

City of Brookings

MEETING AGENDA

CITY COUNCIL

Monday, April 22, 2019, 7:00pm

City Hall Council Chambers, 898 Elk Drive, Brookings, OR 97415

The City Council will meet in Executive Session at 6:00 PM, in the City's Manager's office, under the authority of ORS 192.660(2)(d) "To conduct deliberations with persons designated by the governing body to carry on labor negotiations."

CITY COUNCIL

A. Call to Order

B. Pledge of Allegiance

C. Roll Call

D. Oral Requests and Communications from the audience

(Public Comments on non-agenda items – 5 minute limit per person.*)

E. Consent Calendar

1. Approve Council minutes for April 8, 2019 [Pg. 3]
2. Accept TPAC Committee minutes for March 14, 2019 [Pg. 6]
3. Receive monthly financial report for March 2019 [Pg. 8]

F. Staff Reports/Public Hearings/Ordinances

1. Ratify all April 8th Council Meeting Decisions [City Manager, Pg. 14]
 - a. Agenda for April 8, 2019 [Pg. 15]
2. Waive Wild Rogue River [Parks, Pg. 17]
 - a. Application Permit [Pg. 18]
3. Riparian ORD [PWDS, Pg. 20]
 - a. LCOG Memo [Pg. 21]
 - b. Riparian Protection Overlay Zone Ordinance [Pg. 23]
 - c. Exhibit A [Pg. 25]
 - d. Exhibit B [Pg. 36]
 - e. Exhibit C [Pg. 37]
4. Contract with Ausland Group for the City Hall Seismic Retrofit project [City Manager, Pg. 44]
 - a. Ausland main agreement A133-2009 [Pg. 45]
 - b. A201-2017 (attachment to agreement) [Pg. 77]
 - c. COB Terms and Conditions (attachment) [Pg. 119]
 - d. COB Certification of Compliance (attachment) [Pg. 124]
5. City Hall Seismic Retrofit – Additional Roof Repair [PWDS, Pg. 126]
6. Fund Allocation for 4th of July – Family Fun Festival [City Manager, Pg. 127]
 - a. Event Funding Application [Pg. 128]

G. Remarks from Mayor and Councilors

H. Adjournment

*Obtain Public Comment Forms and view the agenda and packet information on-line at www.brookings.or.us, at City Hall and at the local library. Return completed Public Comment Forms to the City Recorder before the start of meeting or during regular business hours.

All public meetings are held in accessible locations. Auxiliary aids will be provided upon request with at least 72 hours advance notification. Please contact 469-1102 if you have any questions regarding this notice.

City of Brookings
CITY COUNCIL MEETING MINUTES
City Hall Council Chambers, 898 Elk Drive, Brookings, OR 97415
Monday, April 8, 2019

Call to Order

Mayor Pieper called the meeting to order at 7:00 PM.

Roll Call

Council Present: Mayor Jake Pieper, Councilors Bill Hamilton, Ron Hedenskog, and John McKinney; Council Brent Hodges absent; a quorum present.

Staff present: City Manager Janell Howard, City Attorney Martha Rice and Deputy Recorder Rita Ritz.

Media Present: Jane Stebbins of Curry Pilot

Others Present: Approximately twenty audience members

Scheduled Public Appearances

Jim Graham – 2020 Census

Jim Graham provided a slide show on the 2020 Census and encouraged the need to form a Complete Count Committee to help gather the best results for future Federal funding.

Oral Requests and Communications from the audience

- Catherine Wiley of Duley Creek, Brookings Oregon addressed Council regarding the notice of Public Meetings.

- Gordon Clay of P.O. Box 12 addressed the Council asking for the support of "Suicide Awareness and Prevention: Finding Hope."

Consent Calendar

1. Approve Council minutes for March 25, 2019
2. Accept Parks and Recreation Committee minutes for January 25, 2019
3. Accept Holly Beyer's resignation from Parks and Recreation Committee

Councilor Hedenskog moved, Councilor Hamilton seconded and Council voted unanimously to approve the Consent Calendar.

Staff Reports

Letter of Support for Curry Health District

City Manager Howard presented the staff report.

The following individuals addressed Council in support of the measure:

1. Connie Hunter of 106 1310 English Court
2. Gary Milliman of 1090 Parkview Drive

The following individuals addressed Council in opposition of the measure:

1. Catherine Wiley of Duley Creek, Brookings Oregon
2. Marsh Thibodeaux of 1380 Glenwood Drive
3. Teresa Lawson of 820 Brookhaven Drive
4. Candice Michel of 1253 Rowland Lane
5. Dan Sherman 820 Brookhaven Drive

The following individual addressed Council as an interested party:

1. Barbara Braunstein of P.O. Box 6547

Councilor Hedenskog moved, Councilor McKinney seconded and council voted unanimously to authorize the Mayor to sign a support letter for Curry Health District regarding the need for an Emergency Department in Brookings.

Waiver of Fees for Elmo Williams Day Event

City Manager Howard presented the staff report.

Councilor McKinney moved, Councilor Hamilton seconded and Council voted unanimously to waive deposit and fees for the use of the Capella for the Elmo Williams Day event.

Waive Picnic Table Use Fees for the Festival of Art in Stout Park

City Manager Howard presented the staff report.

Councilor Hedenskog moved, Councilor McKinney seconded and Council voted unanimously to waive picnic table fees for the Pelican Bay Arts Association (PBSS) sponsored Festival of the Art in Stout Park.

Cooperative Improvement Agreement, US101, Parkview Drive to Lucky Lane

City Manager Howard presented the staff report.

Councilor Hedenskog moved, Councilor Hamilton seconded and Council voted unanimously to authorize the City Manager to execute a Cooperative Improvement Agreement with the State of Oregon, Department of Transportation for US101, Parkview Drive to Lucky Lane.

Remarks from Mayor and Councilors

Councilor Hamilton remarked that as summer approaches, so do the events. He asks for those who can to be mindful of the needs of our community and to donate to help make a difference.

Councilor Hedenskog informed the Council with much sadness that former Port Orford Councilor and Mayor James Auburn passed away last Sunday, "He was a good friend and good partner to all three Cities in Curry County."

Mayor Pieper also expressed his sadness for the loss of James Auburn. He also drew attention to how there has been no major damage to storm water or sewer infrastructures during the last big storms. He thanked staff and City Council for all the capital improvement products.

Adjournment

Councilor Hedenskog moved, Council Hamilton seconded and all Councilors in favor. Mayor Pieper adjourned the meeting at 8:43 p.m.

Respectfully submitted:

ATTESTED:
this 22nd day of April 2019:

Jake Pieper, Mayor

Janell K Howard, City Recorder

TOURISM PROMOTION ADVISORY COMMITTEE (TPAC) MINUTES
Thursday – March 14, 2019

CALL TO ORDER

Meeting called to order at 4:01 PM

1. ROLL CALL

Present: Committee members Sonya Billington, Barbara Ciaramella, Matt Honeycutt, Bob Pieper, and Skip Watwood

Absent: Tim Kennedy, Dane Tippman

Also present: Staff Committee Liaison Lauri Ziemer

2. APPROVAL OF MINUTES –

Motion made by Matt Honeycutt to approve the minutes of February 14, 2019; motion seconded by Barbara Ciaramella. Committee voted and the motion carried unanimously.

3. Public Comment – none

4. ACTION ITEMS

- a. **Spectrum Digital Campaign** – Brian Marchant returned to present the digital advertising campaign information with targets the Shasta and Tehama Counties areas of northern California at \$500 per month. Committee discussed appropriate timing to ensure the most seasonal advertising. **Motion made by Barbara Ciaramella to start the Spectrum Digital Campaign in April and to continue for six months thru September 2019; motion seconded by Sonya Billington. Committee voted and the motion carried unanimously.**
- b. **Wild Rogue Relay Event Proposal** – Jay Trost presented event proposal requesting \$2,000 in TOT funding. Event brings many people to the area who stay over and eat in restaurants. **Motion made by Bob Pieper to grant \$2,000 in TOT funds to the Wild Rogue Relay event; motion seconded by Skip Watwood. Committee voted and the motion carried unanimously.**
- c. **Azalea Festival Event Proposal** – David Allen and Staci Barr presented event proposal requesting \$3,950 in TOT funding for the 80th Azalea Festival which has been designated by the state as a Heritage event. **Motion made by Sonya Billington to grant \$3950 in TOT funds to the Azalea Festival event; motion seconded by Skip Watwood.** Committee questioned event expenses and requested more event details which have not been completely solidified. To encourage out of town attendance committee suggested advertising and social media. **Committee voted 3-1-1 with Bob Peiper voting no and Barbara Ciaramella abstaining; the motion carried.**
- d. **TPAC Letter to City Council to support Annual Budget Line Items** - Committee discussed submitting the letter to City Council but questioned the intent and need. Bob Pieper advised he would not support submission. **Motion made by Skip Watwood to table item until the next meeting for further consideration; motion seconded by Matt Honeycutt. Committee voted and the motion carried unanimously.**

5. INFORMATIONAL ITEMS

- a. **OCVA Update** - Dave Lacey presented information on the Oregon Coast Visitors Association (OCVA) which the City is currently a member of and the registered Destination Marketing Organization (DMO) for this area. Explained OCVA's goals are to expand

marketing and encourage visitors to the southern Oregon coast, and detailed the benefits provided which include media exposure, south coast event sponsorship and fund allocation.

b. Recent Council Actions

I. Lauri Ziemer advised that City Council approved the Festival of Art in stout Park event funding in the amount of \$1,000.

c. TPAC Budget – Committee reviewed the remaining budget amounts.

6. Committee Comments on Non-Agenda Items – None

7. SCHEDULE NEXT MEETING – Next meeting scheduled for April 11, 2019.

8. ADJOURNMENT – with no further business before the Committee, meeting adjourned at 5:40 pm.

Respectfully submitted,



Tim Kennedy-- Vice Chair
(approved at April 11, 2019 meeting)

CITY OF BROOKINGS
 FUND SUMMARY
 FOR THE 9 MONTHS ENDING MARCH 31, 2019

GENERAL FUND

	BUDGET	PERIOD ACTUAL	YTD ACTUAL	REMAINING BUDGET	PCNT
<u>REVENUE</u>					
TAXES	3,104,993.00	122,777.34	2,911,931.06	193,061.94	93.8
LICENSES AND PERMITS	117,000.00	6,935.78	98,837.25	18,162.75	84.5
INTERGOVERNMENTAL	258,000.00	32,799.59	119,180.35	138,819.65	46.2
CHARGES FOR SERVICES	172,000.00	13,255.57	369,136.13	(197,136.13)	214.6
OTHER REVENUE	223,383.00	46,699.40	171,491.34	51,891.66	76.8
TRANSFERS IN	705,572.00	.00	.00	705,572.00	.0
	<u>4,580,948.00</u>	<u>222,467.68</u>	<u>3,670,576.13</u>	<u>910,371.87</u>	<u>80.1</u>
<u>EXPENDITURES</u>					
JUDICIAL:					
PERSONAL SERVICES	27,896.00	1,635.06	19,028.84	8,867.16	68.2
MATERIAL AND SERVICES	10,850.00	972.82	6,515.43	4,334.57	60.1
CAPITAL OUTLAY	.00	.00	.00	.00	.0
	<u>38,746.00</u>	<u>2,607.88</u>	<u>25,544.27</u>	<u>13,201.73</u>	<u>65.9</u>
FINANCE AND ADMINISTRATION:					
PERSONAL SERVICES	253,613.00	9,223.48	150,998.93	102,614.07	59.5
MATERIAL AND SERVICES	114,500.00	1,653.82	64,931.23	49,568.77	56.7
CAPITAL OUTLAY	.00	.00	.00	.00	.0
	<u>368,113.00</u>	<u>10,877.30</u>	<u>215,930.16</u>	<u>152,182.84</u>	<u>58.7</u>
POLICE:					
PERSONAL SERVICES	2,219,583.00	159,747.68	1,509,449.12	710,133.88	68.0
MATERIAL AND SERVICES	187,800.00	15,211.84	128,412.13	59,387.87	68.4
CAPITAL OUTLAY	240,000.00	966.00	153,639.60	86,360.40	64.0
DEBT SERVICE	63,807.00	4,452.31	41,034.67	22,772.33	64.3
TRANSFERS OUT	.00	.00	.00	.00	.0
	<u>2,711,190.00</u>	<u>180,377.83</u>	<u>1,832,535.52</u>	<u>878,654.48</u>	<u>67.6</u>
FIRE:					
PERSONAL SERVICES	191,291.00	16,241.46	173,079.72	18,211.28	90.5
MATERIAL AND SERVICES	97,000.00	5,835.75	52,104.73	44,895.27	53.7
CAPITAL OUTLAY	.00	.00	.00	.00	.0
DEBT SERVICE	30,579.00	.00	30,579.01	(.01)	100.0
TRANSFERS OUT	.00	.00	.00	.00	.0
	<u>318,870.00</u>	<u>22,077.21</u>	<u>255,763.46</u>	<u>63,106.54</u>	<u>80.2</u>

CITY OF BROOKINGS
FUND SUMMARY
FOR THE 9 MONTHS ENDING MARCH 31, 2019

GENERAL FUND

	BUDGET	PERIOD ACTUAL	YTD ACTUAL	REMAINING BUDGET	PCNT
PLANNING AND BUILDING:					
PERSONAL SERVICES	180,315.00	13,640.10	124,143.50	56,171.50	68.9
MATERIAL AND SERVICES	90,800.00	1,479.86	20,423.46	70,376.54	22.5
CAPITAL OUTLAY	.00	.00	.00	.00	.0
TRANSFERS OUT	.00	.00	.00	.00	.0
	<u>271,115.00</u>	<u>15,119.96</u>	<u>144,566.96</u>	<u>126,548.04</u>	<u>53.3</u>
PARKS & RECREATION:					
PERSONAL SERVICES	282,199.00	17,443.22	172,885.08	109,313.92	61.3
MATERIAL AND SERVICES	103,500.00	4,072.96	68,941.22	34,558.78	66.6
CAPITAL OUTLAY	.00	.00	2,060.00	(2,060.00)	.0
DEBT SERVICE	48,383.00	4,031.88	36,286.92	12,096.08	75.0
TRANSFERS OUT	.00	.00	.00	.00	.0
	<u>434,082.00</u>	<u>25,548.06</u>	<u>280,173.22</u>	<u>153,908.78</u>	<u>64.5</u>
FINANCE AND HUMAN RESOURCES:					
PERSONAL SERVICES	226,445.00	17,612.84	153,481.56	72,963.44	67.8
MATERIAL AND SERVICES	33,700.00	908.12	21,096.99	12,603.01	62.6
CAPITAL OUTLAY	.00	.00	.00	.00	.0
	<u>260,145.00</u>	<u>18,520.96</u>	<u>174,578.55</u>	<u>85,566.45</u>	<u>67.1</u>
SWIMMING POOL:					
PERSONAL SERVICES	62,187.00	.00	55,849.18	6,337.82	89.8
MATERIAL AND SERVICES	39,000.00	1,621.06	20,568.87	18,431.13	52.7
CAPITAL OUTLAY	2,500.00	.00	.00	2,500.00	.0
	<u>103,687.00</u>	<u>1,621.06</u>	<u>76,418.05</u>	<u>27,268.95</u>	<u>73.7</u>
NON-DEPARTMENTAL:					
MATERIAL AND SERVICES	148,000.00	8,299.11	92,281.79	55,718.21	62.4
CAPITAL OUTLAY	.00	.00	.00	.00	.0
TRANSFERS OUT	358,907.00	.00	.00	358,907.00	.0
CONTINGENCIES AND RESERVES	628,093.00	.00	.00	628,093.00	.0
	<u>1,135,000.00</u>	<u>8,299.11</u>	<u>92,281.79</u>	<u>1,042,718.21</u>	<u>8.1</u>
	<u>5,640,948.00</u>	<u>285,049.37</u>	<u>3,097,791.98</u>	<u>2,543,156.02</u>	<u>54.9</u>
	<u>(1,060,000.00)</u>	<u>(62,581.69)</u>	<u>572,784.15</u>	<u>(1,632,784.15)</u>	<u>54.0</u>

CITY OF BROOKINGS
 FUND SUMMARY
 FOR THE 9 MONTHS ENDING MARCH 31, 2019

STREET FUND

	BUDGET	PERIOD ACTUAL	YTD ACTUAL	REMAINING BUDGET	PCNT
<u>REVENUE</u>					
INTERGOVERNMENTAL	520,000.00	36,724.36	409,006.67	110,993.33	78.7
OTHER REVENUE	14,650.00	.00	5,536.50	9,113.50	37.8
TRANSFER IN	.00	.00	.00	.00	.0
	<u>534,650.00</u>	<u>36,724.36</u>	<u>414,543.17</u>	<u>120,106.83</u>	<u>77.5</u>
<u>EXPENDITURES</u>					
EXPENDITURES:					
PERSONAL SERVICES	205,076.00	15,382.25	145,745.60	59,330.40	71.1
MATERIAL AND SERVICES	207,000.00	16,496.22	106,708.75	100,291.25	51.6
CAPITAL OUTLAY	95,000.00	7,039.81	8,443.24	86,556.76	8.9
DEBT SERVICE	22,238.00	1,576.41	15,308.92	6,929.08	68.8
TRANSFERS OUT	46,612.00	.00	.00	46,612.00	.0
CONTINGENCIES AND RESERVES	118,724.00	.00	.00	118,724.00	.0
	<u>694,650.00</u>	<u>40,494.69</u>	<u>276,206.51</u>	<u>418,443.49</u>	<u>39.8</u>
	<u>694,650.00</u>	<u>40,494.69</u>	<u>276,206.51</u>	<u>418,443.49</u>	<u>39.8</u>
	<u>(160,000.00)</u>	<u>(3,770.33)</u>	<u>138,336.66</u>	<u>(298,336.66)</u>	<u>86.5</u>

CITY OF BROOKINGS
 FUND SUMMARY
 FOR THE 9 MONTHS ENDING MARCH 31, 2019

WATER FUND

	BUDGET	PERIOD ACTUAL	YTD ACTUAL	REMAINING BUDGET	PCNT
<u>REVENUE</u>					
SOURCE 03	.00	.00	.00	.00	.0
CHARGES FOR SERVICES	1,661,000.00	116,090.25	1,322,061.50	338,938.50	79.6
OTHER INCOME	51,000.00	2,790.00	54,082.00	(3,082.00)	106.0
TRANSFERS IN	.00	.00	.00	.00	.0
	<u>1,712,000.00</u>	<u>118,880.25</u>	<u>1,376,143.50</u>	<u>335,856.50</u>	<u>80.4</u>
<u>EXPENDITURES</u>					
WATER DISTRIBUTION:					
PERSONAL SERVICES	400,962.00	28,474.71	283,418.83	117,543.17	70.7
MATERIAL AND SERVICES	198,400.00	3,052.35	87,626.08	110,773.92	44.2
CAPITAL OUTLAY	50,000.00	1,296.42	27,375.11	22,624.89	54.8
DEBT SERVICE	8,722.00	242.78	5,810.25	2,911.75	66.6
TRANSFERS OUT	24,000.00	.00	.00	24,000.00	.0
	<u>682,084.00</u>	<u>33,066.26</u>	<u>404,230.27</u>	<u>277,853.73</u>	<u>59.3</u>
WATER TREATMENT:					
PERSONAL SERVICES	30,424.00	1,376.66	13,550.02	16,873.98	44.5
MATERIAL AND SERVICES	462,925.00	36,971.50	316,178.34	146,746.66	68.3
CAPITAL OUTLAY	10,000.00	.00	.00	10,000.00	.0
DEBT SERVICE	6,389.00	242.78	5,810.25	578.75	90.9
TRANSFERS OUT	687,650.00	.00	.00	687,650.00	.0
CONTINGENCIES AND RESERVES	177,528.00	.00	.00	177,528.00	.0
	<u>1,374,916.00</u>	<u>38,590.94</u>	<u>335,538.61</u>	<u>1,039,377.39</u>	<u>24.4</u>
DEPARTMENT 24:					
CAPITAL OUTLAY	.00	.00	.00	.00	.0
	<u>.00</u>	<u>.00</u>	<u>.00</u>	<u>.00</u>	<u>.0</u>
	<u>2,057,000.00</u>	<u>71,657.20</u>	<u>739,768.88</u>	<u>1,317,231.12</u>	<u>36.0</u>
	<u>(345,000.00)</u>	<u>47,223.05</u>	<u>636,374.62</u>	<u>(981,374.62)</u>	<u>184.5</u>

CITY OF BROOKINGS
 FUND SUMMARY
 FOR THE 9 MONTHS ENDING MARCH 31, 2019

WASTEWATER FUND

	BUDGET	PERIOD ACTUAL	YTD ACTUAL	REMAINING BUDGET	PCNT
<u>REVENUE</u>					
SOURCE 03	(4,500.00)	.00	.00	(4,500.00)	.0
CHARGES FOR SERVICES	3,183,300.00	257,522.42	2,379,881.00	803,419.00	74.8
OTHER REVENUE	15,000.00	.00	20,832.57	(5,832.57)	138.9
TRANSFER IN	.00	.00	.00	.00	.0
	<u>3,193,800.00</u>	<u>257,522.42</u>	<u>2,400,713.57</u>	<u>793,086.43</u>	<u>75.2</u>
<u>EXPENDITURES</u>					
WASTEWATER COLLECTION:					
PERSONAL SERVICES	570,336.00	39,626.12	383,251.66	187,084.34	67.2
MATERIAL AND SERVICES	250,200.00	3,446.72	70,161.83	180,038.17	28.0
CAPITAL OUTLAY	25,000.00	.00	9,100.00	15,900.00	36.4
DEBT SERVICE	8,722.00	242.78	5,810.25	2,911.75	66.6
TRANSFERS OUT	177,359.00	.00	.00	177,359.00	.0
	<u>1,031,617.00</u>	<u>43,315.62</u>	<u>468,323.74</u>	<u>563,293.26</u>	<u>45.4</u>
WASTEWATER TREATMENT:					
PERSONAL SERVICES	39,878.00	2,065.23	20,314.73	19,563.27	50.9
MATERIAL AND SERVICES	895,225.00	71,901.58	610,476.20	284,748.80	68.2
CAPITAL OUTLAY	.00	.00	.00	.00	.0
DEBT SERVICE	6,389.00	242.78	5,810.25	578.75	90.9
TRANSFERS OUT	1,509,923.00	.00	.00	1,509,923.00	.0
CONTINGENCIES AND RESERVES	315,268.00	.00	.00	315,268.00	.0
	<u>2,766,683.00</u>	<u>74,209.59</u>	<u>636,601.18</u>	<u>2,130,081.82</u>	<u>23.0</u>
	<u>3,798,300.00</u>	<u>117,525.21</u>	<u>1,104,924.92</u>	<u>2,693,375.08</u>	<u>29.1</u>
	<u>(604,500.00)</u>	<u>139,997.21</u>	<u>1,295,788.65</u>	<u>(1,900,288.65)</u>	<u>214.4</u>

CITY OF BROOKINGS
 FUND SUMMARY
 FOR THE 9 MONTHS ENDING MARCH 31, 2019

URBAN RENEWAL AGENCY FUND

	BUDGET	PERIOD ACTUAL	YTD ACTUAL	REMAINING BUDGET	PCNT
<u>REVENUE</u>					
TAXES	586,211.00	20,414.34	568,434.81	17,776.19	97.0
INTERGOVERNMENTAL	.00	.00	.00	.00	.0
OTHER REVENUE	2,000.00	1.13	3,336.49	(1,336.49)	166.8
TRANSFERS IN	650,000.00	.00	.00	650,000.00	.0
	<u>1,238,211.00</u>	<u>20,415.47</u>	<u>571,771.30</u>	<u>666,439.70</u>	<u>46.2</u>
<u>EXPENDITURES</u>					
GENERAL:					
PERSONAL SERVICES	.00	.00	.00	.00	.0
MATERIAL AND SERVICES	35,000.00	.00	6,666.02	28,333.98	19.1
CAPITAL OUTLAY	842,472.00	.00	.00	842,472.00	.0
DEBT SERVICE	.00	.00	.00	.00	.0
TRANSFERS OUT	450,739.00	.00	.00	450,739.00	.0
CONTINGENCIES AND RESERVES	.00	.00	.00	.00	.0
	<u>1,328,211.00</u>	<u>.00</u>	<u>6,666.02</u>	<u>1,321,544.98</u>	<u>.5</u>
DEPARTMENT 20:					
CAPITAL OUTLAY	.00	.00	.00	.00	.0
	<u>.00</u>	<u>.00</u>	<u>.00</u>	<u>.00</u>	<u>.0</u>
DEPARTMENT 22:					
MATERIAL AND SERVICES	.00	.00	.00	.00	.0
DEBT SERVICE	.00	.00	.00	.00	.0
	<u>.00</u>	<u>.00</u>	<u>.00</u>	<u>.00</u>	<u>.0</u>
DEPARTMENT 24:					
CONTINGENCIES AND RESERVES	.00	.00	.00	.00	.0
	<u>.00</u>	<u>.00</u>	<u>.00</u>	<u>.00</u>	<u>.0</u>
	<u>1,328,211.00</u>	<u>.00</u>	<u>6,666.02</u>	<u>1,321,544.98</u>	<u>.5</u>
	<u>(90,000.00)</u>	<u>20,415.47</u>	<u>565,105.28</u>	<u>(655,105.28)</u>	<u>627.9</u>

CITY OF BROOKINGS

COUNCIL AGENDA REPORT

Meeting Date: April 22, 2019

Originating Dept: City Manager

Signature (submitted by)


City Manager Approval

Subject:

Ratify April 8, 2019 City Council Meeting decisions

Recommended Motion:

Motion to ratify and approve all actions taken at the previous City Council meeting dated April 8, 2019.

