Applications for Payment for more than the amount actually due under the Contract Documents, the Construction Manager shall (1) issue a credit to the Owner in the amount of the overage, if the overage has not been paid, and (2) pay the amount of the overage and accumulated interest thereon, if the overage has been paid.

§ 6.11.2.1 If the amount of the overage determined by the audit referenced in Section 6.11.2, whether paid or not, is one hundred two percent (102%) or more of the amount actually due under the Contract Documents, the Construction Manager shall pay the cost of the audit. Such cost shall not be included in the Cost of the Work.

ARTICLE 7 PAYMENTS FOR CONSTRUCTION PHASE SERVICES

§ 7.1 Progress Payments

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

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

« »

§ 7.1.3 Provided that a complete and correct Application for Payment is received by the Owner and Architect not later than the « 1st » day of a month, the Owner shall make payment of the approved amount to the Construction Manager not later than the « 30th » day of the same month. If an Application for Payment is received by the Owner and Architect after the application date fixed above, payment shall be made of the approved amount by the Owner not later than « thirty » (« 30 ») days after the Owner and Architect receives the Application for Payment. Amounts unpaid « fifteen » (« 15 ») days after Architect's certification shall bear interest at the rate entered below:

Three times the discount rate on 90-day commercial paper in effect on the Progress Payment Due Date at the Federal Reserve Bank in the Federal Reserve district that includes Oregon, up to a maximum rate of thirty percent (30 %).

§ 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 (1) progress payments already received by the Construction Manager, less (2) that portion of those payments attributable to the Construction Manager's Fee, plus (3) payrolls for the period covered by the present Application for Payment.

§ 7.1.5 Each Application for Payment shall be based on the most recent schedule of values submitted by the Construction Manager and approved by the Owner 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, Change Orders, alternates, unit price Work, allowances and contingencies shall be shown as separate items. The schedule of values shall comply with the General Conditions. The current schedule of values approved by the Owner shall be used as a basis for reviewing the Construction Manager's Applications for Payment.

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

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

- .1 Take that portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 7.3.9 of the General Conditions;
- .2 Add that portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work, or if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing;
- .3 Add the Construction Manager's Fee. The Construction Manager's Fee shall be computed upon the Cost of the Work at the rate stated in Section 5.1.1 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 the aggregate of previous payments made by the Owner;
- .5 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;
- .6 Subtract amounts, if any, for which the Architect has withheld or nullified a Certificate for Payment as provided in Section 9.5 of the General Conditions; and
- .7 Subtract retainage of five percent (5 %).

§ 7.1.8 Payments to Subcontractors shall be subject to retainage of not less than five percent (5%).

§ 7.1.9 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 the 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 the Owner has made exhaustive or continuous on-site inspections; or that the Architect or the Owner 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. Owner's making of progress payments shall not be construed as an acceptance or approval of any part of the Work, and shall not relieve the Contractor of responsibility for defective workmanship or material.

§ 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 after final payment as provided in Section 12.2.2 of the General Conditions, and to satisfy other requirements, if any, which arise or extend beyond final payment;
- .2 the Construction Manager has submitted a final accounting for the Cost of the Work and a final Application for Payment;
- .3 Construction Manager has completed the Punch List items, and has delivered to Owner a final certificate of occupancy or its equivalent, and all Close Out Documents, lien waivers, and other documents and deliveries required for final payment under the Contract Documents.
- .4 a final Certificate for Payment has been issued by the Architect and approved by the Owner; and
- .5 the Construction Manager has fully complied with Section 9.10 of the General Conditions, and all other requirements of the Contract Documents for final payment.

The Owner's final payment to the Construction Manager shall be made no later than thirty (30) days after the issuance of the Architect's final Certificate for Payment.

§ 7.2.2 The Owner's auditors may review and report on the Construction Manager's final accounting within 30 days after delivery of the final accounting to the Architect and the Owner by the Construction Manager. The Owner's auditors will notify the Architect in writing if they intend to review and report on the Construction Manager's final

accounting within fourteen (14) days after delivery of the final accounting to the Architect and the Owner by the Construction Manager. Based upon such Cost of the Work as the Owner's auditors report to be substantiated by the Construction Manager's final accounting, and provided the other conditions of Section 7.2.1 have been met, the Architect will, within seven (7) days after receipt of the written report of the Owner's auditors or written notification that the Owner's auditors do not intend to review and report on the Construction Manager's final accounting, either issue to the Owner a final Certificate for Payment with a copy to the Construction Manager, or notify the Construction Manager and Owner in writing of the Architect's reasons for withholding a certificate as provided in Section 9.5.1 of the General Conditions. The time periods stated in this Section 7.2.2 supersede those stated in Section 9.4.1 of the General Conditions. The Architect is not responsible for verifying the accuracy of the Construction Manager's final accounting.

