



## REQUEST FOR QUALIFICATIONS

### **2024 ON-CALL CONSTRUCTION MANAGER / GENERAL CONTRACTOR**

QUALIFICATIONS DUE: **JUNE 6, 2024** BY 3 P.M. local time

**REQUEST FOR QUALIFICATIONS**  
**Construction Manager/General Contractor**  
**(On Call for CM/GC Services)**

Issue Date: May 3, 2024  
Statements of Qualifications Due: June 6, 2024 by 3:00 pm local time

To all Respondents:

Capital City Development Corporation (CCDC), the urban renewal agency for Boise City, Idaho, will accept Statements of Qualifications from firms licensed in Idaho with both construction manager and public works contractor licenses to be named to a preapproved list for Construction Manager/General Contractor (CM/GC) services for a five-year basis.

CCDC anticipates constructing high-profile and unique public works projects using the CM/GC delivery process and seeks proposals from qualified firms to be preapproved to provide such services. Firms selected in accordance with the Request for Qualifications (RFQ) specifications are not guaranteed work nor compensation until under contract with CCDC for a specific project.

**Background**

As Boise’s redevelopment agency, CCDC works to increase investment in the city through its own projects and public/private partnerships. CCDC focuses its efforts on economic development, infrastructure improvements such as streetscape construction, placemaking projects including public art installation and the design and construction of public spaces, mobility-related projects such as bike and public transportation infrastructure, and special projects within six urban renewal districts.

CCDC also owns the six public parking garages operating under the ParkBOI brand in downtown Boise. The garages require regular repair and maintenance projects for safe and efficient operations as well as other upgrades to improve service for the public.

Each year CCDC publishes a fiscally responsible [5-year Capital Improvement Plan](#) as a predictable framework to collaborate with agency and community partners to achieve urban redevelopment goals and the long-term vision for the city. The Construction Manager/General Contractor services are relevant to the various future projects planned each year.

For additional information regarding CCDC, its impact on downtown Boise, and its many past and future projects, please visit the agency’s website at [www.ccdcboise.com](http://www.ccdcboise.com).

CCDC appreciates the effort it takes to respond to an RFQ. Thank you in advance for your submission. We look forward to hearing from you.



Kathy Wanner, Contracts Manager  
[kwanner@ccdcb Boise.com](mailto:kwanner@ccdcb Boise.com)

# INSTRUCTIONS TO RESPONDENTS

## 1.1 Proposal Information

Please follow these instructions for submitting a proposal.

**PROPOSAL DEADLINE is 3:00 p.m. local time, June 6, 2024**

The proposal must be submitted electronically by email to: [bids@ccdcb Boise.com](mailto:bids@ccdcb Boise.com)

Please include this subject line on the email:

**“RFQ SUBMITTAL: ON-CALL CM/GC SERVICES”**

All required submittal documents must be *signed and dated* and must be submitted by email either in one PDF or a separate PDF of each required document. Late or incomplete submittals will not be accepted; CCDC takes no responsibility for submittals received after the Proposal Deadline or incomplete in any way. Respondent assumes full responsibility for the timely submittal of all proposal documents via the email process.

## SCOPE OF SERVICES

### 2.1 Background

CCDC is soliciting proposals from experienced firms that can adequately demonstrate that they have the resources, experience, and qualifications to provide CM/GC services for a variety of projects. Over the next few years, CCDC anticipates completing multiple independent projects under a CM/GC delivery method. In accordance with Idaho Code § 67-2320, CCDC is selecting firms to be named to a preapproved list to respond to future RFQs for the following public infrastructure projects:

- CCDC 5-Year Capital Improvement Plan (“CIP”) – capital improvement projects in various urban renewal districts. The 5-Year CIP is updated annually.
  - Projects may include mobility-related projects such as bike, pedestrian and public transportation infrastructure and streetscape improvements, including utility improvements and relocation, green stormwater infrastructure, suspended pavement systems, traffic signals, street lighting, subgrade vault demolition and building foundation improvements, asphalt and concrete paving, curb and gutter, brick paving, landscaping, and site furnishings. Projects may also include work within other public spaces, such as plazas, alleys and parks as well as work related to irrigation structures (i.e. canals, piping, concrete culverts). Estimated budgets vary from \$200,000 to several million dollars; construction timing to be determined.
- Other large-scale projects to be determined.
- ParkBOI projects may include--but are not limited to--stair tower renovations, elevator modernization and replacement, rooftop solar canopies, electric vehicle charging infrastructure, concrete and steel structural repairs and upgrades, asphalt paving

repair, structure painting and application of other surface coatings, and other major equipment upgrades and/or replacement.

## **2.2 CM/GC Scope of Services**

Contracts with CCDC for CM/GC Services for specific projects will involve a preconstruction services phase (for design and bidding and for long lead procurement services) followed by negotiation of a contract for the construction phase (including Guaranteed Maximum Price).

Preconstruction Services: Include, but are not limited to, review of design documents, constructability reviews, generating construction cost estimates, project schedules, phasing plan, logistic requirements, developing trade bid packages and scopes of work, obtaining/opening bids for subcontracts and trade contracts.

Construction Services: The selected contractor will serve as the construction manager at risk throughout the duration of the construction process for each project, including award of the subcontracts and trade contracts, through completion and closeout. The CM/GC firm will be “at risk” to complete the construction work for the bid prices and agreed upon fees used to establish the Guaranteed Maximum Price (GMP) and within the contract times established for each project element, subject to contract provisions for changes to the GMP.

All CM/GC services must be performed by staff properly licensed in the State of Idaho. The actual scope of services will be negotiated for individual projects after this RFQ selection process has been conducted.

## **2.3 Special Instructions**

Throughout the project, the CM/GC shall provide CCDC with professional construction management and contractor services and represent CCDC’s interests in completing the project on time, within set budgets, and as planned with minimum difficulties. The Standard Agreement and General Conditions between Owner and Construction Manager (Where the CM is At-Risk), Exhibit C, will form the basis of agreement for CM/GC services to be entered into for the project; provided however, CCDC reserves the right to change, modify, or amend the final contract to be entered into by the parties.

# **GENERAL CONDITIONS**

## **3.1 Intent of RFQ**

It is the intent of CCDC to run a Qualification Based Selection process to establish a preapproved list for Construction Manager/General Contractor (CM/GC) services, created pursuant to Idaho Code § 67-2320(2)(i), for a five-year basis. After the preapproved list is established, listed CM/GC firms may be asked to submit Statements of Qualifications for specific CCDC projects in need of CM/GC services. If a contract cannot be negotiated with the highest ranked firm for each RFQ, CCDC will approach the next highest ranked firm to negotiate a contract.

## **3.2 Reserved Rights**

CCDC reserves the right to act in the public best interest and in furtherance of the purposes of the Idaho Code Title 50, Chapter 20 (Idaho Urban Renewal Law) and Idaho Code Title 67, Chapter 28 (Purchasing by Political Subdivisions). CCDC reserves the right to waive any formalities or defects as to form, procedure, or content with respect to its Request for Qualifications and any irregularities in the proposals received, to request additional data and

information from any and all Respondents, to reject any proposals based on real or apparent conflict of interest, to reject any proposals containing inaccurate or misleading information, and to accept the proposal or proposals that are in the best interest of CCDC and the public. The issuance of this RFQ and the receipt and evaluation of proposals does not obligate CCDC to select a company nor award a contract. CCDC may in its discretion cancel, postpone, or amend this RFQ at any time without liability.

### **3.3 Public Records**

CCDC is a public agency. All documents in its possession are public records subject to inspection and copying under the Idaho Public Records Act, Chapter 1, Title 74, Idaho Code. The Public Records Act contains certain exemptions – one of which is potentially applicable to part of your response is an exemption for trade secrets. Trade secrets include a formula, pattern, compilation, program, computer program, device, method, technique, or process that derives economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by other persons and is subject to the efforts that are reasonable under the circumstances to maintain its secrecy. Prices quoted in a proposal are not trade secrets.

If any Respondent claims any part of a proposal is exempt from disclosure under the Idaho Public Records Act, the Respondent must: 1.) Indicate by marking the pertinent document “CONFIDENTIAL”; and 2.) Include the specific basis for the position that it be treated as exempt from disclosure. Marking the entire proposal as “Confidential” is not in accordance with Idaho Public Records Act and will not be honored.

CCDC, to the extent allowed by law and in accordance with these Instructions, will honor a nondisclosure designation. By claiming materials to be exempt from disclosure under the Idaho Public Records Act, Respondent expressly agrees to defend, indemnify, and hold CCDC harmless from any claim or suit arising from CCDC’s refusal to disclose such materials pursuant to the Respondent’s designation. Any questions regarding the applicability of the Public Records Act should be addressed to your own legal counsel prior to submission.

### **3.4 Insurance**

Prior to executing any contract for CM/GC services with CCDC or commencing any work under the contract, the CM/GC will be required to provide evidence of the coverages listed below and pay all costs associated with the insurance coverage. Insurance policies or certificates of insurance will name CCDC as the named insured, and the CM/GC will maintain these minimum insurance coverages during the entire term of the contract:

- a. Professional Liability Insurance coverage with minimum coverage of One Million Dollars (\$1,000,000) per occurrence and a minimum aggregate limit of One Million Dollars (\$1,000,000). NOTE: CGL policies do not provide coverage for the type of professional services the CM will be performing during the pre-construction phase of the project, therefore Professional Liability Insurance coverage must be obtained.
- b. Commercial General Liability Insurance coverage with minimum coverage of Two Million Dollars (\$2,000,000) on an occurrence basis (not a claims-made basis).
- c. Comprehensive Automobile Liability coverage with minimum coverage of One Million Dollars (\$1,000,000) per occurrence for owned, non-owned, and hired vehicles.

- d. Excess Liability (Umbrella) with minimum coverage of Two Million Dollars (\$2,000,000) per occurrence.
- e. Worker's Compensation Insurance in an amount as required by statute and Employer's Liability Insurance in an amount not less than One Million Dollars (\$1,000,000) for each occurrence, for all of the company's employees to be engaged in work on the project under contract and, in the case any such work is subcontracted, the CM/GC company will require Subcontractors and trade contractors similarly to provide Worker's Compensation and Employer's Liability Insurance for all the Subcontractors and trade contractors to be engaged in such work.
- f. Cyber Liability Insurance: CM/GC shall maintain throughout the term of this Agreement Cyber liability Insurance, with limits not less than \$1,000,000 per occurrence or claim, \$1,000,000 aggregate and includes third party. Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by CM/GC in this Agreement and shall include, but not be limited to, claims involving security breach, system failure, data recovery, business interruption, cyber extortion, social engineering, funds transfer fraud, infringement of intellectual property, including but not limited to infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, and alteration of electronic information. The policy shall provide coverage for breach response costs, regulatory fines and penalties as well as credit monitoring expenses.

### **3.5 Bonding**

As the General Contractor, the CM/GC must have the capability to bond for 100% of the contract price of the selected projects estimated at the time the contract is negotiated and until such time that the entire project bids, the overall Guaranteed Maximum Price (GMP) for the work is established, and the bond is delivered to CCDC. The performance and payment bonds shall be AIA Document A312 (2010 or the most recent edition) and shall be executed by a surety or sureties reasonably acceptable to CCDC and authorized to do business in the State of Idaho.

### **3.6 Taxes**

CCDC is exempt from federal and state taxes. Items purchased by CCDC and put into use by a contractor are subject to Idaho Use Tax. All other taxes are the responsibility of the Contractor and are to be included in the Contractor's pricing.

### **3.7 Legal Residency Requirement**

By submitting a proposal, the Respondent attests, under penalty of perjury, that they are a United States citizen or legal permanent resident or that they are otherwise lawfully present in the United States pursuant to federal law. Prior to being issued a contract, the company will be required to submit proof of lawful presence in the United States in accordance with Idaho Code § 67-7903.

### **3.8 Dual-Capacity License Requirements**

Proposals will be accepted from Idaho licensed construction managers and the company of which they are a principal or full-time employee who, prior to the proposal deadline, also have a valid public works contractor license as a general contractor pursuant to Idaho Code § 54-1902. Idaho Code § 54-1902 requires that public works contractors and subcontractors have the appropriate Public Works License for the particular type of construction work involved.

## SUBMISSION, EVALUATION, AND SELECTION

### 4.1 Forms Submitted

Respondents must submit the following completed forms via email along with the proposal by the proposal deadline:

- RFQ Submittal Cover Sheet (attached to this RFQ as Exhibit A)
- RFQ Waiver and Release (attached to this RFQ as Exhibit B)

Failure to submit all requested information may render any proposal unresponsive and void.

### 4.2 Objections to Specifications or Process

Objections to specifications or RFQ procedures must be in writing and received by CCDC, Attn: Kathy Wanner, Contracts Manager, at least three (3) business days before the date and time of the proposal deadline. The objection must state the exact nature of the protest, describing the location of the protest portion or clause in the RFQ documents and explaining why the provision should be struck, added, or altered, and contain suggested corrections. CCDC may deny the objection, modify the RFQ, and/or reject all or part of the objection.

### 4.3 Addenda

In the event it becomes necessary to revise any part of this RFQ, addenda will be issued. Information given to one Respondent will be available to all other Respondents if such information is necessary for purposes of submitting a proposal or if failure to give such information would be prejudicial to uninformed Respondents. It is the Respondent's responsibility to check for addenda prior to submitting a proposal. Failure to do so may result in the proposal being declared non-responsive. No addenda will be issued fewer than four (4) business days before the proposal deadline unless the deadline is extended. Respondent shall indicate within their cover letter the addenda number(s) which they have incorporated into their proposal.

### 4.4 Scoring

Proposals must include the following information in the sequence set forth below. This format is meant to allow uniform review and easy access to information by the evaluation committee. For each of the specific articles listed below, Respondents should include a complete description of qualifications to serve as a CM/GC. Respondents are invited to include information about innovative methods and/or procedures that they can provide to assist in ensuring successful completion of this project; unique qualities and/or capabilities and cost efficiencies should be identified. Respondents acknowledge they will be ranked according to each article below, with points applied per article (100 points total):

**RFQ Submittal Cover Sheet (Exhibit A)** Must be included.

**RFQ Waiver and Release (Exhibit B)** Must be included.

**Signed Cover Letter (Limit 1 page)** 5 Points

Provide a signed letter briefly stating the Respondent's understanding of the RFQ for CM/GC services and a statement as to why the firm believes it is qualified to perform CM/GC services for CCDC. Indicate receipt and incorporation of addenda number(s) into Respondent's proposal.

**Detailed Proposal (Limit 20 pages) – organized with the following information:**

**a. Company Profile and Staffing: 15 Points**

Describe the company's history, size, resources, philosophy of service, typical volume of work, home office support staff, and construction management techniques and methods. Describe how your expertise, experience, techniques, and culture can be advantageous to CCDC in completing projects. Provide typical team structure and staffing support for CM/GC projects. Include Idaho Public Works and Idaho Public Works Construction Manager license information.

**b. CM/GC Approach: 25 Points**

Describe the firm's philosophy and approach to providing CM/GC services. Include a description of typical services provided; approaches to reach-out/solicit to subcontractors; how the firm manages budgets, subcontracts and trade contracts, materials purchases, and schedules; how the firm coordinates the work; and the approach to dealing with construction problems such as poor work quality, schedule adherence, disputes, etc.

Describe actions and procedures used to minimize adverse impacts to the public and adjacent businesses and property owners. Explain how good relations will be established and maintained and how open and productive communications will be fostered with all interested parties. Specific examples of successful implementation of these actions and procedures from past projects are encouraged.

Indicate how the firm manages risk during the construction phase.

**c. Budget Control: 15 Points**

Submit detailed information of how your firm provides and periodically updates construction cost estimates and participates in Value Engineering (VE) during project design. Describe how opportunities will be identified that will make the project a better value. Include the means and methods that will be used and, specifically, how key personnel will interact with stakeholders and the design team to introduce VE proposals and work through updates to cost estimates. Describe past projects where VE has been an integral part of the relationship with the owner, including VE processes that were not successful and VE means and methods successfully used on past projects.

Describe how your company successfully tracks and reports construction costs, including line item costs for each bid package, fees, permits, reimbursable costs, CM fees, and all other project costs. Describe how your company would administratively manage, track, and invoice for the various separate cost categories that comprise the Guaranteed Maximum Price especially given that CCDC projects may have multiple funding sources from separate agencies including CCDC, ACHD and the City of Boise.

**d. Scheduling: 15 Points**

Describe the primary scheduling techniques the firm uses and the software you will employ to produce an effective construction schedule. Provide examples of successful construction management and scheduling services provided on complex, multi-phase projects. Describe how construction phasing can be optimized to ensure successful on-time completion. Describe methods used to coordinate with third party contractors for utility relocations/adjustments to existing utilities to ensure timely execution of utility work



ahead of or in concert with other project work. Discuss in detail how you intend to enforce contract schedule compliance.

