FIRCREST CITY COUNCIL
STUDY SESSION AGENDA

MONDAY, JULY 15, 2019 **COUNCIL CHAMBERS**
6:00 P.M. **FIRCREST CITY HALL, 115 RAMSDELL STREET**

1. Call to Order
2. Pledge of Allegiance
3. Roll Call
4. Agenda Modifications
5. Action Item: Motion – Alameda Grind and Overlay Project Bid Award and Contract Approval
6. Action Item: Resolution – KPG, P.S. Supplement #1 for Construction Management Services
7. Caselle Software Presentation and Discussion
8. Financial Policies Discussion
9. Pool and Bathhouse Bid Award Discussion
10. Adjournment

ITEM 5. Alameda Grind and Overlay Project Bid Award and Contract Approval

FROM: Jerry Wakefield, Public Works Director

RECOMMENDED MOTION: I move the City Council authorize the City Manager to award the contract for the Alameda Avenue Grind and Overlay project to Tony Lind Paving, LLC in the amount of $138,793.64 to prepare and execute the required contract documents, and to give the "Notice to Proceed" to commence construction of the project.

PROPOSAL: It is proposed that the City of Fircrest award the contract for the Alameda Avenue Grind and Overlay project to Tony Lind Paving, LLC in the amount of $138,793.64. By this action, the Council gives authorization to prepare and execute contract documents, and give the low bidder a "Notice to Proceed" with the work detailed in the plans and specifications.

FISCAL IMPACT: Three (3) bids were received, which ranged from $138,793.64 to $179,375.00. The engineer's estimate was $153,490.00. The project is being funding by a grant from the Puget Sound Regional Council (PSRC) and administered by WSDOT. The amount authorized for the construction phase of the contract is $153,490.00.

ADVANTAGE: This bid is within the budget and grant amounts for this project. The low bidder is responsive and comes recommended to do this project.

DISADVANTAGES: None identified.

ALTERNATIVES: Not to proceed with the project and return funding to PSRC.

HISTORY: This project received the PSRC grant based on the scope and estimated costs prepared in December 2016. Due to delays incurred by PSRC, this project was finally obligated for funding in 2019. The City received the obligation for funding the Preliminary Engineering in January 2019. KPG was selected as the consultant to prepare the design and construction management of the project in March 2019. The project was authorized for construction in June 2019. Three bids were received on June 28, 2019. All bids were reviewed and considered responsive.

KPG tabulated the bids and checked on the responsiveness and references of the bids. Attached is a copy of KPG letter of recommendation to award to Tony Lind Paving. KPG and WSDOT acknowledges that Tony Lind Paving is a qualified bidder and that this is a responsive bid for the Alameda Avenue Grind and Overlay project.

ATTACHMENTS: Certified Bid Tabulation
KPG Recommendation Letter

KPG
Interdisciplinary Design

City of Fircrest
Alameda Ave Grind & Overlay Project
STPUP-2991(003)