§ 7.2.3 If the Owner's auditors report the Cost of the Work as substantiated by the Construction Manager's final accounting to be less than claimed by the Construction Manager, the Construction Manager shall be entitled to request mediation of the disputed amount pursuant to the terms of the Contract. A request for mediation shall be made by the Construction Manager within thirty (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 thirty (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 of Payment.

§ 7.2.4 If, subsequent to final payment but within one (1) year after Substantial Completion of the Work, and at the Owner's written request, the Construction Manager incurs costs described in and not excluded by Article 6 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.

ARTICLE 8 INSURANCE AND BONDS

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

§ 8.1 Notwithstanding the provisions set forth in Article 11 of the General Conditions, the Construction Manager shall be required to provide payment and performance bonds by the earlier of the execution of an agreement for the performance of early work or the execution of the GMP Amendment.

ARTICLE 9 BINDING DISPUTE RESOLUTION

§ 9.1 For any Claim subject to, but not resolved by mediation pursuant to Section 15.2 of the General Conditions, the method of binding dispute resolution shall, pursuant to Section 15.3 of the General Conditions, be at the Owner's sole option either (i) arbitration or (ii) litigation in a court of competent jurisdiction.

ARTICLE 10 TERMINATION OR SUSPENSION

§ 10.1 Termination Prior to Establishment of the Guaranteed Maximum Price

§ 10.1.1 Prior to the execution of the Guaranteed Maximum Price Amendment, the Owner may terminate this Agreement upon not less than seven (7) days' written notice to the Construction Manager for cause or for the Owner's convenience and without cause, and the Construction Manager may terminate this Agreement, upon not less than seven (7) days' written notice to the Owner, for the reasons set forth in Section 14.1.1 of the General Conditions.

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

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

- .1 Take the Cost of the Work incurred by the Construction Manager to the date of termination;

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

In no event shall the Owner be obligated to pay the Construction Manager for overhead or profit on unperformed Work, or damages as a result of such termination.

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

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

§ 10.2 Termination Subsequent to Establishing Guaranteed Maximum Price

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

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

§ 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 14.4.3 of the General Conditions shall not exceed the amount the Construction Manager would otherwise have received under Sections 10.1.2 and 10.1.3 above.

§ 10.3 Suspension

The Work may be suspended by the Owner as provided in Article 14 of the General Conditions. In such case, the Guaranteed Maximum Price and Contract Time may be increased as provided in Section 14.3.2 of the General Conditions, except that the term "profit" shall be understood to mean the Construction Manager's Fee as described in Sections 5.1 and 5.3.4 of this Agreement.

§ 10.4 Termination of the Contract or a divisible portion thereof shall not relieve either the Contractor or its surety of liability for claims arising out of the Work performed.

ARTICLE 11 MISCELLANEOUS PROVISIONS

§ 11.1 Terms in this Agreement shall have the same meaning as those in the General Conditions.

§ 11.2 Other Provisions

§ 11.2.1 The Construction Manager represents and warrants to the Owner, in addition to the other representations and warranties contained in the Contract Documents and as an inducement to the Owner to execute the Agreement, which representations and warranties shall survive the execution of this Agreement and the Final Completion of the Work, as follows:

- .1 that the Construction Manager is financially solvent, able to pay its debts as they mature and possessed of sufficient working capital to perform and complete the Work as described in the Contract Documents and to otherwise perform its obligations under the Contract Documents;
- .2 that the Construction Manager is able to furnish the labor, services, materials, equipment, facilities, supervision, project management and other services necessary and required to perform and complete the Work as described in this Agreement and to otherwise perform its obligations under the Contract Documents, and has sufficient experience and competence to do so;
- .3 that the Construction Manager is authorized to do business in the state where the Project is located and is properly licensed and registered by all necessary governmental and quasi-public authorities having jurisdiction over the Construction Manager, the Work and the Project; and
- .4 that the Construction Manager's execution of this Agreement and its performance of the Contract is within its duly authorized powers.

§ 11.3 **Attorneys' Fees.** Should any suit, action or arbitration be commenced in connection with any dispute arising out of this Agreement, the prevailing party shall be entitled to recover its costs and disbursements, investigation costs and fees, expert witness costs and fees, and attorney costs and fees, as the court or arbitrator may adjudge reasonable, incurred in connection with such dispute before trial or arbitration, at trial or arbitration, upon any motion for reconsideration, upon any appeal or petition for review, and upon any collection efforts or proceedings.