**e. Relevant Similar Experience: 25 points**

Provide five (5) CM/GC projects completed within the last 10 years describing the firm's experience. Projects including the following experience are of particular interest.

- Traffic signal work, asphalt pavement reconstruction, sidewalk and bulb out construction, green stormwater infrastructure, suspended pavement systems, utility infrastructure upgrades, canal improvements, downtown streetscape improvements, and mobility-related projects such as bike and public transportation.
- Parking garage structural maintenance and repairs, building renovation and building improvements.
- Working within or across multiple agency jurisdictions and work within urban areas with complex construction phasing within the public right-of-way should be highlighted.

Please focus on company experience. Do not include individual experience for projects performed while individuals were employed by other companies. As applicable, describe the firm's project approach, including a management plan and project management information systems that will be used on projects for CCDC.

Provide the following key information for each noted project:

- Brief description of the project, highlighting scope, budget, complexity, context, key interfaces, project staffing and management, and project delivery method similarities.
- Client reference and current contact information including name, title, phone number, and role on the project.
- Location of the project and completion date.
- The company's responsibilities on the project.
- Amount of initial contract award and final contract closeout or projected price. Respondent's portion of contract, scope of Respondent's portion, and value of Respondent's portion, and identification of whether Respondent was a prime or subcontractor on the project.

#### **4.5 Evaluation of Respondent**

A selection committee will evaluate the Respondent's response and qualifications. Before the preapproved list is created, CCDC may conduct reference investigations and interviews with one or more Respondents as is necessary to evaluate and determine the performance record and ability of the Respondents to perform CM/GC services and to determine the quality of the service being offered. By submitting a proposal, the Respondent authorizes CCDC to conduct reference investigations as needed and to conduct interviews as necessary.

#### **4.6 Qualification-Based Selection**

Selection will be based on the procurement rules set forth in Idaho Code § 67-2320. Final selection is made by the CCDC Board of Commissioners. CCDC has the right to waive or alter submission requirements or to reject any or all proposals, consistent with Idaho law. It is the Respondent's responsibility to conform to all applicable federal, state, and local statutes or other applicable legal requirements. The information provided herein is intended to assist Respondents

in meeting applicable requirements, but is not exhaustive, and CCDG will not be responsible for any failure by any Respondent to meet applicable requirements.

#### **4.7 Modification or Withdrawal of Proposal**

A proposal may be modified or withdrawn by the Respondent prior to the submission deadline set forth in this RFQ. After the submission deadline, the submitted proposal shall remain in effect for a minimum of 90 days for evaluation and contracting purposes.

#### **4.8 QUESTIONS**

Any questions, clarifications, or objections must be received no later than 3:00 pm May 17, 2024.

Direct questions to: Kathy Wanner, Contracts Manager  
(208) 391-7304 or [kwanner@ccdcboise.com](mailto:kwanner@ccdcboise.com)

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#### **EXHIBITS TO THIS RFQ:**

- A: RFQ Submittal Cover Sheet
- B: RFQ Waiver and Release
- C. Sample Standard Agreement and General Conditions between Owner and Construction Manager (Where the CM is At-Risk)

**EXHIBIT A**

**RFQ: ON CALL CM/GC SERVICES  
SUBMITTAL COVER SHEET  
(REQUIRED FOR SUBMISSION)**

TO: Capital City Development Corporation  
Attn: Kathy Wanner, Contracts Manager  
121 N. 9<sup>th</sup> Street, Suite 501  
Boise, Idaho 83702

FROM:

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

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

\_\_\_\_\_

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

\_\_\_\_\_

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

E-mail Address: \_\_\_\_\_

**Company officer responsible to CCDC for CM/GC services contemplated by this RFQ:**

**SIGNATURE:** **X** \_\_\_\_\_

Print Name and Title: \_\_\_\_\_

**License Information:** Idaho Public Works Contractor License # \_\_\_\_\_

Idaho Public Works Construction Management License # \_\_\_\_\_

held by \_\_\_\_\_ (name of licensed CM who will be responsible).

**EXHIBIT B**

**REQUIRED WAIVER & RELEASE  
(REQUIRED FOR SUBMISSION)**

The undersigned has read this waiver and release and fully accepts the Capital City Development Corporation's (CCDC) discretion and non-liability as stipulated herein, and expressly for, but not limited to, CCDC's decision to proceed with a qualification-based selection process in response to the Request for Qualifications (RFQ) to select a company to supply on call construction manager / general contractor services to CCDC for the project.

- A. Discretion of CCDC: The Proposer submitting a response to this RFQ agrees that CCDC has the right to, unless contrary to applicable state law:
  - a. Modify or suspend any and all aspects of the process seeking proposals and making any decisions concerning the services RFQ;
  - b. Obtain further information from any person, entity, or group regarding the Proposer, and to ascertain the depth of Proposer's capability and experience for supplying the services and in any and all other respects to meet with and consult with any Proposer or any other person, entity, or group;
  - c. Waive any formalities or defects as to form, procedure, or content with respect to CCDC's RFQ to select a construction manager / general contractor firm and any response by any Proposer thereto;
  - d. Accept or reject any sealed proposal received in response to the RFQ, including any sealed proposal submitted by the undersigned; or select any one proposal over another in accordance with the selection criteria; and
  - e. Accept or reject all or any part of any materials or statements, including, but not limited to, the nature and type of proposal.
  
- B. Non-Liability of CCDC:
  - a. The undersigned agrees that CCDC shall have no liability whatsoever of any kind or character, directly or indirectly, by reason of all or any decision made at the discretion of CCDC as identified above.
  - b. The undersigned, including all team members, have carefully and thoroughly reviewed the RFQ and has found it to be complete and free from ambiguities and sufficient for their intended purpose.

Proposer's Signature: **X** \_\_\_\_\_

Print Name: \_\_\_\_\_

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

Name of Firm: \_\_\_\_\_

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

## EXHIBIT C

### STANDARD AGREEMENT AND GENERAL CONDITIONS BETWEEN OWNER AND CONSTRUCTION MANAGER (Where the CM is At-Risk)

#### TABLE OF ARTICLES

1. AGREEMENT
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5. SUBCONTRACTS
6. TIME
7. COMPENSATION AND GUARANTEED MAXIMUM PRICE
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11. INDEMNITY, INSURANCE, AND BONDS
12. SUSPENSION, NOTICE TO CURE, AND TERMINATION
13. DISPUTE MITIGATION AND RESOLUTION
14. MISCELLANEOUS
15. CONTRACT DOCUMENTS

**ARTICLE 1 AGREEMENT**

This Agreement is made this \_\_\_\_\_ Day of \_\_\_\_\_, 2024, by and between the

OWNER: **Capital City Development Corporation (CCDC)**  
**121 N. 9<sup>th</sup> Street**  
**Suite 501**  
**Boise, Idaho 83702**

and the

CONSTRUCTION MANAGER: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Tax identification number (TIN): Tax ID: \_\_\_\_\_

Contractor License No: **Idaho Public Works Contractors License:** \_\_\_\_\_  
**Idaho Construction Manager License:** \_\_\_\_\_

for services in connection with the following PROJECT,

\_\_\_\_\_  
**Located in downtown Boise, Idaho**

Notice to the Parties shall be given at the above addresses.

The Design Professional is \_\_\_\_\_

The Parties agree as set forth herein:

**ARTICLE 2 GENERAL PROVISIONS**

2.1 RELATIONSHIP OF PARTIES The Parties each agree to proceed with the Project on the basis of mutual trust, good faith, and fair dealing.

2.1.1 The Construction Manager shall furnish construction administration and management services and use the Construction Manager's diligent efforts to perform the Work in an expeditious manner consistent with the Contract Documents. The Parties shall each endeavor to promote harmony and cooperation among all Project participants.

2.1.2 The Construction Manager represents that it is an independent contractor and that in its performance of the Work it shall act as an independent contractor.

2.1.3 Neither the Construction Manager nor any of its agents or employees shall act on behalf of or in the name of the Owner except as provided in this Agreement unless authorized in writing by the Owner's Representative.

2.1.4 The Parties shall perform their obligations with integrity, ensuring at a minimum that each: (a) avoids conflicts of interest and promptly discloses any to the other Party; and (b) warrants that it has

not and shall not pay or receive any contingent fees or gratuities to or from the other Party, including its agents, officers and employees, subcontractors, subconsultants or others for whom they may be liable, to secure preferential treatment.

2.2 DESIGN PROFESSIONAL The Owner, through its Design Professional, shall provide all architectural and engineering design services necessary for the completion of the Work, except the following: **None**. The Construction Manager shall not be required to provide professional services which constitute the practice of architecture or engineering except as otherwise provided.

2.2.1 The Owner shall obtain from the Design Professional either a license for the Construction Manager and Subcontractors to use the design documents prepared by the Design Professional or ownership of the copyrights for such design documents, and shall indemnify and hold harmless the Construction Manager against any suits or claims of infringement of any copyrights or licenses arising out of the use of the design documents for the Project.

## 2.3 DEFINITIONS

2.3.1 "Agreement" means this Standard Agreement and General Conditions Between Owner and Construction Manager, as modified, and exhibits and attachments made part of this agreement upon its execution.

2.3.1.1 The following attached exhibits are a part of this Agreement:  
Exhibit A **Preconstruction Services Proposal dated** \_\_\_\_\_  
Exhibit B CCDC RFQ; and  
Exhibit C Construction Manager's Proposal to CCDC RFQ.

2.3.2 "Business Day" means all Days, except weekends and official federal or state holidays where the Project is located.

2.3.3 A "Change Order" is a written order signed by the Owner and the Construction Manager after execution of this Agreement, indicating changes in the scope of the Work, the GMP and Date of Substantial Completion or Date of Final Completion, including substitutions proposed by the Construction Manager and accepted by the Owner.

2.3.4 The "Contract Documents" consist of this Agreement, the existing Contract Documents listed in section 15.1, drawings, specifications, addenda issued and acknowledged prior to execution of this Agreement, information furnished by the Owner pursuant to subsection 3.15.4, and modifications issued in accordance with this Agreement.

2.3.5 "Contract Time" is the period between the Date of Commencement and the Final Completion.

2.3.6 "Cost of the Work" means the costs and discounts specified in ARTICLE 8.

2.3.7 The "Construction Manager" is the person or entity identified in ARTICLE 1 and includes the Construction Manager's Representative. In the event the parties agree to a Guaranteed Maximum Price as defined herein, the Construction Manager shall serve the role of a Construction Manager / General Contractor for the actual performance of the Work.

2.3.8 "Date of Commencement" is as set forth in section 6.1.

2.3.9 "Day" means a calendar day.

2.3.10 "Defective Work" is any portion of the Work that that does not conform with the Contract Documents.

2.3.11 “Design Professional” means the licensed architect or engineer, and its consultants, retained by the Owner to perform design services for the Project.

2.3.12 “Final Completion” occurs on the date when the Construction Manager's obligations under this Agreement are complete and accepted by the Owner and final payment becomes due and payable. This date shall be confirmed by a Certificate of Final Completion signed by the Owner and the Construction Manager.

2.3.13 “Guaranteed Maximum Price” or “GMP” means the amount proposed by the Construction Manager, negotiated by the Parties, and thereafter accepted by the Parties as the maximum cost to the Owner for construction of the Work in accordance with the Contract Documents. The GMP includes Construction Manager's Fee, the General Conditions Costs, the Cost of the Work, and Construction Manager's Construction Contingency amount.

2.3.14 “Interim Directed Change” is a change to the Work directed by the Owner pursuant to section 9.2.

2.3.15 “Laws” mean federal, state, and local laws, ordinances, codes, rules, and regulations applicable to the Work with which the Construction Manager must comply that are enacted as of the Agreement date.

2.3.16 A “Material Supplier” is a person or entity retained by the Construction Manager to provide material and equipment for the Work.

2.3.17 “Others” means other contractors, material suppliers, and persons at the Worksite who are not employed by the Construction Manager or Subcontractors.

2.3.18 “Overhead” means (a) payroll costs and other compensation of the Construction Manager's employees in the Construction Manager's principal and branch offices; (b) general and administrative expenses of the Construction Manager's principal and branch offices.

2.3.19 “Owner” is the person or entity identified in ARTICLE 1 and includes the Owner's Representative.

2.3.20 The “Owner's Program” is an initial description of the Owner's objectives, including budgetary and time criteria, space requirements and relationships, flexibility and expandability requirements, special equipment and systems, site requirements, and any requirements for phased occupancy.

2.3.21 The “Parties” are collectively the Owner and the Construction Manager.

2.3.22 The “Project,” as identified in ARTICLE 1, is the building, facility, or other improvements for which the Construction Manager is to perform Work under this Agreement. It may also include construction by the Owner or Others.

2.3.23 The “Schedule of the Work” is the document prepared by the Construction Manager that specifies the dates on which the Construction Manager plans to begin and complete various parts of the Work, including dates on which information and approvals are required from the Owner.

2.3.24 “Subcontractor” is a person or entity retained by the Construction Manager as an independent contractor to provide the labor, materials, equipment, or services necessary to complete a specific portion of the Work. The term Subcontractor does not include the Design Professional or Others. All subcontractors shall hold valid Public Works Contractor license(s) pursuant to Idaho Code § 54-1902.

2.3.25 “Substantial Completion” of the Work, or of a designated portion, occurs on the date when the Work is sufficiently complete in accordance with the Contract Documents so that the Owner may



occupy or utilize the Work, or a designated portion, for the use for which it is intended, without unscheduled disruption. The issuance of a certificate of occupancy is not a prerequisite for Substantial Completion if the certificate of occupancy cannot be obtained due to factors beyond the Construction Manager's control. This date shall be confirmed by a certificate of Substantial Completion signed by the Owner and Construction Manager.

2.3.26 A "Subsubcontractor" is a person or entity who has an agreement with a Subcontractor or another Subsubcontractor to perform a portion of the Subcontractor's Work.

2.3.27 "Terrorism" means a violent act, or an act that is dangerous to human life, property, or infrastructure, that is committed by an individual or individuals and that appears to be part of an effort to coerce a civilian population or to influence the policy or affect the conduct of any government by coercion. Terrorism includes, but is not limited to, any act certified by the United States government as an act of terrorism pursuant to the Terrorism Risk Insurance Act, as amended.

2.3.28 "Work" means the construction and services necessary or incidental to fulfill the Construction Manager's obligations for the Project in conformance with this Agreement and the other Contract Documents. The Work may refer to the whole Project or only a part of the Project if work is also being performed by the Owner or Others.

2.3.29 "Worksite" means the geographical area of the Project location as identified in ARTICLE 1 where the Work is to be performed.

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

#### **3.1 GENERAL RESPONSIBILITIES**

3.1.1 The Construction Manager shall provide all labor, materials, equipment, and services necessary to complete the Work, all of which shall be provided in full accord with and reasonably inferable from the Contract Documents.

3.1.2 The Construction Manager shall be responsible for the supervision and coordination of the Work, including the construction means, methods, techniques, sequences, and procedures utilized, unless the Contract Documents give other specific instructions. In such case, the Construction Manager shall not be liable to the Owner for damages resulting from compliance with such instructions unless the Construction Manager recognized and failed to timely report to the Owner any error, inconsistency, omission, or unsafe practice that it discovered in the specified construction means, methods, techniques, sequences, or procedures.

3.1.3 The Construction Manager shall perform Work only within locations allowed by the Contract Documents, Laws, and applicable permits.

3.1.4 The Construction Manager understands that the Work within and around public rights-of-way and in and around other third party construction projects may create unique and challenging circumstances that must be anticipated, thoughtfully considered, and effectively managed by Construction Manager in the performance of all aspects of this Agreement. The Construction Manager shall work cooperatively with any and all parties working in and around the Worksite in performance of the services outlined in this Agreement.

#### **3.2 CONSTRUCTION PERSONNEL AND SUPERVISION**

3.2.1 The Construction Manager shall provide competent supervision for the performance of the Work. The Construction Manager shall utilize the key personnel for the Work involving this contract as indicated in Construction Manager's Response to Owner's Request for Qualifications: **NAME OF**

**PROJECT**, dated [REDACTED], attached as Exhibit C and specifically incorporated herein by reference. Any superintendent disapproved by Owner shall not perform in that capacity thereafter at the Worksite.

3.2.2 The Construction Manager shall be responsible to the Owner for acts or omissions of Parties or entities performing portions of the Work for or on behalf of the Construction Manager or any of its Subcontractors.

3.2.3 The Construction Manager shall permit only fit and skilled persons to perform the Work. The Construction Manager shall enforce safety procedures, strict discipline and good order among persons performing the Work. If the Owner determines that a particular person does not follow safety procedures, or is unfit or unskilled for the assigned work, the Construction Manager shall immediately reassign the person on receipt of the Owner's written notice to do so.

3.2.4 CONSTRUCTION MANAGER'S REPRESENTATIVE The Construction Manager's authorized representative is [REDACTED]. The Construction Manager's Representative shall possess full authority to receive instructions from the Owner and to act on those instructions. If the Construction Manager changes its representative or their authority, the Construction Manager shall immediately notify the Owner in writing.