Background/Discussion:

Although staff and the City Attorney believe the meeting to have been properly and duly noticed per Oregon law, there was an error in the city's noticing process in that the agenda was not automatically emailed to persons who had signed up for email notifications. Therefore I am asking you to ratify and approve those decisions made on April 8, 2019. Those actions were all passed unanimously 4 to 0, with Councilor Hodges being absent, and are listed below.

1. Approval of Consent Calendar.
2. Authorize the Mayor to sign a support letter for Curry Health District regarding the need for an Emergency Department in Brookings.
3. Waive deposit fees for the use of the Capella for the Elmo Williams Day event.
4. Waive picnic table fees for the Pelican Bay Arts Association (PBSS) sponsored Festival of the Art in Stout Park.
5. Authorize the City Manager to execute a Cooperative Improvement Agreement with the State of Oregon, Department of Transportation for US101, Parkview Drive to Lucky Lane.

Attachment(s):

- a. Agenda for April 8, 2019

City of Brookings

MEETING AGENDA

CITY COUNCIL

Monday, April 8, 2019, 7:00pm

City Hall Council Chambers, 898 Elk Drive, Brookings, OR 97415

CITY COUNCIL

A. Call to Order

B. Pledge of Allegiance

C. Roll Call

D. Scheduled Public Appearances

(Informational presentations to Council on non-agenda items – 10 minute limit per person.)

1. Jim Graham – 2020 Census

E. Oral Requests and Communications from the audience

(Public Comments on non-agenda items – 5 minute limit per person.*)

F. Consent Calendar

1. Approve Council minutes for March 25, 2019 [Pg. 3]
2. Accept Parks and Recreation minutes for January 24, 2019 [Pg. 6]
3. Accept Holly Beyer's resignation from Parks and Recreation Committee

G. Staff Reports/Resolutions

1. Letter of Support for Curry Health District [City Manager, Pg. 7]
 - a. Draft letter of support [Pg. 8]
2. Waiver of Fees for Elmo Williams Day Event [City Manager, Pg. 9]
 - a. Capella Use Application [Pg. 10]
3. Waive Picnic Table Use Fees for the Festival of Art in Stout Park [City Manger, Pg. 11]
 - a. PBAA Waiver Request [Pg. 12]
4. Cooperative Improvement Agreement, US 101, Parkview Drive to Lucky Lane [City Manager, Pg. 13]
 - a. Draft Cooperative Improvement Agreement [Pg. 14]

H. Informational Non-Action Items

1. March Vouchers [Pg. 24]
2. Committee Vacancies [Pg. 27]

I. Remarks from Mayor and Councilors

J. Adjournment

*Obtain Public Comment Forms and view the agenda and packet information on-line at www.brookings.or.us, at City Hall and at the local library. Return completed Public Comment Forms to the City Recorder before the start of meeting or during regular business hours.

All public meetings are held in accessible locations. Auxiliary aids will be provided upon request with at least 72 hours advance notification. Please contact 469-1102 if you have any questions regarding this notice.

CITY OF BROOKINGS

COUNCIL AGENDA REPORT

Meeting Date: April 22, 2019


Signature (submitted by)


City Manager Approval

Originating Dept: Parks

Subject: Wild Rogue Relay - 2019

Recommended Motion:

Motion to authorize City Manager to waive park use fees and deposits associated with services provided in support of the Wild Rogue Relay 2019 event.

Financial Impact:

Fees and associated services for the event are estimated to be \$1,000.

Background/Discussion:

The Wild Rogue Relay annual event is scheduled for June 14-15, 2019. This is the seventh year of the event and the fifth year that Azalea Park will serve as the terminus. Organizers have requested the City waive all fees associated with the event, including park use and event fees; provide a garbage dumpster, and requests that the City Public Safety Department assist with conveying runners safely through town.

This event starts at Applegate Reservoir and covers a 215 mile route to the coast. The event organizers estimate that 85 twelve person teams and 14 six person teams will participate in the event. Combined with family members, vendors, and other volunteers, this event brings more than 2,500 visitors to Brookings. Organizers report that approximately 40 percent of those participating in the event stay overnight. At its March 25, 2019 meeting, City Council approved unanimously to grant \$2,000 in TOT funding.

Azalea Park will be used as the terminus for the run, and will be the location of a post-run event that will include the award ceremony, food, alcoholic beverages, music and dancing. The Run organizers will also be seeking other local sponsors and vendors.

Attachment:

- a. Application Permit



PARK USE APPLICATION PERMIT

The City of Brookings programs, services, and activities are open to all persons without regard to race, age, sex, disability, religion, or national origin.

CITY USE ONLY		Rec'd Date: 4/3/19	By: [Signature]	
Department:	By:	Date:	Approved	Comment
Parks			Y / N	Y / N
Public Works			Y / N	Y / N
Fire			Y / N	Y / N
Police			Y / N	Y / N
Finance Dept.			Y / N	Y / N

Please sign, date and deliver to the next Dept. Please note comments on pg. 4 under "Comments" and RETURN TO LAURI Distributed: _____

Event Date(s): 4/15/19 to 06/15/19 Time: 8:00 am/pm to 9:30 am/pm Day(s): M/T/W/R/F/Sat/Sun

No. of participants (each day): 1500 Nature/Name of Event: Finish line for overnight relay

Organization: Sourwood Running LLC

Contact Person: Sydney Smedley Phone #: 541 951 9960 Cell #: Same

Mailing Address: 2812 Old Stage Rd. Central Point OR 97502
sarahbrendle@sourwoodrunning.com

email: [Signature] Return deposit to: _____

PARK/LOCATION: (Check all that apply)

- Azalea
- Bud Cross
- Easy Manor
- Bankus
- Skate Park
- Chetco Point
- Stout
- Tennis Courts
- Oasis
- Other: _____

AZALEA PARK AREA: (Check all that apply)

- Gazebo
- Bandshell/Stage
- Concession Stand - Bandshell
- Lawn area
- Kidtown Picnic Area
- Restrooms only - Bandshell
- Softball Field 1
- Field 2
- Multiuse Field
- Concession Stand - Softball
- Restrooms only - Softball
- Other: _____

Check Yes or No to each of the following:

- Will you be renting picnic tables? Yes No Qty: All Delivery: _____
- Is this event free? Yes No If no, how will funds be secured/protected? Lock box
- Will amplification equipment be used? Yes No If yes, noise level must be contained within the immediate area.
Describe purpose/type: Band 2 - 8pm
- Will alcohol be served? Yes* No Will alcohol be sold? Yes* No If yes, must obtain Liquor License
*Additional requirements - see page 8 of application
race winners / food trucks
- Will merchandise be sold? Yes No By whom/ Describe purpose/type: merchandise / food
- Do you want to place temporary signs? Yes No (Requires prior Park Supervisor approval - see page 1)
Describe quantity, location, type: _____

LIABILITY STATEMENT/AGREEMENT

I/We agree to abide by all applicable federal, state, and local laws, regulations, and ordinances which pertain to the use of said property and agree to pay for any damage to same, as a result of use. I/We agree to hold the City, its officials and employees, harmless from any liability resulting from use of said property and to obtain any and all required permits and/or business licenses required by the City.

THE CITY OF BROOKINGS ASSUMES NO RESPONSIBILITY OR LIABILITY FOR INCLEMENT WEATHER

The undersigned agrees to pay for any and all damages occurring during the reserved period. User agrees that the deposit paid herewith will be applied toward damages to the facility or its contents during the reserved period. Any of the deposit not applied to damages will be applied first to unpaid rental fees with any excess refund to user. Normal wear and tear as determined by the City of Brookings shall not be considered damage. User also acknowledges that he/she has read and understands the Rules and Regulations for Brookings City Parks and has reviewed all pages of the application. **APPLICANT: It is the applicant's responsibility to obtain required insurance, permits and/or licenses prior to the event and provide proof to the City.**

Applicant Name (PRINT): Jim Brendle

Applicant SIGNATURE: [Signature] Date: 03-24-2019

City Use Only: Paid: \$0 Applicant Notified: _____ Parks Notified: _____

Requesting waiver of park use fees from C.C.

PARK USE FEE/REQUIREMENT WORKSHEET



THIS PAGE FOR CITY USE ONLY:

requesting CC waive fees/deposits

Use	# of people	City Resident	Non Profit	User Fees	Deposit Fees	Restrictions/Comments
Park	1000-2000+	Y/N	Y/N	\$ 405.-	\$ 405	} requesting Fees/Dep be waived
Bandshell/Stage		Y/N	Y/N	\$ 66.-	\$ 66	
Concession Stand w/restrooms - \$82.00				\$ 82.-	\$ 82	
Concession Restrooms ONLY - \$25.00				\$ -	\$ -	
Picnic Tables: Qty <u>20</u> @ \$20 each				\$ 400.-	\$ 400	
TOTAL				\$ 953.-	\$ 953.-	
Check #						
City Receipt #						

Other Requirements

Additional Information/Comments

Site Plan Map On-site visit required. Date: _____ Time: _____ am/pm
 City Business License
 Liquor License - Required to sell alcoholic beverages (Must obtain license through the Oregon Liquor Control Commission)
 Proof of Insurance
 Security No. of Officers: _____ Comments: _____
 Temporary Signs Park Supervisor Approval: Yes No
 Comments: _____

Department Comments: *Need Insurance, And site map, OCC Lic. Public safety assistance with runners, to provide map.*

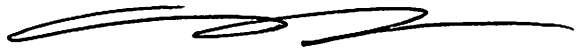
Security Deposit refund submitted on: _____ Amount: \$ _____
 Deposit not returned/reason: _____
 Event cancelled on: _____ Fee returned: in full partial Amount refunded: \$ _____
 Reason for refund: _____

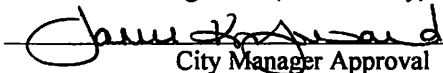
Requesting waiver of park use fees from C.C.

CITY OF BROOKINGS
COUNCIL AGENDA REPORT

Meeting Date: April 22, 2019

Originating Dept: PW/DS



Signature (submitted by)


City Manager Approval

Subject: Riparian Protection Overlay Zone Ordinance

Recommended Motion: Motion to adopt Ordinance 19-O-776, adding Chapter 17.74, Riparian Protection Overlay Zone to the Brookings Municipal Code and accompanying standards for the City of Brookings consistent with Oregon Statewide Goal 5, Riparian Safe Harbor Inventory Procedures and Goal 5, Safe Harbor Protections.

Background/Discussion:

(See LCOG Memo)

Attachments:

- a. LCOG Memo – Brookings Riparian Protection Overlay Zone Ordinance Summary
- b. Riparian Protection Overlay Zone Ordinance
- c. Exhibit A - Findings – Riparian Protection Overlay Zone
- d. Exhibit B - Riparian Protection Overlay Zone Map
- e. Exhibit C – Riparian Protection Overlay Zone - Proposed Code Language



MEMORANDUM

Meeting Date: April 22nd, 2019

To: City of Brookings City Council
From: Lane Council Governments (LCOG) Contact: Jacob Callister, Principal Planner
 Contact Info: 541-682-4114, jcallister@lco.org
RE: Brookings Riparian Area Protection Ordinance Summary

I. BACKGROUND

Following is a summary of the timeline of the Brookings Riparian Ordinance:

Date	Event
March 7th, 2018	Direction from the Brookings Planning Commission to develop a riparian protection ordinance.
Spring, 2018	LCOG worked with ODF and ODFW to develop a draft inventory of fish-bearing waterways in Brookings and developed code language based on the State's Goal 5 riparian area model ordinance.
July 10th, 2018	Planning Commission Work session
September 17th, 2018	Planning Commission and City Council joint work session addressing riparian protection ordinance
November 6 th , 2018	Planning Commission Hearing – resulting in a motion to recommend approval to the Brookings City Council.
January 14 th , 2019	City Council public hearing. The matter was tabled. Council directed staff to address a series of concerns to be discussed at a future council work session.
February 4 th , 2019	City Council work session to discuss concerns and deliberate further on direction to staff.

II. FINAL REVISIONS TO RIPARIAN ORDINANCE

Staff have iterated through resident, property owner, advocate, agency, Planning Commission and City Council concerns related to the riparian area inventory and protection ordinance. Key changes requested by the City Council are summarized below:

Concern/Direction	Response
Review for reduction of overall length.	The ordinance was reduced from approximately 12 pages to 7 pages. Variance language was simplified to point more directly to existing variance language. Plan amendment language was removed. Numerous references to wetlands were removed due to their being no local wetland inventory in Brookings.
Clarity of definitions, visuals and process related to the establishment of riparian corridors.	Several definitions were further clarified or removed due to unnecessary inclusion or redundancy to other terms.

Review to minimize discretionary elements of the ordinance.	DLCD worked with LCOG to minimize discretionary elements of the riparian ordinance.
Defining setback measurement as slope-based	LCOG revised the riparian area setback graphic to reflect measurement on a slope, and confirmed that the safe harbor approach could be preserved with that approach.
Simplification of ordinance administration	The ordinance was changed to be processed through the existing Permit Clearance Form, instead of a new Riparian Permit.
Research into impacted lots	LCOG performed an analysis on estimated impacts of the proposed buffer. These impacts are largely limited. The buffer occurs mostly in objectively non-developable areas.

III. RECOMMENDATION

As noted, the Brookings Riparian Protection Ordinance reflects iterations and feedback from many and varied stakeholders, including property owners, residents, state agencies, advocacy groups and local decision making bodies. LCOG recommends approval of the riparian inventory and protection ordinance as now constituted.

**CITY OF BROOKINGS
ORDINANCE NO. 19-O-776**

**AN ORDINANCE ESTABLISHING A RIPARIAN PROTECTION OVERLAY ZONE AND
ACCOMPANYING STANDARDS FOR THE CITY OF BROOKINGS CONSISTENT WITH OREGON
STATEWIDE PLANNING GOAL 5 RIPARIAN SAFE HARBOR INVENTORY PROCEDURES
AND GOAL 5 SAFE HARBOR PROTECTIONS**

WHEREAS, the City of Brookings City Council, through enactment of Ordinance 19-O-776, has adopted the Riparian Protection Overlay Zone Map (Exhibit B).

WHEREAS, the City of Brookings City Council, through enactment of Ordinance 19-O-776, has adopted the Riparian Protection Overlay Zone Code Amendments (Exhibit C).

WHEREAS, the City of Brookings Planning Commission reviewed the proposal on November 6th, 2018, at a Public Hearing, and recommended approval of the proposed Development Code; and

WHEREAS, evidence exists within the record (Exhibit A) indicating that the proposal meets the requirements of the City of Brookings Comprehensive Plan and the requirements of applicable state and local law, including consistency with Oregon’s Statewide Planning Goals; and

WHEREAS, the City of Brookings City Council has conducted a public hearing on January 14th, 2019 and is now ready to take action;

NOW THEREFORE THE CITY OF BROOKINGS ORDAINS AS FOLLOWS:

Section 1. The City of Brookings City Council adopts the Code Amendment, as set forth in Exhibits B and C as “Chapter 17.74 Riparian Protection (RP) District” of the Brookings Land Development Code.

Section 2. The City of Brookings City Council adopts the Findings of Fact, attached as Exhibit A, which include findings addressing the consistency of the proposed amendments with the City of Brookings Comprehensive Plan and Oregon’s Statewide Planning Goals.

Section 3. Severability. If any phrase, clause, or part of this Ordinance is found to be invalid by a court of competent jurisdiction, the remaining phrases, clauses, and parts shall remain in full force and effect.

Passed by the City Council this _____ day of _____, 2019.

Signed by the Mayor this _____ day of _____, 2019.

ATTEST:

Exhibit “A”

FINDINGS IN SUPPORT OF ADOPTING A RIPARIAN OVERLAY ZONE WITH AN ACCOMPANYING ORDINANCE CONSISTENT WITH GOAL 5 SAFE HARBOR

The proposed Ordinance to the City of Brookings Land Development Code (Title 17), to add an Overlay Zone “Riparian Protection Overlay Zone” including accompanying zoning code procedures in conformance with the following Statewide Planning Goals and Comprehensive Plan Policies:

CONSISTENCY WITH CITY OF BROOKINGS LEGISLATIVE AMENDMENT PROCEDURE

17.140.010 Procedure.

The Brookings comprehensive plan and land development code may be amended by adopting revisions to reflect changes in the law, clarify language or procedures, correct mistakes, or to reflect changing community conditions. Amendments to the text follow legislative procedures.

17.140.020 Proposed amendments.

A. An amendment to the text of the comprehensive plan or land development code may be proposed as a legislative hearing by the city council, planning commission, planning director, or an individual.

FINDINGS: The proposal is consistent with these criteria following a legislative adoption process and originated by the City.

17.140.050 Qualified comprehensive plan map and/or zone change.

A. When considering a comprehensive plan map and/or zone change, the planning commission and city council may qualify, or condition, a zone change such that:

- 1. The property may not be utilized for all the uses ordinarily permitted in a particular zone; or*
- 2. The development of the site must conform to certain specified standards; or*
- 3. Any combination of the above.*

B. A qualified zone change shall be dependent on findings of fact including but not limited to the following:

- 1. Such limitations are deemed necessary to protect the best interests and ensure compatibility with the surrounding property or neighborhood; or*
- 2. Such limitations are deemed necessary to protect public safety and the city’s best interests and/or infrastructure; or*
- 3. Such limitations are deemed necessary to prevent or mitigate potential adverse environmental effects. [Ord. 09-O-631 § 2.]*

FINDINGS: The proposal is consistent with these criteria in that the proposal to adopt a Riparian Protection Overlay Zone implements numerous specific Comprehensive Plan policies in the City’s best interests including preventing or mitigating adverse impacts to environmental effects or certain forms of development with riparian corridors.

17.140.060 Action by the planning commission.

A. Upon filing of said application for an amendment as described in BMC 17.140.030 or 17.140.040, the matter shall be referred to the planning commission and a public hearing shall be held on the matter for which notice shall be given as provided in Chapter 17.84 BMC.

B. In the case of a text amendment, the planning commission shall review the draft language and make any revisions that are considered necessary. The planning commission shall recommend approval, qualified approval, or denial to the city council.

C. In the case of a comprehensive plan/zone change amendment, the planning commission shall recommend the approval, approval with conditions, or denial of the application to the city council.

...

E. If the proposed zone change is for property containing a mobile home park, notice shall also be provided to tenants of such mobile home park. The commission may recommend an alternate zoning designation for the area under consideration. [Ord. 09-O-631 § 2; Ord. 96-O-446.BB § 7; Ord. 89-O-446 § 1. Formerly 17.140.040.]

17.140.070 Action by the city council.

A. Following the planning commission hearing and recommendation for a comprehensive plan/zone change, a hearing before city council shall be scheduled. Notice of said public hearing shall be given as provided in Chapter 17.84 BMC.

B. In the case of a text amendment, the council shall enact an ordinance approving or denying the amendment.

C. In the case of a zone change amendment, the council shall enact an ordinance to approve, approve with conditions, or deny the application.

...

E. To adopt an ordinance for a zone change, findings must be made, and adopted as a part of said ordinance, that are adequate to support the amendment proposal. The findings must be factual and must be supported by substantial evidence submitted into the record. It must be found that the amendment complies with and conforms to the comprehensive plan goals, policies, generalized land use map, and any applicable statewide planning goals. [Ord. 09-O-631 § 2; Ord. 96-O-446.BB § 7; Ord. 94-O-446.W § 2; Ord. 89-O-446 § 1. Formerly 17.140.050.]

FINDINGS: The City of Brookings staff and decision making bodies have prepared to and plan to follow the adoption procedure outlined in Sections 17.140.060 and 070. Hearings are scheduled and anticipated at both the commission and council level. With the Commission providing a recommendation to the Council.

CONSISTENCY WITH CITY OF BROOKINGS COMPREHENSIVE PLAN

LAND USE

Policy 1: The City will make all reasonable efforts to publicize planning issues and meetings where these issues will be discussed and decided upon.

Policy 3: In instances where public hearings are required, relative to this Plan, the Planning Commission and City Council will follow procedures established in the City's Zoning Ordinance. These bodies are responsible for considering the effects of a decision on the entire community and should not be swayed unduly by persons testifying for or against a particular course of action, but must place this input into its proper perspective and base the final decision on all information provided to them.

FINDINGS: The proposal is consistent with these criteria because the ordinance was developed in a public venue, has been properly noticed and is planned for hearing as required by the Brookings Land Development Code.

OPEN SPACES, SCENIC AND HISTORIC AREAS AND NATURAL RESOURCES

Fish and Wildlife Resources

...

An in-depth analysis of the fish and wildlife resources within and around the Urban Growth Boundary can be found in the Chetco River Estuary Plan (Goal 16) and Inventory section. Four streams within or partly within the city limits have been identified as fish bearing streams. These streams are— Chetco River, Ransom Creek, Harris Creek, and Shigh Creek. To protect the fishery within each of these streams, a Riparian Corridor will be established along each stream and protective provisions will be described in Section 96, Riparian Corridor Protection, of the city's Land Development Code.

...

Policy 1: It is the policy of the City of Brookings to protect natural and scenic resources by encouraging the conservation of ecologically and scientifically significant natural areas, scenic views and sites, historic areas, local energy sources, and mineral and aggregate resources.

Policy 5: It is the City's policy to protect the fish bearing streams within the city limits through the establishment of a riparian setback corridor along each.

DISCUSSION: The Comprehensive Plan mentions waterways identified by the Chetco River Estuary Plan. It does not include all of the waterways identified in the proposed Riparian Protection Overlay Zone. This is because several streams were identified as "fish-bearing" in the federal datasets required for the Goal 5 riparian safe harbor approach.

FINDINGS: The proposal is consistent with Policies 1 and 5 by proposing riparian protections on all fish-bearing streams and encouraging the conservation of ecologically and scientifically significant natural areas.

GOAL 6 AIR, WATER AND LAND RESOURCES QUALITY

Policy 2: It is the City's policy to ensure that waste and process discharge will not threaten to violate or violate applicable state statutes, rules or standards or degrade air, land and water areas needed for watersheds and their water quality.

Policy 4: If necessary, the City is willing to control or limit growth where appropriate to prevent degradation of air, land and water resources. It is also in the City's interest to conserve riparian vegetation and maintain adequate sewerage facilities in the City to preserve water quality.

FINDINGS: The proposal is consistent with these criteria because the *City of Brookings Riparian Protection Overlay Zone* includes protections aimed at providing buffers on riparian areas preserving critical vegetation which is proven to reduce pollutants and manage discharge and manage degradation of water resources.

GOAL 9 ECONOMY

Policy 1(c): Brookings will encourage compatible industrial uses to be located in appropriate areas throughout the community.

Policy 4(e): The City shall provide adequate industrial land for the development of new industrial uses.

FINDINGS: The Riparian Protection overlay Zone will contribute to the appropriate locating of compatible industrial uses but establishing a clearer awareness of the City's riparian corridors. The proposed Riparian Protection Overlay Zone is not found to threaten the City's ability to provide adequate industrial land for new industrial purposes.

GOAL 10 HOUSING

Policy 1: City shall not unduly restrict land development thereby artificially inflating the cost of both new and existing housing, but rather provide land in suitable quantities and encourage the construction of new residential units to meet increased demand.

Policy 4: City shall, through mapping and other means, provide, where known, general information relative to site development suitability.