§ 11.4 Contractor hereby agrees that the Project will be completed substantially in accordance with building permits and any other permits related to development of the Project, the Contract Documents and unless otherwise provided in the Contract Documents all manufacturers' or suppliers' recommended installation procedures so as to preserve any warranties with respect thereto, free and clear of all liens or encumbrances and within the time set forth in the Contract Documents. Contractor does further agree that on the date of Substantial Completion, the Project shall comply with all applicable building laws, ordinances, rules and regulations known, or which should in the exercise of reasonable care be known, to Contractor, and that all utility services necessary for the operation of the Project shall have been provided to the Project within the time for completion of construction.

§ 11.5 **Interpretation.** The Contract Documents have been carefully reviewed and negotiated by both parties at arm's length, and they shall be given fair and reasonable interpretation in accordance with the words contained in them without any weight being given to whether a provision was drafted by one party or its counsel. Section headings are for convenience only and shall not be a part of the Contract Documents or considered in their interpretation. The Exhibits attached hereto are made a part hereof.

§ 11.6 **Compliance with All Governmental Regulations.** The Contractor shall comply with all federal, state and local laws, codes, regulations and ordinances applicable to the Work and this Agreement. ORS Chapters 279A and 279C and the Attorney General's Model Public Contracting Rules (as such rules may have been modified by Owner) ("Rules") contain certain requirements for public contracts, including but not limited to certain required contract provisions. The required contract provisions are attached as Exhibit C and are incorporated herein by this reference. Furthermore, Contractor and Owner agree to comply with all requirements of ORS Chapter 297A and 279C, the Rules and other laws and regulations whether or not such provisions are included in Exhibit C and whether or not such provisions are excised in Exhibit C.

§ 11.7 If the Contractor fails, neglects or refuses to make prompt payment for labor, materials, equipment or other services furnished to the Contractor or a Subcontractor by any person in connection with the Project as such claim becomes due, the Owner may pay the claim and charge the amount of the payment against funds due or to become due the Contractor under this Contract. Payment of claims in this manner shall not relieve the Contractor or the Contractor's surety from obligation with respect to any unpaid claims.

§ 11.8 Work performed during the Construction Phase of this Contract is subject to the State of Oregon Bureau of Labor and Industries Prevailing Wage Rates, and Contractor shall pay or cause to be paid all workers accordingly.

§ 11.9 Remedies Cumulative

§11.9.1 The Owner may, at its discretion, avail itself of any or all rights or remedies set forth in these rules, in the Contract, or available at law or in equity.

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 herein
- .2 the General Conditions
- .3 Other documents:
(List other documents, if any, forming part of the Agreement.)

Exhibit A – AIA Documents A133, Exhibit A – Guaranteed Maximum Price Amendment

Exhibit B – Lien Waivers and Claim Releases

Exhibit C – Contract Provisions from ORS Chapters 279A and 279C and the Attorney General Model Public Contracting Rules

Exhibit D – Forms of Payment and Performance Bonds

Exhibit E – Insurance Requirements

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

OWNER (Signature)

CONSTRUCTION MANAGER (Signature)

« »« »

(Printed name and title)

« »« »

(Printed name and title)

DRAFT AIA[®] Document A133[™] - 2009

Exhibit A

Guaranteed Maximum Price Amendment

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

2016 Bond Project
Umatilla, Oregon

THE OWNER:
(Name, legal status and address)

Umatilla School District
1001 6th Street
Umatilla, OR 97882

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

« »« »
« »

ARTICLE A.1

§ A.1.1 Guaranteed Maximum Price

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

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

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

« »

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

« »

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

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.

(Identify allowance and state exclusions, if any, from the allowance price.)

Item	Price (\$0.00)

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

« »

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

Document	Title	Date	Pages

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

« »

Section	Title	Date	Pages

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

« »

Number	Title	Date

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

« »

ARTICLE A.2

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

« »

OWNER (Signature)

CONSTRUCTION MANAGER (Signature)

« »« »

(Printed name and title)

« »« »

(Printed name and title)

EXHIBIT B

FORMS OF WAIVERS AND RELEASES

CONDITIONAL RELEASE ON PROGRESS PAYMENT	UNCONDITIONAL RELEASE ON PROGRESS PAYMENT
--	--

The undersigned does hereby acknowledge that upon receipt by the undersigned of a check from _____ in the sum of \$_____ for labor, services, equipment and materials, and covering all events, conditions and occurrences, on the above-referenced job, and when the check has been properly endorsed and has been paid by the bank upon which it was drawn, this document shall become effective to release any and all rights of lien and claims of lien, and any and all other claims, including but not limited to, negligence, breach of contract, delay and impact claims, or any other claims, which the undersigned has or may have, whether known or unknown, on the above-referenced job ("Claims"). This release covers full payment for all labor, services, equipment, materials, events, conditions, occurrences and Claims through _____ (Date) only and does not cover unpaid retention or items furnished after that date.