3.3 PRECONSTRUCTION SERVICES The Preconstruction Services under this section and as included in Exhibit A are included in the Construction Manager's work.

3.3.1 PRELIMINARY EVALUATION The Construction Manager shall provide a preliminary evaluation of the Owner's Program and report such findings to the Owner and the Design Professional.

3.3.2 CONSULTATION The Construction Manager shall schedule and attend regular meetings with the Owner, Design Professional, and third parties identified by Owner as having an interest in the Work. The Construction Manager shall consult with the Owner, Design Professional, and third parties regarding site use and improvements and the selection of materials, building systems, and equipment. 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 provide reasonable care to review these Drawings and Specifications and report to the Owner any nonconformity discovered by or made known to the Construction Manager. The Construction Manager shall provide recommendations on: construction feasibility; actions designed to minimize adverse effects of labor or material shortages; steps to minimize adverse effects on third parties; time requirements for procurement, installation, and construction completion; and factors related to construction cost, including estimates of alternative designs or materials.

3.3.3 SCHEDULE OF THE WORK When Project requirements have been sufficiently identified, the Construction Manager shall prepare a preliminary Schedule of the Work for the Design Professional's review and the Owner's approval. The Construction Manager shall coordinate and integrate the Schedule of the Work with the services and activities of the Owner, Construction Manager, Design Professional, the requirements of governmental entities, and any pre-construction or construction activities being performed in and around the Worksite by third parties. As design proceeds, the Construction Manager shall update the Schedule of the Work to indicate proposed activity sequences, durations, or milestone dates for such activities as receipt and approval of pertinent information, issuance of the drawings and specifications, the preparation and processing of shop drawings and samples, delivery of materials or equipment requiring long-lead-time procurement, Owner's occupancy requirements and estimated date of Substantial Completion of the Project. If Schedule of the Work updates indicates that milestone dates contained in prior Schedules of the Work will not be met, the Construction Manager shall notify and make recommendations to the Owner. If the Project is to be completed in phases, the Construction Manager shall make

recommendations to the Owner and Design Professional regarding the phased issuance of the drawings and specifications.

### 3.3.4 ESTIMATES

3.3.4.1 When the Owner has sufficiently identified the Owner's Program and other Project requirements and the Design Professional has prepared other basic design criteria, the Construction Manager shall prepare, for the review of the Design Professional and approval of the Owner, an initial estimate for the Project, utilizing area, volume, or similar conceptual estimating techniques.

3.3.4.2 When schematic or preliminary design documents have been completed by the Design Professional and approved by the Owner, the Construction Manager shall prepare for the review of the Design Professional and approval of the Owner, a more detailed budget with supporting data. During the preparation of the design development documents or documents of comparable detail, the Construction Manager shall update and refine this estimate at appropriate intervals agreed upon by the Owner and Construction Manager.

3.3.4.3 When design development documents or documents of comparable detail have been completed by the Design Professional and approved by the Owner, the Construction Manager shall prepare a further detailed estimate with supporting data for review by the Design Professional and approval by the Owner. During the preparation of the drawings and specifications, the Construction Manager shall update and refine this estimate at appropriate intervals agreed upon by the Owner and Construction Manager.

3.3.4.4 If any estimate submitted to the Owner exceeds previously approved estimates, the Construction Manager shall notify and make recommendations to the Owner.

3.3.5 CONSTRUCTION DOCUMENT REVIEW The Construction Manager shall review the drawings and specifications in an effort to identify potential constructability problems that could impact the Construction Manager's ability to perform the Work in an expeditious and economical manner. The Construction Manager shall issue a report to the Design Professional and Owner for their review and action as appropriate. In addition, the Construction Manager shall promptly report to the Owner and the Design Professional any errors or omissions which it discovers in the drawings and specifications.

3.3.6 TEMPORARY FACILITIES The Construction Manager shall make recommendations regarding temporary construction facilities, equipment, materials, and services for common use by the Construction Manager, its Subcontractors, Subsubcontractors, and Material Suppliers.

3.3.7 LONG-LEAD ITEMS The Construction Manager shall recommend to the Owner and Design Professional a schedule for procurement of long-lead-time items which will constitute part of the Work as required to meet the Schedule of the Work. The Construction Manager shall help expedite the delivery of long-lead-time items.

3.3.8 SOLICITATION OF SUBCONTRACTORS AND SUPPLIERS The Construction Manager shall seek to develop Subcontractor interest in the Project and shall furnish to the Owner a list of possible subcontractors from whom proposals may be requested for each principal portion of the Work.

3.3.9 EQUAL EMPLOYMENT OPPORTUNITY AND AFFIRMATIVE ACTION The Construction Manager shall consult with the Owner regarding equal employment opportunity and affirmative action programs.

3.3.10 CONSULTANTS The Construction Manager shall assist the Owner in selecting, retaining and coordinating the professional services of a surveyor, testing laboratories, and special consultants as needed.

3.3.11 PERMITS The Construction Manager shall assist the Owner in obtaining building permits and special permits for permanent improvements, except for permits required to be obtained directly by the Construction Manager.

3.3.12 OTHER PRECONSTRUCTION SERVICES The Construction Manager shall provide such other preconstruction services as are agreed upon by the Parties and identified in an attached exhibit to this Agreement.

### 3.4 GUARANTEED MAXIMUM PRICE (GMP)

3.4.1 At such time as the Owner and Construction Manager agree the drawings and specifications are sufficiently complete, the Construction Manager shall prepare and submit to the Owner in writing a GMP. The GMP proposal shall include the sum of the estimated Cost of the Work, the Construction Manager's Fee, General Conditions costs, Risk Contingency, the clarifications and assumptions upon which the GMP is based, allowances, and reasonable contingencies, but shall not include compensation for Preconstruction Services. The Construction Manager does not guarantee any specific line item provided as part of the GMP, but agrees that it will be responsible for paying all costs of completing the Work which exceed the GMP, as adjusted in accordance with this Agreement. If both the Owner and Construction Manager mutually agree, the Construction Manager may prepare and submit to the Owner in writing a Lump Sum proposal to complete the work.

3.4.2 BASIS OF GUARANTEED MAXIMUM PRICE The Construction Manager shall include with the GMP proposal sufficient details and information for its basis, which shall include:

3.4.2.1 a list of the drawings and specifications, including all addenda, which were used in preparation of the GMP Proposal;

3.4.2.2 a list of allowances and a statement of their basis;

3.4.2.3 a list of the assumptions and clarifications made by the Construction Manager in the preparation of the GMP Proposal to supplement the information contained in the drawings and specifications;

3.4.2.4 the Date of Substantial Completion or the Date of Final Completion upon which the proposed GMP is based, and the Schedule of Work upon which the Date of Substantial Completion or the Date of Final Completion is based;

3.4.2.5 a schedule of applicable alternate prices;

3.4.2.6 a schedule of applicable unit prices;

3.4.2.7 a "Summary Matrix of Cost Allocation" table summarizing the costs associated with the various cost categories of CM/GC fee, General Conditions, Subcontract Costs, Change Orders, Risk Contingency, and Owner Cost.

3.4.2.8 a statement of any work to be self-performed by the Construction Manager.

3.4.2.9 a list of all bid packages and purchase orders the Construction Manager anticipates awarding.

3.4.2.10 a draft Schedule of Values in which the sum of all line items equals the GMP.

3.4.3 RISK CONTINGENCY ACCOUNT The Construction Manager's Risk Contingency Account shall be a negotiated percentage of the GMP.

3.4.3.1 Subject to prior written consent of the Owner, the Construction Manager may utilize the Risk Contingency Account to pay for coordination of the following items for which the Construction Manager is responsible:

- 3.4.3.1.1 All costs related to Subcontractor claims or charges that result from mistakes or omissions in the subcontract buyout.
- 3.4.3.1.2 Coordination errors and coordination omissions related to the shop drawings and submittals defined in the Contract Documents.
- 3.4.3.1.3 Delays or interference caused by a Subcontractor impacting the construction schedule or the Construction Manager's management of the project.
- 3.4.3.1.4 Delays or interference caused by Subcontractors impacting the schedule or work of another Subcontractor.
- 3.4.3.1.5 Costs related to replacement of a non-performing subcontractor.
- 3.4.3.1.6 Off-Hours work

3.4.3.2 The Construction Manager may not use the Risk Contingency Account for items that are covered by the Construction Manager's Fee or defined as General Conditions. The Risk Contingency Account also may not be used for Subcontract Bid Packages that exceed the bid estimate, defective or nonconforming Subcontractor work, or trade damage.

3.4.3.3 The Construction Manager's use of the Risk Contingency Account is limited to the items described in section **Error! Reference source not found.** and must be approved in writing in advance by the Owner, provided that in the event of a critical or emergency type situation, the Construction Manager determines that there is not time to obtain the Owner's prior written approval, the Construction Manager may take action at its risk that must be subsequently concurred with in writing by the Owner before the Risk Contingency Account may be used. The Construction Manager shall provide the Owner monthly updates on the use of the Risk Contingency Account. Any funds remaining in the Risk Contingency Account shall be returned to the Owner without the corresponding Construction Manager's Fee.

3.4.4 The Construction Manager shall meet with the Owner to review the GMP. If the Owner discovers any inconsistencies, inaccuracies, or omissions in the information presented, they shall promptly notify the Construction Manager, who shall make appropriate adjustments to the GMP. The Owner shall then give prompt written approval of the GMP following the approval of the Owner's Board of Commissioners.

3.4.5 The Owner shall cause the Design Professional to revise the drawings and specifications to the extent necessary to reflect the clarifications, assumptions, and allowances on which the GMP is based. Revised drawings and specifications shall be furnished to the Construction Manager in accordance with the current Schedule of the Work, unless otherwise agreed by the Owner, Construction Manager, and Design Professional. The Construction Manager shall promptly notify the Owner and Design Professional if the revised drawings and specifications are inconsistent with the GMP's clarifications, assumptions, and allowances.

3.4.6 If the Contract Documents are not complete at the time the GMP proposal is submitted to the Owner, the Construction Manager shall provide in the GMP for further development of the Contract Documents. Such further development does not include changes in scope, systems, kinds and quality of materials, finishes, or equipment, all of which, if required, shall be incorporated by Change Document.

3.4.7 If this Agreement is executed prior to establishment of the Guaranteed Maximum Price and its acceptance by the Owner, then the GMP and its basis shall be set forth in an Amendment to the Agreement.

3.4.8 ALLOWANCES Allowances shall include the costs of materials, supplies, and equipment delivered to the Worksite less applicable trade discounts and including requisite taxes, unloading and handling at the Worksite, and labor and installation, unless specifically stated otherwise. The Construction Manager's overhead and profit for the allowances shall be included in the GMP, but not in the allowances. The GMP shall be adjusted by Change Order to reflect the actual costs when they are greater than or less than the allowances.

3.4.9 FAILURE TO ACCEPT THE GMP PROPOSAL Unless the Owner accepts the GMP Proposal in writing on or before the date specified in the GMP Proposal for such acceptance and so notifies the Construction Manager, the GMP Proposal shall not be effective. If the Owner fails to accept the GMP Proposal, or rejects the GMP Proposal, the Owner shall have the right to:

3.4.9.1 suggest modifications to the GMP Proposal. If such modifications are accepted in writing by the Construction Manager, the GMP Proposal shall be deemed accepted in accordance with subsection 3.4.7;

3.4.9.2 direct the Construction Manager to proceed on the basis of reimbursement as provided in ARTICLE 7 and ARTICLE 8 without a GMP, in which case all references in this Agreement to the GMP shall not be applicable; or

3.4.9.3 terminate the Agreement for convenience in accordance with section 12.4. In the absence of a GMP the Parties may establish a Date of Substantial Completion or a Date of Final Completion.

3.4.10 PRE-GMP WORK Prior to the Owner's acceptance of the GMP Proposal, the Construction Manager shall not incur any cost to be reimbursed as part of the Cost of the Work, except as provided in this Agreement or as the Owner may specifically authorize in writing.

### 3.5 COOPERATION WITH WORK OF OWNER AND OTHERS

3.5.1 The Owner may perform work at the Worksite directly or by Others. Any agreements with Others to perform construction or operations related to the Project shall include provisions pertaining to insurance, indemnification, waiver of subrogation, consequential damages, coordination, interference, clean up, and safety that are substantively the same as the corresponding provisions of this Agreement.

3.5.2 If the Owner elects to perform work at the Worksite directly or by Others, the Construction Manager and Owner shall coordinate the activities of all forces at the Worksite and agree upon fair and reasonable schedules and operational procedures for Worksite activities. The Owner shall require each separate contractor to cooperate with the Construction Manager and assist with the coordination of activities and the review of construction schedules and operations. The GMP or the Date of Substantial Completion or the Date of Final Completion shall be equitably adjusted, as mutually agreed by the Parties, for changes made necessary by the coordination of construction activities, and the Schedule of the Work shall be revised accordingly. The Construction Manager, the Owner, and Others shall adhere to the revised Schedule of the Work.

3.5.3 With regard to the work of the Owner and Others, the Construction Manager shall (a) proceed with the Work in a manner that does not hinder, delay, or interfere with the work of the Owner or Others or cause the work of the Owner or Others to become defective, (b) afford the Owner or Others reasonable access for introduction and storage of their materials and equipment and performance of their activities, and (c) coordinate the Construction Manager's Work with theirs.

3.5.4 Before proceeding with any portion of the Work affected by the construction or operations of the Owner or Others, the Construction Manager shall give the Owner prompt, written notification of any defects the Construction Manager discovers in their work which will prevent the proper execution of the Work. The Construction Manager's obligations in this subsection do not create a responsibility for the work of Owner or Others, but are for the purpose of facilitating the Work. If the Construction Manager does not notify the Owner of defects interfering with the performance of the Work, the Construction Manager acknowledges that the work of the Owner or Others is not defective and is acceptable for the proper execution of the Work. Following receipt of written notice from the Construction Manager of defects, the Owner shall promptly inform the Construction Manager what action, if any, the Construction Manager shall take with regard to the defects.

### 3.6 CONSTRUCTION SERVICES AND ADMINISTRATION

3.6.1 Prior to commencing the Work, the Construction Manager shall carefully study and compare the various Contract Documents relative to that portion of the Work, 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 Construction Manager and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Construction Manager shall promptly report to the Owner any errors, inconsistencies or omissions discovered by or made known to the Construction Manager.

3.6.2 Should the Construction Manager discover any errors, omissions, or inconsistencies in the Contract Documents, the Construction Manager shall promptly report them to the Owner. It is recognized that the Construction Manager is not acting in the capacity of a licensed design professional. Following receipt of written notice from the Construction Manager of defects, the Owner shall promptly inform the Construction Manager what action, if any, the Construction Manager shall take with regard to the defects.

3.6.3 The Construction Manager shall have no liability for errors, omissions, or inconsistencies discovered under this section.

3.6.4 The Construction Manager may be entitled to additional costs or time because of clarifications or instructions growing out of the Construction Manager's reports described in the three preceding subsections; any additional costs or time must be approved by Owner.

3.6.5 **COST REPORTING** The Construction Manager shall keep such full and detailed accounts as are necessary for proper financial management under this Agreement. The Construction Manager shall maintain a complete set of all books and records prepared or used by the Construction Manager with respect to the Project. The Construction Manager's records supporting its performance and billings under this Agreement shall be current, complete, and accurate and maintained according to Generally Accepted Accounting Principles. The Owner shall be afforded access to all of the Construction Manager's records, books, correspondence, instructions, drawings, receipts, vouchers, memoranda, and similar data relating to this Agreement. The Construction Manager shall preserve all such records for a period of three years after the final payment or longer where required by Law.

3.6.5.1 The Construction Manager agrees to use reasonable skill and judgment in the preparation of cost estimates and Schedule of the Work, but does not warrant or guarantee their accuracy.

### 3.7 MATERIALS FURNISHED BY THE OWNER OR OTHERS

3.7.1 If the Work includes installation of materials or equipment furnished by the Owner or Others, it shall be the responsibility of the Construction Manager to examine the items so provided and thereupon handle, store, and install the items, unless otherwise provided in the Contract

Documents, with such skill and care as to provide a satisfactory and proper installation. Loss or damage due to acts or omissions of the Construction Manager shall be the responsibility of the Construction Manager and may be deducted from any amounts due or to become due the Construction Manager. Any defects discovered in such materials or equipment shall be reported at once to the Owner. Following receipt of written notice from the Construction Manager of defects, the Owner shall promptly inform the Construction Manager what action, if any, the Construction Manager shall take with regard to the defects.

### 3.8 TESTS AND INSPECTIONS

3.8.1 The Construction Manager shall schedule all required tests, approvals and inspections of the Work or portions thereof at appropriate times so as not to delay the progress of the Work or other work related to the Project. The Construction Manager shall give proper notice to all required Parties of such tests, approvals, and inspections. If feasible, the Owner and Others may timely observe the tests at the normal place of testing. Except as provided in subsection 3.8.3, the Owner shall bear all expenses associated with tests, inspections, and approvals required by the Contract Documents which, unless otherwise agreed to, shall be conducted by an independent testing laboratory or entity retained by the Owner. Unless otherwise required by the Contract Documents, required certificates of testing, approval, or inspection shall be secured by the Construction Manager and promptly delivered to the Owner.