FINDINGS: In the context of the the Policies mentioned throughout this staff report, the proposed Riparian Protection Overlay Zone is not found to unduly restrict land development or inflate costs of new and existing housing. The Riparian Protection overlay Zone establishes a clearer awareness of site suitability by mapping the City's riparian corridors and providing clear and objective standards for those corridors.

GOAL 16 ESTUARINE RESOURCES

Implementation:

The management units will implement the policies of the Curry County and Brookings comprehensive Plans, the Chetco Estuary Plan and the Oregon Estuary Classification System. Implementing

measures are set forth in Section 72, Marine Activities (MA) District, of the city's Land Development Code.

FINDINGS: The Chetco River is addressed substantially in the existing Marine Activities Overlay Zone. The proposed Overlay Zone is supportive of and consistent with the goals, policies and implementation concepts outlined in the Estuarine Resource element of the Brookings Comprehensive Plan.

GOAL 17 COASTAL SHORELANDS

Policy 7: It is City policy to require the maintenance and, where appropriate, restoration and enhancement of riparian vegetation consistent with water dependent uses.

FINDINGS: The Chetco River is addressed substantially in the existing Marine Activities Overlay Zone. The proposed Overlay Zone is supportive of and consistent with the goals, policies and implementation concepts outlined in the Coastal Shorelands element of the Brookings Comprehensive Plan.

CONSISTENCY WITH STATEWIDE PLANNING GOALS

GOAL 1: CITIZEN INVOLVEMENT: TO DEVELOP A CITIZEN INVOLVEMENT PROGRAM THAT INSURES THE OPPORTUNITY FOR CITIZENS TO BE INVOLVED IN ALL PHASES OF THE PLANNING PROCESS.

FINDINGS: The proposed amendment has been discussed in two public decision maker work sessions (In April and in September, 2018). Notice has been provided to all property owners determined to likely be within the “riparian corridors” addressed in the Ordinance. The notice sent was consistent with Measure 56 requirements. The hearings for both Planning Commission and City Council will be announced and published consistent with local requirements. Two hearings are open to the public and comments are incorporated into the final findings.

GOAL 2: LAND USE PLANNING: TO ESTABLISH A LAND USE PLANNING PROCESS AND POLICY FRAMEWORK AS A BASIS FOR ALL DECISIONS AND ACTIONS RELATED TO THE USE OF LAND AND TO ASSURE AN ADEQUATE FACTUAL BASE FOR SUCH DECISIONS AND ACTIONS.

FINDINGS: The proposed Amendment is consistent with Goal 2 because the Amendment followed the land use planning process established by the existing Comprehensive Plan, Development Code and State Statute.

GOAL 3: AGRICULTURAL LANDS: TO PRESERVE AND MAINTAIN AGRICULTURAL LANDS.

FINDINGS: This goal does not apply within adopted, acknowledged urban growth boundaries. The City of Brookings does not have any agricultural zoning districts.

GOAL 4: FOREST LANDS: TO CONSERVE FOREST LANDS BY MAINTAINING THE FOREST LAND BASE AND TO PROTECT THE STATE'S FOREST ECONOMY BY MAKING POSSIBLE ECONOMICALLY EFFICIENT FOREST PRACTICES THAT ASSURE THE CONTINUOUS GROWING AND HARVESTING OF FOREST TREES SPECIES AS THE LEADING USE ON FORESTLAND CONSISTENT WITH SOUND MANAGEMENT OF SOIL, AIR, WATER, AND

FISH AND WILDLIFE RESOURCES AND TO PROVIDE FOR RECREATIONAL OPPORTUNITIES AND AGRICULTURE.

FINDINGS: This goal does not apply within adopted, acknowledged urban growth boundaries. The City of Brookings does not have any forest zoning districts.

GOAL 5: OPEN SPACES, SCENIC AND HISTORIC AREAS, AND NATURAL RESOURCES: TO PROTECT NATURAL RESOURCES AND CONSERVE SCENIC AND HISTORIC AREAS AND OPEN SPACES.

FINDINGS: The Ordinance is consistent with Goal 5 because the City utilized the Safe Harbor approach as defined in OAR 660-023-0020(2) and safe harbor criteria including but not limited to those set forth in OAR 660-023-0090(5), (8), 660-023-100(4)(b), and 660-023-110(4). The proposed Amendments adopt the Riparian Protection Overlay Zone by reference. and add the following Goal 5 goals, policies and action steps:

The following are findings demonstrating consistency with the State inventory and significance determination processes.

OAR 660-023- PROCEDURES AND REQUIREMENTS FOR COMPLYING WITH GOAL 5

660-023-0030

Inventory Process

(1) Inventories provide the information necessary to locate and evaluate resources and develop programs to protect such resources. The purpose of the inventory process is to compile or update a list of significant Goal 5 resources in a jurisdiction. This rule divides the inventory process into four steps. However, all four steps are not necessarily applicable, depending on the type of Goal 5 resource and the scope of a particular PAPA or periodic review work task. For example, when proceeding under a quasi-judicial PAPA for a particular site, the initial inventory step in section (2) of this rule is not applicable in that a local government may rely on information submitted by applicants and other participants in the local process. The inventory process may be followed for a single site, for sites in a particular geographical area, or for the entire jurisdiction or urban growth boundary (UGB), and a single inventory process may be followed for multiple resource categories that are being considered simultaneously. The standard Goal 5 inventory process consists of the following steps, which are set out in detail in sections (2) through (5) of this rule and further explained in sections (6) and (7) of this rule:

- (a) Collect information about Goal 5 resource sites;
- (b) Determine the adequacy of the information;
- (c) Determine the significance of resource sites; and
- (d) Adopt a list of significant resource sites.

(2) Collect information about Goal 5 resource sites: The inventory process begins with the collection of existing and available information, including inventories, surveys, and other applicable data about potential Goal 5 resource sites. If a PAPA or periodic review work task pertains to certain specified sites, the local government is not required to collect information regarding other resource sites in the jurisdiction. When collecting information about potential Goal 5 sites, local governments shall, at a minimum:

- (a) Notify state and federal resource management agencies and request current resource information; and
- (b) Consider other information submitted in the local process.

(3) Determine the adequacy of the information: In order to conduct the Goal 5 process, information about each potential site must be adequate. A local government may determine that the information about a site is inadequate to complete the Goal 5 process based on the criteria in this section. This determination shall be clearly indicated in the record of proceedings. The issue of adequacy may be raised by the department or objectors, but final determination is made by the commission or the Land Use Board of Appeals, as provided by law. When local governments determine that information about a site is inadequate, they shall not proceed with the Goal 5 process for such sites unless adequate information is obtained, and they shall not regulate land uses in order to protect such sites. The

information about a particular Goal 5 resource site shall be deemed adequate if it provides the location, quality and quantity of the resource, as follows:

(a) Information about location shall include a description or map of the resource area for each site. The information must be sufficient to determine whether a resource exists on a particular site. However, a precise location of the resource for a particular site, such as would be required for building permits, is not necessary at this stage in the process.

(b) Information on quality shall indicate a resource site's value relative to other known examples of the same resource. While a regional comparison is recommended, a comparison with resource sites within the jurisdiction itself is sufficient unless there are no other local examples of the resource. Local governments shall consider any determinations about resource quality provided in available state or federal inventories.

(c) Information on quantity shall include an estimate of the relative abundance or scarcity of the resource.

(4) Determine the significance of resource sites: For sites where information is adequate, local governments shall determine whether the site is significant. This determination shall be adequate if based on the criteria in subsections (a) through (c) of this section, unless challenged by the department, objectors, or the commission based upon contradictory information. The determination of significance shall be based on:

(a) The quality, quantity, and location information;

(b) Supplemental or superseding significance criteria set out in OAR 660-023-0090 through 660-023-0230; and

(c) Any additional criteria adopted by the local government, provided these criteria do not conflict with the requirements of OAR 660-023-0090 through 660-023-0230.

(5) Adopt a list of significant resource sites: When a local government determines that a particular resource site is significant, the local government shall include the site on a list of significant Goal 5 resources adopted as a part of the comprehensive plan or as a land use regulation. Local governments shall complete the Goal 5 process for all sites included on the resource list except as provided in OAR 660-023-0200(7) for historic resources, and OAR 660-023-0220(3) for open space acquisition areas.

(6) Local governments may determine that a particular resource site is not significant, provided they maintain a record of that determination. Local governments shall not proceed with the Goal 5 process for such sites and shall not regulate land uses in order to protect such sites under Goal 5.

(7) Local governments may adopt limited interim protection measures for those sites that are determined to be significant, provided:

(a) The measures are determined to be necessary because existing development regulations are inadequate to prevent irrevocable harm to the resources on the site during the time necessary to complete the ESEE process and adopt a permanent program to achieve Goal 5; and

(b) The measures shall remain effective only for 120 days from the date they are adopted, or until adoption of a program to achieve Goal 5, whichever occurs first.

...

660-023-0090

Riparian Corridors

...

(3) Local governments shall inventory and determine significant riparian corridors by following either the safe harbor methodology described in section (5) of this rule or the standard inventory process described in OAR 660-023-0030 as modified by the requirements in section (4) of this rule. The local government may divide the riparian corridor into a series of stream sections (or reaches) and regard these as individual resource sites.

(4) When following the standard inventory process in OAR 660-023-0030, local governments shall collect information regarding all water areas, fish habitat, riparian areas, and wetlands within riparian corridors. Local governments may postpone determination of the precise location of the riparian area on lands designated for farm

or forest use until receipt of applications for local permits for uses that would conflict with these resources. Local governments are encouraged, but not required, to conduct field investigations to verify the location, quality, and quantity of resources within the riparian corridor. At a minimum, local governments shall consult the following sources, where available, in order to inventory riparian corridors along rivers, lakes, and streams within the jurisdiction:

- (a) Oregon Department of Forestry stream classification maps;
- (b) United States Geological Service (USGS) 7.5-minute quadrangle maps;
- (c) National Wetlands Inventory maps;
- (d) Oregon Department of Fish and Wildlife (ODFW) maps indicating fish habitat;
- (e) Federal Emergency Management Agency (FEMA) flood maps; and
- (f) Aerial photographs

FINDINGS: The proposal is consistent with these criteria because the City of Brookings Riparian Protection Overlay Zone inventory is based upon the reference to the datasets noted above (Oregon Department of Forestry Stream Classification and Oregon Department of Fish and Wildlife data).

(5) As a safe harbor in order to address the requirements under OAR 660-023-0030, a local government may determine the boundaries of significant riparian corridors within its jurisdiction using a standard setback distance from all fish-bearing lakes and streams shown on the documents listed in subsections (a) through (f) of section (4) of this rule, as follows:

- (a) Along all streams with average annual stream flow greater than 1,000 cubic feet per second (cfs) the riparian corridor boundary shall be 75 feet upland from the top of each bank.
- (b) Along all lakes, and fish-bearing streams with average annual stream flow less than 1,000 cfs, the riparian corridor boundary shall be 50 feet from the top of bank.
- (c) Where the riparian corridor includes all or portions of a significant wetland as set out in OAR 660-023-0100, the standard distance to the riparian corridor boundary shall be measured from, and include, the upland edge of the wetland.

FINDINGS: The proposal is consistent with these criteria because the City of Brookings Riparian Protection Overlay Zone which includes the City of Brookings Riparian Protection Overlay Map is based upon the appropriate buffer distance applied to fish-bearing streams in Brookings.

660-023-0050

Programs to Achieve Goal 5

(1) For each resource site, local governments shall adopt comprehensive plan provisions and land use regulations to implement the decisions made pursuant to OAR 660-023-0040(5). The plan shall describe the degree of protection intended for each significant resource site. The plan and implementing ordinances shall clearly identify those conflicting uses that are allowed and the specific standards or limitations that apply to the allowed uses. A program to achieve Goal 5 may include zoning measures that partially or fully allow conflicting uses (see OAR 660-023-0040(5)(b) and (c)).

(2) When a local government has decided to protect a resource site under OAR 660-023-0040(5)(b), implementing measures applied to conflicting uses on the resource site and within its impact area shall contain clear and objective standards. For purposes of this division, a standard shall be considered clear and objective if it meets any one of the following criteria:

- (a) It is a fixed numerical standard, such as a height limitation of 35 feet or a setback of 50 feet;

(b) It is a nondiscretionary requirement, such as a requirement that grading not occur beneath the dripline of a protected tree; or

(c) It is a performance standard that describes the outcome to be achieved by the design, siting, construction, or operation of the conflicting use, and specifies the objective criteria to be used in evaluating outcome or performance. Different performance standards may be needed for different resource sites. If performance standards are adopted, the local government shall at the same time adopt a process for their application (such as a conditional use, or design review ordinance provision).

(3) In addition to the clear and objective regulations required by section (2) of this rule, except for aggregate resources, local governments may adopt an alternative approval process that includes land use regulations that are not clear and objective (such as a planned unit development ordinance with discretionary performance standards), provided such regulations:

(a) Specify that landowners have the choice of proceeding under either the clear and objective approval process or the alternative regulations; and

(b) Require a level of protection for the resource that meets or exceeds the intended level determined under OAR 660-023-0040(5) and 660-023-0050(1).

FINDINGS: The Amendment is consistent with these criteria because the City is *concurrently adopting* the Overlay Zone with amendments to the Brookings Land Development Code, establishing standards for Goal 5 Riparian Corridors in Brookings and has adopted standards that provide a level of protection in compliance with OAR 660-023-090.

660-023-0060: Notice and Land Owner Involvement

Local governments shall provide timely notice to landowners and opportunities for citizen involvement during the inventory and ESEE process. Notification and involvement of landowners, citizens, and public agencies should occur at the earliest possible opportunity whenever a Goal 5 task is undertaken in the periodic review or plan amendment process. A local government shall comply with its acknowledged citizen involvement program, with statewide goal requirements for citizen involvement and coordination, and with other applicable procedures in statutes, rules, or local ordinances.

FINDINGS: Public meetings were conducted prior to the determination of or completion of the inventory. Adequate notice and hearings are in place to solicit public feedback and inquiry.

GOAL 6: AIR, WATER AND LAND RESOURCES QUALITY: TO MAINTAIN AND IMPROVE THE QUALITY OF THE AIR, WATER, AND LAND RESOURCES OF THE STATE.

FINDINGS: The proposal is consistent with Goal 6 because the policies protecting riparian corridors restrict development within the riparian corridor (including any associated wetlands) and protect water quality functions by providing naturally occurring surface water storage and water quality impoundments.

GOAL 7 - AREAS SUBJECT TO NATURAL DISASTERS AND HAZARDS: TO PROTECT LIFE AND PROPERTY FROM NATURAL DISASTERS AND HAZARDS.

FINDINGS: The proposal is consistent with Goal 7 because the policies protecting riparian areas (and associated wetlands) improve flood storage capacity and limit development near stream banks and other areas of potential flooding.

GOAL 8 - RECREATIONAL NEEDS: TO SATISFY THE RECREATIONAL NEEDS OF THE CITIZENS OF THE STATE AND VISITORS AND, WHERE APPROPRIATE, TO PROVIDE FOR

THE SITING OF NECESSARY RECREATIONAL FACILITIES INCLUDING DESTINATION RESORTS.

FINDING: The proposal does not impact Goal 8 Recreation.

GOAL 9 - ECONOMIC DEVELOPMENT: TO PROVIDE ADEQUATE OPPORTUNITIES THROUGHOUT THE STATE FOR A VARIETY OF ECONOMIC ACTIVITIES VITAL TO THE HEALTH, WELFARE AND PROSPERITY OF OREGON'S CITIZENS.

FINDING: The proposed Amendments do not impact Goal 9.

GOAL 10 - HOUSING: TO PROVIDE FOR THE HOUSING NEEDS OF CITIZENS OF THE STATE.

FINDINGS: The proposed Amendment minimally affects portions of lands that may be available for new residential development in the City of Brookings. The City has an adequate supply of buildable residential land. The protection of the identified significant riparian areas will not impact the City's ability to provide an adequate supply of developable land. Therefore, the City concludes the proposed amendment does not substantially impact Goal 10.

GOAL 11 - PUBLIC FACILITIES AND SERVICES: TO PLAN AND DEVELOP A TIMELY, ORDERLY AND EFFICIENT ARRANGEMENT OF PUBLIC FACILITIES AND SERVICES TO SERVE AS A FRAMEWORK FOR URBAN AND RURAL DEVELOPMENT.

FINDINGS: The proposed Amendment is consistent with Goal 11 the protection of riparian corridors.

GOAL 12 – TRANSPORTATION: TO PROVIDE AND ENCOURAGE A SAFE, CONVENIENT AND ECONOMIC TRANSPORTATION SYSTEM.

FINDING: The proposed Amendments do not impact Goal 12.

GOAL 13 - ENERGY CONSERVATION: TO CONSERVE ENERGY.

FINDING: The proposed Amendments do not impact Goal 13.

GOAL 14: URBANIZATION: TO PROVIDE FOR AN ORDERLY AND EFFICIENT TRANSITION FROM RURAL TO URBAN USE.

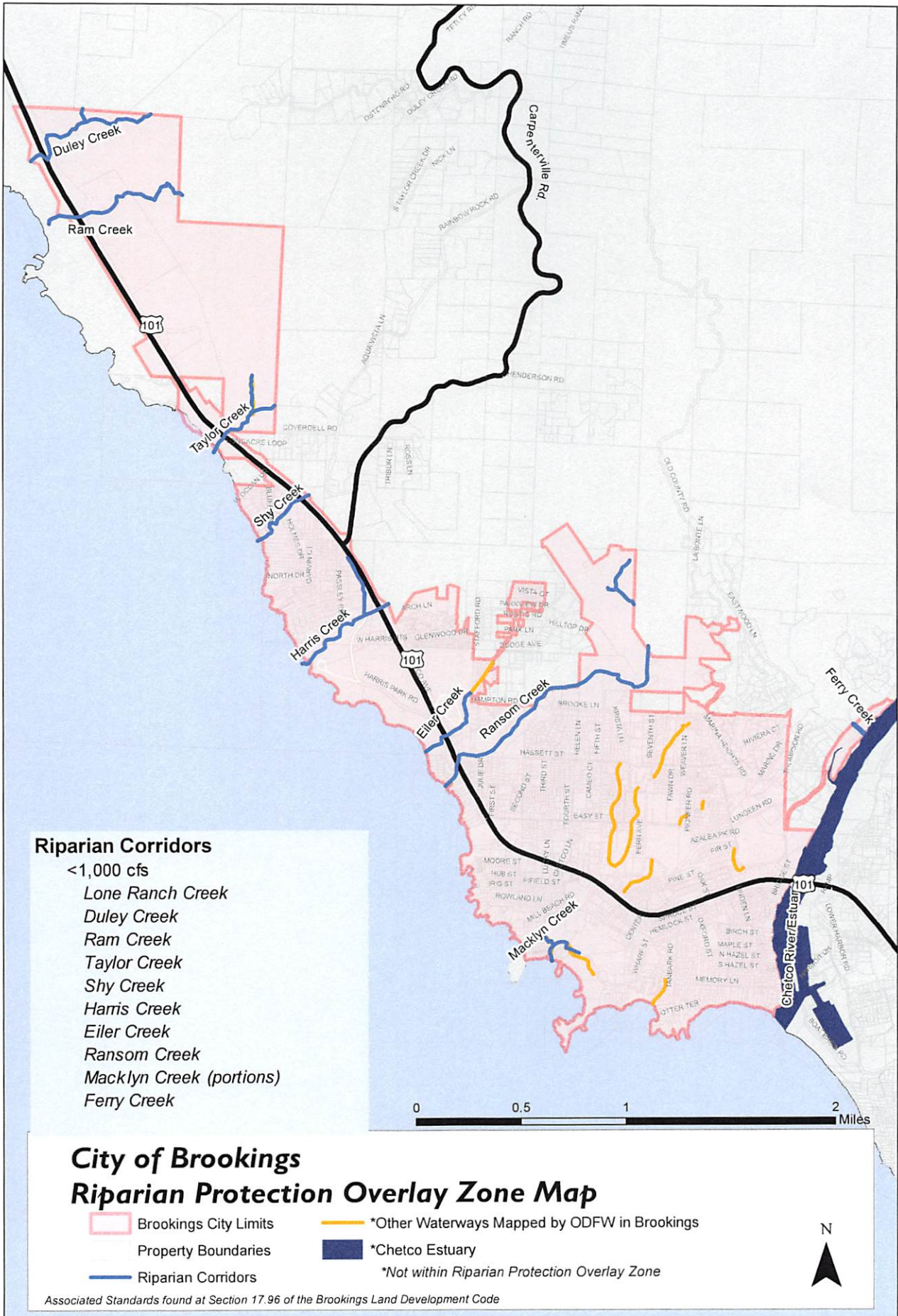
FINDING: The proposed Amendments do not impact Goal 14.

GOAL 16: ESTUARINE RESOURCES

FINDING: The proposed Amendments are consistent with and directly promote Goal 16 by adding protections to the Chetco River and its Estuary.

GOAL 17: COASTAL SHORELANDS

FINDING: The proposed Amendments are consistent with and directly promote Goal 17 by adding protections to the riparian corridors within the City of Brookings – all of which terminate in the Pacific Ocean in or near Brookings.



RIPARIAN PROTECTION OVERLAY (RP) –

I. Purpose

The purpose of this ordinance is to protect and restore select water bodies in the City of Brookings and their associated riparian areas, thereby protecting and restoring the hydrologic, ecological and water quality functions these areas provide. Specifically, this ordinance is intended to protect habitat for fish and other aquatic life, protect habitat for wildlife, protect water quality for human uses and for aquatic life, control erosion and limit sedimentation, and reduce the effects of flooding. This ordinance attempts to meet these goals by excluding structures from areas adjacent to significant (fish-bearing) lakes and streams, and by prohibiting vegetation removal or other alterations in those areas.

II. Definitions

Delineation: An analysis that determines the boundary of natural resource according to an approved methodology.

Excavation: Removal of organic or inorganic material (e.g. soil, sand, sediment, muck) by human action.

Fill: Deposition of organic or inorganic material (e.g. soil, sand, sediment, muck, debris) by human action.

Fish Bearing: Means inhabited at any time of the year by anadromous or game fish species and fish that are listed as threatened or endangered species under the federal Endangered Species Act or included on the OSFW Threatened and Endangered Species List. Fish bearing status is determined through a combination of Oregon Department of Fish and Wildlife data and Oregon Department of Forestry Stream Classification maps.

Impervious surface: Any material which reduces or prevents absorption of storm water..

Lawn: Grass or maintained as a ground cover of less than six inches in height, and managed to restrict the growth of shrubs and trees. For purposes of this ordinance, lawn is not considered native vegetation regardless of the species used.

Mitigation: A means of compensating for impacts to a riparian corridor including: restoration, creation, or enhancement of riparian functions. Some examples of riparian impact mitigation actions are replanting trees, removal of nuisance plants, and restoring streamside vegetation where it is disturbed or where it has been degraded due to past practices.

Native Vegetation: Plants identified as naturally occurring and historically found within the eco-region.

Natural Resource Enhancement: A modification of a natural resource to improve its quality.

Non-conforming: A structure or use that does not conform to the standards of this ordinance but has been in continuous existence from prior to the date of adoption of this ordinance up to the present. Non-conforming uses are not considered violations and are allowed to continue, although expansion, re-construction, or substantial improvements are regulated.

Net Loss: means a permanent loss of riparian functions provided by riparian structure and vegetation that results from a development action despite mitigation measures having been taken.

Off-Site Mitigation: Mitigation undertaken on a lot or parcel adjacent to or distant from the lot or parcel affected by a development action.

On-Site Mitigation: Mitigation undertaken within the lot or parcel affected by a development action.

Ordinary High Water Line (OHWL): means the line on the bank or shore to which the high water ordinarily rises. The OHWL excludes exceptionally high water levels caused by large flood events (e.g., 100-year events).

Qualified Professional: An individual who has proven expertise and vocational experience in the delineation of water resources.

Riparian area: The area adjacent to a river, lake, or stream, consisting of the area of transition from an aquatic ecosystem to a terrestrial ecosystem.

Riparian corridor: A resource that includes the water areas, fish habitat, riparian areas, that serve to protect water quality and the habitat functions of the water body. Corridors are further defined in Section IV(C).

Shrubs: Woody vegetation greater than 3 feet but less than 20 feet tall, including multi-stemmed, bushy shrubs and small trees and saplings.

Stream: A channel such as a river or creek that carries flowing surface water, including perennial streams and intermittent streams with defined channels, and excluding man-made irrigation and drainage channels.