Before any recipient of this document relies on it, said party should verify evidence of payment to the undersigned.

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

SIGNATURE:

(Authorized Corporate Officer/Partner/Owner)

(Title) _____

Company Name: _____

Dated this ___ day of _____, 20__

Project Name: _____

Project Address: _____

The undersigned does hereby acknowledge that the undersigned has been paid and has received a progress payment in the sum of \$_____ for labor, services, equipment and materials, and covering all events, conditions and occurrences, on the above-referenced job, and does hereby release any and all rights of lien and claims of lien, and any and all other claims, including but not limited to, negligence, breach of contract, delay and impact claims, or any other claims, which the undersigned has or may have, whether known or unknown, on the above-referenced job ("Claims"). This release covers full payment for all labor, services, equipment, materials, events, conditions, occurrences and Claims through _____ (Date) only and does not cover unpaid retention or items furnished after that date.

NOTICE: THIS DOCUMENT IS ENFORCEABLE AGAINST YOU IF YOU SIGN IT, EVEN IF YOU HAVE NOT BEEN PAID. IF YOU HAVE NOT BEEN PAID, USE A CONDITIONAL RELEASE FORM.

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

SIGNATURE:

(Authorized Corporate Officer/Partner/Owner)

(Title) _____

Company Name: _____

Dated this ___ day of _____, 20__

Project Name: _____

Project Address: _____

CONDITIONAL RELEASE ON FINAL PAYMENT	UNCONDITIONAL RELEASE ON FINAL PAYMENT
---	---

The undersigned does hereby acknowledge that upon receipt by the undersigned of a final payment check from _____ in the sum of \$ _____ (representing the agreed full and final payment) for all labor, services, equipment and materials, and covering all events, conditions and occurrences, on the above-referenced job, and when the check has been properly endorsed and has been paid by the bank upon which it was drawn, this document shall become effective to release any and all rights of lien and claims of lien, and any and all other claims, including but not limited to, negligence, breach of contract, delay and impact claims, or any other claims, which the undersigned has or may have, whether known or unknown, on the above-referenced job ("Claims"). This release covers full and final payment for all labor, services, equipment, materials, events, conditions, occurrences and Claims, including but not limited to all retention, through Final Completion of the Work and for the entire project.

Before any recipient of this document relies on it, said party should verify evidence of payment to the undersigned.

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

SIGNATURE:

(Authorized Corporate Officer/Partner/Owner)

(Title) _____

Company Name: _____

Dated this ___ day of _____, 20__

Project Name: _____

Project Address: _____

The undersigned does hereby acknowledge that the undersigned has been paid and has received final payment in the sum of \$ _____ (representing the agreed full and final payment) for all labor, services, equipment and materials, and covering all events, conditions and occurrences, on the above-referenced job, and does hereby release any and all rights of lien and claims of lien, and any and all other claims, including but not limited to, negligence, breach of contract, delay and impact claims, or any other claims, which the undersigned has or may have, whether known or unknown, on the above-referenced job ("Claims"). This release covers full and final payment for all labor, services, equipment, materials, events, conditions, occurrences and Claims, including but not limited to all retention, through Final Completion of the Work and for the entire project.

NOTICE: THIS DOCUMENT IS ENFORCEABLE AGAINST YOU IF YOU SIGN IT, EVEN IF YOU HAVE NOT BEEN PAID. IF YOU HAVE NOT BEEN PAID, USE A CONDITIONAL RELEASE FORM.

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

SIGNATURE:

(Authorized Corporate Officer/Partner/Owner)

(Title) _____

Company Name: _____

Dated this ___ day of _____, 20__

Project Name: _____

Project Address: _____

EXHIBIT C

PROVISIONS FROM THE PUBLIC CONTRACTING CODE AND PUBLIC CONTRACTING RULES

1. GENERAL

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

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

2. PAYMENT.

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

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

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

2.4 CONTRACTOR’S FAILURE TO MAKE PROMPT PAYMENT. If the Contractor has failed, neglected or refused to pay promptly a person’s claim for labor, equipment, services or materials that the person provides to the Contractor or a Subcontractor in connection with the Project as such claim becomes due, the Owner may pay such claim to the person that provides the labor, equipment, services or materials and charge the amount of the payment against funds due or to become due the Contractor under the Contract. Owner reserves the right to make payments directly or by multiple-payee check and Contractor hereby consents to such direct and multiple-payee check payments. Upon Owner’s request, Contractor shall furnish to Owner the information required to facilitate such payments with each application for

payment, including (1) names, addresses, and telephone numbers of persons making any such claim for labor, equipment, services or material, and (2) a complete listing of outstanding amounts owed to all such persons.