3.8.2 If the Owner or appropriate authorities determine that tests, inspections, or approvals in addition to those required by the Contract Documents will be necessary, the Construction Manager shall arrange for the procedures and give timely notice to the Owner and Others who may observe the procedures. Costs of the additional tests, inspections, or approvals are at the Owner's expense except as provided in the subsection below.

3.8.3 If the procedures described in the two subsections immediately above indicate that portions of the Work fail to comply with the Contract Documents due to the negligence of the Construction Manager, the Construction Manager shall be responsible for costs of correction and retesting.

### 3.9 WORKMANSHIP

3.9.1 The Work shall be executed in accordance with the Contract Documents in a workmanlike manner. All materials used in the Work shall be furnished in sufficient quantities to facilitate the proper and expeditious execution of the Work and shall be new except such materials as may be expressly provided in the Contract Documents to be otherwise.

### 3.10 WARRANTY

3.10.1 The Construction Manager warrants that all materials and equipment furnished under the Construction Phase of this Agreement will be new unless otherwise specified, of good quality, in conformance with the Contract Documents, and free from defective workmanship and materials. At the Owner's request, the Construction Manager shall furnish satisfactory evidence of the quality and type of materials and equipment furnished. The Construction Manager further warrants that the Work shall be free from material defects not intrinsic in the design or materials required in the Contract Documents. The Construction Manager's warranty does not include remedies for defects or damages caused by normal wear and tear during normal usage, use for a purpose for which the Project was not intended, improper or insufficient maintenance, modifications performed by the Owner or Others, or abuse. The Construction Manager's warranty shall commence on the Date of Substantial Completion of the Work, or of a designated portion.

3.10.2 With respect to any portion of Work first performed after Substantial Completion, the Construction Manager's warranty obligation shall be extended by the period of time between Substantial Completion and the actual performance of the later Work.



3.10.3 To the extent products, equipment, systems, or materials incorporated in the Work are specified and purchased by the Owner, they shall be covered exclusively by the warranty of the manufacturer. There are no warranties which extend beyond the description on the face of any such warranty.

3.10.4 The Construction Manager shall obtain from its Subcontractors and Material Suppliers any special or extended warranties required by the Contract Documents. All such warranties are expressly incorporated herein by reference and Parties shall take reasonable efforts to set forth a list of special or extended warranties as an attached exhibit to this Agreement. Construction Manager's liability for such warranties shall be limited to the two-year correction period referred to in the section immediately below. After that period the Construction Manager shall provide reasonable assistance to the Owner in enforcing the obligations of Subcontractors or Material Suppliers for such extended warranties.

### 3.11 CORRECTION OF WORK WITHIN TWO YEARS

3.11.1 If prior to Substantial Completion or within two years after the date of Substantial Completion of the Work any Defective Work is found, the Owner shall promptly notify the Construction Manager in writing. Unless the Owner provides written acceptance of the condition, the Construction Manager shall promptly correct the Defective Work at its own cost and time and bear the expense of additional services required for correction of any Defective Work for which it is responsible. If within the two-year correction period the Owner discovers and does not promptly notify the Construction Manager or give the Construction Manager an opportunity to test or correct Defective Work as reasonably requested by the Construction Manager, the Owner waives the Construction Manager's obligation to correct that Defective Work as well as the Owner's right to claim a breach of the warranty with respect to that Defective Work.

3.11.2 With respect to any portion of Work first performed after Substantial Completion, the two-year correction period shall be extended by the period of time between Substantial Completion and the actual performance of the later Work. Correction periods shall not be extended by corrective work performed by the Construction Manager.

3.11.3 If the Construction Manager fails to correct Defective Work within a reasonable time after receipt of written notice from the Owner prior to final payment, the Owner may correct it in accordance with the Owner's right to carry out the Work. In such case, an appropriate Change Order shall be issued deducting the cost of correcting the Defective Work from payments then or thereafter due the Construction Manager. If payments then or thereafter due Construction Manager are not sufficient to cover such amounts, the Construction Manager shall pay the difference to the Owner within forty-five (45) Days.

3.11.4 The Construction Manager's obligations and liability, if any, with respect to any Defective Work discovered after the two-year correction period shall be determined by the Law. If, after the two-year correction period but before the applicable limitation period has expired, the Owner discovers any Work which the Owner considers Defective Work, the Owner shall, unless the Defective Work requires emergency correction, promptly notify the Construction Manager and allow the Construction Manager an opportunity to correct the Work if the Construction Manager elects to do so. If the Construction Manager elects to correct the Work it shall provide written notice of such intent within fourteen (14) Days of its receipt of notice from the Owner and shall complete the correction of Work within a mutually agreed timeframe. If the Construction Manager does not elect to correct the Work, the Owner may have the Work corrected by itself or Others, and, if the Owner intends to seek recovery of those costs from the Construction Manager, the Owner shall promptly provide the Construction Manager with an accounting of the correction costs it incurs.

3.11.5 If the Construction Manager's correction or removal of Defective Work causes damage to or destroys other completed or partially completed work or existing building, the Construction Manager shall be responsible for the cost of correcting the destroyed or damaged property.

3.11.6 The two-year period for correction of Defective Work does not constitute a limitation period with respect to the enforcement of the Construction Manager's other obligations under the Contract Documents.

3.11.7 Prior to final payment, at the Owner's option and with the Construction Manager's agreement, the Owner may elect to accept Defective Work rather than require its removal and correction. In such cases, the GMP shall be equitably adjusted for any diminution in the value of the Project caused by such Defective Work.

### 3.12 CORRECTION OF COVERED WORK

3.12.1 On request of the Owner, Work that has been covered without a requirement that it be inspected prior to being covered may be uncovered for the Owner's inspection. The Owner shall pay for the costs of uncovering and replacement if the Work proves to be in conformance with the Contract Documents, or if the defective condition was caused by the Owner or Others. If the uncovered Work proves to be defective, the Construction Manager shall pay the costs of uncovering and replacement.

3.12.2 If contrary to specific requirements in the Contract Documents or contrary to a specific request from the Owner, a portion of the Work is covered, the Owner, by written request, may require the Construction Manager to uncover the Work for the Owner's observation. In this circumstance the Work shall be replaced at the Construction Manager's expense and with no adjustment to the Dates of Substantial or Final Completion.

### 3.13 SAFETY OF PERSONS AND PROPERTY

3.13.1 SAFETY PRECAUTIONS AND PROGRAMS The Construction Manager shall have overall responsibility for safety precautions and programs in the performance of the Work. However, such obligation does not relieve Subcontractors of their responsibility for the safety of persons or property in the performance of their work, nor for compliance with Laws.

3.13.2 The Construction Manager shall seek to avoid injury, loss, or damage to persons or property by taking reasonable steps to protect: (a) its employees and other persons at the Worksite; (b) materials and equipment stored at onsite or offsite locations for use in the Work; and (c) property located at the Worksite and adjacent to Work areas, whether or not the property is part of the Worksite.

3.13.3 CONSTRUCTION MANAGER'S SAFETY REPRESENTATIVE The Construction Manager's Worksite Safety Representative is [REDACTED] who shall act as the Construction Manager's authorized safety representative with a duty to prevent accidents. The Construction Manager shall report promptly in writing all recordable accidents and injuries occurring at the Worksite. When the Construction Manager is required to file an accident report with a public authority, the Construction Manager shall furnish a copy of the report to the Owner. The cost of this activity is included in the GMP.

3.13.4 The Construction Manager shall provide the Owner with copies of all notices required of the Construction Manager by law or regulation. The Construction Manager's safety program shall comply with the requirements of governmental and quasi-governmental authorities having jurisdiction.

3.13.5 Damage or loss not insured under property insurance that may arise from the Work, to the extent caused by negligent acts or omissions of the Construction Manager, or anyone for whose acts the Construction Manager may be liable, shall be promptly remedied by the Construction Manager. With regard to damage or loss attributable to the acts or omissions of the Owner or

Others and not to the Construction Manager, the Owner may either (a) promptly remedy the damage or loss; or (b) accept the damage or loss.

3.13.6 If the Owner deems any part of the Work or Worksite unsafe, the Owner, without assuming responsibility for the Construction Manager's safety program, may require the Construction Manager to stop performance of the Work or take corrective measures satisfactory to the Owner, or both. If the Construction Manager does not adopt corrective measures, the Owner may perform them and deduct their cost from the GMP. The Construction Manager agrees to make no claim for damages, or an increase in the GMP, or for a change in the Dates of Substantial or Final Completion based on the Construction Manager's compliance with the Owner's reasonable request.

3.14 EMERGENCIES In an emergency affecting the safety of persons or property, the Construction Manager shall act in a reasonable manner to prevent threatened damage, injury, or loss. If appropriate, an equitable adjustment in GMP or Date of Substantial Completion or Date of Final Completion shall be determined as provided for in ARTICLE 9.

### 3.15 HAZARDOUS MATERIALS

3.15.1 A Hazardous Material is any substance or material identified now or in the future as hazardous under Laws or any other substance or material that may be considered hazardous or otherwise subject to statutory or regulatory requirement governing handling, disposal, or clean-up. The Construction Manager shall not be obligated to commence or continue work until any Hazardous Material discovered at the Worksite has been removed, rendered or determined to be harmless by the Owner as certified by an independent testing laboratory, and approved by the appropriate governmental agency.

3.15.2 If after commencing the Work, Hazardous Material is discovered at the Worksite, the Construction Manager shall be entitled to immediately stop Work in the affected area. The Construction Manager shall promptly report the condition to the Owner, the Design Professional, and, if required, the governmental agency with jurisdiction.

3.15.3 The Construction Manager shall not be required to perform any Work relating to or in the area of Hazardous Material without written mutual agreement.

3.15.4 The Owner shall be responsible for retaining an independent testing laboratory to determine the nature of the material encountered and whether the material requires corrective measures or remedial action. Such measures shall be the sole responsibility of the Owner, and shall be performed in a manner minimizing any adverse effect upon the Work. The Construction Manager shall resume Work in the area affected by any Hazardous Material only upon written agreement between the Parties after the Hazardous Material has been removed or rendered harmless and only after approval, if necessary, of the governmental agency with jurisdiction.

3.15.5 If the Construction Manager incurs additional costs or is delayed due to the presence or remediation of Hazardous Material, the Construction Manager shall be entitled to an equitable adjustment in the GMP or the Dates of Substantial or Final Completion.

3.15.6 To the extent permitted by section 6.7 and to the extent not caused by the negligent acts or omissions of the Construction Manager, its Subcontractors and Subsubcontractors, and the agents, officers, directors, and employees of each of them, the Owner shall defend, indemnify, and hold harmless the Construction Manager, its Subcontractors and Subsubcontractors, and the agents, officers, directors, and employees of each of them, from and against any and all direct claims, damages, losses, costs, and expenses, including but not limited to reasonable attorneys' fees, costs, and expenses incurred in connection with any dispute resolution procedure arising out of or relating to the performance of the Work in any area affected by Hazardous Material. To the fullest extent permitted by law, such indemnification shall apply regardless of the fault, negligence, breach of warranty or contract, or strict liability of the Owner.

### 3.15.7 MATERIALS BROUGHT TO THE WORKSITE

3.15.7.1 Material Safety Data (MSD) sheets as required by law and pertaining to materials or substances used or consumed in the performance of the Work, whether obtained by the Construction Manager, Subcontractors, the Owner or Others, shall be maintained at the Worksite by the Construction Manager and made available to the Owner, Subcontractors, and Others.

3.15.7.2 The Construction Manager shall be responsible for the proper delivery, handling, application, storage, removal, and disposal of all materials and substances brought to the Worksite by the Construction Manager in accordance with the Contract Documents and used or consumed in the performance of the Work.

3.15.7.3 To the extent permitted under section 6.7 and to the extent not caused by the negligent acts or omissions of the Construction Manager, its agents, officers, directors, and employees, the Owner shall defend, indemnify and hold harmless the Construction Manager, its agents, officers, directors, and employees, from and against claims, damages, losses, costs, and expenses, including but not limited to reasonable attorneys' fees, costs and expenses incurred in connection with any dispute resolution process, arising out of or relating to the delivery, handling, application, storage, removal, and disposal of all materials and substances brought to the Worksite by the Construction Manager in accordance with the Contract Documents.

3.15.7.4 This section shall survive the completion of the Work or any termination of this Agreement.

### 3.16 SUBMITTALS

3.16.1 The Construction Manager shall submit to the Owner and the Design Professional all shop drawings, samples, product data, and similar submittals required by the Contract Documents for review and approval. Submittals shall be submitted in electronic form if required in accordance with subsection 4.5.1. The Construction Manager shall be responsible for the accuracy and conformity of its submittals to the Contract Documents. At no additional cost, the Construction Manager shall prepare and deliver its submittals in such time and sequence so as not to delay the performance of the Work or the work of the Owner and Others. The Construction Manager's submittals shall identify in writing for each submittal all changes, deviations, or substitutions from the requirements of the Contract Documents. The review and approval of any Construction Manager submittal shall not be deemed to authorize changes, deviations, or substitutions from the requirements of the Contract Documents unless express written approval is obtained from the Owner specifically authorizing such deviation, substitution, or change. To the extent a change, deviation, or substitution causes an impact to the Contract Price or Contract Time, such approval shall be promptly memorialized in a Change Order. Neither the Design Professional nor Owner shall make any change, deviation, or substitution through the submittal process without specifically identifying and authorizing such deviation to the Construction Manager. If the Contract Documents do not contain submittal requirements pertaining to the Work, the Construction Manager agrees upon request to submit in a timely fashion to the Design Professional and the Owner for review any shop drawings, samples, product data, manufacturers' literature, or similar submittals as may reasonably be required by the Owner.

3.16.2 The Owner shall be responsible for review and approval of submittals with reasonable promptness to avoid causing delay.

3.16.3 The Construction Manager shall perform all Work strictly in accordance with approved submittals. Approval of shop drawings is not an authorization to perform changed work, unless the

procedures of ARTICLE 9 are followed. Approval does not relieve the Construction Manager from responsibility for Defective Work resulting from errors or omissions on the approved shop drawings.

3.16.4 Record copies of the following, incorporating field changes and selections made during construction, shall be maintained at the Worksite and available to the Owner upon request: drawings, specifications, addenda and other modifications, and required submittals including product data, samples, and shop drawings.

3.16.5 No substitutions shall be made in the Work unless permitted in the Contract Documents and then only after the Construction Manager obtains approvals required under the Contract Documents for substitutions. All such substitutions shall be promptly memorialized in a Change Order no later than seven (7) Days following approval by the Owner and, if applicable, Design Professional provide for an adjustment in the Contract Price or Contract Time.

3.16.6 The Construction Manager shall prepare and submit to the Owner final marked-up as-built drawings.

3.17 DESIGN DELEGATION If the Contract Documents specifically require the Construction Manager to procure design services, the Owner shall specify all required performance and design criteria. The Construction Manager shall not be responsible for the adequacy of such performance and design criteria. As permitted by the laws, rules, and regulations in the jurisdiction where the Project is located, the Construction Manager shall procure such services and any certifications necessary to satisfactorily complete the Work from a licensed design professional. The signature and seal of the Construction Manager's design professional shall appear on all drawings, calculations, specifications, certifications, shop drawings, and other submittals related to the Work designed or certified by the Construction Manager's design professional.

### 3.18 WORKSITE CONDITIONS

3.18.1 WORKSITE VISIT The Construction Manager acknowledges that it has visited, or has had the opportunity to visit, the Worksite to visually inspect the general and local conditions which could affect the Work.

3.18.2 CONCEALED OR UNKNOWN SITE CONDITIONS If the conditions encountered at the Worksite are (a) subsurface or other physical conditions materially different from those indicated in the Contract Documents, or (b) unusual and unknown physical conditions materially different from conditions ordinarily encountered and generally recognized as inherent in Work provided for in the Contract Documents, the Construction Manager shall stop affected Work after the condition is first observed and give prompt written notice of the condition to the Owner and the Design Professional. The Construction Manager shall not be required to perform any Work relating to the unknown condition without the written mutual agreement of the Parties. Any change in the GMP, estimated Cost of the Work, Construction Manager's Fee, Date of Substantial Completion or Date of Final Completion, and, if appropriate, the Compensation for Preconstruction Services as a result of the unknown condition shall be determined as provided in ARTICLE 9.

### 3.19 PERMITS AND TAXES

3.19.1 The Construction Manager shall give public authorities all notices required by law and, except for permits and fees that are the responsibility of the Owner pursuant to section 4.4, shall obtain and pay for all necessary permits, licenses, and renewals pertaining to the Work. The Construction Manager shall provide to the Owner copies of all notices, permits, licenses, and renewals required under this Agreement.