Structure: A building or other structure that is built, constructed or installed, not including minor improvements, such as fences, utility poles, flagpoles, or irrigation system components that are not customarily regulated through zoning ordinances.

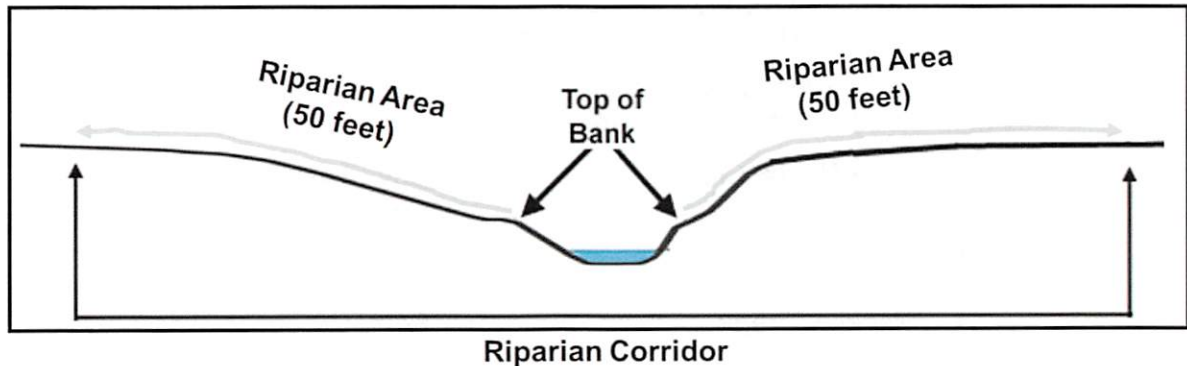
Substantial Improvement: Any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure either:

- (a) Before the improvement or repair is started, or if the structure has been damaged and is being restored, before the damage occurred.
- (b) For the purposes of this definition "substantial improvement" is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure.

The term does not, however, include either:

- (c) Any project for improvement of a structure to comply with existing state or local health, sanitary, or safety code specifications which are solely necessary to assure safe living conditions, or
- (d) Any alteration of a structure listed on the National Register of Historic Places or a State Inventory of Historic Places.

Top of Bank: A distinct break in slope between the stream bottom and the surrounding terrain which corresponds with the ordinary high water line of the stream; or the two-year recurrence interval flood elevation.



State and Federal Natural Resource Agency: Oregon Department of State Lands, Oregon Department of Fish and Wildlife, U.S. Army Corps of Engineers, U.S. Department of Agriculture Natural Resources Conservation Service, U.S. Fish and Wildlife Service, U.S. Environmental Protection Agency, and Oregon Department of Environmental Quality.

Trees: A woody plant five inches or greater in diameter at breast height and 20 feet or taller.

Water dependent: A use or activity which can be carried out only on, in, or adjacent to water areas because the use requires access to the water body for water-borne transportation, recreation, energy production, or source of water.

Water related: Uses which are not directly dependent upon access to a water body, but which provide goods or services that are directly associated with water-dependent land or waterway use, and which, if not located adjacent to water, would result in a public loss of quality in the goods or services offered. Except as necessary for water-dependent or water-related uses or facilities, residences, parking lots, spoil and dump sites, roads and highways, restaurants, businesses, factories, and trailer parks are not generally considered dependent on or related to water location needs.

III. Applicability

(A). Affected Property

The procedures and requirements of the Riparian Protection (RP) Overlay Zone:

- (a) apply to any parcel designated as containing any portion of a riparian corridor as mapped in the City of Brookings Riparian Protection Overlay Zone Map;
- (b) apply in addition to the standards of the property's underlying zone.
- (c) supersede the property's underlying zone where the underlying zone does not provide the level of resource protection afforded by the RP Overlay Zone.

IV. Riparian Corridors

The Riparian Protection Overlay Zone identifies fish-bearing streams, lakes, and a riparian area of specified width. The following riparian corridors are to be established:

- (A) Along all fish-bearing lakes, and fish-bearing streams with average annual stream flow less than 1,000 cfs, the riparian area shall be 50 feet.
 - Lone Ranch Creek
 - Duley Creek
 - Ram Creek
 - Taylor Creek
 - Macklyn Creek
 - Shy Creek
 - Harris Creek
 - Eiler Creek
 - Ransom Creek
 - Ferry Creek
- (B) Along all streams with average annual stream flow greater than 1,000 cubic feet per second (cfs) the riparian corridor shall be 75 feet.
 - *The Chetco River has an annual stream flow greater than 1,000 cfs. However, the portion of the Chetco River within the City of Brookings is within the Chetco River Estuary and considered coastal shoreland, subject to the City's Marine Activity District (BMC Chapter 17.72).*
- (C) The measurement of distance to the riparian corridor boundary shall be from the top of bank (see definition).

V. Administration

- (A) Development submissions identified on the City of Brookings' Permit Clearance Form as initiating development activities in any areas designated as a riparian corridor, must be accompanied by the following:
 - (1) Site Plan (in triplicate and drawn to scale) showing:
 - i. A delineation, prepared by a qualified professional, of the Riparian Corridor on the site.
 - ii. Existing improvements such as structures, buildings, utility lines, fences, etc. for the whole site.
 - iii. Areas where riparian area has been previously disturbed.
 - iv. Areas where new disturbance in the riparian area is proposed.
 - v. Outline of trees, shrubs and ground covers

- (2) **Construction Management Plan**
Identify how the management plan conforms to applicable requirements of the Brookings Municipal Code. Identify measures that will be taken during construction or mitigation work to protect the remaining resources at and near the construction site and a description of how the undisturbed areas will be protected. For example, describe how protective fencing will delineate the protection area, how protection zones around remaining trees will be identified and protected, erosion controls, stormwater management, and construction equipment locations and the timing of construction in relation to season.
- (3) **Landscape Plan**
In addition to the construction management plan, a landscape plan will be required for newly disturbed areas prior to issuance of permits. The plan shall include the extent of vegetation removal proposed, characteristics of the existing vegetation (types, density), proposed riparian enhancement or restoration measures, proposed alterations of topography or drainage patterns, and existing uses on the property.

VI. Activities within the Riparian Corridor

- (A) The permanent alteration of the riparian corridor by grading or by the placement of structures or impervious surfaces is prohibited, except for the following uses:
 - (1) **Streets, roads, and paths;**
Public or private streets, driveways, or paths may be placed within a riparian corridor to access construction activities if it is shown to the satisfaction of the reviewing authority that no other practicable method of access exists, The following standards shall apply:
 - i. To achieve minimum intrusion into the riparian corridor, design roads, driveways, and paths to be no wider than 20 feet and otherwise consistent with local standards for road and path construction). Crossing angle shall be no less than 90% perpendicular to the riparian corridor;
 - ii. Bridges, arched culverts, or box culverts with a natural bottom shall be used for crossing of a waterway. The lower lip of any culvert must meet the channel bed at or below grade. Access for abutting lots and access through easements for adjacent lots shall be shared to minimize number of channel crossings;
 - iii. Consider site plan elements that could facilitate access to potential new building sites and help reduce the need for subsequent encroachments into the riparian corridor. (A statement by the applicant that such elements have been considered shall satisfy this provision);
 - iv. During construction, no stockpiling of fill materials, parking, or storage of equipment is allowed within the riparian corridor;

- v. Erosion control measures, such as mulching, straw waddles, silt fences and bio-filter bags, shall be used to reduce the likelihood of sediment and untreated stormwater entering surface water, consistent with BMC 17.100.
- (2) Drainage facilities, utilities, and irrigation pumps;
- Public and private utilities or drainage facilities may be placed within a riparian corridor if it is shown to the satisfaction of the reviewing authority that no other practicable alternative exists. If allowed the following standards shall apply:
- i. The corridor necessary to construct utilities shall be the minimum width practical to minimize intrusion into the riparian corridor. Removal of trees and native vegetation shall be avoided unless alternative paths are practically impossible. The existing grade of the land shall be restored after construction. Native the construction corridor shall be replanted with native vegetation;
 - ii. No stockpiling of materials, parking, or storage of equipment is allowed within the riparian corridor.
- (3) Water-related and water-dependent uses.
- (4) Replacement of existing structures with structures in the same location that do not disturb additional surface area;
- (5) Non-conforming uses existing fully or partially within the riparian corridor may be expanded, provided the expansion does not occur within the significant riparian corridor. Substantial improvement of a non-conforming structure in the riparian corridor shall comply with the standards of this ordinance.
- (6) Shoreline stabilization and flood control structures that legally existed on the effective date of this ordinance may be maintained. Any expansion of existing structures or development of new structures shall be evaluated by the Public Works/Development Services Director (Director) and appropriate state natural resource agency staff. Such alteration of the significant riparian corridor shall be approved only if less-invasive or non-structural methods will not adequately meet the stabilization or flood control needs.
- (B) Removal of vegetation is prohibited, except for:
- (1) Removal of non-native vegetation and replacement with native plant species. The replacement vegetation shall cover, at a minimum, the area from which vegetation was removed, and shall maintain or exceed the density of the removed vegetation.
 - (2) Removal of vegetation necessary for the development of approved uses.. Vegetation removal shall be kept to the minimum necessary to allow the use.
 - (3) Trees in danger of falling [as determined by a certified arborist] and thereby posing a hazard to life or property may be felled, following the Director's approval of the arborist's determination.

- (4) Existing lawn within the significant riparian corridor may be maintained, but not expanded into the resource.
- (C) Exceptions. The following activities are not required to meet the standards of this section and do not require a Riparian Development Permit:
- (1) Commercial forest practices regulated by the Oregon Forest Practices Act.
 - (2) Temporary emergency procedures necessary for the safety or protection of property.
 - (3) Normal and accepted farming practices other than the construction of buildings, structures, or paved roads.
 - (4) Vegetation removal consistent with Section VI (B).

Note to planners on herbicide use in riparian areas – Local governments are not allowed to regulate pesticide/herbicide use, but can provide information to improve compliance with state and federal law See list of pesticides prohibited for use near salmon bearing streams: <http://www.pesticide.org/finalproductslist.pdf>

VII. Agency Review

Decisions made by the City of Brookings under this ordinance do not supersede the authority of the state or federal agencies which may regulate or have an interest in the activity in question. It is the responsibility of the landowner to ensure that any other necessary state or federal permits or clearances are obtained.

VIII. Natural Resource Enhancement

Enhancement of natural resources, such as riparian enhancement, in-channel habitat improvements, non-native plant control, and similar projects, which propose to improve or maintain the quality of a riparian resource is encouraged; however, no enhancement activity requiring the excavation or filling of material in a waterway is allowed unless all applicable state and federal permits have been granted.

IX. Variance

In cases where the limitations on activities within the significant riparian corridor would result in the loss of reasonable economic use of a lot or parcel legally created before the effective date of this ordinance, a property owner may request a variance. Granting of a variance requires findings consistent with the variance criteria outlined in Chapter 17.132 of the BMC.

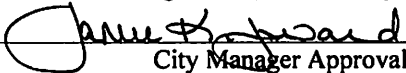
CITY OF BROOKINGS

COUNCIL AGENDA REPORT

Meeting Date: April 22, 2019

Originating Dept: PWDS

Signature (submitted by)



City Manager Approval

Subject: Contract with Ausland Group for City Hall Seismic Retrofit project

Recommended Motion: Motion to authorize the City Manager to enter into an agreement with Ausland Group as the prime contractor for the City Hall Seismic Rehabilitation project.

Financial Impact: The City received a Seismic Rehabilitation Grant award of \$1,287,988 from Business Oregon for the seismic rehabilitation of the Police and Fire Station wings of the City Hall Complex. A local Match of \$209,672 is required and will draw from the Capital Projects Fund.

Background/Discussion: Grant funds will pay the total amount of the architectural and engineering fees, estimated at \$164,500. WRK Engineering was selected in 2017 to prepare construction documents for the project.

To select a building contractor at this stage of the design and construction document phase is important as a contractor with experience in this type of work can assist in value engineering as well as provide the engineer with true construction costs.

Staff advertised and received two Requests for Qualifications (RFQ's) from Ausland Group and Vitus Constriction Inc. Staff has reviewed the qualifications of both and is recommending the selection of Ausland as they possess a strong history of providing similar construction services locally. Ausland is currently under contract with Brookings Harbor School District for seismic retrofit rehabilitation of all school buildings.

Council authorized the City Manager to enter into an agreement with Ausland Group as the prime contractor for the City Hall Seismic Rehabilitation project on October 8, 2019. The City Attorney has been working on a specialized contract with representatives of Ausland. It is now ready, and the City Attorney recommends we bring this back for approval.

Attachment(s):

- a. Ausland main agreement A133-2009
- b. A201-2017 (attachment to agreement)
- c. COB Terms and Conditions (attachment to agreement)
- d. COB Certification of Compliance (attachment to agreement)



AIA[®] Document A133[™] – 2009

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

AGREEMENT made as of the 18 day of April in the year 2019
(In words, indicate day, month and year.)

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

City of Brookings, a subdivision of the State of Oregon
898 Elk Drive
Brookings, Oregon 97415

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

Ausland Group
3935 Highland Avenue
Grants Pass OR 97526

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

City of Brookings Fire Department and Police Department Seismic Retrofit Project
898 Elk Drive
Brookings, Oregon 97415

The Architect:
(Name, legal status and address)
WRK Engineers
215 West 12th Street, Suite 202
Vancouver, Washington 98660

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

Tony Baron
City of Brookings Public Works and Development
898 Elk Drive
Brookings, Oregon 97415

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

Aaron Ausland
Ausland Group
3935 Highland Avenue
Grants Pass, Oregon 97526

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

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

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

Init.

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User Notes: (3B9ADA58)

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

WRK Engineers
215 West 12th Street, Suite 202
Vancouver, Washington 98660

The Owner and Construction Manager agree as follows.

TABLE OF ARTICLES

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

EXHIBIT A GUARANTEED MAXIMUM PRICE AMENDMENT

ARTICLE 1 GENERAL PROVISIONS

§ 1.1 The Contract Documents

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

§ 1.2 Relationship of the Parties

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

§ 1.3 General Conditions

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

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ARTICLE 2 CONSTRUCTION MANAGER'S RESPONSIBILITIES

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

§ 2.1 Preconstruction Phase

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

§ 2.1.2 Consultation

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

§ 2.1.3 When Project requirements in Section 3.1.1 have been sufficiently identified, the Construction Manager shall prepare and periodically update a Project schedule for the Architect's review and the Owner's acceptance. The Construction Manager shall obtain the Architect's 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 and Suppliers

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

§ 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

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

§ 2.1.8 Extent of Responsibility

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

§ 2.1.9 Notices and Compliance with Laws

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

§ 2.2 Guaranteed Maximum Price Proposal and Contract Time

§ 2.2.1 At a time to be mutually agreed upon by the Owner and the Construction Manager and in consultation with the Architect, the Construction Manager shall prepare a Guaranteed Maximum Price proposal for the Owner's review and acceptance. The Guaranteed Maximum Price in the proposal shall be the sum of the Construction Manager's estimate of the Cost of the Work, including contingencies described in Section 2.2.4, and the Construction Manager's Fee.

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

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

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

§ 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.

§ 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.

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

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

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

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

§ 2.3 Construction Phase

§ 2.3.1 General

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

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

§ 2.3.2 Administration

§ 2.3.2.1 Those portions of the Work that the Construction Manager does not customarily perform with the Construction Manager's own personnel shall be performed under subcontracts or by other appropriate agreements with the Construction Manager. The Owner may designate specific persons from whom, or entities from which, the Construction Manager shall obtain bids. The Construction Manager shall select Subcontractors according to Article 5 of the A201. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection.

§ 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 require that a Change Order be issued to adjust the Contract Time and the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Construction Manager and the amount and time requirement of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

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

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

§ 2.3.2.5 The Construction Manager shall schedule and conduct meetings to discuss such matters as procedures,

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progress, coordination, scheduling, and status of the Work. The Construction Manager shall prepare and promptly distribute minutes to the Owner and Architect.

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

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

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

§ 2.4 Professional Services

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

§ 2.5 Hazardous Materials

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

ARTICLE 3 OWNER'S RESPONSIBILITIES

§ 3.1 Information and Services Required of the Owner

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

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

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

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

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

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

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

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

§ 3.2 Owner's Designated Representative

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

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

§ 3.3 Architect

The Owner shall retain an Architect to provide services, duties and responsibilities as required to execute the project.

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.)

Construction Manager will be paid \$15,200 as described in Articles 5 and 6.

§ 4.1.3 If the Preconstruction Phase services covered by this Agreement have not been completed within 5 (five) months of the date of this Agreement, through no fault of the Construction Manager, the Construction Manager's compensation for Preconstruction Phase services shall be adjusted in accordance with Construction Manager's standard billing rates

§ 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.

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

1.5 % (one and a half percent) per month

ARTICLE 5 COMPENSATION FOR CONSTRUCTION PHASE SERVICES

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

§ 5.1.1 The Construction Manager’s Fee:
(State a lump sum, percentage of Cost of the Work or other provision for determining the Construction Manager’s Fee.)

Lump Sum: \$15,200

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

Seven (7) percent of the Cost of the Work

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

Subcontractor overhead and profit will be evaluated by Construction Manager and Owner on a case-by-case basis. Construction Manager and Owner expect such overhead and profit will not exceed 15% of direct Subcontractor cost.

§ 5.1.4 Rental rates for Construction Manager-owned equipment shall not exceed the standard rates paid at the place of the Project.

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

Item	Units and Limitations	Price per Unit (\$0.00)
N/A		

(Table Deleted)

§ 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.)

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

§ 5.3 Changes in the Work

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

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

§ 5.3.2 Adjustments to the Guaranteed Maximum Price on account of changes in the Work subsequent to the execution of the Guaranteed Maximum Price Amendment may be determined by any of the methods listed in Section 7.3.3 of AIA Document A201–2017, General Conditions of the Contract for Construction.

§ 5.3.3 In calculating adjustments to subcontracts (except those awarded with the Owner’s prior consent on the basis of cost plus a fee), the terms “cost” and “fee” as used in Section 7.3.3.3 of AIA Document A201–2007 and the term “costs” as used in Section 7.3.7 of AIA Document A201–2017 shall have the meanings assigned to them in AIA Document A201–2017 and shall not be modified by Sections 5.1 and 5.2, Sections 6.1 through 6.7, and Section 6.8 of this Agreement. Adjustments to subcontracts awarded with the Owner’s prior consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.

§ 5.3.4 In calculating adjustments to the Guaranteed Maximum Price, the terms “cost” and “costs” as used in the above-referenced provisions of AIA Document A201–2017 shall mean the Cost of the Work as defined in Sections 6.1 to 6.7 of this Agreement and the term “fee” shall mean the Construction Manager’s Fee as defined in Section 5.1 of this Agreement.

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

ARTICLE 6 COST OF THE WORK FOR CONSTRUCTION PHASE

§ 6.1 Costs to Be Reimbursed

§ 6.1.1 The term Cost of the Work shall mean costs necessarily incurred by the Construction Manager in the proper performance of the Work. Such costs shall be at rates not higher than the standard paid at the place of the Project except with prior consent of the Owner. The Cost of the Work shall include only the items set forth in Sections 6.1 through 6.7.

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

§ 6.2 Labor Costs

§ 6.2.1 Wages of construction workers directly employed by the Construction Manager to perform the construction of the Work at the site or at off-site workshops when directly attributable to the Project.

§ 6.2.2 Wages or salaries of the Construction Manager’s supervisory and administrative personnel when stationed at the site or stationed at the Construction Manager’s principal or other offices when engaged in work directly attributable to the Project. When Construction Manager’s supervisory and administrative personnel are stationed at Construction Manager’s principal or other offices, the amount due under this Contract will be only for that portion of their time reasonably required for the Work.

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

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

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

(Paragraph Deleted)

§ 6.3 Subcontract Costs

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

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

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

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

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

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

§ 6.5.2 Rental charges for temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site and costs of transportation, installation, minor repairs, dismantling and removal. The total rental cost of any Construction Manager-owned item may not exceed the purchase price of any comparable item. Rates of Construction Manager-owned equipment and quantities of equipment are attached.

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

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

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

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

§ 6.6 Miscellaneous Costs

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

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

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

§ 6.6.4 Fees of laboratories for tests required by the Contract Documents, except those related to defective or nonconforming Work for which reimbursement is excluded by Section 13.5.3 of AIA Document A201-2017 or by other provisions of the Contract Documents, and which do not fall within the scope of Section 6.7.3.

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§ 6.6.5 Royalties and license fees paid for the use of a particular design, process or product required by the Contract Documents; the cost of defending suits or claims for infringement of patent rights arising from such requirement of the Contract Documents; and payments made in accordance with legal judgments against the Construction Manager resulting from such suits or claims and payments of settlements made with the Owner's consent. However, such costs of legal defenses, judgments and settlements shall not be included in the calculation of the Construction Manager's Fee or subject to the Guaranteed Maximum Price. If such royalties, fees and costs are excluded by the last sentence of Section 3.17 of AIA Document A201–2017 or other provisions of the Contract Documents, then they shall not be included in the Cost of the Work.

§ 6.6.6 Costs for electronic equipment and software, directly related to the Work.

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

§ 6.6.8 Legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between the Owner and Construction Manager, reasonably incurred by the Construction Manager after the execution of this Agreement in the performance of the Work.

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

§ 6.7 Other Costs and Emergencies

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

§ 6.7.2 Costs incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property, as provided in Section 10.4 of AIA Document A201–2017.

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

§ 6.7.4 The costs described in Sections 6.1 through 6.7 shall be included in the Cost of the Work, notwithstanding any provision of AIA Document A201–2017 or other Conditions of the Contract which may require the Construction Manager to pay such costs, unless such costs are excluded by the provisions of Section 6.8.

§ 6.8 Costs Not To Be Reimbursed

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

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

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§ 6.9 Discounts, Rebates and Refunds

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

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

§ 6.10 Related Party Transactions

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

§ 6.10.2 If any of the costs to be reimbursed arise from a transaction between the Construction Manager and a related party, the Construction Manager shall notify the Owner of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction, then the cost incurred shall be included as a cost to be reimbursed, and the Construction Manager shall procure the Work, equipment, goods or service from the related party, as a Subcontractor, according to the terms of Sections 2.3.2.1, 2.3.2.2 and 2.3.2.3. If the Owner fails to authorize the transaction, the Construction Manager shall procure the Work, equipment, goods or service from some person or entity other than a related party according to the terms of Sections 2.3.2.1, 2.3.2.2 and 2.3.2.3.

§ 6.11 Accounting Records

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

ARTICLE 7 PAYMENTS FOR CONSTRUCTION PHASE SERVICES

§ 7.1 Progress Payments

§ 7.1.1 Based upon Applications for Payment submitted to the Owner's Representative by the Construction Manager and Certificates for Payment issued by the Owner's Representative, 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 an Application for Payment is received by the Owner's Representative not later than the 15th day of a month, the Owner shall make payment of the certified amount to the Construction Manager not later than the last day of the same month. If an Application for Payment is received by the Owner's Representative after the application date fixed above, payment shall be made by the Owner not later than 20 (twenty) days after the Owner's Representative receives the Application for Payment.

(Federal, state or local laws may require payment within a certain period of time.)

§ 7.1.4 If requested by the Owner, the Construction Manager shall submit reasonable documentation to demonstrate that cash disbursements already made to the Construction Manager have been used to satisfy Construction Manager's obligations to those supplying labor and materials in the performance of the Work.

§ 7.1.5 Each Application for Payment shall be based on the most recent schedule of values submitted by the Construction Manager in accordance with the Contract Documents. The schedule of values shall allocate the entire Guaranteed Maximum Price among the various portions of the Work, except that the Construction Manager's Fee shall be shown as a single separate item. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Owner's Representative may reasonably require. This schedule, unless objected to by the Owner's Representative, 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 percentage or that portion of the Work which has actually been completed.

§ 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 the total Work by the share of the Guaranteed Maximum Price allocated to the total Work in the schedule of values. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 7.3.9 of AIA Document A201-2017;
- .2 Add that portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work, or if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing;
- .3 Add the Construction Manager's Fee, less retainage of five percent (5 %). The Construction Manager's Fee shall be computed upon the Cost of the Work at the rate stated in Section 5.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, shall be an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- .4 Subtract retainage of five percent (5 %) from that portion of the Work that the Construction Manager self-performs;
- .5 Subtract the aggregate of previous payments made by the Owner;
- .6 Subtract the shortfall, if any, indicated by the Construction Manager in the documentation required by Section 7.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
- .7 Subtract amounts, if any, for which the Owner's Representative has withheld or nullified a Certificate for Payment as provided in Section 9.5 of AIA Document A201-2017.
- .8 After 50 percent of the Work is completed, the Construction Manager may request in writing that the retainage reduction be eliminated from future payments and the Owner will eliminate the reduction (keeping retainage already withheld) if, in the Owner's sole discretion, Owner finds it warranted based upon Owner's opinion that the Work is progressing in accordance with the Contract Documents.