I reviewed the bid tabs from balanced bids
x 6-28-19
Daniel Clark, KPG

Bid Tab Analysis
June 28, 2019

Bid Item	Section	Item	Quantity	Unit	Unit Cost	Base Cost	Tony Lind Paving, LLC Unit Cost	Tony Lind Paving, LLC Base Cost	Puget Paving and Construction, Inc. Unit Cost	Puget Paving and Construction, Inc. Base Cost	Miles Resources, LLC Unit Cost	Miles Resources, LLC Base Cost
		SECTION 1 PREPARATION										
1	1-04	Minor Changes	1	EST	$ 4,000.00	$ 4,000.00	$4,000.00	$4,000.00	$4,000.00	$4,000.00	$4,000.00	$4,000.00
2	1-07	SPCC Plan	1	LS	$ 1,000.00	$ 1,000.00	$720.00	$720.00	$500.00	$500.00	$975.00	$975.00
3	1-09	Mobilization	1	LS	$ 16,000.00	$ 16,000.00	$18,396.04	$18,396.04	$35,285.00	$35,285.00	$21,600.00	$21,600.00
4	1-10	Project Temporary Traffic Control	1	LS	$ 20,000.00	$ 20,000.00	$23,184.00	$23,184.00	$22,500.00	$22,500.00	$43,050.00	$43,050.00
5	2-02	Adjust Water Valve to Finished Grade	4	EA	$ 750.00	$ 3,000.00	$780.00	$3,120.00	$1,000.00	$4,000.00	$700.00	$2,800.00
6	2-02	Adjust Sewer Manhole to Finished Grade	2	EA	$ 1,500.00	$ 3,000.00	$1,000.00	$2,000.00	$1,000.00	$2,000.00	$1,100.00	$2,200.00
7	2-02	Adjust Catch Basin to Finished Grade	1	EA	$ 1,250.00	$ 1,250.00	$1,000.00	$1,000.00	$800.00	$800.00	$1,100.00	$1,100.00
8	4-04	Crushed Surfacing Base Course	25	TON	$ 50.00	$ 1,250.00	$6.00	$150.00	$50.00	$1,250.00	$50.00	$1,250.00
9	5-04	Pavement Repair Excavation Incl. Haul	25	CY	$ 110.00	$ 2,750.00	$24.99	$624.75	$200.00	$5,000.00	$250.00	$6,250.00
10	5-04	Planing Bituminous Pavement	3380	SY	$ 5.00	$ 16,900.00	$6.10	$20,618.00	$6.00	$20,280.00	$5.60	$18,928.00
11	5-04	HMA Cl. 1/2 In. PG 64-22	420	TON	$ 140.00	$ 58,800.00	$104.73	$43,986.60	$140.00	$58,800.00	$109.50	$45,990.00
12	5-04	HMA Cl. 1/2 In. PG 64-22 for Pavement Repair	25	TON	$ 140.00	$ 3,500.00	$104.73	$2,618.25	$300.00	$7,500.00	$160.00	$4,000.00
13	7-05	Supply Sewer Manhole Ring and Cover	2	EA	$ 2,000.00	$ 4,000.00	$442.20	$884.40	$1,000.00	$2,000.00	$350.00	$700.00
14	8-01	Erosion/Water Pollution Control	1	LS	$ 2,500.00	$ 2,500.00	$2,976.00	$2,976.00	$1,500.00	$1,500.00	$3,000.00	$3,000.00
15	8-01	Inlet Protection	11	EA	$ 125.00	$ 1,375.00	$50.00	$550.00	$100.00	$1,100.00	$85.00	$935.00
16	8-20	Traffic Induction Loop	3	EA	$ 2,500.00	$ 7,500.00	$1,800.00	$5,400.00	$1,650.00	$4,950.00	$1,800.00	$5,400.00
17	8-21	Paint Line	1020	LF	$ 2.00	$ 2,040.00	$6.00	$6,120.00	$5.50	$5,610.00	$0.50	$510.00
18	8-22	Plastic Stop Line	15	LF	$ 25.00	$ 375.00	$42.00	$630.00	$40.00	$600.00	$10.00	$150.00
19	8-22	Plastic Traffic Letter	17	EA	$ 250.00	$ 4,250.00	$106.80	$1,815.60	$100.00	$1,700.00	$150.00	$2,550.00
		ESTIMATED CONSTRUCTION COST				**$153,490.00**		**$138,793.64**		**$179,375.00**		**$165,388.00**
		Contingency (xxx)				**$0.00**						
		TOTAL ESTIMATED CONSTRUCTION COST				**$153,490.00**						

KPG

July 01, 2019

Jerry Wakefield, PE
Director of Public Works
City of Fircrest
115 Ramsdell St
Fircrest, WA 98466

RE: **Alameda Ave Grind & Overlay Project**
WSDOT Fed Aid No.: STPUP-2991(003)

Dear Jerry,

On June 28, 2019, sealed bids were received and opened for the Alameda Avenue Grind & Overlay Project in City of Fircrest City Hall at 10:00 a.m. Three bids were submitted, with the results of the bids and Engineer's Estimate as follows:

Bidder's Name	**Bid**
Engineer's Estimate	$153,490.00
Tony Lind Paving, LLC	$138,793.64
Puget Paving and Construction, Inc.	$179,375.00
Miles Resources, LLC	$165,388.00

Tony Lind Paving, LLC is the apparent low bidder.