3.19.2 The Construction Manager shall pay all applicable taxes, including use taxes, enacted when bids are received or negotiations concluded for the Work provided by the Construction Manager.

3.19.3 The GMP shall be adjusted for additional costs resulting from Laws enacted after the date of this Agreement, including taxes.

3.19.4 If, in accordance with the Owner's direction, the Construction Manager claims an exemption for taxes, the Owner shall indemnify and hold the Construction Manager harmless from any liability, penalty, interest, fine, tax assessment, attorneys' fees, or other expense or cost incurred by the Construction Manager as a result of any such action.

### 3.20 CUTTING, FITTING, AND PATCHING

3.20.1 The Construction Manager shall perform cutting, fitting, and patching necessary to coordinate the various parts of the Work and to prepare its Work for the work of the Owner or Others.

3.20.2 Cutting, patching, or altering the work of the Owner or Others shall be done with the prior written approval of the Owner. Such approval shall not be unreasonably withheld.

### 3.21 CLEANING UP

3.21.1 The Construction Manager shall regularly remove debris and waste materials at the Worksite resulting from the Work. Prior to discontinuing Work in an area, the Construction Manager shall clean the area and remove all rubbish and its construction equipment, tools, machinery, waste, and surplus materials. The Construction Manager shall minimize and confine dust and debris resulting from construction activities. At the completion of the Work, the Construction Manager shall remove from the Worksite all construction equipment, tools, surplus materials, waste materials, and debris.

3.21.2 If the Construction Manager fails to commence compliance with cleanup duties within two (2) Business Days after written notification from the Owner of non-compliance, the Owner may implement appropriate cleanup measures without further notice and the cost shall be deducted from any amounts due or to become due the Construction Manager in the next payment period.

3.22 ACCESS TO WORK The Construction Manager shall facilitate the access of the Owner, its Design Professional, and Others to Work in progress.

3.23 COMPLIANCE WITH LAWS The Construction Manager shall comply with all Laws at its own costs. The Construction Manager shall be liable to the Owner for all loss, cost, or expense attributable to any acts or omissions by the Construction Manager, its employees, subcontractors, and agents for failure to comply with Laws, including fines, penalties, or corrective measures. However, liability under this subsection shall not apply if notice to the Owner is given and advance approval by appropriate authorities, including the Owner, is received.

3.24 CONFIDENTIALITY Unless compelled by law, a governmental agency or authority, an order of a court of competent jurisdiction, or a validly issued subpoena, the Construction Manager shall treat as confidential and not disclose to third persons, except Subcontractors, Subsubcontractors, and as is necessary for the performance of the Work, or use for its own benefit, any of the Owner's confidential information, know-how, discoveries, production methods, and the like that may be disclosed to the Construction Manager or which the Construction Manager may acquire in connection with the Work. The Owner shall treat as confidential information all of the Construction Manager's estimating systems and historical and parameter cost data that may be disclosed to the Owner in connection with the performance of this Agreement. The Owner and the Construction Manager shall each specify those items to be treated as confidential and shall mark them as "Confidential." In the event of a legal compulsion or other order seeking disclosure of any Confidential Information, the Construction Manager or Owner, as the case may be, shall promptly notify the other party to permit that party's legal objection, if necessary.

## ARTICLE 4 OWNER'S RESPONSIBILITIES

4.1 INFORMATION AND SERVICES Any information or services to be provided by the Owner shall be fulfilled with reasonable detail and in a timely manner.

4.2 FINANCIAL INFORMATION Prior to commencement of the Work and thereafter at the written request of the Construction Manager, the Owner shall provide the Construction Manager with evidence of Project financing. Evidence of such financing shall be a condition precedent to the Construction Manager's commencing or continuing the Work. The Construction Manager shall be notified prior to any material change in Project financing.

4.3 WORKSITE INFORMATION To the extent the Owner has obtained, or is required elsewhere in the Contract Documents to obtain, the following Worksite information, the Owner shall provide at the Owner's expense and with reasonable promptness:

4.3.1 information describing the physical characteristics of the Worksite, including surveys, Worksite evaluations, legal descriptions, data or drawings depicting existing conditions, subsurface conditions, and environmental studies, reports, and investigations. Legal descriptions shall include easements, title restrictions, boundaries, and zoning restrictions. Worksite descriptions shall include existing buildings and other construction and all other pertinent site conditions. Adjacent property descriptions shall include structures, streets, sidewalks, alleys, and other features relevant to the Work. Utility details shall include available services, lines at the Worksite and adjacent thereto, and connection points. The information shall include public and private information, subsurface information, grades, contours, and elevations, drainage data, exact locations and dimensions, and benchmarks that can be used by the Construction Manager in laying out the Work;

4.3.2 tests, inspections, and other reports dealing with environmental matters, Hazardous Material and other existing conditions, including structural, mechanical, and chemical tests, required by the Contract Documents or Laws; and

4.3.3 any other information or services requested in writing by the Construction Manager which are required for the Construction Manager's performance of the Work and under the Owner's control.

4.4 BUILDING PERMIT, FEES AND APPROVALS Except for those permits and fees related to the Work which are the responsibility of the Construction Manager pursuant to section 3.19.1, the Owner shall secure and pay for all other permits, approvals, easements, assessments, and fees required for the development, construction, use, or occupancy of permanent structures or for permanent changes in existing facilities, including the building permit.

4.5 CONTRACT DOCUMENTS Unless otherwise specified, the Owner shall provide a reasonable number of hard copies of the Contract Documents to the Construction Manager without cost.

4.5.1 DOCUMENTS IN ELECTRONIC FORM Project document exchange and submittals will be managed through Construction Manager's project management system.

4.6 OWNER'S REPRESENTATIVE The Owner's Representative is [REDACTED]. The Owner's Representative shall be fully acquainted with the Project and, to the extent allowed by statute and OWNER's policies and procedures, shall have authority to bind the Owner in all matters requiring the Owner's approval, authorization, or written notice. If the Owner changes its representative or the representative's authority, the Owner shall immediately notify the Construction Manager in writing.

4.7 OWNER'S CUTTING AND PATCHING Cutting, patching, or altering the Work by the Owner or Others shall be done with the prior written approval of the Construction Manager, which approval shall not be unreasonably withheld.

4.8 COST OF CORRECTING DAMAGED OR DESTROYED WORK With regard to damage or loss attributable to the acts or omissions of the Owner or Others and not to the Construction Manager, the Owner may either (a) promptly remedy the damage or loss or (b) accept the damage or loss. If the Construction Manager incurs additional costs or is delayed due to such loss or damage, the Construction Manager shall be entitled to an equitable adjustment in the GMP, estimated Cost of the Work, Construction Manager's Fee, Date of Substantial Completion or Date of Final Completion and, if appropriate, the Compensation for Preconstruction Services.

## ARTICLE 5 SUBCONTRACTS

5.1 SUBCONTRACTORS The Work not performed by the Construction Manager with its own forces shall be performed by Subcontractors holding valid Public Works Contractor licenses pursuant to Idaho Code § 54-1902. All subcontracts shall be issued on a lump sum basis unless the Owner has given prior written approval of a different method of payment to the Subcontractor.

### 5.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK

5.2.1 Promptly after the execution of this Agreement, the Construction Manager shall provide the Owner, and, if directed, the Design Professional with a written list of the proposed subcontractors and significant Material Suppliers.

5.3 BINDING OF SUBCONTRACTORS AND MATERIAL SUPPLIERS The Construction Manager agrees to bind every Subcontractor and Material Supplier (and require every Subcontractor to so bind its subcontractors and material suppliers) to all the provisions of this Agreement and the Contract Documents as they apply to the Subcontractor's or Material Supplier's portions of the Work.

### 5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

5.4.1 If this Agreement is terminated, each subcontract and supply agreement shall be assigned by the Construction Manager to the Owner, subject to the prior rights of any surety, provided that:

5.4.1.1 this Agreement is terminated by the Owner pursuant to sections 12.3 or 12.4; and

5.4.1.2 the Owner accepts such assignment after termination by notifying the Subcontractor and Construction Manager in writing, and assumes all rights and obligations of the Construction Manager pursuant to each subcontract agreement.

5.4.2 If the Owner accepts such an assignment, and the Work has been suspended for more than thirty (30) consecutive Days, following termination, the Subcontractor's compensation shall be equitably adjusted as a result of the suspension.

## ARTICLE 6 TIME

6.1 DATE OF COMMENCEMENT The Date of Commencement is the Agreement date in ARTICLE 1 unless otherwise set forth below.

6.1.1 SUBSTANTIAL/FINAL COMPLETION Unless the Parties agree otherwise, the Date of Substantial Completion or the Date of Final Completion shall be established in an Amendment to this Agreement subject to adjustments as provided for in the Contract Documents. The Owner and the Construction Manager may agree not to establish such dates, or in the alternative, to establish one but not the other of the two dates. If such dates are not established upon the execution of this Agreement, at such time as GMP is accepted a Date of Substantial Completion or Date of Final Completion of the Work shall be established in the Amendment. If a GMP is not established and the



Parties desire to establish a Date of Substantial Completion or Date of Final Completion, it shall be set forth in an Amendment. The dates for Substantial and Final Completion are subject to adjustments as provided for in the Contract Documents.

6.1.2 Time is of the essence for this Agreement.

6.1.3 Unless instructed by the Owner in writing, the Construction Manager shall not knowingly commence the Work before the effective date of insurance to be provided by the Construction Manager or the Owner as required by the Contract Documents.

## 6.2 SCHEDULE OF THE WORK

6.2.1 Before submitting the first application for payment, the Construction Manager shall submit to the Owner and the Design Professional a Schedule of the Work showing the dates on which the Construction Manager plans to commence and complete various parts of the Work, including dates on which information and approvals are required from the Owner. The Construction Manager shall comply with the approved Schedule of the Work, unless directed by the Owner to do otherwise or the Construction Manager is otherwise entitled to an adjustment in the Contract Time. The Construction Manager shall update the Schedule of the Work on a monthly basis or at appropriate intervals as required by the conditions of the Work and the Project.

6.2.2 The Owner may determine the sequence in which the Work shall be performed, provided it does not unreasonably interfere with the approved project schedule. The Owner may require the Construction Manager to make reasonable changes in the sequence at any time during the performance of the Work in order to facilitate the performance of work by the Owner or Others. To the extent such changes increase the Construction Manager's costs or time, the GMP or the Dates of Substantial or Final Completion shall be equitably adjusted.

## 6.3 DELAYS AND EXTENSIONS OF TIME

6.3.1 If the Construction Manager is delayed at any time in the commencement or progress of the Work by any cause beyond the control of the Construction Manager, the Construction Manager shall be entitled to an equitable extension of the Date of Substantial Completion or Date of Final Completion. In addition, if the Construction Manager incurs additional costs as a result of such delay, the Construction Manager shall be entitled to an equitable adjustment in the GMP subject to section 6.7. Examples of causes beyond the control of the Construction Manager include, but are not limited to, the following: (a) acts or omissions of the Owner, the Design Professional, or Others; (b) changes in the Work or the sequencing of the Work ordered by the Owner, or arising from decisions of the Owner that impact the time of performance of the Work; (c) encountering Hazardous Materials, or concealed or unknown conditions; (d) delay authorized by the Owner pending dispute resolution or suspension by the Owner under section 12.1; (e) transportation delays not reasonably foreseeable; (f) labor disputes not involving the Construction Manager; (g) general labor disputes impacting the Project but not specifically related to the Worksite; (h) fire; (i) Terrorism; (j) epidemics, (k) adverse governmental actions, (l) unavoidable accidents or circumstances; (m) adverse weather conditions not reasonably anticipated. The Construction Manager shall submit any requests for equitable extensions of Contract Time or equitable adjustment in Contract Price in accordance with the provisions of ARTICLE 9.

6.3.2 In addition, if the Construction Manager incurs additional costs as a result of a delay that is caused by items (a) through (m) immediately above, the Construction Manager shall be entitled to an equitable adjustment in the GMP subject to section 6.7.

6.3.3 NOTICE OF DELAYS If delays to the Work are encountered for any reason, the Construction Manager shall provide prompt written notice to the Owner of the cause of such delays after the Construction Manager first recognizes the delay. The Owner and the Construction Manager agree to take reasonable steps to mitigate the effect of such delays.

**6.4 NOTICE OF DELAY CLAIMS** If the Construction Manager requests an equitable extension of the Contract Time or an equitable adjustment in the Contract Price as a result of a delay described in the section above, the Construction Manager shall give the Owner written notice of the claim in accordance with section 9.4. If the Construction Manager causes delay in the completion of the Work, the Owner shall be entitled to recover its additional costs subject to section 6.7. The Owner shall process any such claim against the Construction Manager in accordance with ARTICLE 9.

**6.5 MONITORING PROGRESS AND COSTS** Following acceptance by the Owner of the GMP, the Construction Manager shall establish a process for monitoring actual costs against the GMP and actual progress against the Schedule of Work. The Construction Manager will provide written reports to the Owner at intervals as agreed to by the Parties on the status of the Work, showing variances between actual costs and the GMP and actual progress as compared to the Schedule of Work, including estimates of future costs and recovery programs if actual progress indicates that the Dates of Substantial Completion or Final Completion may not be met.

## **6.6 LIQUIDATED DAMAGES**

**6.6.1 SUBSTANTIAL COMPLETION** The Owner and the Construction Manager agree that this Agreement shall provide for the imposition of liquidated damages based on the Date of Substantial Completion.

**6.6.1.1** The Construction Manager understands that if the Date of Substantial Completion established by this Agreement, as may be amended by subsequent Change Order, is not attained, the Owner will suffer damages which are difficult to determine and accurately specify. The Construction Manager agrees that if the Date of Substantial Completion is not attained, the Construction Manager shall pay the Owner FIVE HUNDRED DOLLARS (\$500.00) as liquidated damages and not as a penalty for each Day that Substantial Completion extends beyond the Date of Substantial Completion. The liquidated damages provided herein shall be in lieu of all liability for any and all extras costs, losses, expenses, claims, penalties, and any other damages of whatsoever nature incurred by the Owner which are occasioned by any delay in achieving the Date of Substantial Completion.

**6.6.2 FINAL COMPLETION** The Owner and the Construction Manager agree that this Agreement shall provide for the imposition of liquidated damages based on the Date of Final Completion.

**6.6.2.1** The Construction Manager understands that if the Date of Final Completion established by this Agreement, as may be amended by subsequent Change Order is not attained, the Owner will suffer damages which are difficult to determine and accurately specify. The Construction Manager agrees that if the Date of Final Completion is not attained the Construction Manager shall pay the Owner FIVE HUNDRED DOLLARS (\$500.00) as liquidated damages and not as a penalty for each Day that Final Completion extends beyond the Date of Final Completion. The liquidated damages provided herein shall be in lieu of all liability for any and all extra costs, losses, expenses, claims, penalties, and any other damages of whatsoever nature incurred by the Owner which are occasioned by any delay in achieving the Date of Final Completion.

**6.6.3 OTHER LIQUIDATED DAMAGES** The Owner and the Construction Manager may agree upon the imposition of liquidated damages based on other project milestones or performance requirements. Such agreement shall be included as an exhibit to this Agreement.

**6.7 LIMITED MUTUAL WAIVER OF CONSEQUENTIAL DAMAGES** Except for damages mutually agreed upon by the Parties as liquidated damages in section 6.6 and excluding losses covered by insurance required by the Contract Documents, the Owner and the Construction Manager agree to waive all claims against each other for any consequential damages that may arise out of or relate to this Agreement, except for those specific items of damages excluded from this waiver as mutually agreed upon by the

Parties and identified below. The Owner agrees to waive damages including but not limited to the Owner's loss of use of the Project, any rental expenses incurred, loss of income, profit or financing related to the Project, as well as the loss of business, loss of financing, loss of profits not related to this Project, loss of reputation, or insolvency. The Construction Manager agrees to waive damages including but not limited to loss of business, loss of financing, principal office overhead and expenses, loss of profits not related to this Project, loss of bonding capacity, loss of reputation, or insolvency. The provisions of this section shall also apply to the termination of this Agreement and shall survive such termination. The following items of damages are excluded from this mutual waiver: NONE.

6.7.1 The Owner and the Construction Manager shall require similar waivers in contracts with Subcontractors and Others retained for the Project.

## ARTICLE 7 COMPENSATION AND GUARANTEED MAXIMUM PRICE

7.1 The Owner shall compensate the Construction Manager for Work performed on the following basis:

7.1.1 the Cost of the Work as allowed in ARTICLE 8; and

7.1.2 the Construction Manager's Fee paid in proportion to the Work performed subject to adjustment as provided in section 7.4.

7.2 The compensation to be paid shall be limited to the GMP established in an Amendment to this Agreement, as the GMP may be adjusted under ARTICLE 9.