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

§ 7.1.9 Except with the Owner's prior approval, the Construction Manager shall not make advance payments exceeding \$5,000 to suppliers for materials or equipment which have not been delivered and stored at the site.

§ 7.1.10 In taking action on the Construction Manager's Applications for Payment, the Owner's Representative 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 Owner's Representative 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 Owner's Representative has made exhaustive or continuous on-site inspections; or that the Owner's

Representative has made examinations to ascertain how or for what purposes the Construction Manager has used amounts previously paid on account of the Contract. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

§ 7.2 Final Payment

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

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

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

§ 7.2.2 The Owner's auditors will review and report in writing on the Construction Manager's final accounting within 30 days after delivery of the final accounting to the Architect by the Construction Manager. Based upon such Cost of the Work as the Owner's auditors report to be substantiated by the Construction Manager's final accounting, and provided the other conditions of Section 7.2.1 have been met, the Owner's Representative will, within seven days after receipt of the written report of the Owner's auditors, either issue to the Owner a final Certificate for Payment with a copy to the Construction Manager, or notify the Construction Manager and Owner in writing of the Owner's Representative's reasons for withholding a certificate as provided in Section 9.5.1 of the AIA Document A201-2017. The time periods stated in this Section supersede those stated in Section 9.4.1 of the AIA Document A201-2017. The Owner's Representative is not responsible for verifying the accuracy of the Construction Manager's final accounting.

§ 7.2.3 If the Owner's auditors report the Cost of the Work as substantiated by the Construction Manager's final accounting to be less than claimed by the Construction Manager, the Construction Manager shall be entitled to request mediation of the disputed amount without seeking an initial decision pursuant to Section 15.2 of A201-2017. A request for mediation shall be made by the Construction Manager within 30 days after the Construction Manager's receipt of a copy of the Owner's Representative's final Certificate for Payment. Failure to request mediation within this 30-day period shall result in the substantiated amount reported by the Owner's auditors becoming binding on the Construction Manager. Pending a final resolution of the disputed amount, the Owner shall pay the Construction Manager the amount certified in the Owner's Representative's final Certificate for Payment.

§ 7.2.4 If, subsequent to final payment and at the Owner's request, the Construction Manager incurs costs described in Section 6.1.1 and not excluded by Section 6.8 to correct defective or nonconforming Work, the Owner shall reimburse the Construction Manager such costs and the Construction Manager's Fee applicable thereto on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price. If the Construction Manager has participated in savings as provided in Section 5.2.1, the amount of such savings shall be recalculated and appropriate credit given to the Owner in determining the net amount to be paid by the Owner to the Construction Manager.

ARTICLE 8 INSURANCE AND BONDS

For all phases of the Project, the Construction Manager shall purchase and maintain insurance, and the Construction Manager shall provide bonds as set forth in Article 11 of AIA Document A201-2017 and insurance as set forth below, naming the Owner, Owner's Representative, the Architect and the Architect's representative as additional insureds.

Type of Insurance or Bond

Limit of Liability or Bond Amount (\$0.00)

Init.

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Payment and Performance Bonds	Sum of initial GMP.
Public Works Bond	\$30,000 (per Oregon law)
Warranty Bond (1 year for defective materials or workmanship)	10% of initial GMP
Commercial General Liability (including coverage for broad form contractual liability; broad form property damage; personal and advertising injury; owners and contractor protective; premises/operations; and products/completed operations. Coverage shall not exclude excavation, collapse, underground, or explosion hazards. Aggregate limits shall apply on a per-project basis.)	\$2 million per occurrence for bodily injury, personal injury and property damage
Comprehensive Auto Liability	\$2 million each occurrence / \$3 million aggregate for BI/PD
Employer's Liability	\$2 million per accident for bodily injury or disease
Workers Compensation	Per Oregon law (ORS 656.017)

(Table Deleted)

ARTICLE 9 DISPUTE RESOLUTION

§ 9.1 Any Claim between the Owner and Construction Manager shall be resolved in accordance with the provisions set forth in this Article 9 and Article 15 of A201–2017. However, for Claims arising from or relating to the Construction Manager's Preconstruction Phase services, no decision by the Initial Decision Maker shall be required as a condition precedent to mediation or binding dispute resolution, and Section 9.3 of this Agreement shall not apply.

§ 9.2 For any Claim subject to, but not resolved by mediation pursuant to Section 15.3 of AIA Document A201–2017, the method of binding dispute resolution shall be as follows:

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

- Arbitration pursuant to Section 15.4 of AIA Document A201–2017
- Litigation in a court of competent jurisdiction
- Other: *(Specify)*

§ 9.3 Initial Decision Maker

The Architect will serve as the Initial Decision Maker pursuant to Section 15.2 of AIA Document A201–2017 for Claims arising from or relating to the Construction Manager's Construction Phase services, unless the parties appoint below another individual, not a party to the Agreement, to serve as the Initial Decision Maker.

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

Init.

WRK Engineers
215 West 12th Street, Suite 202
Vancouver, Washington 98660

ARTICLE 10 TERMINATION OR SUSPENSION

§ 10.1 Termination Prior to Establishment of the Guaranteed Maximum Price

§ 10.1.1 Prior to the execution of the Guaranteed Maximum Price Amendment, the Owner may terminate this Agreement upon not less than seven days' written notice to the Construction Manager for the Owner's convenience and without cause, and the Construction Manager may terminate this Agreement, upon not less than seven days' written notice to the Owner, for the reasons set forth in Section 14.1.1 of A201–2017.

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

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

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

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

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

§ 10.2 Termination Subsequent to Establishing Guaranteed Maximum Price

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

§ 10.2.1 If the Owner terminates the Contract after execution of the Guaranteed Maximum Price Amendment, the amount payable to the Construction Manager pursuant to Sections 14.2 and 14.4 of A201–2017 shall not exceed the amount the Construction Manager would otherwise have received pursuant to Sections 10.1.2 and 10.1.3 of this Agreement.

§ 10.2.2 If the Construction Manager terminates the Contract after execution of the Guaranteed Maximum Price Amendment, the amount payable to the Construction Manager under Section 14.1.3 of A201–2017 shall not exceed the amount the Construction Manager would otherwise have received under Sections 10.1.2 and 10.1.3 above, except that the Construction Manager’s Fee shall be calculated as if the Work had been fully completed by the Construction Manager, utilizing as necessary a reasonable estimate of the Cost of the Work for Work not actually completed.

§ 10.3 Suspension

The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2017. In such case, the Guaranteed Maximum Price and Contract Time shall be increased as provided in Section 14.3.2 of AIA Document A201–2017, except that the term “profit” shall be understood to mean the Construction Manager’s Fee as described in Sections 5.1 and 5.3.5 of this Agreement.

ARTICLE 11 MISCELLANEOUS PROVISIONS

§ 11.1 Terms in this Agreement shall have the same meaning as those in A201–2017.

§ 11.2 Ownership and Use of Documents

Section 1.5 of A201–2017 shall apply to both the Preconstruction and Construction Phases.

§ 11.3 Governing Law

Section 13.1 of A201–2017 shall apply to both the Preconstruction and Construction Phases.

§ 11.4 Assignment

The Owner and Construction Manager, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither the Owner nor the Construction Manager shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner’s rights and obligations under this Agreement. Except as provided in Section 13.2.2 of A201–2017, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 11.5 Other provisions:

Personnel stationed at the Construction Manager’s principal or other offices, when engaged in work directly attributable to the Project, shall be included as a reimbursable Cost of the Work.

The prevailing party in any arbitration, trial, court proceeding, including any appeal, shall be entitled to its reasonable attorney fees as determined by the arbitrator or court.

ARTICLE 12 SCOPE OF THE AGREEMENT

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

§ 12.2 The following documents comprise the Agreement:

- .1 AIA Document A133–2009, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price
- .2 AIA Document A201–2017, General Conditions of the Contract for Construction – as modified attached.

(Paragraph Deleted)

(Paragraph Deleted)

Init.

| *(Paragraph Deleted)*

| *.3 City of Brookings Standard Terms and Conditions*
|.4 City of Brookings Certification Statement for Independent Contractor

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

OWNER *(Signature)*

(Printed name and title)
(Table Deleted)

CONSTRUCTION MANAGER *(Signature)*

Aaron M. Ausland, President

(Printed name and title)

Init.

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

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

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 13:47:04 ET on 04/18/2019.

PAGE 1

AGREEMENT made as of the ~~day of~~ in the year 18 day of April in the year 2019

...

City of Brookings, a subdivision of the State of Oregon

...

898 Elk Drive

...

Brookings, Oregon 97415

...

Ausland Group

...

3935 Highland Avenue

...

Grants Pass OR 97526

...

City of Brookings Fire Department and Police Department Seismic Retrofit Project

...

898 Elk Drive

...

Brookings, Oregon 97415

...

WRK Engineers

...

215 West 12th Street, Suite 202

...

Vancouver, Washington 98660

...

Tony Baron

...

City of Brookings Public Works and Development

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898 Elk Drive

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Aaron Ausland

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Ausland Group

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3935 Highland Avenue

...

Grants Pass, Oregon 97526

PAGE 2

WRK Engineers

...

215 West 12th Street, Suite 202

...

Vancouver, Washington 98660

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TABLE OF ARTICLES

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

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~~§ 2.3.2.1~~ Those portions of the Work that the Construction Manager does not customarily perform with the Construction Manager's own personnel shall be performed under subcontracts or by other appropriate agreements with the Construction Manager. The Owner may designate specific persons from whom, or entities from which, the Construction Manager shall obtain bids. ~~The Construction Manager shall obtain bids from Subcontractors and from suppliers of materials or equipment fabricated especially for the Work and shall deliver such bids to the Architect. The Owner shall then determine, with the advice of the Construction Manager and the Architect, which bids will be accepted.~~ select Subcontractors according to Article 5 of the A201. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection.

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

...

Construction Manager will be paid \$15,200 as described in Articles 5 and 6.

...

~~§ 4.1.3~~ If the Preconstruction Phase services covered by this Agreement have not been completed within ~~—5 (five)~~ months of the date of this Agreement, through no fault of the Construction Manager, the Construction Manager's compensation for Preconstruction Phase services shall be ~~equitably adjusted.~~ adjusted in accordance with Construction Manager's standard billing rates

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~~§ 4.2.2~~ Payments are due and payable upon presentation of the Construction Manager's invoice. Amounts unpaid ~~—30 (thirty)~~ days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Construction Manager.

...

~~%—1.5 % (one and a half percent) per month~~

...

Lump Sum: \$15,200

...

Seven (7) percent of the Cost of the Work

...

Subcontractor overhead and profit will be evaluated by Construction Manager and Owner on a case-by-case basis. Construction Manager and Owner expect such overhead and profit will not exceed 15% of direct Subcontractor cost.

...

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

...

<u>Item</u>	<u>Units and Limitations</u>	<u>Price per Unit (\$0.00)</u>
<u>Item</u>	<u>Units and Limitations</u>	<u>Price per Unit (\$0.00)</u>

...

<u>Item</u>	<u>Units and Limitations</u>	<u>Price per Unit (\$0.00)</u>
<u>N/A</u>		

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§ 5.3.2 Adjustments to the Guaranteed Maximum Price on account of changes in the Work subsequent to the execution of the Guaranteed Maximum Price Amendment may be determined by any of the methods listed in Section 7.3.3 of AIA Document ~~A201-2007, A201-2017~~, General Conditions of the Contract for Construction.

...

§ 5.3.3 In calculating adjustments to subcontracts (except those awarded with the Owner’s prior consent on the basis of cost plus a fee), the terms “cost” and “fee” as used in Section 7.3.3.3 of AIA Document A201-2007 and the term “costs” as used in Section 7.3.7 of AIA Document ~~A201-2007 A201-2017~~ shall have the meanings assigned to them in AIA Document ~~A201-2007 A201-2017~~ and shall not be modified by Sections 5.1 and 5.2, Sections 6.1 through 6.7, and Section 6.8 of this Agreement. Adjustments to subcontracts awarded with the Owner’s prior consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.

...

§ 5.3.4 In calculating adjustments to the Guaranteed Maximum Price, the terms “cost” and “costs” as used in the above-referenced provisions of AIA Document ~~A201-2007 A201-2017~~ 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.

...

§ 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~~ or at off-site workshops when directly attributable to the Project.

...

§ 6.2.2 Wages or salaries of the Construction Manager’s supervisory and administrative personnel when stationed at the site ~~with the Owner’s prior approval~~ or stationed at the Construction Manager’s principal or other offices when engaged in work directly attributable to the Project. When Construction Manager’s supervisory and administrative personnel are stationed at Construction Manager’s principal or other offices, the amount due under this Contract will be only for that portion of their time reasonably required for the Work.

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

...

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

...

§ 6.6.4 Fees of laboratories for tests required by the Contract Documents, except those related to defective or nonconforming Work for which reimbursement is excluded by Section 13.5.3 of AIA Document A201-2007-A201-2017 or by other provisions of the Contract Documents, and which do not fall within the scope of Section 6.7.3.

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§ 6.6.5 Royalties and license fees paid for the use of a particular design, process or product required by the Contract Documents; the cost of defending suits or claims for infringement of patent rights arising from such requirement of the Contract Documents; and payments made in accordance with legal judgments against the Construction Manager resulting from such suits or claims and payments of settlements made with the Owner's consent. However, such costs of legal defenses, judgments and settlements shall not be included in the calculation of the Construction Manager's Fee or subject to the Guaranteed Maximum Price. If such royalties, fees and costs are excluded by the last sentence of Section 3.17 of AIA Document A201-2007-A201-2017 or other provisions of the Contract Documents, then they shall not be included in the Cost of the Work.

...

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

...

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

...

§ 6.7.2 Costs incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property, as provided in Section 10.4 of AIA Document A201-2007-A201-2017.

...

§ 6.7.4 The costs described in Sections 6.1 through 6.7 shall be included in the Cost of the Work, notwithstanding any provision of AIA Document A201-2007-A201-2017 or other Conditions of the Contract which may require the Construction Manager to pay such costs, unless such costs are excluded by the provisions of Section 6.8.

...

.8 Costs for services incurred during the Preconstruction Phase. Phase, which are to be paid under Article

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§ 7.1.1 Based upon Applications for Payment submitted to the ~~Architect-Owner's Representative~~ by the Construction Manager and Certificates for Payment issued by the ~~Architect-Owner's Representative~~, 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.

...

§ 7.1.3 Provided that an Application for Payment is received by the ~~Architect-Owner's Representative~~ not later than the ~~15th~~ day of a month, the Owner shall make payment of the certified amount to the Construction Manager not later than the ~~day of the last day of the same~~ month. If an Application for Payment is received by the ~~Architect-Owner's Representative~~ after the application date fixed above, payment shall be made by the Owner not later than ~~(20 (twenty)~~ days after the ~~Architect-Owner's Representative~~ receives the Application for Payment.

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§ 7.1.4 ~~With each Application for Payment, the Construction Manager shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner or Architect. If requested by the Owner, the Construction Manager shall submit reasonable documentation to demonstrate that cash disbursements already made by the Construction Manager on account of the Cost of the Work equal or exceed progress payments already received by the Construction Manager, less that portion of those payments attributable to the Construction Manager's Fee, plus payrolls for the period covered by the present Application for Payment to the Construction Manager have been used to satisfy Construction Manager's obligations to those supplying labor and materials in the performance of the Work.~~

...

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

...

- .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~~ total Work by the share of the Guaranteed Maximum Price allocated to ~~that portion of the total~~ total Work in the schedule of values. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 7.3.9 of AIA Document A201-2007; A201-2017;

...

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

...

- .4 Subtract retainage of ~~percent~~ (five percent (5 %)) from that portion of the Work that the Construction Manager self-performs;

...

- .7 Subtract amounts, if any, for which the ~~Architect-Owner's Representative~~ has withheld or nullified a Certificate for Payment as provided in Section 9.5 of AIA Document ~~A201-2007~~ A201-2017.

...

- .8 After 50 percent of the Work is completed, the Construction Manager may request in writing that the retainage reduction be eliminated from future payments and the Owner will eliminate the reduction (keeping retainage already withheld) if, in the Owner's sole discretion, Owner finds it warranted based upon Owner's opinion that the Work is progressing in accordance with the Contract Documents.

...

§ 7.1.9 Except with the Owner's prior approval, the Construction Manager shall not make advance payments exceeding \$5,000 to suppliers for materials or equipment which have not been delivered and stored at the site.

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§ 7.1.10 In taking action on the Construction Manager's Applications for Payment, the ~~Architect-Owner's Representative~~ 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-Owner's Representative~~ 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-Owner's Representative~~ has made exhaustive or continuous on-site inspections; or that the ~~Architect-Owner's Representative~~ 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.

...

- .3 a final Certificate for Payment has been issued by the ~~Architect-Owner's Representative~~.

...

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

...

§ 7.2.2 The Owner's auditors will review and report in writing on the Construction Manager's final accounting

within 30 days after delivery of the final accounting to the Architect by the Construction Manager. Based upon such Cost of the Work as the Owner's auditors report to be substantiated by the Construction Manager's final accounting, and provided the other conditions of Section 7.2.1 have been met, the ~~Architect-Owner's Representative~~ will, within seven days after receipt of the written report of the Owner's auditors, either issue to the Owner a final Certificate for Payment with a copy to the Construction Manager, or notify the Construction Manager and Owner in writing of the ~~Architect's-Owner's Representative's~~ reasons for withholding a certificate as provided in Section 9.5.1 of the AIA Document ~~A201-2007-A201-2017~~. The time periods stated in this Section supersede those stated in Section 9.4.1 of the AIA Document ~~A201-2007~~. ~~The Architect-A201-2017~~. The ~~Owner's Representative~~ is not responsible for verifying the accuracy of the Construction Manager's final accounting.

...

§ 7.2.3 If the Owner's auditors report the Cost of the Work as substantiated by the Construction Manager's final accounting to be less than claimed by the Construction Manager, the Construction Manager shall be entitled to request mediation of the disputed amount without seeking an initial decision pursuant to Section 15.2 of ~~A201-2007-A201-2017~~. A request for mediation shall be made by the Construction Manager within 30 days after the Construction Manager's receipt of a copy of the ~~Architect's-Owner's Representative's~~ final Certificate for Payment. Failure to request mediation within this 30-day period shall result in the substantiated amount reported by the Owner's auditors becoming binding on the Construction Manager. Pending a final resolution of the disputed amount, the Owner shall pay the Construction Manager the amount certified in the ~~Architect's-Owner's Representative's~~ final Certificate for Payment.

...

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

...

(State bonding requirements, if any, and limits of liability for insurance required in Article 11 of AIA Document ~~A201-2007-A201-2017~~ and insurance as set forth below, naming the Owner, Owner's Representative, the Architect and the Architect's representative as additional insureds.

...

<u>Type of Insurance or Bond</u>	<u>Limit of Liability or Bond Amount (\$0.00)</u>
<u>Type of Insurance or Bond</u>	<u>Limit of Liability or Bond Amount (\$0.00)</u>

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<u>Type of Insurance or Bond</u>	<u>Limit of Liability or Bond Amount (\$0.00)</u>
----------------------------------	---

<u>Payment and Performance Bonds</u>	<u>Sum of initial GMP.</u>
<u>Public Works Bond</u>	<u>\$30,000 (per Oregon law)</u>
<u>Warranty Bond (1 year for defective materials or workmanship)</u>	<u>10% of initial GMP</u>
<u>Commercial General Liability (including coverage for broad form contractual liability; broad form property damage; personal and advertising injury; owners and contractor protective; premises/operations; and products/completed operations. Coverage shall not exclude excavation, collapse, underground, or explosion hazards. Aggregate limits shall apply on a per-project basis.)</u>	<u>\$2 million per occurrence for bodily injury, personal injury and property damage</u>
<u>Comprehensive Auto Liability</u>	<u>\$2 million each occurrence / \$3 million aggregate for BI/PD</u>
<u>Employer's Liability</u>	<u>\$2 million per accident for bodily injury or disease</u>
<u>Workers Compensation</u>	<u>Per Oregon law (ORS 656.017)</u>

...

§ 9.1 Any Claim between the Owner and Construction Manager shall be resolved in accordance with the provisions set forth in this Article 9 and Article 15 of ~~A201-2007~~-A201-2017. However, for Claims arising from or relating to the Construction Manager's Preconstruction Phase services, no decision by the Initial Decision Maker shall be required as a condition precedent to mediation or binding dispute resolution, and Section 9.3 of this Agreement shall not apply.

...

§ 9.2 For any Claim subject to, but not resolved by mediation pursuant to Section 15.3 of AIA Document ~~A201-2007~~-A201-2017, the method of binding dispute resolution shall be as follows:

...

Arbitration pursuant to Section 15.4 of AIA Document ~~A201-2007~~A201-2017

...

Litigation in a court of competent jurisdiction

...

Other: *(Specify)*

...

The Architect will serve as the Initial Decision Maker pursuant to Section 15.2 of AIA Document ~~A201-2007~~-A201-2017 for Claims arising from or relating to the Construction Manager's Construction Phase services, unless the parties appoint below another individual, not a party to the Agreement, to serve as the Initial Decision Maker.

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WRK Engineers

...

215 West 12th Street, Suite 202

...

Vancouver, Washington 98660

...

§ 10.1.1 Prior to the execution of the Guaranteed Maximum Price Amendment, the Owner may terminate this Agreement upon not less than seven days' written notice to the Construction Manager for the Owner's convenience and without cause, and the Construction Manager may terminate this Agreement, upon not less than seven days' written notice to the Owner, for the reasons set forth in Section 14.1.1 of ~~A201-2007~~A201-2017.

...

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

...

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

...

§ 10.2.1 If the Owner terminates the Contract after execution of the Guaranteed Maximum Price Amendment, the amount payable to the Construction Manager pursuant to Sections 14.2 and 14.4 of ~~A201-2007~~A201-2017 shall not exceed the amount the Construction Manager would otherwise have received pursuant to Sections 10.1.2 and 10.1.3 of this Agreement.

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§ 10.2.2 If the Construction Manager terminates the Contract after execution of the Guaranteed Maximum Price Amendment, the amount payable to the Construction Manager under Section 14.1.3 of ~~A201-2007~~A201-2017 shall not exceed the amount the Construction Manager would otherwise have received under Sections 10.1.2 and 10.1.3 above, except that the Construction Manager's Fee shall be calculated as if the Work had been fully completed by the Construction Manager, utilizing as necessary a reasonable estimate of the Cost of the Work for Work not actually completed.

...

The Work may be suspended by the Owner as provided in Article 14 of AIA Document ~~A201-2007~~A201-2017. In such case, the Guaranteed Maximum Price and Contract Time shall be increased as provided in Section 14.3.2 of AIA Document ~~A201-2007~~A201-2017, except that the term "profit" shall be understood to mean the Construction Manager's Fee as described in Sections 5.1 and 5.3.5 of this Agreement.

...

§ 11.1 Terms in this Agreement shall have the same meaning as those in ~~A201-2007~~A201-2017.

...

Section 1.5 of ~~A201-2007~~A201-2017 shall apply to both the Preconstruction and Construction Phases.

...

Section 13.1 of ~~A201-2007~~A201-2017 shall apply to both the Preconstruction and Construction Phases.

...

The Owner and Construction Manager, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither the Owner nor the Construction Manager shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement. Except as provided in Section 13.2.2 of ~~A201-2007~~A201-2017, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

...

Personnel stationed at the Construction Manager's principal or other offices, when engaged in work directly attributable to the Project, shall be included as a reimbursable Cost of the Work.

...

The prevailing party in any arbitration, trial, court proceeding, including any appeal, shall be entitled to its reasonable attorney fees as determined by the arbitrator or court.

...

~~.2~~ AIA Document ~~A201-2007~~A201-2017, General Conditions of the Contract for Construction – as modified attached.

...

~~.3~~ AIA Document E201TM-2007, Digital Data Protocol Exhibit, if completed, or the following:

...

~~.4~~ AIA Document E202TM-2008, Building Information Modeling Protocol Exhibit, if completed, or the following:

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~~.5~~ Other documents:

...