Contractor Qualifications

- Verified Bidder Responsibility Checklist and project documents.

- Exhibit 1: Bid Tabulations indicate that Tony Lind Paving, LLC has prepared the proposal correctly, without errors and projects as the low bid.

- Exhibit 2: Verification of Tony Lind Paving, LLC contractor's license from the Department of Labor and Industries; verification of Business Registrations; verification of Insurance of Coverage, verification of State Excise Tax Registration, verification that Tony Lind Paving, LLC is not on the State Tax Payment delinquent list.

- Exhibit 3: Tony Lind Paving, LLC is not on the State L&I and Federal "Debarred Contractors" List; verification that Tony Lind Paving, LLC is not on the State L&I Contractor Strike List.

KPG

- Exhibit 4: Reference Checks
    - City of Kirkland – Ralph Utley "They do a lot of our grind and overlays and we have always been very pleased with their work. Paperwork has never been an issue for them"
    - Boeing – Chet Williams – "We have worked with them on a lot of Boeing work and with municipalities and they do excellent work and we have never had a problem with them in any way."
    - City of Sumner – Andrew Leach – "They worked for us a couple years ago and I remember they were pretty good and we had no problems. We even had some adds on that project and they were good to work with. The project was not Federally Funded."
- Exhibit 5: Subcontractor verification

Based on the outcome of the bids and a check of the Contractor's qualifications, I recommend that the City of Fircrest award a construction contract to Tony Lind Paving, LLC in the amount of $138,793.64.

Please call me with any questions, (253) 777-5905

Sincerely,

Daniel Clark, KPG

Project Manager

Attachments: Bidder Responsibility Checklist and Project Documents

Exhibits 1-5

BIDDER'S CHECKLIST

Bidder must execute and return with submittal:

1. ✓ NON-COLLUSION DECLARATION (WSDOT FORM 272-036I)
2. ✓ BID PROPOSAL
3. ✓ LOCAL AGENCY PROPOSAL SIGNATURE PAGE (WSDOT FORM 272-036K)
4. ✓ LOCAL AGENCY PROPOSAL BOND (WSDOT FORM 252-001A)
5. ✓ LOCAL AGENCY CERTIFICATION FOR FEDERAL AID CONTRACTS
6. ✓ LOCAL AGENCY UNDERUTILIZED DISADVANTAGED BUSINESS ENTERPRISE UTILIZATION CERTIFICATION AND INSTRUCTIONS (WSDOT FORM 272-056U)
7. ✓ LOCAL AGENCY UNDERUTILIZED DISADVANTAGED BUSINESS ENTERPRISE WRITTEN CONFIRMATION DOCUMENT (WSDOT FORM 422-031U)
8. ✓ STATEMENT OF BIDDER'S QUALIFICATIONS
9. ✓ CERTIFICATION OF COMPLIANCE WITH WAGE PAYMENT STATUTES

After the Contract is awarded, execute:

1. LOCAL AGENCY CONTRACT (WSDOT FORM 272-006A)
2. LOCAL AGENCY PERFORMANCE BOND (WSDOT FORM 272-002)
3. LOCAL AGENCY PAYMENT BOND (WSDOT FORM 272-003)

Failure to return this Declaration as part of the bid proposal package will make the bid nonresponsive and ineligible for award.