7.2.1 Payment for Work performed shall be as set forth in ARTICLE 10.

7.3 CONSTRUCTION MANAGER'S FEE If a GMP Amendment is executed, the Construction Manager's Fee for construction services shall be                      PERCENT (X%) and is understood to include overhead and profit subject to adjustment as provided in section 7.4.

7.3.1 The Construction Manager's Fee shall be earned by the Construction Manager and paid by Owner ratably with each application for payment during the construction phase of the Work.

7.3.2 The Construction Manager's Fee shall cover the following:

7.3.2.1 All profit of the Construction Manager for the Project.

7.3.2.2 All home office overhead expenses, including materials, travel, phone, facsimile, postage, internet service, and other incidental office expenses attributed to work on this Project that is not specifically identified in the General Conditions Work.

7.3.2.3 Labor expenses for any Cost Estimator, Safety Manager, and Building Information Modeling Personnel.

7.3.2.4 All reasonable and necessary travel expenses.

7.3.2.5 All overhead expenses of the Construction Manager for participation in and the support of the Subcontractor bidding process of the Project.

7.3.2.6 Other than retail sales tax, all taxes owed by the Construction Manager including city and state business and occupation tax.

7.3.2.7 The Construction Manager's expenses for providing insurance coverage required by the Contract Documents.

7.4 ADJUSTMENT IN THE CONSTRUCTION MANAGER'S FEE Adjustment in the Construction Manager's Fee shall be made as follows:

7.4.1 for changes in the Work as provided in ARTICLE 9, the Construction Manager's Fee shall be adjusted in accordance with the percentages identified in Article 7.3, above.

7.4.2 for delays in the Work not caused by the Construction Manager, except as provided in section 6.3, there shall be an equitable adjustment in the Construction Manager's Fee to compensate the Construction Manager for increased expenses; and

7.4.3 if the Construction Manager is placed in charge of managing the replacement of an insured or uninsured loss, the Construction Manager shall be paid an additional fee in the same proportion that the Construction Manager's Fee bears to the estimated Cost of the Work for the replacement.

7.5 PRECONSTRUCTION SERVICES COMPENSATION The Construction Manager shall be compensated for Preconstruction Services as follows: Owner shall pay Construction Manager the not to exceed sum of [REDACTED] **DOLLARS (\$XX,XXX) at the hourly rates set forth in Exhibit A** for the preconstruction services and reimbursable costs identified in Exhibit A, subject to additional services and other changes requiring an equitable adjustment.

7.6 Savings: If the sum of the actual Cost of the Work and Construction Manager's Fee is less than the GMP at final completion, as such GMP may have been adjusted over the course of the Project, the difference ("Savings") shall be shared as follows: Savings returned to Owner less the Construction Manager's Fee of the GMP at Final Completion.

## ARTICLE 8 COST OF THE WORK

8.1 The Owner agrees to pay the Construction Manager for the Cost of the Work meaning those costs items that are directly related to the Project, necessarily and reasonably incurred by the Construction Manager in the proper performance of the Work, and specifically and expressly defined in this article. Payment of Cost Items shall be in addition to the Construction Manager's Fee stipulated in section 7.3.

### 8.2 COST ITEMS

8.2.1 Wages paid for labor in the direct employ of the Construction Manager in the performance of the Work.

8.2.2 Salaries of the Construction Manager's employees when stationed at the field office and employees engaged on the road expediting the production or transportation of material and equipment, and the following employees working at both the field office and the principal office:

Project Manager – NAME / \$XX.XX per hour  
Senior Superintendent – NAME / \$XX.XX per hour  
Superintendent - NAME / \$XX.XX per hour  
Project Engineer - NAME / \$XX.XX per hour

Normal working hours are Monday-Friday 5:00 a.m. to 7:00 p.m. Any work outside these hours will be considered "off-hours." If off-hours work is required by Owner or agencies having jurisdiction the above rates will increase 25%. Payment of off-hours work shall be made from the Risk Contingency Account and must be approved in writing in advance by the Owner.

8.2.3 Cost of all employee benefits and taxes, including but not limited to, workers' compensation, unemployment compensation, social security, health, welfare, retirement, and other fringe benefits as required by law, labor agreements, or paid under the Construction Manager's standard personnel

policy, insofar as such costs are paid to employees of the Construction Manager who are included in the Cost of the Work pursuant to subsections .1 and .2 immediately above.

8.2.4 Cost of all materials, supplies and equipment incorporated in the Work, including costs of inspection and testing if not provided by the Owner, transportation, storage, and handling.

8.2.5 Payments made by the Construction Manager to Subcontractors for the cost of work performed under this Agreement.

8.2.6 Cost, including transportation and maintenance of all materials, supplies, equipment, temporary facilities and hand tools not owned by the workers that are used or consumed in the performance of the Work, less salvage value or residual value; and cost less salvage value on such items used, but not consumed that remain the property of the Construction Manager.

8.2.7 Rental charges of all necessary machinery and equipment, exclusive of hand tools owned by workers, used at the Worksite, whether rented from the Construction Manager or Others, including installation, repair and replacement, dismantling, removal, maintenance, transportation, and delivery costs. Rental from unrelated third parties shall be reimbursed at actual cost. Rentals from the Construction Manager or its affiliates, subsidiaries, or related parties shall be reimbursed at the prevailing rates in the locality of the Worksite up to eighty-five percent (85%) of the value of the piece of equipment.

8.2.8 Sales tax.

8.2.9 Permits, fees, licenses, tests, royalties, damages for infringement of patents or copyrights.

8.2.10 Losses, expenses, or damages to the extent not compensated by insurance or otherwise, and the cost of corrective work during the Construction Phase and for a two year period following the Date of Substantial Completion, provided that such losses, expenses, damages, or corrective work did not arise from the Construction Manager's negligence.

8.2.11 All costs associated with establishing, equipping, operating, maintaining, and demobilizing the field office.

8.2.12 Reproduction costs, photographs, facsimile transmissions, long-distance telephone calls, data processing costs and services, postage, express delivery charges, data transmission, telephone service, and computer-related costs at the Worksite to the extent such items are used and consumed in the performance of the Work or are not capable of use after completion of the Work.

8.2.13 All water, power, and fuel costs necessary for the Work.

8.2.14 Cost of removal of all nonhazardous substances, debris, and waste materials.

8.2.15 Costs incurred due to an emergency affecting the safety of persons or property.

8.2.16 Legal, mediation, and arbitration fees and costs, other than those arising from disputes between the Owner and the Construction Manager, reasonably and properly resulting from the Construction Manager's performance of the Work.

8.2.17 All costs directly incurred in the performance of the Work or in connection with the Project, and not included in the Construction Manager's Fee as set forth in ARTICLE 7, which are reasonably inferable from the Contract Documents and not otherwise excluded by the terms of this Agreement.

8.3 DISCOUNTS All discounts for prompt payment shall accrue to the Owner to the extent such payments are made directly by the Owner. To the extent payments are made with funds of the Construction Manager, all cash discounts shall accrue to the Construction Manager. All trade discounts, rebates, and refunds, and all returns from sale of surplus materials and equipment, shall be credited to the Cost of the Work.

8.4 EXCLUDED COSTS The following shall not be included in the Cost of the Work:

8.4.1 Salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal office or offices other than the worksite except as allowed in section 8.2

8.4.2 Any overhead and general expenses, except as may be expressly included in section 8.2.

8.4.3 Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work.

8.4.4 Rental cost of machinery and equipment, except as provided in section 8.2.

8.4.5 Any cost associated with the Work not specifically and expressly described in section 8.2.

8.4.6 Costs due to the fault or negligence of the Construction Manager, Subcontractors, Subsubcontractors, suppliers, anyone directly or indirectly employed by any of them, or for whose acts any of them may be liable.

8.4.7 The cost of correction of any repair work, nonconforming or defective work, or warranty work.

8.4.8 Merit, safety, or other incentive payments, bonuses or awards, or any expenses in connection therewith, except as provided in section 8.2.

8.4.9 Fines and penalties.

8.4.10 Any costs in excess of the GMP.

8.5 OTHER COST ITEMS The Construction Manager Fee shall not be applied to the cost of Preconstruction Services, Payment and Performance Bonds, Insurance Policies set forth in section 11.2, any other insurance policies secured by Construction Manager, the Construction Manager's Fee itself, and any other cost or charge that the Agreement states is not to be included in calculating the Construction Manager's Fee.

## **ARTICLE 9 CHANGES**

Changes in the Work that are within the general scope of this Agreement shall be accomplished, without invalidating this Agreement, by Change Order and Interim Directed Change.

### **9.1 CHANGE ORDER**

9.1.1 The Construction Manager may request or the Owner may order changes in the Work or the timing or sequencing of the Work that impacts the GMP or the estimated Cost of the Work, Construction Manager's Fee, Date of Substantial Completion or Date of Final Completion and, if appropriate, the Compensation for Preconstruction Services. All such changes in the Work shall be formalized in a Change Order. Any such requests for changes in the Work shall be processed in accordance with this article.

9.1.2 For changes in the Work, the Owner and the Construction Manager shall negotiate an equitable adjustment to the GMP or the Date of Substantial Completion or Date of Final Completion in good faith and conclude negotiations as expeditiously as possible. Acceptance of the Change Order and any equitable adjustment in the GMP or Date of Substantial Completion or Date of Final Completion shall not be unreasonably withheld.

9.1.3 NO OBLIGATION TO PERFORM The Construction Manager shall not be obligated to perform changes in the Work that impact the GMP or the estimated Cost of the Work, Construction Manager's Fee, Date of Substantial Completion, or Date of Final Completion until a Change Order has been executed or a written Interim Directed Change has been issued.

## 9.2 INTERIM DIRECTED CHANGES

9.2.1 The Owner may issue a written Interim Directed Change directing a change in the Work prior to reaching agreement with the Construction Manager on the adjustment, if any, in the GMP or the Date of Substantial Completion or Date of Final Completion.

9.2.2 The Owner and the Construction Manager shall negotiate expeditiously and in good faith for appropriate adjustments, as applicable, to the GMP or the Date of Substantial Completion or Date of Final Completion arising out of an Interim Directed Change. As the changed Work is performed, the Construction Manager shall submit its costs for such Work with its application for payment beginning with the next application for payment within thirty (30) Days of the issuance of the Interim Directed Change. If there is a dispute as to the cost to the Owner, the Owner shall pay the Construction Manager fifty percent (50%) of its estimated cost to perform the Work. In such event, the Parties reserve their rights as to the disputed amount, subject to the requirements of ARTICLE 12.

9.2.3 When the Owner and the Construction Manager agree upon the adjustments in the GMP or the Date of Substantial Completion or Date of Final Completion, for a change in the Work directed by an Interim Directed Change, such agreement shall be the subject of an appropriate Change Order. The Change Order shall include all outstanding Interim Directed Changes on which the Owner and Construction Manager have reached agreement on GMP or the Date of Substantial Completion or Date of Final Completion issued since the last Change Order.

## 9.3 DETERMINATION OF COST

9.3.1 An increase or decrease in the GMP or the Date of Substantial Completion or Date of Final Completion resulting from a change in the Work shall be determined by one or more of the following methods:

9.3.1.1 unit prices set forth in this Agreement or as subsequently agreed;

9.3.1.2 a mutually accepted, itemized lump sum;

9.3.1.3 costs calculated on a basis agreed upon by the Owner and Construction Manager plus the fee as identified in Article 7.3; or

9.3.1.4 if an increase or decrease cannot be agreed to as set forth in subsections .1 through .3 above, and the Owner issues an Interim Directed Change, the cost of the change in the Work shall be determined by the reasonable actual expense incurred and savings realized in the performance of the Work resulting from the change. If there is a net increase in the GMP, the Construction Manager's Fee shall be adjusted accordingly. In case of a net decrease in the GMP, the Construction Manager's Fee shall not be adjusted unless ten percent (10%) or more of the Project is deleted. The Construction Manager shall maintain a documented, itemized accounting evidencing the expenses and savings.

9.3.1.5 Change Order markup costs for Subcontractors are limited to 10% for overhead and profit on direct costs of labor, materials, and equipment.

9.3.2 If unit prices are set forth in the Contract Documents or are subsequently agreed to by the Parties, but the character or quantity of such unit items as originally contemplated is so different in a proposed Change Order that the original unit prices will cause substantial inequity to the Owner or the Construction Manager, such unit prices shall be equitably adjusted.

9.3.3 If the Owner and the Construction Manager disagree as to whether work required by the Owner is within the scope of the Work, the Construction Manager shall furnish the Owner with an estimate of the costs to perform the disputed work in accordance with the Owner's interpretations.

9.3.4 If the Owner issues a written order for the Construction Manager to proceed, the Construction Manager shall perform the disputed work and the Owner shall pay the Construction Manager fifty percent (50%) of its estimated cost to perform the work. In such event, both Parties reserve their rights as to whether the work was within the scope of the Work. The Owner's payment does not prejudice its right to be reimbursed should it be determined that the disputed work was within the scope of the Work. The Construction Manager's receipt of payment for the disputed work does not prejudice its right to receive full payment for the disputed work should it be determined that the disputed work is not within the scope of the Work.

9.4 CLAIMS FOR ADDITIONAL COST OR TIME Except as provided in subsection 6.3.2 and section 6.4 for any claim for an increase in the GMP or the Date of Substantial Completion or Date of Final Completion, the Construction Manager shall give the Owner written notice of the claim within fourteen (14) Days after the occurrence giving rise to the claim or within fourteen (14) Days after the Construction Manager first recognizes the condition giving rise to the claim, whichever is later. Owner's failure to so respond shall be deemed a denial of the Construction Manager's claim. Except in an emergency, notice shall be given before proceeding with the Work. Thereafter, the Construction Manager shall submit written documentation of its claim, including appropriate supporting documentation, within Sixty (60) Days after giving notice, unless the Parties mutually agree upon a longer period of time. No later than fourteen (14) Days after receipt, the Owner shall respond in writing denying or approving the claim. Owner's failure to so respond shall be deemed a denial of the claim. Any change in the GMP or the Date of Substantial Completion or Date of Final Completion resulting from such claim shall be authorized by Change Order.

9.5 CHANGES IN LAW Notwithstanding the Construction Manager's obligations to comply with all laws, if any changes in Laws, including taxes, which were not reasonably anticipated and then enacted after either the date of this Agreement or the date a GMP Proposal is accepted by the Owner and set forth in an Amendment, whichever occurs later, the GMP, estimated Cost of the Work, and the Date of Substantial Completion or the Date of Final Completion shall be equitably adjusted by Change Order.

9.6 INCIDENTAL CHANGES The Owner may direct the Construction Manager to perform incidental changes in the Work, upon concurrence with the Construction Manager that such changes do not involve adjustments in the Contract Price or the Contract Time. Incidental changes shall be consistent with the scope and intent of the Contract Documents. The Owner shall initiate an incidental change in the Work by issuing a written order to the Construction Manager. Such written notice shall be carried out promptly and is binding on the Parties.

## **ARTICLE 10 PAYMENT**

10.1 SCHEDULE OF VALUES Within twenty-one (21) Days from the date of execution of this Agreement, and within fourteen (14) days from the date of execution of any Amendments affecting the GMP, the Construction Manager shall prepare and submit to the Owner and, if directed, the Design Professional a schedule of values apportioned to the various divisions or phases of the Work. Each line item contained in the schedule of values shall be assigned a value such that the total of all items shall equal the GMP.



## 10.2 PROGRESS PAYMENTS

10.2.1 APPLICATIONS The Construction Manager shall submit to the Owner and, if directed, the Design Professional a monthly application for payment no later than the last day of the calendar month for the preceding thirty (30) Days. The Construction Manager's applications for payment shall be itemized and supported by the Construction Manager's schedule of values and any other substantiating data as required by this Agreement. Applications for payment shall include payment requests on account of properly authorized Change Orders or Interim Directed Changes. The Owner shall pay the amount otherwise due on any payment application, no later than thirty (30) Days after the Construction Manager has submitted a complete and accurate payment application, or such shorter time period as required by applicable state statute. The Owner may deduct from any progress payment amounts that may be retained pursuant to subsection 10.2.3.

10.2.2 STORED MATERIALS AND EQUIPMENT Unless otherwise provided in the contract documents, applications for payment may include materials and equipment not yet incorporated into the Work but delivered to and suitably stored onsite or offsite including applicable insurance, storage, and costs incurred transporting the materials to an offsite storage facility. Approval of payment applications for stored materials and equipment stored offsite shall be conditioned on a submission by the Construction Manager of bills of sale and proof of required insurance, or such other documentation satisfactory to the Owner to establish the proper valuation of the stored materials and equipment, the Owner's title to such materials and equipment, and to otherwise protect the Owner's interests therein, including transportation to the Worksite.

10.2.3 RETAINAGE During the Construction phase, from each progress payment made prior to Final Completion, the Owner may retain Five percent (5.0%) of the amount otherwise due after deduction of any amounts as provided in section 10.3, and in no event shall such percentage exceed any applicable statutory requirements. Upon final completion of any phase of the Work, where phase of the Work is defined as no less than the Scope of Work for any one (1) negotiated GMP, where construction is complete and accepted by the Owner, Construction Manager shall be entitled to payment for the withheld retainage attributable to the phase(s) of the Work attaining Final Completion.