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

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

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

3. PUBLIC WORKS PROJECT.

3.1 PREVAILING RATE OF WAGE. The Project is a public works project subject to the prevailing wage rate requirements in ORS 279C.800 to 279C.870. Contractor and the Subcontractors shall comply with ORS 279C.840. Workers in each trade or occupation required for the Work of the Project shall not be paid less than the minimum hourly rate of wage for such workers as detailed in the Specifications for the Contract.

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

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

5. CONTRACTOR'S EMPLOYEES AND SUBCONTRACTORS.

5.1 EMPLOYEE DRUG TESTING PROGRAM. Contractor shall certify to Owner that Contractor has initiated, and shall maintain through the completion of the Work of the Project, an employee drug testing program.

5.2 WORK DAY/WORK WEEK. No person shall be required or permitted to labor more than 10 hours in any one day, or 40 hours in any one week, except in cases of necessity or emergency or when the

public policy absolutely requires it, in which event, the person so employed for excessive hours shall receive at least time and a half pay for (1) all overtime in excess of eight hours in any one day or 40 hours in any one week when the work week is five consecutive days, Monday through Friday; or (2) all overtime in excess of 10 hours in any one day or 40 hours in any one week when the work week is four consecutive days, Monday through Friday; and (3) all work performed on Saturday and on any legal holiday specified in ORS 279C.540.

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

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

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

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

5.7 PROMPT PAYMENT BY CONTRACTOR AND SUBCONTRACTORS; INTEREST PENALTY. Contractor shall include in each subcontract entered into by the Contractor a clause obligating the Contractor (1) to make payment to the Subcontractor for satisfactory performance within ten (10) days out of such amounts as are paid to the Contractor by the Owner under the Contract, and (2) if payment is not made within 30 days after receipt of payment from the Owner, to pay the Subcontractor an interest penalty on amounts due in the case of each payment not made in accordance with the payment clause included in the subcontract as required by the preceding clause, (1) above. The interest penalty shall be for the period beginning on the day after the required payment date and ending on the date on which payment of the amount due is made, and computed at the rate specified in ORS 279C.515(2). Contractor shall also include in each subcontract entered into by the Contractor a provision requiring each first-tier Subcontractor to include a payment clause and an interest penalty clause conforming to the standards of this Section 5.7 in each of its subcontracts and to require each of the first-tier Subcontractor's lower-tier Subcontractors to include such clauses in their subcontracts with each lower-tier Subcontractor.

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

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

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

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

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

Federal Agencies:

Agriculture, Dept. of
Forest Service
Natural Resource Conservation Service
Defense, Dept. of
Army Corps of Engineers
Coast Guard
Environmental Protection Agency
Interior, Dept. of
U.S. Fish and Wildlife Service
Bureau of Land Management
Bureau of Indian Affairs
Bureau of Reclamation
Labor, Dept. of
Occupational Safety and Health Administration
Transportation, Dept. of
Federal Highway Administration

State Agencies:

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

Local Agencies:

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

10. RETAINAGE. The withholding of retainage by the Contractor or Subcontractor shall be in accordance with ORS 279C.550 to ORS 279C.570 and OAR 137-049-0820.

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

12. NOTICE OF CLAIM ON BOND. The notice of claim required by ORS 279C.600 must be sent by registered or certified mail or hand delivered no later than 180 days after the day the person last provided labor or furnished materials or 180 days after the worker listed in the notice of claim by the Commissioner of the Bureau of Labor and Industries last provided labor. The notice may be sent or delivered to the Contractor or Subcontractor at any place the Contractor or Subcontractor maintains an office or conducts business or at the residence of the Contractor or Subcontractor. If the claim is for a required contribution to a fund of any employee benefit plan, the notice required by ORS 279C.600 must be sent or delivered within 200 days after the employee last provided labor or materials. The notice shall be in writing substantially as follows:

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

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

_____ (here to be signed)

EXHIBIT D
FORMS OF PAYMENT AND PERFORMANCE BONDS

PERFORMANCE BOND

(Bond No. _____)

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

WHEREAS Principal has entered into a Construction Contract (“Contract”) dated _____, 201_ with Obligee for _____ (“Project”), which Contract is made a part hereof as if fully incorporated herein.

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

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

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

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

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

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

No right of action shall accrue on this bond to or for the use of any person or corporation other than Obligee or its heirs, executors, administrators, successors or assigns.