NON-COLLUSION DECLARATION

I, by signing the proposal, hereby declare, under penalty of perjury under the laws of the United States that the following statements are true and correct:

1. That the undersigned person(s), firm, association or corporation has (have) not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with the project for which this proposal is submitted.
2. **That by signing the signature page of this proposal, I am deemed to have signed and to have agreed to the provisions of this declaration.**

NOTICE TO ALL BIDDERS

To report rigging activities call:

1-800-424-9071

The U.S. Department of Transportation (USDOT) operates the above toll-free "hotline" Monday through Friday, 8:00 a.m. to 5:00 p.m., eastern time. Anyone with knowledge of possible bid rigging, bidder collusion, or other fraudulent activities should use the "hotline" to report such activities.

The "hotline" is part of USDOT's continuing effort to identify and investigate highway construction contract fraud and abuse and is operated under the direction of the USDOT Inspector General. All information will be treated confidentially and caller anonymity will be respected.

SR

DOT Form 272-0364 EF
07/2011

Proposal

Alameda Avenue Grind & Overlay Project
Federal Aid No. STPUL-2991(003)

Note: Unit prices for all items, all extensions, and the total amount bid must be shown. Where conflict occurs between the unit price and the total amount specified for any item, the unit price shall prevail, and totals shall be corrected to conform thereto. Refer to Division 10 for definition of pay items. **For SCHEDULE A. sales tax shall be included in the various unit and lump sum prices, per section 1-07.2(1) and WAC 458-20-171.**

SCHEDULE A - ROADWAY IMPROVEMENTS

Item No.	Spec No.	Item Description	Qty	Unit	Unit Price	Amount
1	1-04	Minor Changes	1	EST	$ 4,000.00	$ 4,000.00
2	1-07	SPCC Plan	1	LS	$720.00	$720.00
3	1-09	Mobilization	1	LS	$18,396.04	$18,396.04
4	1-10	Project Temporary Traffic Control	1	LS	$23,184.00	$23,184.00
5	2-02	Adjust Water Valve to Finished Grade	4	EA	$780.00	$3,120.00
6	2-02	Adjust Sewer Manhole to Finished Grade	2	EA	$1,000.00	$2,000.00
7	2-02	Adjust Catch Basin to Finished Grade	1	EA	$1,000.00	$1,000.00
8	4-04	Crushed Surfacing Base Course	25	TON	$6.00	$150.00
9	5-04	Pavement Repair Excavation Incl. Haul	25	CY	$24.99	$624.75
10	5-04	Planing Bituminous Pavement	3380	SY	$6.10	$20,618.00
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14	8-01	Erosion/Water Pollution Control	1	LS	$2,976.00	$2,976.00
15	8-01	Inlet Protection	11	EA	$50.00	$550.00
16	8-20	Traffic Induction Loop	3	EA	$1,800.00	$5,400.00

Proposal

Alameda Avenue Grind & Overlay Project
Federal Aid No. STPUL-2991(003)

Note: Unit prices for all items, all extensions, and the total amount bid must be shown. Where conflict occurs between the unit price and the total amount specified for any item, the unit price shall prevail, and totals shall be corrected to conform thereto. Refer to Division 10 for definition of pay items. **For SCHEDULE A. sales tax shall be included in the various unit and lump sum prices, per section 1-07.2(1) and WAC 458-20-171.**

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Item No.	Spec No.	Item Description	Qty	Unit	Unit Price	Amount
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18	8-22	Plastic Stop Line	15	LF	$42.00	$630.00
19	8-22	Plastic Traffic Letter	17	EA	$106.80	$1,815.60

Total Schedule A .....$ $138,793.64

Provided to Builders Exchange of WA, Inc. For usage Conditions Agreement see www.bxwa.com. Always Verify Seal

Local Agency Proposal - Signature Page

The bidder is hereby advised that by signature of this proposal he/she is deemed to have acknowledged all requirements and signed all certificates contained herein.
A proposal guaranty in an amount of five percent (5%) of the total bid, based upon the approximate estimate of quantities at the above prices and in the form as indicated below is attached hereto:

Cash	☐	In the Amount of _____
Cashier's Check	☐	_____ Dollars
Certified Check	☐	($_____) Payable to the State Treasurer
Proposal Bond	☒	In the Amount of 5% of the Bid

Receipt is hereby acknowledged of addendum(s) No.(s) 1 _____ & _____

Signature of Authorized Official(s)

Tony Lind

Firm Name: Tony Lind Paving, LLC

Address: 23048 172nd Ave SE
Kent, WA 98042

State of Washington Contractor's License No. TONYLLP922J9

Federal ID No. 26-2186022

Note:

(1) This proposal form is not transferable and any alteration of the firm's name entered hereon without prior permission from the City of Fircrest will be cause for considering the proposal irregular and subsequent rejection of the bid.