10.3 ADJUSTMENT OF CONSTRUCTION MANAGER'S PAYMENT APPLICATION The Owner may adjust or reject a payment application or nullify a previously approved payment application, in whole or in part, as may reasonably be necessary to protect the Owner from loss or damage based upon the following, to the extent that the Construction Manager is responsible under this Agreement:

10.3.1 the Construction Manager's repeated failure to perform the Work as required by the Contract Documents;

10.3.2 except as accepted by the insurer providing builders risk or other property insurance covering the project, loss or damage arising out of or relating to this Agreement and caused by the Construction Manager to the Owner or Others to whom the Owner may be liable;

10.3.3 the Construction Manager's failure to properly pay Subcontractors and Material Suppliers following receipt of such payment from the Owner;

10.3.4 Defective Work not corrected in a timely fashion;

10.3.5 reasonable evidence of delay in performance of the Work such that the Work will not be completed by the Dates of Substantial or Final Completion;

10.3.6 reasonable evidence demonstrating that the unpaid balance of the GMP is insufficient to fund the cost to complete the Work; and

10.3.7 uninsured third-party claims involving the Construction Manager or reasonable evidence demonstrating that third-party claims are likely to be filed unless and until the Construction Manager furnishes the Owner with adequate security in the form of a surety bond, letter of credit, or other collateral or commitment sufficient to discharge such claims if established.

No later than seven (7) Days after receipt of an application for payment, the Owner shall give written notice to the Construction Manager, at the time of disapproving or nullifying all or part of an application for payment, stating its specific reasons for such disapproval or nullification, and the remedial actions to be taken by the Construction Manager in order to receive payment. When the above reasons for disapproving or nullifying an application for payment are removed, payment will be promptly made for the amount previously withheld.

10.4 ACCEPTANCE OF WORK Neither the Owner's payment of progress payments nor its partial or full use or occupancy of the Project constitutes acceptance of Work not complying with the Contract Documents.

10.5 PAYMENT DELAY If for any reason not the fault of the Construction Manager the Construction Manager does not receive a progress payment from the Owner within fourteen (14) Days after the time such payment is due, then the Construction Manager, upon giving seven (7) Days' written notice to the Owner, and without prejudice to and in addition to any other legal remedies, may stop Work until payment of the full amount owing to the Construction Manager has been received, including interest for late payment. The GMP and Dates of Substantial or Final Completion shall be equitably adjusted by a Change Order for reasonable cost and delay resulting from shutdown, delay, and start-up.

#### 10.6 SUBSTANTIAL COMPLETION

10.6.1 The Construction Manager shall notify the Owner and, if directed, the Design Professional when it considers Substantial Completion of the Work or a designated portion to have been achieved. The Owner, with the assistance of its Design Professional, shall promptly conduct an inspection to determine whether the Work or designated portion can be occupied or used for its intended use by the Owner without excessive interference in completing any remaining unfinished Work. If the Owner determines that the Work or designated portion has not reached Substantial Completion, the Owner, with the assistance of its Design Professional, shall promptly compile a list of items to be completed or corrected so the Owner may occupy or use the Work or designated portion for its intended use. The Construction Manager shall promptly complete all items on the list.

10.6.2 When Substantial Completion of the Work or a designated portion is achieved, the Construction Manager shall prepare a Certificate of Substantial Completion establishing the date of Substantial Completion and the respective responsibilities of the Owner and Construction Manager for interim items such as security, maintenance, utilities, insurance, and damage to the Work, and fixing the time for completion of all items on the list accompanying the Certificate. The Certificate of Substantial Completion shall be submitted by the Construction Manager to the Owner and, if directed, to the Design Professional for written acceptance of responsibilities assigned in the Certificate of Substantial Completion.

10.6.3 Unless otherwise provided in the Certificate of Substantial Completion, warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or a designated portion.

#### 10.7 PARTIAL OCCUPANCY OR USE

10.7.1 The Owner may occupy or use completed or partially completed portions of the Work when (a) the portion of the Work is designated in a Certificate of Substantial Completion, (b) appropriate insurer(s) consent to the occupancy or use, and (c) public authorities authorize the occupancy or use. The Construction Manager shall not unreasonably withhold consent to partial occupancy or use. The Owner shall not unreasonably refuse to accept partial occupancy.

## 10.8 FINAL COMPLETION AND FINAL PAYMENT

10.8.1 Upon notification from the Construction Manager that the Work is complete and ready for final inspection and acceptance, the Owner, with the assistance of its Design Professional shall promptly conduct an inspection to determine if the Work has been completed and is acceptable under the Contract Documents.

10.8.2 When the Work is complete, the Construction Manager shall prepare for the Owner's written acceptance a final application for payment stating that to the best of the Construction Manager's knowledge, and based on the Owner's inspections, the Work has reached Final Completion in accordance with the Contract Documents.

10.8.3 Final payment of the balance of the GMP and the retainage held by the Owner for the Work shall be made to the Construction Manager within thirty (30) Days after the Construction Manager has submitted an application for final payment, including submissions required under subsection 10.8.4, and after a Certificate of Final Completion has been executed by the Owner and Construction Manager.

10.8.4 Final payment shall be due on the Construction Manager's submission of the following to the Owner:

10.8.4.1 an affidavit declaring any indebtedness connected with the Work, e.g. payrolls or invoices for materials or equipment, to have been paid, satisfied, or to be paid with the proceeds of final payment, so as not to encumber the Owner's property;

10.8.4.2 as-built drawings, manuals, copies of warranties, and all other close-out documents required by the Contract Documents;

10.8.4.3 release of any liens, conditioned on final payment being received;

10.8.4.4 consent of any surety; and

10.8.4.5 any outstanding known and unreported accidents or injuries experienced by the Construction Manager or its Subcontractors at the Worksite.

10.8.5 If, after Substantial Completion of the Work, the Final Completion of a portion of the Work is materially delayed through no fault of the Construction Manager, the Owner shall pay the balance due for portion(s) of the Work fully completed and accepted. If the remaining contract balance for Work not fully completed and accepted is less than the retained amount prior to payment, the Construction Manager shall submit to the Owner and, if directed, the Design Professional the written consent of any surety to payment of the balance due for portions of the Work that are fully completed and accepted. Such payment shall not constitute a waiver of claims, but otherwise shall be governed by section 10.8.

10.8.6 Claims not reserved in writing with the making of final payment shall be waived except for claims relating to liens or similar encumbrances, warranties, Defective Work, and latent defects.

10.8.7 ACCEPTANCE OF FINAL PAYMENT Unless the Construction Manager provides written identification of unsettled claims with an application for final payment, its acceptance of final payment constitutes a waiver of such claims.

10.9 LATE PAYMENT Payments due but unpaid shall bear interest from the date payment is due at the rate allowed by the State of Idaho.

## ARTICLE 11 INDEMNITY, INSURANCE, AND BONDS

### 11.1 INDEMNITY

11.1.1 To the fullest extent permitted by law, the Construction Manager shall indemnify and hold harmless the Owner, Owner's officers, directors, members, consultants, agents, and employees, the Design Professional, and Others (the Indemnitees) from all claims for bodily injury and property damage, other than to the Work itself and other property insured, including reasonable attorneys' fees, costs, and expenses, that may arise from the performance of the Work, but only to the extent caused by or arising out of the negligent acts or omissions of the Construction Manager, Subcontractors, or anyone employed directly or indirectly by any of them or by anyone for whose acts any of them may be liable. The Construction Manager shall be entitled to reimbursement of any defense costs paid above the Construction Manager's percentage of liability for the underlying claim to the extent provided for by the subsection 11.1.2 below.

11.1.2 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Construction Manager, its officers, directors, members, consultants, agents, and employees, Subcontractors, or anyone employed directly or indirectly by any of them or anyone for whose acts any of them may be liable from all claims for bodily injury and property damage, other than property insured, including reasonable attorneys' fees, costs and expenses, that may arise from the performance of work by the Owner, the Design Professional, or Others, but only to the extent caused by or arising out of the negligent acts or omissions by the Owner, the Design Professional, or Others. The Owner shall be entitled to reimbursement of any defense costs paid above the Owner's percentage of liability for the underlying claim to the extent provided for by the subsection 11.1.1 above.

### 11.2 INSURANCE

11.2.1 Before commencing the Work and as a condition precedent to payment, the Construction Manager shall procure and maintain in force Workers' Compensation Insurance, Employers' Liability Insurance, Comprehensive Automobile Liability Insurance, and Commercial General Liability Insurance (CGL). Construction Manager shall furnish Owner with a copy of the Acord certificate(s) evidencing the insurance coverage including the required endorsements. The CGL policy shall include coverage for liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury, contractual liability, and broad form property damage. The Construction Manager shall maintain completed operations liability insurance for two years after Final Completion. The policy cannot be endorsed to exclude the perils of explosion (x), collapse (c), and underground (u) exposures without the specific written approval of the Owner. All insurance coverage shall be occurrence based coverages and shall include a waiver of subrogation by the insurers in favor of Owner. The coverages shall be primary and noncontributing with respect to any other insurance or self-insurance that may be maintained by Owner

The Construction Manager's policies shall be written with at least the following limits of liability:

#### **Professional Liability Insurance**

- \$1,000,000 General Aggregate
- \$1,000,000 Each Occurrence

#### **Commercial General Liability (CGL)**

- \$2,000,000 General Aggregate
- \$2,000,000 Products/Completed Operations Aggregate
- \$1,000,000 Each Occurrence
- \$1,000,000 Personal Injury and Advertising Injury
- \$100,000 Fire Damage Liability

- \$5,000 Medical Expenses – Each Person

**Comprehensive Automobile Liability**

- \$1,000,000 Each Occurrence – coverage to include owned, hired, and non-owned automobiles. Construction Manager shall require each of its subcontractors to include in their liability insurance policies coverage for automobile contractual liability.

**Excess Liability (Umbrella)**

- \$2,000,000

**Cyber Security Liability Insurance**

- \$1,000,000 Each Occurrence or Claim
- \$1,000,000 Aggregate

**Workers Compensation and Employers Liability Insurance**

- Statutory Limits
- Employers Liability
  - \$1,000,000 Each Accident
  - \$1,000,000 Policy Limits
  - \$1,000,000 Each Employee

**Builder’s Risk**

Unless Owner carries or waives such coverage, property insurance written on a builder's risk “all-risks” completed value or equivalent policy form and sufficient to cover the total value of the Work and all existing structures owned by Owner within the project on a replacement cost basis. This property insurance coverage shall be no less than the amount of the initial contract price, plus the value of subsequent modifications and labor performed and materials or equipment supplied by others. The property insurance shall be maintained until the Work is substantially completed (as evidenced by a Certificate of Occupancy), unless otherwise agreed in writing by the parties to this Agreement. This insurance shall include the interests of the Owner, Construction Manager, subcontractors, and sub-subcontractors in the Work as insureds. This insurance shall include the interests of mortgagees as loss payees. The insurance required by this Section shall provide coverage for direct physical loss or damage, and shall not exclude the risks of fire, explosion, theft, vandalism, malicious mischief, collapse, earthquake, flood, or windstorm. The insurance shall also provide coverage for ensuing loss or resulting damage from error, omission, or deficiency in construction methods, design, specifications, workmanship, or materials.

**Cyber Liability Insurance**

Construction Manager shall maintain throughout the term of this Agreement cyber liability insurance, with limits not less than \$1,000,000 per occurrence or claim, \$1,000,000 aggregate and includes third party. Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by Construction Manager in this Agreement and shall include, but not be limited to, claims involving security breach, system failure, data recovery, business interruption, cyber extortion, social engineering, funds transfer fraud, infringement of intellectual property, including but not limited to infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, and alteration of electronic information. The policy shall provide coverage for breach response costs, regulatory fines and penalties as well as credit monitoring expenses.

11.2.2 Employers' Liability, Comprehensive Automobile Liability, Cyber Security Liability, and CGL coverages required under subsection 11.2.1 may be arranged under a single policy for the full limits required or by a combination of underlying policies with the balance provided by Excess or Umbrella Liability policies.

11.2.3 The Construction Manager shall maintain in effect all insurance coverage required under subsection 11.2.1 with insurance companies lawfully authorized to do business in Idaho. If the

Construction Manager fails to obtain or maintain any insurance coverage required under this Agreement, the Owner may purchase such coverage and charge the expense to the Construction Manager, or terminate this Agreement.

11.2.4 To the extent commercially available to the Construction Manager from its current insurance company, insurance policies required under subsection 11.2.1 shall contain a provision that the insurance company or its designee must give the Owner written notice transmitted in paper or electronic format: (a) 30 Days before coverage is nonrenewed by the insurance company and (b) within 10 Business Days after cancellation of coverage by the insurance company. Prior to commencing the Work and upon renewal or replacement of the insurance policies, the Construction Manager shall furnish the Owner with certificates of insurance evidencing the coverage until two years after Substantial Completion or longer if required by the Contract Documents. In addition, if any insurance policy required under subsection 11.2.1 is not to be immediately replaced without lapse in coverage when it expires, exhausts its limits, or is to be cancelled, the Construction Manager shall give Owner prompt written notice upon actual or constructive knowledge of such condition.

### 11.3 ADDITIONAL LIABILITY COVERAGE

11.5.1. Additional Insured. The CGL insurance policy and the Automobile Liability insurance policy shall name Owner as Additional Insured and shall protect its officers, agents, and employees from and against claims for bodily injury, property damage, personal injury, and advertising injury to the extent caused by or arising out of the negligent acts or omissions of Construction Manager, or those acting on the Construction Manager's behalf, in the performance of the Construction Manager's work for the Owner at the Worksite.

Any documented additional cost in the form of a surcharge associated with procuring any additional liability coverage in accordance with this subsection shall be paid by the Owner directly or the costs may be reimbursed by the Owner to the Construction Manager by increasing the Contract Price to correspond to the actual cost required to purchase and maintain the coverage. Before commencing the Work, the Construction Manager shall provide either a copy of the policy, or a certificate and endorsement evidencing that the Owner has been named as an additional insured, as applicable.

11.4 ROYALTIES, PATENTS, AND COPYRIGHTS The Construction Manager shall pay all royalties and license fees which may be due on the inclusion of any patented or copyrighted materials, methods, or systems selected by the Construction Manager and incorporated in the Work. The Construction Manager shall defend, indemnify, and hold the Owner harmless from all suits or claims for infringement of any patent rights or copyrights arising out of such selection. The Owner agrees to defend, indemnify, and hold the Construction Manager harmless from any suits or claims of infringement of any patent rights or copyrights arising out of any patented or copyrighted materials, methods, or systems specified by the Owner or Design Professional.

### 11.5 BONDS

11.5.1 Performance and Payment Bonds are required of the Construction Manager. Such bonds shall be issued by a surety admitted in the state of Idaho and must be acceptable to the Owner. The Owner's acceptance shall not be withheld without a reasonable cause. The penal sum of the bonds shall each be one hundred percent (100%) of the GMP. Any increase in the GMP that exceeds ten percent (10%) in the aggregate shall require a rider to the Bonds increasing penal sums accordingly. Up to such ten percent (10%) amount, the penal sum of the bond shall remain equal to one hundred percent (100%) of the original GMP. The Construction Manager shall endeavor to keep its surety advised of changes potentially impacting the GMP and Contract Time, though the Construction Manager shall require that its surety waives any requirement to be notified of any alteration or extension of time within the scope of the initial Agreement. A copy of the Construction Manager's Payment Bond for the Project, if any, shall be furnished by the Owner or the Construction Manager upon the Subcontractor's written request.

11.6 PROFESSIONAL LIABILITY INSURANCE To the extent the Construction Manager provides professional services, the Construction Manager shall obtain professional liability insurance for claims arising from the negligent performance of professional services under this Agreement, with a company reasonably satisfactory to the Owner, including coverage for all professional liability caused by the Construction Manager, written for not less than One Million dollars (\$1,000,000.00) per claim and in the aggregate with the deductible not to exceed One Hundred Thousand dollars (\$100,000.00). The Construction Manager shall pay the deductible. To the extent the Construction Manager is required to procure design services in accordance with subsection 3.16, the Construction Manager shall require its design professionals to obtain professional liability insurance for claims arising from the negligent performance of professional services under this Agreement, with a company reasonably satisfactory to the Owner, including coverage for all professional liability caused by any consultants to the Construction Manager's design professional, written for not less than One Million dollars (\$1,000,000.00) per claim and in the aggregate with the deductible not to exceed One Hundred Thousand dollars (\$100,000.00). The Construction Manager's design professional shall pay the deductible.