(List other documents, if any, forming part of the Agreement.) .3 City of Brookings Standard Terms and Conditions

...

.4 City of Brookings Certification Statement for Independent Contractor

...

OWNER *(Signature)*

CONSTRUCTION MANAGER *(Signature)*

(Printed name and title)

(Printed name and title)

...

OWNER *(Signature)*

CONSTRUCTION MANAGER *(Signature)*

(Printed name and title)

Aaron M. Ausland, President

(Printed name and title)

Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, , hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 13:47:04 ET on 04/18/2019 under Order No. 6601656775 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of 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 published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

(Signed)

(Title)

(Dated)



AIA Document A201™ – 2017

General Conditions of the Contract for Construction

for the following PROJECT:

(Name and location or address)

Brookings Harbor Fire and Police Station Seismic Retrofit
898 Elk Drive
Brookings, Oregon 97415

THE OWNER:

(Name, legal status and address)

City of Brookings, a subdivision of the State of Oregon
898 Elk Drive
Brookings, Oregon 97415

THE ARCHITECT:

(Name, legal status and address)

WRK Engineers
215 West 12th Street, Suite 202
Vancouver, Washington 98660

ADDITIONS AND DELETIONS:

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

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

For guidance in modifying this document to include supplementary conditions, see AIA Document A503™, Guide for Supplementary Conditions.

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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 Basic Definitions

§ 1.1.1 The Contract Documents

The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement, and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive, or (4) a written order for a minor change in the Work issued by the Architect. Unless specifically enumerated in the Agreement, the Contract Documents do not include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of Addenda relating to bidding or proposal requirements.

§ 1.1.2 The Contract

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner and the Architect or the Architect's consultants, or (4) between any persons or entities other than the Owner and the Contractor. The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties.

§ 1.1.3 The Work

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment, and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

§ 1.1.4 The Project

The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner and by Separate Contractors.

§ 1.1.5 The Drawings

The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules, and diagrams.

§ 1.1.6 The Specifications

The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

§ 1.1.7 Instruments of Service

Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Architect and the Architect's consultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

§ 1.1.8 Initial Decision Maker

The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2. The Initial Decision Maker shall not show partiality to the Owner or Contractor and shall not be liable for results of interpretations or decisions rendered in good faith.

§ 1.2 Correlation and Intent of the Contract Documents

§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

§ 1.2.1.1 The invalidity of any provision of the Contract Documents shall not invalidate the Contract or its remaining provisions. If it is determined that any provision of the Contract Documents violates any law, or is otherwise invalid or unenforceable, then

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that provision shall be revised to the extent necessary to make that provision legal and enforceable. In such case the Contract Documents shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Contract.

§ 1.2.2 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

§ 1.2.3 Unless otherwise stated in the Contract Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

§ 1.3 Capitalization

Terms capitalized in these General Conditions include those that are (1) specifically defined, (2) the titles of numbered articles, or (3) the titles of other documents published by the American Institute of Architects.

§ 1.4 Interpretation

In the interest of brevity the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

§ 1.5 Ownership and Use of Drawings, Specifications, and Other Instruments of Service

§ 1.5.1 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and retain all common law, statutory, and other reserved rights in their Instruments of Service, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and suppliers shall not own or claim a copyright in the Instruments of Service provided by others. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' reserved rights. For any design-build portions of the Work, the Contractor and its Subcontractors, suppliers, or subconsultants will retain all common law, statutory and other reserved rights, including copyrights in their respective Instruments of Service. The Owner and the Architect are authorized to use and reproduce the Instruments of Service provided to them by the Contractor solely and exclusively for execution of the Work to the extent the Owner has complied with its payment obligations under this Contract.

§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors, and suppliers are authorized to use and reproduce the Instruments of Service provided to them, subject to any protocols established pursuant to Sections 1.7 and 1.8, solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service provided by others. The Contractor, Subcontractors, Sub-subcontractors, and suppliers may not use the Instruments of Service on other projects or for additions to the Project outside the scope of the Work without the specific written consent of the Owner, Architect, and the Architect's consultants.

§ 1.6 Notice

§ 1.6.1 Except as otherwise provided in Section 1.6.2, where the Contract Documents require one party to notify or give notice to the other party, such notice shall be provided in writing to the designated representative of the party to whom the notice is addressed and shall be deemed to have been duly served if delivered in person, by mail, by courier, or by electronic transmission if a method for electronic transmission is set forth in the Agreement.

§ 1.6.2 Notice of Claims as provided in Section 15.1.3 shall be provided in writing and shall be deemed to have been duly served only if delivered to the designated representative of the party to whom the notice is addressed by certified or registered mail, or by courier providing proof of delivery.

(Paragraphs deleted)

§ 1.8 Building Information Models Use and Reliance

Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document G202™–2013, Project Building Information Modeling Protocol Form, shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

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User Notes:

ARTICLE 2 OWNER

§ 2.1 General

§ 2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as otherwise provided in Section 4.2.1, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

§ 2.1.2 The Owner shall furnish to the Contractor, within fifteen days after receipt of a written request, information necessary and relevant for the Contractor to evaluate, give notice of, or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein.

§ 2.2 Evidence of the Owner's Financial Arrangements

§ 2.2.1 Prior to commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. The Contractor shall have no obligation to commence the Work until the Owner provides such evidence. If commencement of the Work is delayed under this Section 2.2.1, the Contract Time shall be extended appropriately.

§ 2.2.2 Following commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract only if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due; or (3) a change in the Work materially changes the Contract Sum. If the Owner fails to provide such evidence, as required, within fourteen days of the Contractor's request, the Contractor may immediately stop the Work and, in that event, shall notify the Owner that the Work has stopped. However, if the request is made because a change in the Work materially changes the Contract Sum under (3) above, the Contractor may immediately stop only that portion of the Work affected by the change until reasonable evidence is provided. If the Work is stopped under this Section 2.2.2, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided in the Contract Documents.

§ 2.2.3 After the Owner furnishes evidence of financial arrangements under this Section 2.2, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor.

§ 2.2.4 Where the Owner has designated information furnished under this Section 2.2 as "confidential," the Contractor shall keep the information confidential and shall not disclose it to any other person. However, the Contractor may disclose "confidential" information, after seven (7) days' notice to the Owner, where disclosure is required by law, including a subpoena or other form of compulsory legal process issued by a court or governmental entity, or by court or arbitrator(s) order. The Contractor may also disclose "confidential" information to its employees, consultants, sureties, Subcontractors and their employees, Sub-subcontractors, and others who need to know the content of such information solely and exclusively for the Project and who agree to maintain the confidentiality of such information.

§ 2.3 Information and Services Required of the Owner

§ 2.3.1 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

§ 2.3.2 The Owner shall retain an architect lawfully licensed to practice architecture, or an entity lawfully practicing architecture, in the jurisdiction where the Project is located. That person or entity is identified as the Architect in the Agreement and is referred to throughout the Contract Documents as if singular in number.

§ 2.3.3 If the employment of the Architect terminates, the Owner shall employ a successor to whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the Architect.

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§ 2.3.4 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

§ 2.3.5 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 Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services.

§ 2.3.6 Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor one copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2.

§ 2.4 Owner's Right to Stop the Work

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or repeatedly fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3.

§ 2.5 Owner's Right to Carry Out the Work

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such default or neglect. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect and the Architect may, pursuant to Section 9.5.1, withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect, or failure. If current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. If the Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15.

ARTICLE 3 CONTRACTOR

§ 3.1 General

§ 3.1.1 The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Contractor or the Contractor's authorized representative.

§ 3.1.2 The Contractor shall perform the Work in accordance with the Contract Documents.

§ 3.1.3 The Contractor shall not be relieved of its obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect in the Architect's administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

§ 3.2 Review of Contract Documents and Field Conditions by Contractor

§ 3.2.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed, and correlated personal observations with requirements of the Contract Documents.

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.3.4, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require.

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It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

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

§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall submit Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner, subject to Section 15.1.7, as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.

§ 3.3 Supervision and Construction Procedures

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work under the Contract. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences, or procedures, the Contractor shall evaluate the jobsite safety thereof and shall be solely responsible for the jobsite safety of such means, methods, techniques, sequences, or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely notice to the Owner and Architect, and shall propose alternative means, methods, techniques, sequences, or procedures. The Architect shall evaluate the proposed alternative solely for conformance with the design intent for the completed construction. Unless the Architect objects to the Contractor's proposed alternative, the Contractor shall perform the Work using its alternative means, methods, techniques, sequences, or procedures.

§ 3.3.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors.

§ 3.3.3 The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

§ 3.4 Labor and Materials

§ 3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

§ 3.4.2 Except in the case of minor changes in the Work approved by the Architect in accordance with Section 3.12.8 or ordered by the Architect in accordance with Section 7.4, the Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive.

§ 3.4.3 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them.

§ 3.5 Warranty

§ 3.5.1 The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and

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normal usage. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

§ 3.5.2 All material, equipment, or other special warranties required by the Contract Documents shall be issued in the name of the Owner, or shall be transferable to the Owner, and shall commence in accordance with Section 9.8.4.

§ 3.6 Taxes

The Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

§ 3.7 Permits, Fees, Notices and Compliance with Laws

§ 3.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as for other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded.

§ 3.7.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work.

§ 3.7.3 If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

§ 3.7.4 Concealed or Unknown Conditions

If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than 14 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend that an equitable adjustment be made in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may submit a Claim as provided in Article 15.

§ 3.7.5 If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Architect. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

§ 3.8 Allowances

§ 3.8.1 The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

§ 3.8.2 Unless otherwise provided in the Contract Documents,

- .1 allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- .2 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit, and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and

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- .3 whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.

§ 3.8.3 Materials and equipment under an allowance shall be selected by the Owner with reasonable promptness.

§ 3.9 Superintendent

§ 3.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor.

§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the name and qualifications of a proposed superintendent. Within 14 days of receipt of the information, the Architect may notify the Contractor, stating whether the Owner or the Architect (1) has reasonable objection to the proposed superintendent or (2) requires additional time for review. Failure of the Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection.

§ 3.9.3 The Contractor shall not employ a proposed superintendent to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed.

§ 3.10 Contractor's Construction and Submittal Schedules

§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall contain detail appropriate for the Project, including (1) the date of commencement of the Work, interim schedule milestone dates, and the date of Substantial Completion; (2) an apportionment of the Work by construction activity; and (3) the time required for completion of each portion of the Work. The schedule shall provide for the orderly progression of the Work to completion and shall not exceed time limits current under the Contract Documents. The schedule shall be revised at appropriate intervals as required by the conditions of the Work and Project.

§ 3.10.2 The Contractor, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, shall submit a submittal schedule for the Architect's approval. The Architect's approval shall not be unreasonably delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Architect reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, or fails to provide submittals in accordance with the approved submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.

§ 3.10.3 The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner and Architect.

§ 3.11 Documents and Samples at the Site

The Contractor shall make available, at the Project site, the Contract Documents, including Change Orders, Construction Change Directives, and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and the approved Shop Drawings, Product Data, Samples, and similar required submittals. These shall be in electronic form or paper copy, available to the Architect and Owner, and delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

§ 3.12 Shop Drawings, Product Data and Samples

§ 3.12.1 Shop Drawings are drawings, diagrams, schedules, and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier, or distributor to illustrate some portion of the Work.

§ 3.12.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams, and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

§ 3.12.3 Samples are physical examples that illustrate materials, equipment, or workmanship, and establish standards by which the Work will be judged.

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§ 3.12.4 Shop Drawings, Product Data, Samples, and similar submittals are not Contract Documents. Their purpose is to demonstrate how the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Architect is subject to the limitations of Section 4.2.7. Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Architect without action.

§ 3.12.5 The Contractor shall review for compliance with the Contract Documents, approve, and submit to the Architect, Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents, in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of Separate Contractors.

§ 3.12.6 By submitting Shop Drawings, Product Data, Samples, and similar submittals, the Contractor represents to the Owner and Architect that the Contractor has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

§ 3.12.7 The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples, or similar submittals, until the respective submittal has been approved by the Architect.

§ 3.12.8 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from the requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples, or similar submittals, unless the Contractor has specifically notified the Architect of such deviation at the time of submittal and (1) the Architect has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples, or similar submittals, by the Architect's approval thereof.

§ 3.12.9 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples, or similar submittals, to revisions other than those requested by the Architect on previous submittals. In the absence of such notice, the Architect's approval of a resubmission shall not apply to such revisions.

§ 3.12.10 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences, and procedures. The Contractor shall not be required to provide professional services in violation of applicable law.

§ 3.12.10.1 If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall be entitled to rely upon the adequacy and accuracy of the performance and design criteria provided in the Contract Documents. The Contractor shall cause such services or certifications to be provided by an appropriately licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings, and other submittals prepared by such professional. Shop Drawings, and other submittals related to the Work, designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor the performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review and approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.

§ 3.12.10.2 If the Contract Documents require the Contractor's design professional to certify that the Work has been performed in accordance with the design criteria, the Contractor shall furnish such certifications to the Architect at the time and in the form specified by the Architect.

§ 3.13 Use of Site

The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

§ 3.14 Cutting and Patching

§ 3.14.1 The Contractor shall be responsible for cutting, fitting, or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting, or patching shall be restored to the condition existing prior to the cutting, fitting, or patching, unless otherwise required by the Contract Documents.

§ 3.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or Separate Contractors by cutting, patching, or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter construction by the Owner or a Separate Contractor except with written consent of the Owner and of the Separate Contractor. Consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold, from the Owner or a Separate Contractor, its consent to cutting or otherwise altering the Work.

§ 3.15 Cleaning Up

§ 3.15.1 The Contractor shall keep the premises and surrounding area free from accumulation of waste materials and rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery, and surplus materials from and about the Project.

§ 3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and the Owner shall be entitled to reimbursement from the Contractor.

§ 3.16 Access to Work

The Contractor shall provide the Owner and Architect with access to the Work in preparation and progress wherever located.

§ 3.17 Royalties, Patents and Copyrights

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Architect harmless from loss on account thereof, but shall not be responsible for defense or loss when a particular design, process, or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications, or other documents prepared by the Owner or Architect. However, if an infringement of a copyright or patent is discovered by, or made known to, the Contractor, the Contractor shall be responsible for the loss unless the information is promptly furnished to the Architect.

§ 3.18 Indemnification

§ 3.18.1 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18.

§ 3.18.2 In claims against any person or entity indemnified under this Section 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, the indemnification obligation under Section 3.18.1 shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts, or other employee benefit acts.

ARTICLE 4 ARCHITECT

§ 4.1 General

§ 4.1.1 The Architect is the person or entity retained by the Owner pursuant to Section 2.3.2 and identified as such in the Agreement.

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§ 4.1.2 Duties, responsibilities, and limitations of authority of the Architect as set forth in the Contract Documents shall not be restricted, modified, or extended without written consent of the Owner, Contractor, and Architect. Consent shall not be unreasonably withheld.

§ 4.2 Administration of the Contract

§ 4.2.1 The Architect will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction until the date the Architect issues the final Certificate for Payment. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

§ 4.2.2 The Architect will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents.

§ 4.2.3 On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of, and will not be responsible for acts or omissions of, the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

§ 4.2.4 Communications

The Owner and Contractor shall include the Architect in all communications that relate to or affect the Architect's services or professional responsibilities. The Owner shall promptly notify the Architect of the substance of any direct communications between the Owner and the Contractor otherwise relating to the Project. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and suppliers shall be through the Contractor. Communications by and with Separate Contractors shall be through the Owner. The Contract Documents may specify other communication protocols.

§ 4.2.5 Based on the Architect's evaluations of the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

§ 4.2.6 The Architect has authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the Work in accordance with Sections 13.4.2 and 13.4.3, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 4.2.7 The Architect will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data, and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5, and 3.12. The Architect's review shall not constitute approval of safety precautions or of any construction means, methods, techniques, sequences, or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 4.2.8 The Architect will prepare Change Orders and Construction Change Directives, and may order minor changes in the Work as provided in Section 7.4. The Architect will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

§ 4.2.9 The Architect will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion pursuant to Section 9.8; receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10; and issue a final Certificate for Payment pursuant to Section 9.10.

§ 4.2.10 If the Owner and Architect agree, the Architect will provide one or more Project representatives to assist in carrying out the Architect's responsibilities at the site. The Owner shall notify the Contractor of any change in the duties, responsibilities and limitations of authority of the Project representatives.

§ 4.2.11 The Architect will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 4.2.12 Interpretations and decisions of the Architect will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and decisions, the Architect will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either, and will not be liable for results of interpretations or decisions rendered in good faith.

§ 4.2.13 The Architect's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

§ 4.2.14 The Architect will review and respond to requests for information about the Contract Documents. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

ARTICLE 5 SUBCONTRACTORS

§ 5.1 Definitions

§ 5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a Separate Contractor or the subcontractors of a Separate Contractor.

§ 5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

§ 5.2 Award of Subcontracts and Other Contracts for Portions of the Work

§ 5.2.1 Unless otherwise stated in the Contract Documents, the Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the persons or entities proposed for each principal portion of the Work, including those who are to furnish materials or equipment fabricated to a special design. Within 14 days of receipt of the information, the Architect may notify the Contractor whether the Owner or the Architect (1) has reasonable objection to any such proposed person or entity or (2) requires additional time for review. Failure of the Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection.

§ 5.2.2 The Contractor shall not contract with a proposed person or entity to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

§ 5.2.3 If the Owner or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the

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substitute Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

§ 5.2.4 The Contractor shall not substitute a Subcontractor, person, or entity for one previously selected if the Owner or Architect makes reasonable objection to such substitution.

§ 5.3 Subcontractual Relations

By appropriate written agreement, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work that the Contractor, by these Contract Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies, and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

§ 5.4 Contingent Assignment of Subcontracts

§ 5.4.1 Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner, provided that

- .1 assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor; and
- .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the subcontract.

§ 5.4.2 Upon such assignment, if the Work has been suspended for more than 30 days, the Subcontractor's compensation shall be equitably adjusted for increases in cost resulting from the suspension.

§ 5.4.3 Upon assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity. If the Owner assigns the subcontract to a successor contractor or other entity, the Owner shall nevertheless remain legally responsible for all of the successor contractor's obligations under the subcontract.

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

§ 6.1 Owner's Right to Perform Construction and to Award Separate Contracts

§ 6.1.1 The term "Separate Contractor(s)" shall mean other contractors retained by the Owner under separate agreements. The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and with Separate Contractors retained under Conditions of the Contract substantially similar to those of this Contract, including those provisions of the Conditions of the Contract related to insurance and waiver of subrogation.

§ 6.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

§ 6.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces and of each Separate Contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with any Separate Contractors and the Owner in reviewing their construction schedules. The Contractor shall make any revisions to its construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, Separate Contractors, and the Owner until subsequently revised.

§ 6.1.4 Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces or with Separate Contractors, the Owner or its Separate Contractors shall have the same

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obligations and rights that the Contractor has under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6, and Articles 10, 11, and 12.

§ 6.2 Mutual Responsibility

§ 6.2.1 The Contractor shall afford the Owner and Separate Contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.

§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a Separate Contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly notify the Architect of apparent discrepancies or defects in the construction or operations by the Owner or Separate Contractor that would render it unsuitable for proper execution and results of the Contractor's Work. Failure of the Contractor to notify the Architect of apparent discrepancies or defects prior to proceeding with the Work shall constitute an acknowledgment that the Owner's or Separate Contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work. The Contractor shall not be responsible for discrepancies or defects in the construction or operations by the Owner or Separate Contractor that are not apparent.

§ 6.2.3 The Contractor shall reimburse the Owner for costs the Owner incurs that are payable to a Separate Contractor because of the Contractor's delays, improperly timed activities or defective construction. The Owner shall be responsible to the Contractor for costs the Contractor incurs because of a Separate Contractor's delays, improperly timed activities, damage to the Work or defective construction.

§ 6.2.4 The Contractor shall promptly remedy damage that the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner or Separate Contractor as provided in Section 10.2.5.

§ 6.2.5 The Owner and each Separate Contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14.

§ 6.3 Owner's Right to Clean Up

If a dispute arises among the Contractor, Separate Contractors, and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the Architect will allocate the cost among those responsible.

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 General

§ 7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.

§ 7.1.2 A Change Order shall be based upon agreement among the Owner, Contractor, and Architect. A Construction Change Directive requires agreement by the Owner and Architect and may or may not be agreed to by the Contractor. An order for a minor change in the Work may be issued by the Architect alone.

§ 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents. The Contractor shall proceed promptly with changes in the Work, unless otherwise provided in the Change Order, Construction Change Directive, or order for a minor change in the Work.

§ 7.2 Change Orders

§ 7.2.1 A Change Order is a written instrument prepared by the Architect and signed by the Owner, Contractor, and Architect stating their agreement upon all of the following:

- .1 The change in the Work;
- .2 The amount of the adjustment, if any, in the Contract Sum; and
- .3 The extent of the adjustment, if any, in the Contract Time.

§ 7.3 Construction Change Directives

§ 7.3.1 A Construction Change Directive is a written order prepared by the Architect and signed by the Owner and Architect, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The

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Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

§ 7.3.2 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

§ 7.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 Unit prices stated in the Contract Documents or subsequently agreed upon;
- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 As provided in Section 7.3.4.

§ 7.3.4 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall determine the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.4 shall be limited to the following:

- .1 Costs of labor, including applicable payroll taxes, fringe benefits required by agreement or custom, workers' compensation insurance, and other employee costs approved by the Architect;
- .2 Costs of materials, supplies, and equipment, including cost of transportation, whether incorporated or consumed;
- .3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
- .4 Costs of premiums for all bonds and insurance, permit fees, and sales, use, or similar taxes, directly related to the change; and
- .5 Costs of supervision and field office personnel directly attributable to the change.

§ 7.3.5 If the Contractor disagrees with the adjustment in the Contract Time, the Contractor may make a Claim in accordance with applicable provisions of Article 15.

§ 7.3.6 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Architect of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

§ 7.3.7 A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ 7.3.8 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Architect. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

§ 7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Architect determines, in the Architect's professional judgment, to be reasonably justified. The Architect's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

§ 7.3.10 When the Owner and Contractor agree with a determination made by the Architect concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Architect will prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

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§ 7.4 Minor Changes in the Work

The Architect may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. The Architect's order for minor changes shall be in writing. If the Contractor believes that the proposed minor change in the Work will affect the Contract Sum or Contract Time, the Contractor shall notify the Architect and shall not proceed to implement the change in the Work. If the Contractor performs the Work set forth in the Architect's order for a minor change without prior notice to the Architect that such change will affect the Contract Sum or Contract Time, the Contractor waives any adjustment to the Contract Sum or extension of the Contract Time.

ARTICLE 8 TIME

§ 8.1 Definitions

§ 8.1.1 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

§ 8.1.2 The date of commencement of the Work is the date established in the Agreement.

§ 8.1.3 The date of Substantial Completion is the date certified by the Architect in accordance with Section 9.8.

§ 8.1.4 The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

§ 8.2 Progress and Completion

§ 8.2.1 Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement, the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, commence the Work prior to the effective date of insurance required to be furnished by the Contractor and Owner.

§ 8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

§ 8.3 Delays and Extensions of Time

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by (1) an act or neglect of the Owner or Architect, of an employee of either, or of a Separate Contractor; (2) by changes ordered in the Work; (3) by labor disputes, fire, unusual delay in deliveries, unavoidable casualties, adverse weather conditions documented in accordance with Section 15.1.6.2, or other causes beyond the Contractor's control; (4) by delay authorized by the Owner pending mediation and binding dispute resolution; or (5) by other causes that the Contractor asserts, and the Architect determines, justify delay, then the Contract Time shall be extended for such reasonable time as the Architect may determine.

§ 8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Article 15.

§ 8.3.3 This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents.

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 Contract Sum

§ 9.1.1 The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

§ 9.1.2 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed so that application of such unit prices to the actual quantities causes substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

§ 9.2 Schedule of Values

Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit a schedule of values to the Architect before the first Application for Payment, allocating the entire Contract Sum to the various portions of the Work. The schedule of values shall be prepared in the form, and supported by the data to substantiate its accuracy, required by the

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Architect. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment. Any changes to the schedule of values shall be submitted to the Architect and supported by such data to substantiate its accuracy as the Architect may require, and unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's subsequent Applications for Payment.

§ 9.3 Applications for Payment

§ 9.3.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. The application shall be notarized, if required, and supported by all data substantiating the Contractor's right to payment that the Owner or Architect require, such as copies of requisitions, and releases and waivers of liens from Subcontractors and suppliers, and shall reflect retainage if provided for in the Contract Documents.