(2) Please refer to section 1-02.6 of the standard specifications, re: "Preparation of Proposal," or "Article 4" of the Instruction to Bidders for building construction jobs.

SR

DOT Form 272-036K EF
07/2011

Provided to Builders Exchange of WA, Inc. For usage Conditions Agreement see www.bxwa.com Always Verify Spec

Local Agency Proposal Bond

KNOW ALL MEN BY THESE PRESENTS, That we, Tony Lind Paving LLC

of Kent, WA as principal, and the Merchants National Bonding, Inc.

a corporation duly organized under the laws of the state of Iowa, and

authorized to do business in the State of Washington, as surety, are held and firmly bound unto the State of Washington in the full and penal sum of five (5) percent of the total amount of the bid proposal of said principal for the work hereinafter described, for the payment of which, well and truly to be made, we bind our heirs, executors, administrators and assigns, and successors and assigns, firmly by these presents.

The condition of this bond is such, that whereas the principal herein is herewith submitting his or its sealed proposal for the following highway construction, to wit:

ALAMEDA AVENUE GRIND & OVERLAY, FEDERAL AID NO. STPUL-2991 (003)

said bid and proposal, by reference thereto, being made a part hereof.

NOW, THEREFORE, If the said proposal bid by said principal be accepted, and the contract be awarded to said principal, and if said principal shall duly make and enter into and execute said contract and shall furnish bond as required by the *within a period of twenty (20) days from and after said award, exclusive of the day of such award, then this obligation shall be null and void, otherwise it shall remain and be in full force and effect. *City of Fircrest

IN TESTIMONY WHEREOF, The principal and surety have caused these presents to be signed and sealed this 28th day of June, 2019.

Tony Lind Paving LLC

(Principal)

Merchants National Bonding, Inc.

(Surety)

(Attorney-in-fact) Heather L. Allen

SR

DOT Form 272-001A EF
07/2011

Provided to Builders Exchange of WA, Inc. For usage Conditions Agreement see www.bxwa.com - Always Verify Scal

MERCHANTS
BONDING COMPANY™

POWER OF ATTORNEY

Know All Persons By These Presents, that MERCHANTS BONDING COMPANY (MUTUAL) and MERCHANTS NATIONAL BONDING, INC., both being corporations of the State of Iowa (herein collectively called the "Companies") do hereby make, constitute and appoint, individually,

Aliceon A Keltner; Annelies M Richie; Brandon K Bush; Brent E Heilesen; Carley Espiritu; Christopher Kinyon; Cynthia L Jay; Eric A Zimmerman; Erica E Mosley; Heather L Allen; Holli Albers; James B Binder; Jamie L Marques; Karen C Swanson; Kyle Joseph Howat; Tamara A Ringeisen

their true and lawful Attorney(s)-in-Fact, to sign its name as surety(ies) and to execute, seal and acknowledge any and all bonds, undertakings, contracts and other written instruments in the nature thereof, on behalf of the Companies in their business of guaranteeing the fidelity of persons, guaranteeing the performance of contracts and executing or guaranteeing bonds and undertakings required or permitted in any actions or proceedings allowed by law.

This Power-of-Attorney is granted and is signed and sealed by facsimile under and by authority of the following By-Laws adopted by the Board of Directors of Merchants Bonding Company (Mutual) on April 23, 2011 and amended August 14, 2015 and adopted by the Board of Directors of Merchants National Bonding, Inc., on October 16, 2015.