Executed this ____ day of _____, 201_.

PRINCIPAL

Title

Address

SURETY

Title

Address

COUNTERSIGNED:

Resident Agent

Address

PAYMENT BOND

(Bond No.)

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

WHEREAS the Principal has entered into a Construction Contract (“Contract”) dated _____, 201_ with Obligee for the _____ project (“Project”), which Contract is made a part hereof as if fully incorporated herein.

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

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

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

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

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

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

Except as expressly provided above, no right of action shall accrue on this bond to or for the use of any person or corporation other than Obligee or its heirs, executors, administrators, successors or assigns.

Executed this _____ day of _____, 201_.

PRINCIPAL

Title

Address

SURETY

Title

Address

COUNTERSIGNED:

Resident Agent

Address

EXHIBIT E

INSURANCE REQUIREMENTS

1. Insurance Coverages. The Contractor shall procure and maintain at its expense during the Period of Performance and thereafter as required below the following insurance from one or more companies authorized to do business in the State of Oregon with a policyholder's rating of not less than A-IX in the most recent edition of *Best's Rating Guide*. Except as approved otherwise by the Owner in advance, such insurance shall protect against claims which arise out of or relate to all of the Contractor's services under the Agreement, whether performed by the Contractor or a consultant or a person or entity for which either of them may be responsible.

1.1 Workers' Compensation Insurance, if required by law, with statutory limits.

1.2 Employer's Liability Insurance, if employees are employed for other than secretarial or bookkeeping services, with a limit of not less than \$ _____ each accident, \$ _____ disease each employee and \$ _____ disease policy limit.

1.3 Commercial General Liability Insurance, applicable to all premises and operations, including Bodily Injury, Property Damage, Personal Injury, Contractual Liability, Independent Contractors, Products and Completed Operations, Broad Form Property Damage (including Completed Operations), and coverage for explosion, collapse and underground hazards, with limits of not less than \$ _____ per occurrence, \$ _____ aggregate applicable specifically to the Project, \$ _____ personal and advertising injury and \$ _____ Products and Completed Operations.

1.4 Business Automobile Liability Insurance, applicable to owned, non-owned and hired automobiles, with a limit of not less than \$ _____ combined single limit each accident.

1.5 Professional Liability Insurance, applicable to all acts and omissions of Contractor and its consultants, with limits of not less than \$ _____ per occurrence and \$ _____ aggregate.

1.6 Excess/Umbrella Liability Insurance, at least as broad as all liability policies described above, with limits of not less than \$ _____ per occurrence and \$ _____ aggregate.

2. Deductibles. The Contractor shall pay all deductibles on all policies required by Paragraph 1.

3. Waivers of Subrogation Re Liability Insurance. The Workers' Compensation and Employer's Liability policies shall be subject to a waiver of subrogation in favor of Owner and its members, partners, officers, directors, agents and employees, and the successors in interest of the foregoing.

4. Cross-Liability Coverages. The Commercial General Liability and Automobile Liability policies shall provide cross-liability coverages as would be achieved under the standard International Organization for Standardization ("ISO") separations of insureds clause.

5. Additional Insureds. The Commercial General Liability and Automobile Liability policies shall name the Owner and its officers, directors, agents and employees, and the successors in interest of the foregoing, as additional insureds, using ISO additional insureds endorsement CG 20 10 11 85 or a substitute providing equivalent coverages. Such coverages provided to the additional insureds shall (a) be primary and noncontributory with respect to any insurance or self-insurance retention of the additional insureds, including but not limited to any Excess Liability coverage maintained by the additional insureds, (b) provide the same types and extents of coverages as the coverages provided to the primary insured, and shall not be limited to the "vicarious liability" of the additional insureds, (c) waive all rights of subrogation against the additional insureds, (d) cover all additional insureds that are a partnership or joint venture, if any, as "Named Insureds" as expressly stated in endorsements and (e) be maintained for the same durations as the coverages provided to the primary insured, including but not limited to the continuation of the Products and Completed Operations coverage until three (3) years after final payment to the Owner's prime contractor on the Project, and shall not be limited to "ongoing operations". Notwithstanding the

foregoing, this Paragraph shall not be construed to require the Contractor to provide insurance coverage of the additional insureds in a way or to an extent that results in a violation of ORS § 30.140.