§ 9.3.1.1 As provided in Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Architect, but not yet included in Change Orders.

§ 9.3.1.2 Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or supplier, unless such Work has been performed by others whom the Contractor intends to pay.

§ 9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage, and transportation to the site, for such materials and equipment stored off the site.

§ 9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information, and belief, be free and clear of liens, claims, security interests, or encumbrances, in favor of the Contractor, Subcontractors, suppliers, or other persons or entities that provided labor, materials, and equipment relating to the Work.

§ 9.4 Certificates for Payment

§ 9.4.1 The Architect will, within seven days after receipt of the Contractor's Application for Payment, either (1) issue to the Owner a Certificate for Payment in the full amount of the Application for Payment, with a copy to the Contractor; or (2) issue to the Owner a Certificate for Payment for such amount as the Architect determines is properly due, and notify the Contractor and Owner of the Architect's reasons for withholding certification in part as provided in Section 9.5.1; or (3) withhold certification of the entire Application for Payment, and notify the Contractor and Owner of the Architect's reason for withholding certification in whole as provided in Section 9.5.1.

§ 9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and the data in the Application for Payment, that, to the best of the Architect's knowledge, information, and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is entitled to payment in the amount certified. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion, and to specific qualifications expressed by the Architect. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work; (2) reviewed construction means, methods, techniques, sequences, or procedures; (3) reviewed copies of requisitions received from Subcontractors and suppliers and other data requested by the Owner to substantiate the Contractor's right to payment; or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

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§ 9.5 Decisions to Withhold Certification

§ 9.5.1 The Architect may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's opinion the representations to the Owner required by Section 9.4.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner as provided in Section 9.4.1. If the Contractor and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims, unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or suppliers for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a Separate Contractor caused by the Contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 repeated material failure to carry out the Work in accordance with the Contract Documents.

§ 9.5.2 When either party disputes the Architect's decision regarding a Certificate for Payment under Section 9.5.1, in whole or in part, that party may submit a Claim in accordance with Article 15.

§ 9.5.3 When the reasons for withholding certification are removed, certification will be made for amounts previously withheld.

§ 9.5.4 If the Architect withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or supplier to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Contractor shall reflect such payment on its next Application for Payment.

§ 9.6 Progress Payments

§ 9.6.1 After the Architect has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Architect.

§ 9.6.2 The Contractor shall pay each Subcontractor, no later than seven days after receipt of payment from the Owner, the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

§ 9.6.3 The Architect will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Architect and Owner on account of portions of the Work done by such Subcontractor.

§ 9.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors and suppliers to ascertain whether they have been properly paid. Neither the Owner nor Architect shall have an obligation to pay, or to see to the payment of money to, a Subcontractor or supplier, except as may otherwise be required by law.

§ 9.6.5 The Contractor's payments to suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

§ 9.6.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

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§ 9.6.7 Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors or provided by suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, create any fiduciary liability or tort liability on the part of the Contractor for breach of trust, or entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

§ 9.6.8 Provided the Owner has fulfilled its payment obligations under the Contract Documents, the Contractor shall defend and indemnify the Owner from all loss, liability, damage or expense, including reasonable attorney's fees and litigation expenses, arising out of any lien claim or other claim for payment by any Subcontractor or supplier of any tier. Upon receipt of notice of a lien claim or other claim for payment, the Owner shall notify the Contractor. If approved by the applicable court, when required, the Contractor may substitute a surety bond for the property against which the lien or other claim for payment has been asserted.

§ 9.7 Failure of Payment

If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents, the amount certified by the Architect or awarded by binding dispute resolution, then the Contractor may, upon seven additional days' notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided for in the Contract Documents.

§ 9.8 Substantial Completion

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use.

§ 9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

§ 9.8.3 Upon receipt of the Contractor's list, the Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion.

§ 9.8.4 When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion that shall specify the date on which the Work was substantially completed; establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

§ 9.8.5 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in the Certificate. Upon such acceptance, and consent of surety if any, the Owner shall make payment of retainage applying to the Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

§ 9.9 Partial Occupancy or Use

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and

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insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect.

§ 9.9.2 Immediately prior to such partial occupancy or use, the Owner, Contractor, and Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

§ 9.9.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

§ 9.10 Final Completion and Final Payment

§ 9.10.1 Upon receipt of the Contractor's notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection. When the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect, (3) a written statement that the Contractor knows of no reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment, (5) documentation of any special warranties, such as manufacturers' warranties or specific Subcontractor warranties, and (6) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts and releases and waivers of liens, claims, security interests, or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien, claim, security interest, or encumbrance. If a lien, claim, security interest, or encumbrance remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging the lien, claim, security interest, or encumbrance, including all costs and reasonable attorneys' fees.

§ 9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed, corrected, and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of the surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

§ 9.10.4 The making of final payment shall constitute a waiver of Claims by the Owner except those arising from

- .1 liens, Claims, security interests, or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Contract Documents;
- .3 terms of special warranties required by the Contract Documents; or
- .4 audits performed by the Owner, if permitted by the Contract Documents, after final payment.

§ 9.10.5 Acceptance of final payment by the Contractor, a Subcontractor, or a supplier, shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

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ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 Safety Precautions and Programs

The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract.

§ 10.2 Safety of Persons and Property

§ 10.2.1 The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury, or loss to

- .1 employees on the Work and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody, or control of the Contractor, a Subcontractor, or a Sub-subcontractor; and
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction.

§ 10.2.2 The Contractor shall comply with, and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, bearing on safety of persons or property or their protection from damage, injury, or loss.

§ 10.2.3 The Contractor shall implement, erect, and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards; promulgating safety regulations; and notifying the owners and users of adjacent sites and utilities of the safeguards.

§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment, or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

§ 10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3. The Contractor may make a Claim for the cost to remedy the damage or loss to the extent such damage or loss is attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

§ 10.2.6 The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and Architect.

§ 10.2.7 The Contractor shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

§ 10.2.8 Injury or Damage to Person or Property

If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, notice of the injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

§ 10.3 Hazardous Materials and Substances

§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials or substances. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and notify the Owner and Architect of the condition.

§ 10.3.2 Upon receipt of the Contractor's notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of the material or substance or who are to perform the task of removal or safe containment of the material or substance. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable additional costs of shutdown, delay, and start-up.

§ 10.3.3 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such damage, loss, or expense is due to the fault or negligence of the party seeking indemnity.

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for hazardous materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for hazardous materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances.

§ 10.3.5 The Contractor shall reimburse the Owner for the cost and expense the Owner incurs (1) for remediation of hazardous materials or substances the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

§ 10.3.6 If, without negligence on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall reimburse the Contractor for all cost and expense thereby incurred.

§ 10.4 Emergencies

In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury, or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7.

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 Contractor's Insurance and Bonds

§ 11.1.1 The Contractor shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Contractor shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Owner, Architect, and Architect's consultants shall be named as additional insureds under the Contractor's commercial general liability policy or as otherwise described in the Contract Documents.

§ 11.1.2 The Contractor shall provide surety bonds of the types, for such penal sums, and subject to such terms and conditions as required by the Contract Documents. The Contractor shall purchase and maintain the required bonds from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located.

§ 11.1.3 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.

§ 11.1.4 **Notice of Cancellation or Expiration of Contractor's Required Insurance.** Within three (3) business days of the date the Contractor becomes aware of an impending or actual cancellation or expiration of any insurance required by the Contract

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Documents, the Contractor shall provide notice to the Owner of such impending or actual cancellation or expiration. Upon receipt of notice from the Contractor, the Owner shall, unless the lapse in coverage arises from an act or omission of the Owner, have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by the Contractor. The furnishing of notice by the Contractor shall not relieve the Contractor of any contractual obligation to provide any required coverage.

§ 11.2 Owner's Insurance

§ 11.2.1 The Owner shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Owner shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located.

§ 11.2.2 **Failure to Purchase Required Property Insurance.** If the Owner fails to purchase and maintain the required property insurance, with all of the coverages and in the amounts described in the Agreement or elsewhere in the Contract Documents, the Owner shall inform the Contractor in writing prior to commencement of the Work. Upon receipt of notice from the Owner, the Contractor may delay commencement of the Work and may obtain insurance that will protect the interests of the Contractor, Subcontractors, and Sub-Subcontractors in the Work. When the failure to provide coverage has been cured or resolved, the Contract Sum and Contract Time shall be equitably adjusted. In the event the Owner fails to procure coverage, the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent the loss to the Owner would have been covered by the insurance to have been procured by the Owner. The cost of the insurance shall be charged to the Owner by a Change Order. If the Owner does not provide written notice, and the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain the required insurance, the Owner shall reimburse the Contractor for all reasonable costs and damages attributable thereto.

§ 11.2.3 **Notice of Cancellation or Expiration of Owner's Required Property Insurance.** Within three (3) business days of the date the Owner becomes aware of an impending or actual cancellation or expiration of any property insurance required by the Contract Documents, the Owner shall provide notice to the Contractor of such impending or actual cancellation or expiration. Unless the lapse in coverage arises from an act or omission of the Contractor: (1) the Contractor, upon receipt of notice from the Owner, shall have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by either the Owner or the Contractor; (2) the Contract Time and Contract Sum shall be equitably adjusted; and (3) the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent any loss to the Owner would have been covered by the insurance had it not expired or been cancelled. If the Contractor purchases replacement coverage, the cost of the insurance shall be charged to the Owner by an appropriate Change Order. The furnishing of notice by the Owner shall not relieve the Owner of any contractual obligation to provide required insurance.

§ 11.3 Waivers of Subrogation

§ 11.3.1 The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents, and employees, each of the other; (2) the Architect and Architect's consultants; and (3) Separate Contractors, if any, and any of their subcontractors, sub-subcontractors, agents, and employees, for damages caused by fire, or other causes of loss, to the extent those losses are covered by property insurance required by the Agreement or other property insurance applicable to the Project, except such rights as they have to proceeds of such insurance. The Owner or Contractor, as appropriate, shall require similar written waivers in favor of the individuals and entities identified above from the Architect, Architect's consultants, Separate Contractors, subcontractors, and sub-subcontractors. The policies of insurance purchased and maintained by each person or entity agreeing to waive claims pursuant to this section 11.3.1 shall not prohibit this waiver of subrogation. This waiver of subrogation shall be effective as to a person or entity (1) even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, (2) even though that person or entity did not pay the insurance premium directly or indirectly, or (3) whether or not the person or entity had an insurable interest in the damaged property.

§ 11.3.2 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, to the extent permissible by such policies, the Owner waives all rights in accordance with the terms of Section 11.3.1 for damages caused by fire or other causes of loss covered by this separate property insurance.

§ 11.4 Loss of Use, Business Interruption, and Delay in Completion Insurance

The Owner, at the Owner's option, may purchase and maintain insurance that will protect the Owner against loss of use of the Owner's property, or the inability to conduct normal operations, due to fire or other causes of loss. The Owner waives all rights

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of action against the Contractor and Architect for loss of use of the Owner's property, due to fire or other hazards however caused.

§11.5 Adjustment and Settlement of Insured Loss

§ 11.5.1 A loss insured under the property insurance required by the Agreement shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.5.2. The Owner shall pay the Architect and Contractor their just shares of insurance proceeds received by the Owner, and by appropriate agreements the Architect and Contractor shall make payments to their consultants and Subcontractors in similar manner.

§ 11.5.2 Prior to settlement of an insured loss, the Owner shall notify the Contractor of the terms of the proposed settlement as well as the proposed allocation of the insurance proceeds. The Contractor shall have 14 days from receipt of notice to object to the proposed settlement or allocation of the proceeds. If the Contractor does not object, the Owner shall settle the loss and the Contractor shall be bound by the settlement and allocation. Upon receipt, the Owner shall deposit the insurance proceeds in a separate account and make the appropriate distributions. Thereafter, if no other agreement is made or the Owner does not terminate the Contract for convenience, the Owner and Contractor shall execute a Change Order for reconstruction of the damaged or destroyed Work in the amount allocated for that purpose. If the Contractor timely objects to either the terms of the proposed settlement or the allocation of the proceeds, the Owner may proceed to settle the insured loss, and any dispute between the Owner and Contractor arising out of the settlement or allocation of the proceeds shall be resolved pursuant to Article 15. Pending resolution of any dispute, the Owner may issue a Construction Change Directive for the reconstruction of the damaged or destroyed Work.

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 Uncovering of Work

§ 12.1.1 If a portion of the Work is covered contrary to the Architect's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Architect, be uncovered for the Architect's examination and be replaced at the Contractor's expense without change in the Contract Time.

§ 12.1.2 If a portion of the Work has been covered that the Architect has not specifically requested to examine prior to its being covered, the Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, the Contractor shall be entitled to an equitable adjustment to the Contract Sum and Contract Time as may be appropriate. If such Work is not in accordance with the Contract Documents, the costs of uncovering the Work, and the cost of correction, shall be at the Contractor's expense.

§ 12.2 Correction of Work

§ 12.2.1 Before Substantial Completion

The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, discovered before Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense.

§ 12.2.2 After Substantial Completion

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of notice from the Owner to do so, unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.5.

§ 12.2.2.2 The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

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§ 12.2.2.3 The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Section 12.2.

§ 12.2.3 The Contractor shall remove from the site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

§ 12.2.4 The Contractor shall bear the cost of correcting destroyed or damaged construction of the Owner or Separate Contractors, whether completed or partially completed, caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

§ 12.2.5 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

§ 12.3 Acceptance of Nonconforming Work

If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 Governing Law

The Contract shall be governed by the law of the State of Oregon.

§ 13.2 Successors and Assigns

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

§ 13.2.2 The Owner may, without consent of the Contractor, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate the assignment.

§ 13.3 Rights and Remedies

§ 13.3.1 Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights, and remedies otherwise imposed or available by law.

§ 13.3.2 No action or failure to act by the Owner, Architect, or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed upon in writing.

§ 13.4 Tests and Inspections

§ 13.4.1 Tests, inspections, and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules, and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections, and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections, and approvals. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of tests, inspections, or approvals that do not become requirements until after bids are received or negotiations concluded. The Owner shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require.

§ 13.4.2 If the Architect, Owner, or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection, or approval not included under Section 13.4.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection, or approval, by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect of when and where tests and inspections are to be made so

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that the Architect may be present for such procedures. Such costs, except as provided in Section 13.4.3, shall be at the Owner's expense.

§ 13.4.3 If procedures for testing, inspection, or approval under Sections 13.4.1 and 13.4.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure, including those of repeated procedures and compensation for the Architect's services and expenses, shall be at the Contractor's expense.

§ 13.4.4 Required certificates of testing, inspection, or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Architect.

§ 13.4.5 If the Architect is to observe tests, inspections, or approvals required by the Contract Documents, the Architect will do so promptly and, where practicable, at the normal place of testing.

§ 13.4.6 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

§ 13.5 Interest

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

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 Termination by the Contractor

§ 14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, for any of the following reasons:

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .2 An act of government, such as a declaration of national emergency, that requires all Work to be stopped;
- .3 Because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or
- .4 The Owner has failed to furnish to the Contractor reasonable evidence as required by Section 2.2.

§ 14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, repeated suspensions, delays, or interruptions of the entire Work by the Owner as described in Section 14.3, constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed, as well as reasonable overhead and profit on Work not executed, and costs incurred by reason of such termination.

§ 14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, or their agents or employees or any other persons or entities performing portions of the Work because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

§ 14.2 Termination by the Owner for Cause

§ 14.2.1 The Owner may terminate the Contract if the Contractor

- .1 repeatedly and materially refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors or suppliers in accordance with the respective agreements between the Contractor and the Subcontractors or suppliers;
- .3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- .4 otherwise is guilty of substantial breach of a provision of the Contract Documents.

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§ 14.2.2 When any of the reasons described in Section 14.2.1 exist, and upon certification by the Architect that sufficient cause exists to justify such action, the Owner may, without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

- .1 Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- .2 Accept assignment of subcontracts pursuant to Section 5.4; and
- .3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

§ 14.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

§ 14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Initial Decision Maker, upon application, and this obligation for payment shall survive termination of the Contract.

§ 14.3 Suspension by the Owner for Convenience

§ 14.3.1 The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work, in whole or in part for such period of time as the Owner may determine.

§ 14.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay, or interruption under Section 14.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent

- .1 that performance is, was, or would have been, so suspended, delayed, or interrupted, by another cause for which the Contractor is responsible; or
- .2 that an equitable adjustment is made or denied under another provision of the Contract.

§ 14.4 Termination by the Owner for Convenience

§ 14.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

§ 14.4.2 Upon receipt of notice from the Owner of such termination for the Owner's convenience, the Contractor shall

- .1 cease operations as directed by the Owner in the notice;
- .2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and
- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

§ 14.4.3 In case of such termination for the Owner's convenience, the Owner shall pay the Contractor for Work properly executed; costs incurred by reason of the termination, including costs attributable to termination of Subcontracts; and the termination fee, if any, set forth in the Agreement.

ARTICLE 15 CLAIMS AND DISPUTES

§ 15.1 Claims

§ 15.1.1 Definition

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, a change in the Contract Time, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim. This Section 15.1.1 does not require the Owner to file a Claim in order to impose liquidated damages in accordance with the Contract Documents.

§ 15.1.2 Time Limits on Claims

The Owner and Contractor shall commence all Claims and causes of action against the other and arising out of or related to the Contract, whether in contract, tort, breach of warranty or otherwise, in accordance with the requirements of the binding dispute

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resolution method selected in the Agreement and within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all Claims and causes of action not commenced in accordance with this Section 15.1.2.

§ 15.1.3 Notice of Claims

§ 15.1.3.1 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered prior to expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Claims by either party under this Section 15.1.3.1 shall be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

§ 15.1.3.2 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party. In such event, no decision by the Initial Decision Maker is required.

§ 15.1.4 Continuing Contract Performance

§ 15.1.4.1 Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents.

§ 15.1.4.2 The Contract Sum and Contract Time shall be adjusted in accordance with the Initial Decision Maker's decision, subject to the right of either party to proceed in accordance with this Article 15. The Architect will issue Certificates for Payment in accordance with the decision of the Initial Decision Maker.

§ 15.1.5 Claims for Additional Cost

If the Contractor wishes to make a Claim for an increase in the Contract Sum, notice as provided in Section 15.1.3 shall be given before proceeding to execute the portion of the Work that is the subject of the Claim. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

§ 15.1.6 Claims for Additional Time

§ 15.1.6.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, notice as provided in Section 15.1.3 shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

§ 15.1.6.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated, and had an adverse effect on the scheduled construction.

§ 15.1.7 Waiver of Claims for Consequential Damages

The Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes

- .1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
- .2 damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit, except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.7 shall be deemed to preclude assessment of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

§ 15.2 Initial Decision

§ 15.2.1 Claims, excluding those where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2 or arising under Sections 10.3, 10.4, and 11.5, shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation of any Claim. If an initial decision has not been rendered within 30 days after the Claim has been referred

to the Initial Decision Maker, the party asserting the Claim may demand mediation and binding dispute resolution without a decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

§ 15.2.2 The Initial Decision Maker will review Claims and within ten days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.

§ 15.2.3 In evaluating Claims, the Initial Decision Maker may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Initial Decision Maker in rendering a decision. The Initial Decision Maker may request the Owner to authorize retention of such persons at the Owner's expense.

§ 15.2.4 If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of the request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished, or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part.

§ 15.2.5 The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the Architect, if the Architect is not serving as the Initial Decision Maker, of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.

§ 15.2.6 Either party may file for mediation of an initial decision at any time, subject to the terms of Section 15.2.6.1.

§ 15.2.6.1 Either party may, within a reasonable time from the date of receipt of an initial decision, request mediation. If such a request is made and the party receiving the request fails to participate in mediation within a reasonable time, the party failing to participate in mediation waives any rights it may have to mediate prior to binding dispute resolution proceedings.

§ 15.2.7 In the event of a Claim against the Contractor, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

§ 15.2.8 If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.

§ 15.3 Mediation

§ 15.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract, except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.7, shall be subject to mediation as a condition precedent to binding dispute resolution.

§ 15.3.2 The parties shall endeavor to resolve their Claims by mediation. The parties will share the mediator's fee and any filing fees equally. A request for mediation may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation. If an arbitration is stayed pursuant to this Section 15.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 15.3.3 (Not Used)

§ 15.3.4 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

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§ 15.4 Arbitration

§ 15.4.1 If the parties have selected arbitration as the method for binding dispute resolution in the Agreement, any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the Arbitration Service of Portland, Inc., in accordance with rules in effect on the date of the Agreement.

§ 15.4.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim.

§ 15.4.2 The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof. If any court action or arbitration is instituted relating to this Contract, the prevailing party shall be entitled to recover from the other party and the other party agrees to pay the prevailing party its reasonable attorney fees in the action or proceeding and in any appeal of the same.

§ 15.4.3 The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement, shall be specifically enforceable under applicable law in any court having jurisdiction thereof.

§ 15.4.4 Consolidation or Joinder

§ 15.4.4.1 Either party may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that the arbitrations to be consolidated substantially involve common questions of law or fact.

§ 15.4.4.2 Either party may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration.

§ 15.4.4.3 The Owner and Contractor grant to any person or entity made a party to an arbitration conducted under this Section 15.4, whether by joinder or consolidation, the same rights of joinder and consolidation as those of the Owner and Contractor under this Agreement.

Additions and Deletions Report for

AIA® Document A201™ – 2017

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Brookings Harbor Fire and Police Station Seismic Retrofit
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City of Brookings, a subdivision of the State of Oregon
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...

WRK Engineers
215 West 12th Street, Suite 202
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§ 1.5.1 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and retain all common law, statutory, and other reserved rights in their Instruments of Service, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and suppliers shall not own or claim a copyright in the Instruments of ~~Service~~. Service provided by others. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' reserved rights. For any design-build portions of the Work, the Contractor and its Subcontractors, suppliers, or subconsultants will retain all common law, statutory and other reserved rights, including copyrights in their respective Instruments of Service. The Owner and the Architect are authorized to use and reproduce the Instruments of Service provided to them by the Contractor solely and exclusively for execution of the Work to the extent the Owner has complied with its payment obligations under this Contract.

§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors, and suppliers are authorized to use and reproduce the Instruments of Service provided to them, subject to any protocols established pursuant to Sections 1.7 and 1.8, solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of ~~Service~~. Service provided by others. The Contractor, Subcontractors, Sub-subcontractors, and suppliers may not use the Instruments of Service on other projects or for additions to the Project outside the scope of the Work without the specific written consent of the Owner, Architect, and the Architect's consultants.

...

§ 1.7 Digital Data Use and Transmission

The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form. The parties will use AIA Document E203™ 2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.

PAGE 26

- .5 damage to the Owner or a Separate Contractor caused by the Contractor;

...

- .7 repeated material failure to carry out the Work in accordance with the Contract Documents.

PAGE 27

§ 9.8.4 When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion that shall ~~establish the date of Substantial Completion; specify the date on which the Work was substantially completed;~~ establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

PAGE 33

The Contract shall be governed by the law of the place where the Project is located, ~~excluding that jurisdiction's choice of law rules. If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 15.4.~~

State of Oregon.

PAGE 34

- .1 repeatedly and materially refuses or fails to supply enough properly skilled workers or proper materials;

PAGE 37

§ 15.2.6.1 Either party may, within ~~30 days a reasonable time~~ from the date of receipt of an initial decision, ~~demand in writing that the other party file for mediation. If such a demand request mediation. If such a request is made and the party receiving the demand fails to file for mediation within 30 days after receipt thereof, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision request fails to participate in mediation within a reasonable time, the party failing to participate in mediation waives any rights it may have to mediate prior to binding dispute resolution proceedings.~~

...

§ 15.3.2 The parties shall endeavor to resolve their Claims by mediation which, ~~unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request mediation. The parties will share the mediator's fee and any filing fees equally. A request for mediation may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. mediation.~~ If an arbitration is stayed pursuant to this Section 15.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 15.3.3 Either party may, ~~within 30 days from the date that mediation has been concluded without resolution of the dispute or 60 days after mediation has been demanded without resolution of the dispute, demand in writing that the~~

~~other party file for binding dispute resolution. If such a demand is made and the party receiving the demand fails to file for binding dispute resolution within 60 days after receipt thereof, then both parties waive their rights to binding dispute resolution proceedings with respect to the initial decision.(Not Used)~~

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~~§ 15.4.1 If the parties have selected arbitration as the method for binding dispute resolution in the Agreement, any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules Arbitration Service of Portland, Inc., in accordance with rules in effect on the date of the Agreement. The Arbitration shall be conducted in the place where the Project is located, unless another location is mutually agreed upon. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.~~

...