"The President, Secretary, Treasurer, or any Assistant Treasurer or any Assistant Secretary or any Vice President shall have power and authority to appoint Attorneys-in-Fact, and to authorize them to execute on behalf of the Company, and attach the seal of the Company thereto, bonds and undertakings, recognizances, contracts of indemnity and other writings obligatory in the nature thereof."

"The signature of any authorized officer and the seal of the Company may be affixed by facsimile or electronic transmission to any Power of Attorney or Certification thereof authorizing the execution and delivery of any bond, undertaking, recognizance, or other suretyship obligations of the Company, and such signature and seal when so used shall have the same force and effect as though manually fixed."

In connection with obligations in favor of the Florida Department of Transportation only, it is agreed that the power and aut hority hereby given to the Attorney-in-Fact includes any and all consents for the release of retained percentages and/or final estimates on engineering and construction contracts required by the State of Florida Department of Transportation. It is fully understood that consenting to the State of Florida Department of Transportation making payment of the final estimate to the Contractor and/or its assignee, shall not relieve this surety company of any of its obligations under its bond.

In connection with obligations in favor of the Kentucky Department of Highways only, it is agreed that the power and authority hereby given to the Attorney-in-Fact cannot be modified or revoked unless prior written personal notice of such intent has been given to the Commissioner-Department of Highways of the Commonwealth of Kentucky at least thirty (30) days prior to the modification or revocation.

In Witness Whereof, the Companies have caused this instrument to be signed and sealed this 20th day of May , 2019 .

MERCHANTS NATIONAL BONDING, INC. INCORPORATED -o- 2003

MERCHANTS BONDING COMPANY (MUTUAL) INCORPORATED -o- 1933

MERCHANTS BONDING COMPANY (MUTUAL)
MERCHANTS NATIONAL BONDING, INC.

By Larry Taylor
President

STATE OF IOWA
COUNTY OF DALLAS ss.
On this this 20th day of May 2019 , before me appeared Larry Taylor, to me personally known, who being by me duly sworn did say that he is President of MERCHANTS BONDING COMPANY (MUTUAL) and MERCHANTS NATIONAL BONDING, INC.; and that the seals affixed to the foregoing instrument are the Corporate Seals of the Companies; and that the said instrument was signed and sealed in behalf of the Companies by authority of their respective Boards of Directors.

NOTARIAL SEAL IOWA
ALICIA K. GRAM
Commission Number 767430
My Commission Expires
April 1, 2020

Alicia K. Gram
Notary Public

(Expiration of notary's commission does not invalidate this instrument)

I, William Warner, Jr., Secretary of MERCHANTS BONDING COMPANY (MUTUAL) and MERCHANTS NATIONAL BONDING, INC., do hereby certify that the above and foregoing is a true and correct copy of the POWER-OF-ATTORNEY executed by said Companies, which is still in full force and effect and has not been amended or revoked.

In Witness Whereof, I have hereunto set my hand and affixed the seal of the Companies on this 28th day of June , 2019 .

MERCHANTS NATIONAL BONDING, INC. INCORPORATED -o- 2003

MERCHANTS BONDING COMPANY (MUTUAL) INCORPORATED -o- 1933

William Warner Jr.
Secretary

POA 0018 (3/17)

Local Agency Certification for Federal-Aid Contracts

The prospective participant certifies by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

This certification is material representation of the fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each failure.

The prospective participant also agrees by submitting his or her bid or proposal that he or she shall require that the language of this certification be included in all lower tier subcontracts, which exceed $100,000 and that all such subrecipients shall certify and disclose accordingly.

SR

DOT Form 272-040A EF
07/2011

Washington State Department of Transportation

Underutilized Disadvantaged Business Enterprise Utilization Certification

To be eligible for Award of this Contract the Bidder shall fill out and submit, as a supplement to its sealed Bid Proposal, an Underutilized Disadvantaged Business Enterprise (UDBE) Utilization Certification. The Contracting Agency shall consider as non-responsive and shall reject any Bid Proposal that does not contain a UDBE Utilization Certification which properly demonstrates that the Bidder will meet the UDBE participation requirements in one of the manners provided for in the proposed Contract. **Refer to the instructions on Page 2 when filling out this form or the Bid may be rejected. An example form has been provided on Page 3.** The successful Bidder's UDBE Utilization Certification shall be deemed a part of the resulting Contract.