## **ARTICLE 12 SUSPENSION, NOTICE TO CURE, AND TERMINATION**

### **12.1 SUSPENSION BY OWNER FOR CONVENIENCE**

12.1.1 OWNER SUSPENSION Should the Owner order the Construction Manager in writing to suspend, delay, or interrupt the performance of the Work for the convenience of the Owner and not due to any act or omission of the Construction Manager or any person or entity for whose acts or omissions the Construction Manager may be liable, then the Construction Manager shall immediately suspend, delay, or interrupt that portion of the Work for the time period ordered by the Owner, following all instructions by Owner regarding the suspension, delay, or interruption, and take all actions necessary (or that the Owner may direct) for the protection and preservation of the Work. The GMP and the Dates of Substantial or Final Completion shall be equitably adjusted by Change Document for the cost and delay resulting from any such suspension.

12.1.2 Any action taken by the Owner that is permitted by any other provision of the Contract Documents and that result in a suspension of part or all of the Work does not constitute a suspension of Work under this section.

12.2 NOTICE TO CURE A DEFAULT If the Construction Manager persistently fails to supply enough properly qualified workers, proper materials, or equipment to maintain the approved Schedule of the Work or fails to make prompt payment to its workers, Subcontractors, or Material Suppliers, disregards Laws or orders of any public authority having jurisdiction, or is otherwise guilty of a material breach of a provision of this Agreement, the Construction Manager may be deemed in default. If the Construction Manager fails within seven (7) Days after receipt of written notice to commence and continue satisfactory correction of such default with diligence and promptness, then the Owner shall give the Construction Manager a second notice to correct the default within a three (3) Day period. If the Construction Manager fails to promptly commence and continue satisfactory correction of the default following receipt of such second notice, the Owner without prejudice to any other rights or remedies may: (a) take possession of the Worksite and remove Construction Manager therefrom; (b) complete the Work utilizing reasonable means; (c) withhold payment due to the Construction Manager; and (d) as the Owner deems necessary, supply workers and materials, equipment, and other facilities for the satisfactory correction of the default, and charge the Construction Manager, the costs and expenses, including reasonable Overhead, profit, and attorneys' fees.

12.2.1 In the event of an emergency affecting the safety of persons or property, the Owner may immediately commence and continue satisfactory correction of such default without first giving written notice to the Construction Manager, but shall give prompt written notice of such action to the Construction Manager following commencement of the action.

## 12.3 OWNER'S RIGHT TO TERMINATE FOR DEFAULT

12.3.1 TERMINATION BY OWNER FOR DEFAULT If, within seven (7) Days of receipt of a notice to cure pursuant to section 12.2, the Construction Manager fails to commence and satisfactorily continue correction of the default set forth in the notice to cure, the Owner may notify the Construction Manager, and if applicable, the surety, that it intends to terminate this Agreement for default absent appropriate corrective action within fourteen (14) additional Days. After the expiration of the additional fourteen (14) Day period, the Owner may terminate this Agreement by written notice absent appropriate corrective action. Termination for default is in addition to any other remedies available to the Owner under section 12.2. If the Owner's costs arising out of the Construction Manager's failure to cure, including the costs of completing the Work and reasonable attorneys' fees, exceed the unpaid GMP, the Construction Manager shall be liable to the Owner for such excess costs. If the Owner's costs are less than the unpaid GMP, the Owner shall pay the difference to the Construction Manager. If the Owner exercises its rights under this section, upon the request of the Construction Manager, the Owner shall furnish to the Construction Manager a detailed accounting of the costs incurred by the Owner.

12.3.2 If the Owner or Others perform work under this section, the Owner shall have the right to exclude Construction Manager from the site and take possession of and use any materials, supplies, and equipment belonging to the Construction Manager and located at the Worksite for the purpose of completing any remaining Work. Immediately upon completion of the Work, any remaining materials, supplies, or equipment not consumed or incorporated in the Work shall be returned to the Construction Manager in substantially the same condition as when they were taken, reasonable wear and tear excepted.

12.3.3 If the Construction Manager files a petition under the Bankruptcy Code, this Agreement shall terminate if the Construction Manager or the Construction Manager's trustee rejects the Agreement, or if there has been a default and the Construction Manager is unable to give adequate assurance that the Construction Manager will perform as required by this Agreement, or otherwise is unable to comply with the requirements for assuming this Agreement under the applicable provisions of the Bankruptcy Code.

12.3.4 The Owner shall make reasonable efforts to mitigate damages arising from the Construction Manager's default, and shall promptly invoice the Construction Manager for all amounts due pursuant to sections 12.2 and 12.3.

12.3.5 If the Owner terminates this Agreement for default, and it is later determined that the Construction Manager was not in default, or that the default was excusable under the terms of the Contract Documents, then, in such event, the termination shall be deemed a termination for convenience, and the rights of the Parties shall be as set forth in section 12.4.

## 12.4 TERMINATION BY OWNER FOR CONVENIENCE

12.4.1 Upon written notice to the Construction Manager, the Owner may, without cause, terminate this Agreement. The Construction Manager shall immediately stop the Work, follow the Owner's instructions regarding shutdown and termination procedures, and strive to minimize any further costs.

12.4.2 If the Owner terminates this Agreement pursuant to this section, the Construction Manager shall be paid (a) for the Work performed to date including Overhead and profit; (b) for all demobilization costs and costs incurred as a result of the termination but not including Overhead or profit on Work not performed.

12.4.3 If the Owner terminates this Agreement, the Construction Manager shall:



12.4.3.1 execute and deliver to the Owner all papers and take all action required to assign, transfer, and vest in the Owner the rights of the Construction Manager to all materials, supplies, and equipment for which payment has been or will be made in accordance with the Contract Documents and all subcontracts, orders, and commitments which have been made in accordance with the Contract Documents;

12.4.3.2 exert reasonable effort to reduce to a minimum the Owner's liability for subcontracts, orders, and commitments that have not been fulfilled at the time of the termination;

12.4.3.3 cancel any subcontracts, orders, and commitments as the Owner directs; and

12.4.3.4 sell at prices approved by the Owner any materials, supplies, and equipment as the Owner directs, with all proceeds paid or credited to the Owner.

## 12.5 CONSTRUCTION MANAGER'S RIGHT TO TERMINATE

12.5.1 Upon seven (7) Days' written notice to the Owner, the Construction Manager may terminate this Agreement if the Work has been stopped for a thirty (30) Day period through no fault of the Construction Manager for any of the following reasons:

12.5.1.1 under court order or order of other governmental authorities having jurisdiction;

12.5.1.2 as a result of the declaration of a national emergency or other governmental act during which, through no act or fault of the Construction Manager, materials are not available; or

12.5.1.3 suspension by the Owner for convenience pursuant to section 12.1.

12.5.2 In addition, upon seven (7) Days' written notice to the Owner, the Construction Manager may terminate this Agreement if the Owner:

12.5.2.1 fails to furnish reasonable evidence pursuant to section 4.2 that sufficient funds are available and committed for Project financing, or

12.5.2.2 assigns this Agreement over the Construction Manager's reasonable objection, or

12.5.2.3 fails to pay the Construction Manager in accordance with this Agreement and the Construction Manager has complied with section 10.6, or

12.5.2.4 otherwise materially breaches this Agreement.

12.5.3 Upon termination by the Construction Manager in accordance with this section, the Construction Manager shall be entitled to recover from the Owner payment for all Work executed and for any proven loss, cost, or expense in connection with the Work, including all demobilization costs plus reasonable Overhead and profit on Work not performed.

12.6 OBLIGATIONS ARISING BEFORE TERMINATION Even after termination pursuant to this article, the provisions of this Agreement still apply to any Work performed, payments made, events occurring, costs charged or incurred, or obligations arising before the termination date.

## ARTICLE 13 DISPUTE MITIGATION AND RESOLUTION

13.1 WORK CONTINUANCE AND PAYMENT Unless otherwise agreed in writing, the Construction Manager shall continue the Work and maintain the Schedule of the Work during any dispute mitigation or

resolution proceedings. If the Construction Manager continues to perform, the Owner shall continue to make payments in accordance with this Agreement.

**13.2 DIRECT DISCUSSIONS** If the Parties cannot reach resolution on a matter relating to or arising out of this Agreement, the Parties shall endeavor to reach resolution through good faith direct discussions between the Parties' representatives, who shall possess the necessary authority to resolve such matter and who shall record the date of first discussions. If the Parties' representatives are not able to resolve such matter within five (5) Business Days from the date of first discussion, the Parties' representatives shall immediately inform senior executives of the Parties in writing that resolution was not affected. Upon receipt of such notice, the senior executives of the Parties shall meet within five (5) Business Days to endeavor to reach resolution. If the dispute remains unresolved after fifteen (15) Days from the date of first discussion, the Parties shall be entitled to submit such matter to the binding dispute resolution procedures selected herein.

**13.3 BINDING DISPUTE RESOLUTION** If the matter is unresolved after submission of the matter to a mitigation procedure or to mediation, the Parties shall submit the matter to the binding dispute resolution procedure selected below:

Arbitration using:

- the current Construction Industry Arbitration Rules of the AAA and administered by the AAA;
- the current JAMS Engineering and Construction Arbitration Rules and Procedures and administered by JAMS; or
- the current arbitration rules of [ ] and administered by [ ].

Unless the Parties mutually agree otherwise in writing, if arbitration is selected as the binding dispute resolution procedure and this Agreement does not specify the arbitration rules to be utilized, then the arbitration shall be conducted using the current Construction Industry Arbitration Rules of the AAA and the arbitration shall be administered by the AAA.

Litigation in either the state or federal court having jurisdiction of the matter in the location of the Project.

**13.3.1 COSTS** The costs of any binding dispute resolution procedures and reasonable attorneys' fees shall be borne by the non-prevailing Party, as determined by the adjudicator of the dispute.

**13.3.2 VENUE** The venue of any binding dispute resolution procedure shall be in Boise, Idaho.

**13.3.3** Neither Party may commence arbitration if the claim or cause of action would be barred by the applicable statute of limitations had the claim or cause of action been filed in a state or federal court. Receipt of a demand for arbitration by the person or entity administering the arbitration shall constitute the commencement of legal proceedings for the purposes of determining whether a claim or cause of action is barred by the applicable statute of limitations. If, however, a state or federal court exercising jurisdiction over a timely filed claim or cause of action orders that the claim or cause of action be submitted to arbitration, the arbitration proceeding shall be deemed commenced as of the date the court action was filed, provided that the Party asserting the claim or cause of action files its demand for arbitration with the person or entity administering the arbitration within thirty (30) Days after the entry of such order.

**13.3.4** An award entered in an arbitration proceeding pursuant to this Agreement shall be final and binding upon the Parties, and judgment may be entered upon an award in any court having jurisdiction.

**13.4 MULTIPARTY PROCEEDING** All Parties necessary to resolve a matter agree to be parties to the same dispute resolution proceeding. Appropriate provisions shall be included in all other contracts relating to the Work to provide for the joinder or consolidation of such dispute resolution procedures.

## ARTICLE 14 MISCELLANEOUS

14.1 EXTENT OF AGREEMENT Except as expressly provided, this Agreement and each and every provision is for the exclusive benefit of the Parties and not the benefit of any third party. This Agreement represents the entire and integrated agreement between the Parties, and supersedes all prior negotiations, representations, or agreements, either written or oral.

14.2 ASSIGNMENT Except as to the assignment of proceeds, neither Party shall assign their interest in this Agreement without the written consent of the other Party. The terms and conditions of this Agreement shall be binding upon both Parties, their partners, successors, assigns, and legal representatives. Neither Party shall assign the Agreement as a whole without written consent of the other except that the Owner may assign the Agreement to a wholly owned subsidiary of the Owner when the Owner has fully indemnified the Construction Manager or to an institutional lender providing construction financing for the Project as long as the assignment is no less favorable to the Construction Manager than this Agreement. If such assignment occurs, the Construction Manager shall execute any consent reasonably required. In such event, the wholly owned subsidiary or lender shall assume the Owner's rights and obligations under the Contract Documents. If either Party attempts to make such an assignment, that Party shall nevertheless remain legally responsible for all obligations under this Agreement, unless otherwise agreed by the other Party.

14.3 GOVERNING LAW This Agreement shall be governed by the laws of the State of Idaho.

14.4 SEVERABILITY The partial or complete invalidity of any one or more provisions of this Agreement shall not affect the validity or continuing force and effect of any other provision.

14.5 NO WAIVER OF PERFORMANCE The failure of either Party to insist, in any one or more instances, on the performance of any of the terms, covenants, or conditions of this Agreement, or to exercise any of its rights, shall not be construed as a waiver or relinquishment of such term, covenant, condition, or right with respect to further performance or any other term, covenant, condition, or right.

14.6 TITLES The titles given to the articles are for ease of reference only and shall not be relied upon or cited for any other purpose.

14.7 JOINT DRAFTING The Parties expressly agree that this Agreement was jointly drafted, and that both had opportunity to negotiate its terms and to obtain the assistance of counsel in reviewing its terms prior to execution. Therefore, this Agreement shall be construed neither against nor in favor of either Party, but shall be construed in a neutral manner.

14.8 RIGHTS AND REMEDIES The Parties' rights, liabilities, responsibilities and remedies with respect to this Agreement, whether in contract, tort, negligence, or otherwise, shall be exclusively those expressly set forth in this Agreement.

14.9 ANTI-BOYCOTT AGAINST ISRAEL CERTIFICATION In accordance with Idaho Code Section 67-2346, Construction Manager, by entering into this Agreement, hereby certifies that it is not currently engaged in, or for the duration of this Agreement will not engage in, a boycott of goods or services from the State of Israel or territories under its control. This provision does not apply to the following agreements: 1.) Those with a total potential dollar value of less than \$100,000; or 2.) Those with any Consultant, Construction Manager, or Contractor having fewer than 10 employees.

14.10 CERTIFICATION REGARDING GOVERNMENT OF CHINA. In accordance with Idaho Code Section 67-2359, effective July 1, 2023, Constructor, by entering into this Agreement, hereby certifies that it is not currently owned or operated by the government of China and will not, for the duration of the Agreement, be owned or operated by the government of China.

## ARTICLE 15 CONTRACT DOCUMENTS

15.1 EXISTING CONTRACT DOCUMENTS The Contract Documents in existence at the time of execution of this Agreement are as follows:

- (a) Exhibit A: CM/GC Preconstruction Services Proposal, dated [REDACTED]
- (b) Exhibit B: CCDDC RFQ, dated [REDACTED]
- (c) Exhibit C: Construction Manager's Proposal to CCDDC RFQ, dated [REDACTED]
- (d) Drawings: [REDACTED]
- (e) Specifications: [REDACTED]
- (f) Addenda: [REDACTED]
- (g) Owner Provided information: [REDACTED]
- (h) Other: [REDACTED]

### 15.2 INTERPRETATION OF CONTRACT DOCUMENTS

15.2.1 The drawings and specifications are complementary. If Work is shown only on one but not on the other, the Construction Manager shall perform the Work as though fully described on both consistent with the Contract Documents and reasonably inferable.

15.2.2 In case of conflicts between the drawings and specifications, the specifications shall govern. In any case of omissions or errors in figures, drawings or specifications, the Construction Manager shall immediately submit the matter to the Owner and, if directed, to its Design Professional for clarification. The Owner's clarifications are final and binding on all Parties, subject to an equitable adjustment in Dates of Substantial or Final Completion or Contract Price or dispute mitigation and resolution.

15.2.3 Where figures are given, they shall be preferred to scaled dimensions.

15.2.4 Unless otherwise specifically defined in this Agreement, any terms that have well-known technical or trade meanings shall be interpreted in accordance with their well-known meanings.

15.2.5 ORDER OF PRECEDENCE In case of any inconsistency, conflict, or ambiguity among the Contract Documents, the documents shall govern in the following order: (a) Change Orders and written amendments to this Agreement; (b) the Agreement; (c) subject to subsection 15.2.2 the drawings, specifications, and addenda issued prior to the execution of this Agreement; (d) approved submittals; (e) information furnished by the Owner pursuant to subsection 3.15.4 or designated as a Contract Document in 15.1; (f) other documents listed in this Agreement. Among all the Contract Documents, the term or provision that is most specific or includes the latest date shall control. Information identified in one Contract Document and not identified in another shall not be considered to be a conflict or inconsistency. If any provision of this Agreement conflicts with or is inconsistent with any other provision of other Contract Documents, the provision of this Agreement governs, unless the other provision specifically refers to the provision it supersedes and replaces in this Agreement.

End of Agreement  
*Signatures appear on the following page.*

IN WITNESS WHEREOF, OWNER AND CONSTRUCTION MANAGER have executed this Agreement with an effective date as first written above.

**OWNER: Capital City Development Corporation**

BY: \_\_\_\_\_  
John Brunelle, Executive Director

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

Approved as to Form:

\_\_\_\_\_  
Mary Watson, General Counsel

**CONSTRUCTION MANAGER:** \_\_\_\_\_

BY: \_\_\_\_\_  
\_\_\_\_\_

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

**END OF DOCUMENT**

SAMPLE

Budget Info / For Office Use	
Fund/District	
Account	
Activity Code	
PO #	
Due Date	
Termination	