6. Duration of Coverages. The insurance coverages required by Paragraph 1 shall be written on an occurrence basis, except the Professional Liability Insurance. The Professional Liability policy shall provide for a retroactive date of placement prior to or coinciding with the date of commencement under the Agreement. All other policies shall be in effect as of the date of commencement of the Contractor's services under the Agreement. All policies shall be maintained and remain in effect until one (1) year after Final Completion and thereafter when the Contractor is assisting or advising the Owner regarding the correction of defective or nonconforming Work; provided that the Products and Completed Operations policy and the Professional Liability policy shall remain in effect until three (3) years after final payment to the Owner's prime contractor on the Project. The Contractor shall notify the Owner of any claims against the Professional Liability policy, in which event the Owner shall have the right to require the Contractor at its expense to obtain additional Professional Liability Insurance in order to restore the required coverage available for the Project.

7. Proof of Insurance. The Contractor shall file with Owner, upon execution of the Agreement, certificates of insurance acceptable to the Owner as well as copies of all insurance policies, with all riders and endorsements, all separate exclusions, conditions and waivers, and all other amendatory documents attached, evidencing the insurance required by this Exhibit E. These certificates and policies shall contain a provision that coverages afforded under the policies will not be cancelled or allowed to expire until at least thirty (30) days' written notice has been given to the Owner. If any of the required coverages are to renew during the period when such coverage is to remain in effect, or are required to remain in force after final payment to the Owner's prime contractor on the Project, an additional certificate evidencing continuation of such coverage shall be submitted upon renewal or with the Contractor's final invoice.

8. Effect of No or Insufficient Insurance. The Contractor's failure to comply with the requirements of this Exhibit E shall constitute a material breach of the Agreement entitling the Owner to terminate the Agreement for cause. In the alternative, the Owner in its sole discretion may purchase the insurance required of, but not obtained or maintained, by the Contractor pursuant to this Exhibit E and charge such costs thereof to the Contractor. The Owner's rights under this Paragraph shall be in addition to, and without waiver of, its other rights and remedies under the Agreement or applicable law.

9. Limitation of This Exhibit E. Nothing in this Exhibit E shall negate, abridge or reduce the Contractor's responsibilities or liabilities under the Agreement or applicable law, the meaning and effect of the provisions of this Exhibit E being limited to setting out the Contractor's express obligations with respect to insurance.

Appendix C

CERTIFICATION OF NONDISCRIMINATION

The undersigned Proposer is aware that, under ORS 279A.110, no Proposer who contracts with a public contracting agency may discriminate against minority, women, or emerging small business enterprises certified under ORS 200.055 or a business enterprise that is owned or controlled by or that employs a disabled veteran, as defined in ORS 408.225, in the awarding of subcontracts. Accordingly, the undersigned Proposer hereby certifies as part of its Proposal submission that it has not and will not discriminate against any minority, women, or emerging small business enterprises or a business enterprise that is owned or controlled by or that employs a disabled veteran in obtaining any of the required subcontracts for this project.

Firm Name _____

Authorized Signature _____

Printed Name _____

Title _____

Date _____

Appendix D

PROPOSER RESIDENCY STATEMENT

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

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

Bidder/proposer/Proposer ____ IS/ ____ IS NOT a “Resident Bidder/proposer” as set forth above.

2. If a Resident Bidder/proposer, enter your Oregon Business address below:

3. If a Non-resident Bidder/proposer, enter state of residency:

Bidder/proposer/Proposer hereby certifies that the information provided is true and accurate.

Signature: _____ Date: _____

Printed or Typed name: _____

Title: _____

Telephone: _____

Appendix E

**UMATILLA SCHOOL DISTRICT
Acknowledgement of Addenda**

I/we have received and reviewed the RFP, the Attachments to the RFP, and any Addenda issued by the District and this submission is our entire proposal. Addenda Received:

Addendum No. _____ Date Received _____

Addendum No. _____ Date Received _____

Addendum No. _____ Date Received _____

Addendum No. _____ Date Received _____

Addendum No. _____ Date Received _____

If no addendum received write "None" _____

Firm Name _____

Authorized Signature _____

Printed Name _____

Title _____

Date _____

Appendix F

**UMATILLA SCHOOL DISTRICT
Acknowledgement of Prevailing Wage Requirement**

The undersigned agrees to be bound by and will comply with the applicable prevailing wage requirements, including but not necessarily limited to ORS 279C.838, 279C.840 and 40 U.S.C. 3141 to 3148.

Firm Name _____

Authorized Signature _____

Printed Name _____

Title _____

Date _____

Appendix G

**UMATILLA SCHOOL DISTRICT
CM/GC Fee Proposal**

1. Preconstruction Phase Services. The undersigned agrees to the lump sum amount set forth below as full payment for the Preconstruction Phase Services as defined in this RFP.