Box 1: Tony Lind Paving, LLC certifies that the UDBE firms listed below have been contacted regarding participation on this project. If this Bidder is successful on this project and is awarded the Contract, it shall assure that subcontracts or supply agreements are executed with named UDBEs. (If necessary, use additional sheets.)

Box 2: ALAMEDA AVENUE GRIND & OVERLAY

Column 1 **Name of UDBE** (See instructions)	Column 2 **Project Role** (See instructions)	Column 3 **Description of Work** (See instructions)	Column 4 **Dollar Amount Subcontracted to UDBE** (See instructions)	Column 5 **Dollar Amount to be Applied Towards Goal** (See instructions)
Advanced Government Services, Inc.	Subcontractor	Traffic Control	$19,000.00	$7,000.00
G & G Incorporated	Subcontractor	Electrical	$4,500.00	$4,500.00

Underutilized Disadvantaged Business Enterprise Condition of Award Contract Goal $11,103.49 Box 3

Total UDBE Commitment Dollar Amount $11,500.00 Box 4

5 ☐ By checking Box 5 the Bidder is stating that their attempts to solicit sufficient UDBE participation to meet the COA Contract goal has been unsuccessful and good faith effort will be submitted in accordance with Section 1-02.9 of the Contract

DOT Form 272-056U
Revised 02/2018

Washington State Department of Transportation

Underutilized Disadvantaged Business Enterprise (UDBE) Written Confirmation Document

See Contract Provisions: UDBE Document Submittal Requirements
Disadvantaged Business Enterprise Participation

THIS FORM SHALL ONLY BE SUBMITTED TO A UDBE THAT IS LISTED ON THE CONTRACTOR'S UNDERUTILIZED DISADVANTAGED BUSINESS ENTERPRISE UTILIZATION CERTIFICATION.

THE CONTRACTOR SHALL COMPLETE PART A PRIOR TO SENDING TO THE UDBE.

PART A: To be completed by the bidder

The entries below shall be consistent with what is shown on the Bidder's Underutilized Disadvantaged Business Enterprise Utilization Certification. Failure to do so will result in Bid rejection.

Contract Title: Alameda Ave Grind and Overlay

Bidder's Business Name: Tony Lind Paving, LLC

UDBE's Business Name: Advance Government Services

Description of UDBE's Work: Traffic Control

Dollar Amount to be Applied Towards UDBE Goal: $7,000

Dollar Amount to be Subcontracted to UDBE*: _____
*Optional Field

PART B: To be completed by the Underutilized Disadvantaged Business Enterprise

As an authorized representative of the Underutilized Disadvantaged Business Enterprise, I confirm that we have been contacted by the Bidder with regard to the referenced project for the purpose of performing the Work described above. If the Bidder is awarded the Contract, we will enter into an agreement with the Bidder to participate in the project consistent with the information provided in Part A of this form.

Name (printed): Arti O'Brien

Signature: Arti O'Brien

Title: President and Owner

Address: 8644 Pacific Avenue,
Tacoma WA, 98444

Date: 6/27/2019

Washington State Department of Transportation

Underutilized Disadvantaged Business Enterprise (UDBE) Written Confirmation Document

See Contract Provisions: *UDBE Document Submittal Requirements*
Disadvantaged Business Enterprise Participation

THIS FORM SHALL ONLY BE SUBMITTED TO A UDBE THAT IS LISTED ON THE CONTRACTOR'S UNDERUTILIZED DISADVANTAGED BUSINESS ENTERPRISE UTILIZATION CERTIFICATION.

THE CONTRACTOR SHALL COMPLETE PART A PRIOR TO SENDING TO THE UDBE.