~~§ 15.4.2 The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof. If any court action or arbitration is instituted relating to this Contract, the prevailing party shall be entitled to recover from the other party and the other party agrees to pay the prevailing party its reasonable attorney fees in the action or proceeding and in any appeal of the same.~~

...

~~§ 15.4.4.1 Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either Either party may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).fact.~~

~~§ 15.4.4.2 Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either Either party may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.arbitration.~~

Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, _____, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 13:46:40 ET on 04/18/2019 under Order No. 0998242405 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A201™ – 2017, General Conditions of the Contract for Construction, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

(Signed)

(Title)

(Dated)

City of Brookings
STANDARD TERMS AND CONDITIONS

1. Contractor is Independent Contractor

- a. Contractor shall perform the work required by this contract as an independent contractor. Although the City reserves the right (i) to specify the desired results; (ii) to determine (and modify) the delivery schedule for the work to be performed; and (iii) to evaluate the quality of the completed performance, the City cannot and will not control the means or manner of the Contractor's performance. The Contractor is responsible for determining the appropriate means and manner of performing the work.
- b. The Contractor represents and warrants that Contractor (i) is not currently an employee of the federal government or the State of Oregon, and (ii) meets the specific independent contractor standards of ORS 670.600, as certified on the Independent Contractor Certification Statement. Contractor represents and warrants that all subcontractors shall also meet such independent contractor standards.
- c. Contractor will be responsible for any federal or state taxes applicable to any compensation or payment paid to Contractor under this contract.
- d. Contractor is not eligible for any federal Social Security, unemployment insurance, state Public Employees' Retirement System, or workers' compensation benefits from compensation or payments to Contractor under this contract.

2. Compliance with Applicable Law

Contractor shall comply with all federal, state, and local laws, regulations, executive orders and ordinances applicable to the work under this contract, including without limitation, ORS 279A.120, ORS 279C.505, ORS 279C.510, ORS 279C.515, ORS 279C.520, ORS 279C.530, ORS 279C.570, and ORS 279C.580. In addition, the provisions of ORS 279C.525 (Provisions concerning environmental and natural resources laws); ORS 279C.540 (Maximum hours of labor on public contracts); ORS 279C.545 (Claims for overtime); ORS 279C.550 to ORS 279C.565 (Retainage); ORS 279C.585 (Authority to substitute undisclosed first-tier subcontractor); ORS 279C.590 (Complaint process for substitutions of subcontractors); ORS 279C.600 to ORS 279C.625 (Bonds); ORS 279C.650 to ORS 279C.670; (Termination for Public Interest) and ORS 279C.800 to ORS 279C.870 (Prevailing Wages) are all incorporated into this contract by this reference as though set forth in full. Without limiting the foregoing, Contractor expressly agrees to comply with: (i) Titles VI and VII of the Civil Rights Act of 1964, as amended; (ii) Sections 503 and 504 of the Rehabilitation Act of 1973, as amended; (iii) the Americans with Disabilities Act of 1990, as amended; (iv) Executive Order 11246, as amended; (v) the Health Insurance Portability and Accountability Act of 1996; (vi) the Age Discrimination in Employment Act of 1967, as amended, and the Age Discrimination Act of 1975, as amended; (vii) the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended; (viii) ORS Chapter 659, as amended; (ix) all regulations and administrative rules established pursuant to the foregoing laws; and (x) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations. A condition or clause required by law to be in this contract shall be considered included by these references.

3. Drug Testing

- a. Contractor shall certify to the City that it has a drug-testing program in place for its employees that includes, at a minimum, the following:

- i. A written employee drug-testing policy,
 - ii. Required drug testing for all new Subject Employees or alternatively, required testing of all Subject Employees every 12 months on a random selection basis, and
 - iii. Required testing of a Subject Employee when the Contractor has reasonable cause to believe the Subject Employee is under the influence of drugs.
- b. A drug-testing program that meets the above requirements will be deemed a "Qualifying Employee Drug-testing Program." For the purposes of this section, an employee is a "Subject Employee" only if that employee will be working on the Public Improvement project job site.
- c. By executing and returning this contract the Contractor certifies, represents and warrants to the City that a Qualifying Employee Drug-testing Program is in place at the time of execution, will continue in full force and effect for the duration of this contract, and that Contractor will comply with the provisions of subsection (d) below. Further, the City's performance obligation (which includes, without limitation, the City's obligation to make payment) is contingent on Contractors compliance with this representation and warranty.
- d. Contractor will require each subcontractor providing labor for the project to:
 - i. Demonstrate to the Contractor that it has a Qualifying Employee Drug-testing Program for the subcontractor's Subject Employees, and represent and warrant to the Contractor that the Qualifying Employee Drug-testing Program is in place at the time of subcontract execution and will continue in full force and effect for the duration of the subcontract; or
 - ii. Require that the subcontractor's Subject Employees participate in the Contractor's Qualifying Employee Drug-testing Program for the duration of the subcontract.

4. Construction Contractor's Board

The Contractor hereby certifies that the Contractor is licensed with the Construction Contractors Board in accordance with ORS 701.035 to 701.055 and, further, that all subcontractors performing work as described in ORS 701.005(2) (i.e., construction work) will be licensed with the Construction Contractors Board in accordance with ORS 701.035 to 701.055 before the subcontractors commence work under the contract.

The Contractor and every subcontractor shall have a public works bond filed with the Construction Contractors Board before starting work on the project, unless exempt under ORS 279C.836(7), (8) or (9). The Contractor shall include in every subcontract a provision requiring the subcontractor to have a public works bond filed with the Construction Contractors Board before starting work on the project, unless exempt under ORS 279C.836(7), (8) or (9).

5. Business License

The Contractor shall obtain a City of Brookings business license as required by BMC 5.05.060 prior to beginning work under this contract. The Contractor shall provide a business license number in the space provided on page two of this contract.

6. Required Statutory Provisions

A condition or clause required by law to be in this contract shall be considered included by these references.

ORS 279C.505 Conditions concerning payment, contributions, liens, withholding, drug testing.

(1) Every public improvement contract shall contain a condition that the contractor shall:

(a) Make payment promptly, as due, to all persons supplying to the contractor labor or material for the performance of the work provided for in the contract.

(b) Pay all contributions or amounts due the Industrial Accident Fund from the contractor or subcontractor incurred in the performance of the contract.

(c) Not permit any lien or claim to be filed or prosecuted against the state or a county, school district, municipality, municipal corporation or subdivision thereof, on account of any labor or material furnished.

(d) Pay to the Department of Revenue all sums withheld from employees under ORS 316.167.

(2) In addition to the conditions specified in subsection (1) of this section, every public improvement contract shall contain a condition that the contractor shall demonstrate that an employee drug testing program is in place.

ORS 279C.510 Demolition contracts to require material salvage; lawn and landscape maintenance contracts to require composting or mulching.

(1) Every public improvement contract for demolition shall contain a condition requiring the contractor to salvage or recycle construction and demolition debris, if feasible and cost-effective.

(2) Every public improvement contract for lawn and landscape maintenance shall contain a condition requiring the contractor to compost or mulch yard waste material at an approved site, if feasible and cost-effective.

ORS 279C.515 Conditions concerning payment of claims by public officers, payment to persons furnishing labor or materials and complaints.

(1) Every public improvement contract must contain a clause or condition that, if the contractor fails, neglects or refuses to pay promptly a person's claim for labor or services

that the person provides to the contractor or a subcontractor in connection with the public improvement contract as the claim becomes due, the proper officer that represents the state or a county, school district, municipality or municipal corporation or a subdivision of the state, county, school district, municipality or municipal corporation may pay the amount of the claim to the person that provides the labor or services and charge the amount of the payment against funds due or to become due the contractor by reason of the contract.

(2) Every public improvement contract must contain a clause or condition that, if the contractor or a first-tier subcontractor fails, neglects or refuses to pay a person that provides labor or materials in connection with the public improvement contract within 30 days after receiving payment from the contracting agency or a 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 within which 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.

(3) Every public improvement contract and every contract related to the public improvement contract must contain a clause or condition that, if the contractor or a subcontractor fails, neglects or refuses pay a person that provides labor or materials in connection with the public improvement 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.

(4) Paying a claim in the manner authorized in this section does not relieve the contractor or the contractor's surety from obligation with respect to an unpaid claim.

ORS 279C.520 Condition concerning hours of labor.

Every public contract subject to this chapter must provide that:

(a) A contractor may not employ an employee for more than 10 hours in any one day, or 40

hours in any one week, except in cases of necessity, emergency or when the public policy absolutely requires otherwise, and in such cases, except in cases of contracts for personal services as defined in ORS 279C.100, the contractor shall pay the employee at least time and a half pay for:

(A)(i) All overtime in excess of eight hours in any one day or 40 hours in any one week if the work week is five consecutive days, Monday through Friday; or

(ii) All overtime in excess of 10 hours in any one day or 40 hours in any one week if the work week is four consecutive days, Monday through Friday; and

(B) All work the employee performs on Saturday and on any legal holiday specified in ORS 279C.540.

(b) The contractor shall comply with the prohibition set forth in ORS 652.220, that compliance is a material element of the contract and that a failure to comply is a breach that entitles the contracting agency to terminate the contract for cause.

(c) The contractor may not prohibit any of the contractor's employees from discussing the employee's rate of wage, salary, benefits or other compensation with another employee or another person and may not retaliate against an employee who discusses the employee's rate of wage, salary, benefits or other compensation with another employee or another person.

(2) A contractor shall give notice in writing to employees who work on a public contract, either at the time of hire or before work begins on the contract, or by posting a notice in a location frequented by employees, of the number of hours per day and days per week that the contractor may require the employees to work.

(3) A public contract for personal services, as defined in ORS 279C.100, must provide that the contractor shall pay the contractor's employees who work under the public contract at least time and a half for all overtime the employees work in excess of 40 hours in any one week, except for employees under a personal services public contract who are excluded under ORS 653.010 to 653.261 or under 29 U.S.C. 201 to 209 from receiving overtime.

(4) A public contract for services at a county fair, or for another event that a county fair board authorizes, must provide that the contractor shall pay employees who work under the public contract at least time and a half for work in excess of 10 hours in any one day or 40 hours in any one week. A contractor shall notify employees who work under the public contract, either at the time of hire or before work begins on the public contract, or by posting a notice in a location frequented by employees, of the number of hours per day and days per week that the contractor may require the employees to work.

(5)(a) Except as provided in subsection (4) of this section, a public contract for services must provide that the contractor shall pay employees at least time and a half pay for work the employees perform under the public contract on the legal holidays specified in a collective bargaining agreement or in ORS 279C.540 (1)(b)(B) to (G) and for all time the employees work in excess of 10 hours in any one day or in excess of 40 hours in any one week, whichever is greater.

(b) A contractor shall notify in writing employees who work on a public contract for services, either at the time of hire or before work begins on the public contract, or by posting a notice in a location frequented by employees, of the number of hours per day and days per week that the contractor may require the employees to work.

ORS 279C.530 Condition concerning payment for medical care and providing workers' compensation.

(1) Every public improvement contract shall contain a condition that the contractor shall promptly, as due, make payment to any person, copartnership, 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.

(2) Every public contract subject to this chapter shall contain a clause or condition that all subject employers working under the contract are either employers that will comply with ORS 656.017 or employers that are exempt under ORS 656.126.

ORS 279C.830 Contractual provisions regarding prevailing rates of wage and fee for administration of law.

(1) The specifications for every contract for public works shall contain a provision stating the existing state prevailing rate of wage and, if applicable, the federal prevailing rate of wage required under the Davis Bacon Act (40 U.S.C. 3141 et seq.) that may be paid to workers in each trade or occupation required for the public works employed in the performance of the contract either by the contractor or subcontractor or other person doing or contracting to do the whole or any part of the work contemplated by the contract. ***** The contract shall contain a provision that the workers shall be paid not less than the specified minimum hourly rate of wage in accordance with ORS 279C.838 and ORS 279C.840.

(2) The specifications for every contract for public works shall contain a provision stating that a fee is required to be paid to the Commissioner of the Bureau of Labor and Industries as provided in ORS 279C.825 (1). The contract shall contain a provision that the fee shall be paid to the commissioner under the administrative rule of the commissioner.

(3) The specifications for every contract for public works shall contain a provision stating that the contractor and every subcontractor must have a public works bond filed with the Construction Contactor Board before starting work on the project unless exempt under ORS 279C.836. *****

ORS 279C.840 Payment of prevailing rate of wage; posting of rates and fringe benefit plan provisions.

(1) The hourly rate of wage to be paid by any contractor or subcontractor to workers upon all public works shall be not less than the prevailing rate of wage for an hour's work in the same trade or occupation in the locality where the labor is performed. The obligation of

a contractor or subcontractor to pay the prevailing rate of wage may be discharged by making the payments in cash, by the making of contributions of a type referred to in ORS 279C.800 (1)(a), or by the assumption of an enforceable commitment to bear the costs of a plan or program of a type referred to in ORS 279C.800 (1)(b), or any combination thereof, where the aggregate of any such payments, contributions and costs is not less than the prevailing rate of wage. The contractor or subcontractor shall pay all wages due and owing to the contractor's or subcontractor's workers upon public works on the regular payday established and maintained under ORS 652.120. *****

**CITY OF BROOKINGS
CERTIFICATION STATEMENT FOR INDEPENDENT CONTRACTOR**

I. INDEPENDENT CONTRACTOR STANDARDS

As used in ORS chapters 316, 656, 657, 671 and 701, "independent contractor" means a person or business entity that provides services for remuneration and who, in the provision of the services, meets the following criteria of ORS 670.600.

II. BASIC REQUIREMENTS

1. The Contractor is free from direction and control over the means and manner of providing the services, subject only to the right of the City to specify the desired results;
 2. The Contractor is customarily engaged in an independently established business;
 3. The Contractor is licensed under ORS chapter 671 or 701 if the person provides services for which a license is required under ORS chapter 671 or 701; and
 4. The Contractor is responsible for obtaining other licenses or certificates necessary to provide the services.
-

III. ADDITIONAL REQUIREMENTS

For purposes of Section II above, a person is considered to be customarily engaged in an independently established business if any three of the following requirements are met:
(Check three or more of the following:)

- _____ The Contractor maintains a business location:
- (a) That is separate from the business or work location of the person for whom the services are provided; or
 - (b) That is in a portion of the person's residence and that portion is used primarily for the business.

- _____ The Contractor bears the risk of loss related to the business or the provision of services as shown by factors such as:
- (a) The person enters into fixed-price contracts;
 - (b) The person is required to correct defective work;
 - (c) The person warrants the services provided; or
 - (d) The person negotiates indemnification agreements or purchases liability insurance, performance bonds or errors and omissions insurance.

- _____ The Contractor provides contracted services for two or more different persons within a 12-month period, or the person routinely engages in business advertising, solicitation or other marketing efforts reasonably calculated to obtain new contracts to provide similar services.

_____ The Contractor makes a significant investment in the business, through means such as:
(a) Purchasing tools or equipment necessary to provide the services;
(b) Paying for the premises or facilities where the services are provided; or
(c) Paying for licenses, certificates or specialized training required to provide the services.

_____ The Contractor has the authority to hire other persons to provide or to assist in providing the services and has the authority to fire those persons.

III. INDEMNIFICATION

If any action is taken by a person or enforcement agency relating to the independent contractor status of Contractor or Contractor's subcontractors in connection with this contract, Contractor shall defend, hold harmless and indemnify the City of Brookings, its elected and appointed officials, employees, volunteers and agents from any such action, claim, judgment, fine, penalty, or order to pay. Contractor shall pay any additional costs incurred by the City in defending such action or incurred as a result of such action. This indemnification is in addition to any indemnification otherwise in this agreement.

IV. CERTIFICATION

Contractor and Project Manager certify that the above statements are true and correct.

Contractor Signature

Date

Project Manager Signature

Date

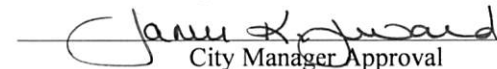
CITY OF BROOKINGS

COUNCIL AGENDA REPORT

Meeting Date: April 22, 2019


Signature (submitted by)

Originating Dept: PWDS


City Manager Approval

Subject: City Hall Seismic Retrofit – Additional Roof Repair

Recommended Motion: Motion to authorize City Manager to enter into an agreement with WRK Engineers and Ausland Group to perform additional roof repair work at City Hall during the seismic retrofit project.

Financial Impact: An additional \$157,000 over the \$209,672 grant match is required and will draw from the Capital Projects Reserve Fund and/or Urban Renewal Fund expenditures in fiscal 2019-20

Background/Discussion: The City received a Seismic Rehabilitation Grant award of \$1,287,988 from Business Oregon for the seismic rehabilitation of the Police and Fire Station wings of the City Hall Complex. A local Match of \$209,672 is required and will draw from the Capital Projects Reserve Fund and/or Urban Renewal Fund expenditures in fiscal 2018-19 and 2019-20.

Grant funds from Business Oregon will pay the engineering fees associated only with seismic retrofit work identified in the contract which is estimated at \$164,500. WRK Engineering was selected in 2017 to prepare construction documents for the project and currently at sixty percent complete. Ausland Group was selected as the building contractor in 2018.

The seismic retrofit design for City Hall includes reinforcing wall and roof diaphragms on the police and fire wings as well as providing a separation joint between the administration wing (Water, Finance, City Manager and Public Works and Development Services offices) and the police and fire wings. Roof work under the grant includes single ply membrane roofing over all police and fire wing areas but does not include increasing pitch needed to address roof drainage issues we currently experience. Also work under the grant does not include new roofing over the administration wing which also experiences drainage issues.

Ausland Group estimates the additional work to complete the re-roof over administration and to increase pitch on the police and fire wings will cost \$122,000. WRK Engineering estimates additional design work at \$35,000 bringing the total additional funds needed to \$157,000.

Discussions regarding roof issues at City Hall between staff and council have been ongoing for several years. This project provides an opportunity to address the issue.


CITY OF BROOKINGS

COUNCIL AGENDA REPORT

Meeting Date: April 22, 2019

Originating Dept: City Manager

Signature (submitted by)



City Manager Approval

Subject:

Transient Occupancy Tax (TOT) Fund Allocation for 4th of July – Family Fun Festival

Recommended Motion:

As recommended by the Tourism Promotion Advisory Committee (TPAC) motion to allocate a total of \$5,000 to the Fun'd the 4th event committee for the 4th of July – Family Fun Festival event. \$2,500 to be disbursed in May 2019 and \$2,500 to be disbursed after July 1, 2019.

Financial Impact:

\$5,000 allocated from TOT revenues set aside for tourism promotion.

Background/Discussion:

The Fun'd the 4th committee submitted a request for \$5,000 in funding assistance for an old fashioned style 4th of July – Family Fun Festival scheduled July 4, 2019. The group's goal is to raise \$31,000 for the event.

This year the event will also include besides the fireworks; a concert, a sandcastle contest, BBQ, family games, car show, boat parade, a watermelon eating contest and other family events to attract people to spend the weekend. The organizers state the funds will be used to assist in paying for the fireworks, musicians, security and venue fees and costs.

This matter was considered by TPAC at their April 11, 2019 meeting. TPAC fully supported the event and they unanimously recommended granting the amount requested of \$5,000 from TOT funding for the event.

Attachment:

- a. Event Funding Application



Event Title: 4th of July-Family Fun Festival **Amount Requested** \$ 5,000
Organization: Fund the 4th Committee
Event Description:
 This year the traditional fireworks display will be accompanied by family activities, live music and great food in an all day event.
Event Date/s: See Attached Time Table
Location: Kite Field **Location secured?** Yes No
Event Goals: There is no other holiday that illustrates the meaning of community and shows off a community's spirit than an Old Fashion 4th! This event offers not only our residents a wonderful day out but visitors looking for a beach get-away. Our focus, to offer local organizations a chance to raise funds in hosting different events traditional to the 4th of July thus growing the event into a Brookings - Harbor tradition for locals and visitors.
How will this event be sustained after the first year?
 This is the 3rd year our committee has presented the fireworks. We have and will continue to rely on community and corporate donations. We believe that as the event blossoms into a Family Fun Festival, we will see an increase in donations.
Sponsors/Investors: TBA
How will funds be used:

Event Budget					
Income			Expenses		
Fees Collected	\$ 5,000		Cleanup, port-a-potty Facility/Venue Costs	1,000	\$ 425
Admissions	\$		Fireworks/Insurance	\$ 17,500	
Concessions	\$		Musicians Advertising	4,000	\$ 5,000
Corporate Sponsors	\$ 21,000		Supplies	\$ 500	
TPAC	\$ 5,000		Security	\$ 2,500	
TOTAL	\$ 31,000		TOTAL	\$ 30,925	

How do you intend to evaluate the success of your event and determine the number of out of town visitors?
 We will conduct a straw poll at the various events being held.
Contact Person: Barbara Ciaramella
Phone: 541.661.2117 **Email:** rediva2012@gmail.com
Mailing Address: c/o Brookings-Harbor Visitor Center, PO Box 1103, Brookings, OR 97415
If more space is required please attach additional pages



April 11, 2019

Dear TPAC Members,

Thank you for this opportunity to address you today. The Fun'd the 4th Committee, is excited to reach out to the City of Brookings with our proposal for funding. We consider this a giant step in bringing back to our community a good old fashion 4th of July to be enjoyed by our residents and visitors alike.

After 2 years of hard work, Fun'd the 4th is in a position to enhance our event with music and family events. We have several groups wanting to participate in our vision which we have branded a Family Fun Festival. As you can see from our timeline, there's a pancake breakfast, walk-run, sandcastle building contest, car show, chili cook-off, 2 live bands, kid's games, a watermelon eating contest and boat parade. It should be a jammed pack day ending with the fireworks display.

For this event to be a real success and be sustainable in the future, we are aware of the need to secure funding. Presently, we have commitments from our past event sponsors for \$7,000 of the \$21,000 in sponsorship fees. Additional sponsorship fees will roll in as we launch our advertising campaign. This is why the funding from the City of Brookings is going to be so important.

We are offering our sponsors print, social media, television and radio coverage with their sponsorships. Additionally, we will be increasing our range of advertising to include the Medford/Grants Pass/Ashland/Illinois Valley as well as Del Norte and Humboldt Counties to get the word out about enjoying our area during the week of the 4th of July. With funds from the City of Brookings for advertising, we can offer our sponsors a tangible BANG for the buck!

We hope that you will share our vision in creating a 4th of July-Family Fun Festival!

Sincerely,

Leslie Wilkinson, Committee Member, Fun'd the 4th



TIMELINE FOR 4TH – 2019

8AM – 10AM	PANCAKE BREAKFAST (Roy Davis Group- Fund raiser- Fund the 4th)
9AM – 10AM	WALK RUN – SPONSORED BY CHETCO BREWING CO.
11AM	SANDCASTLE CONTEST STARTS AT SPORTHAVEN BEACH (ROTARY CLUB)
11AM – 7PM	VENDOR BOOTHS AND FOOD TRUCKS OPEN
	SOUTH COAST FISHERMAN ASSN. – TRI – TIP BBQ
	CHETCO BREWING CO. - BEER & BEVERAGES
12PM – 1PM	BIKE PARADE (possible Hospice Group)
1PM – 4PM	SHOW & SHINE BY KITE FIELD (CURRY COUNTY CRUISERS)
2PM – 3PM	CHILI COOKOFF (PILOT)
3PM	SANDCASTLE CONTEST ENDS – AWARDS GIVEN
3:30PM – 4PM	GAMES BEGIN - BALLOON TOSS & KIDS GAMES (Hosts TBA)
4PM – 5PM	BAND – FLEETWOOD BACK – LOCAL BAND
5PM – 5:30PM	GAMES - SACK RACES - DIFFERENT AGES
5:30PM – 6:30PM	BAND – FLEETWOOD BACK – LOCAL BAND
6:30PM – 7PM	WATERMELON EATING CONTEST (Chetco Activity Center)
7PM – 8PM	BAND – BOYS OF SUMMER
8PM – 8:45PM	BOAT PARADE (SOUTH COAST HUMANE SOCIETY)
8:45PM – 9:45PM	BAND – BOYS OF SUMMER
9:45PM	FIREWORKS DISPLAY COORDINATED WITH RADIO STATION KURY