\$ _____ (_____ Dollars)

2. Contractor's Fee. The undersigned agrees to accept the percentage set forth below, as applied to the Cost of Work, as full payment for its Fee for the performing the Construction Phase Services as defined in this RFP Such amount shall be inclusive of the Construction Manager's profit, overhead, and all other direct or non-reimbursable costs as more fully described in the attached Exhibit 1.

___ % (_____ percent)

Firm Name _____

Authorized Signature _____

Printed Name _____

Title _____

Date _____

COST RESPONSIBILITY MATRIX

Umatilla School District - 2016 Bond Issue Project

Umatilla, OR

08/11/17

In order to assist the Contractors in developing its cost associated with the different segments of the Proposal, the Owner is providing the following cost Responsibility Matrix ("Matrix"). The checked box indicated in what section of the proposal the Contractor will apply the identified cost. This Matrix is intended to be a list of activities required to complete the Project.		A	B	C	D
	Item	CM/GC General Conditions	CM/GC Fee	Provided by Owner	Cost of the Work
1	Negotiations for the scope of work				Pre-Construction
2	Liquidated Damages		X		
3	Design Participation (constructability, phasing, cost control, establish scope of work for subs, etc.)				Pre-Construction
5	Estimating and bid package management				Pre-Construction
6	Scheduling development and management prior to construction				Pre-Construction
7	Architectural and Engineering Services			X	
8	Coordination and finalization of Subcontracting for labor, material and equipment, including review/finalization of scopes of work, buyouts and issuing sub-contracts		X		
9	Sub-contract administration and coordination		X		
10	Sub-contract bid packaging and development		X		
11	Advertise project for bids-as applicable		X		
12	Conduct Pre-bid conferences				Pre-Construction
13	Analyze bids and make recommendation to owner prior to award				Pre-Construction
14	Contractor accounting and cost accounting		X		
15	Administration of the project safety program		X		
16	Administration of the environmental program	X			
17	Payroll/Accounting/Data Processing		X		
18	Bonuses		X		
19	Corporate safety officer		X		
20	Home office administration		X		
21	Corporate IT support		X		
22	Computer Software		X		
23	Home office payroll costs, fringes, bonuses, etc.		X		
24	All site safety work, meetings, training regulatory requirements, personal protective devices		X		
25	Development of the cost of construction				Pre-Construction
26	Development of the negotiated contract		X		
27	Project Builders Risk Insurance Policy (deductible only)				X
28	CM's General Liability Insurance		X		
29	CM's Payment/Performance Bonds		X		
30	Subcontractor Payment/Performance Bonds (if accepted)				X
31	Prepare Application for payments		X		
32	Scope change preparation and procedures		X		
33	Communications and coordination		X		
34	Project Manager, Project Engineer, Clerical support		X		

	Item	CM/GC General Conditions	CM/ GC Fee	Provided by Owner	Cost of the Work
35	Surveying				X
36	Building Permit and Plan Check Fees			X	
37	All other permits				X
38	Meeting minutes-through project completion		X		
39	Review and process of submittals		X		
40	Construction schedule management and updating		X		
41	Contractor Quality Control		X		
42	Testing Laboratory and testing services - Testing Fees			X	
43	Coordination of testing laboratory (if applicable)	X			
44	Replacement of defective or non-conforming work including retesting		X		
45	Parking - Construction related	X			
46	Construction Office and facilities	X			
47	Equipment/Supplies for Job Office	X			
48	Refuse collection, clean-up, removal and proper disposal from the site	X			
49	Dust and Environmental control per Clean Air Authority	X			
50	Vehicles - All expenses, mileage, insurance, etc.	X			
51	Temporary construction-related power and water use only	X			
52	Utility hook-up, meters and fees (contractor coordinates*)	*		X	
53	Construction signs, fences and barricades	X			
54	Temporary construction sanitation facilities	X			
55	Site Security related to construction	X			
56	Materials and equipment for site logistics				X
57	Rental equipment used on site				X
58	Temporary fencing				X
59	Barricades				X
60	Temporary enclosures				X
61	Temporary stairs				X
62	Opening protection				X
63	Safety railings and fall protection				X
64	Project signage	X			
65	Request of and implementation of Substitutions		X		
66	Final Cleaning				X
67	Forklifts and Hoisting				X
68	Scaffolds and Shoring				X
69	Weather protection	X			
70	Project Fire protection	X			
71	Temporary heat (construction related)	X			
72	Small tools				X
73	Contract Close-out		X		
74	Punch-list preparation and administration		X		
75	All Contractor main office and corporate overhead		X		
76	Full time on site job site Superintendent	X			
77	Any general or scope specific Foreman or field support (unless scope specific and agreed to by owner*)	*			X