PART A: To be completed by the bidder

The entries below shall be consistent with what is shown on the Bidder's Underutilized Disadvantaged Business Enterprise Utilization Certification. Failure to do so will result in Bid rejection.

Contract Title: Alameda Ave Grind & Overlay

Bidder's Business Name: Tony Lind Paving, LLC

UDBE's Business Name: Gi Gi INC

Description of UDBE's Work: Electrical

Dollar Amount to be Applied Towards UDBE Goal: $4,500.00

Dollar Amount to be Subcontracted to UDBE*: $4,500.00
*Optional Field

PART B: To be completed by the Underutilized Disadvantaged Business Enterprise

As an authorized representative of the Underutilized Disadvantaged Business Enterprise, I confirm that we have been contacted by the Bidder with regard to the referenced project for the purpose of performing the Work described above. If the Bidder is awarded the Contract, we will enter into an agreement with the Bidder to participate in the project consistent with the information provided in Part A of this form.

Name (printed): Bonnie Graham

Signature:

Title: President

Address: 18044 SE 224
Kent, WA
98042

Date: 6/28/2019

DOT Form 422-031U

CITY OF FIRCREST
STATEMENT OF BIDDER'S QUALIFICATIONS

Contractor Name: Tony Lind Paving, LLC Contact: Kevin Christoperson

Business Address: 23048 172nd Ave SE Kent, WA 98042

Business phone: 253-630-7612 Fax: 253-630-7614

Number of years the Contractor has been engaged in the construction business under the present firm name: 22

Describe the general character of work performed by your company: Grading, HMA paving Concrete, General construction

List five projects of a similar nature which Contractor has completed within the last 10 years. Include contract amount and contact information for references:

Project Name	Amount	Owner/Agency	Contact	Phone	Year Completed
JT-279508	$19,500.00	Kirkland	Ralph Utley	360.739.3679	2019
E.743972	$94,777.00	Fife	Haley McLaughlin	206.347.8776	2017
Boeing DC-9	$1,379,000.00	Boeing	Chet Williams	206.713.0984	2018
Boeing DC-9	$1,101,000.00	Boeing	Chet Williams	206.713.0984	2018
Thompson Valley Rd.	$179,000.00	Sumner	Andrew Leach	253.299.5711	2017

See the supplemental bidder qualification requirements specified in Special Provision Section 1-02.1.

List major equipment anticipated to be used on this project; indicate whether Contractor-owned or to be leased from others:

HMA Pavers (owned + Leased) Steel wheel Rollers (owned & leased)
End dump trucks (owned & Leased)

Bank reference(s): Bank of America

Washington State Contractor Registration No.: TONYLLP922J9

Uniform Business Identification No.: 602-813-830

I certify that other contracts now in progress or hereafter obtained will not interfere with timely performance of the City of Fircrest project should I become the successful bidder.

Authorized Signature: Tony Lind

Print Name: Tony Lind Title: Owner, Member Manager

Certification of Compliance with Wage Payment Statutes

The bidder hereby certifies that, within the three-year period immediately preceding the bid solicitation date (**June 7th, 2019**), that the bidder is not a "willful" violator, as defined in RCW 49.48.082, of any provision of chapters 49.46, 49.48, or 49.52 RCW, as determined by a final and binding citation and notice of assessment issued by the Department of Labor and Industries or through a civil judgment entered by a court of limited or general jurisdiction.

I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Tony Lind Paving, LLC
Contractor

Signature of Authorized Official*

Tony Lind
Printed Name

Owner, Member Manager
Title

06/28/2019	Kent	WA
Date	City	State

Check one:

[ ] Individual [ ] Partnership [ ] Joint Venture [x] Corporation

State of Incorporation, or if not a corporation, State where business entity was formed:
Washington

If a Co-partnership, give firm name under which business is transacted:

_____

* If a corporation, proposal must be executed in the corporate name by the president or vice-president (or any other corporate officer accompanied by evidence of authority to sign). If a co-partnership, proposal must be executed by a partner.

PRIME CONTRACTOR

Tony Lind Paving

Washington State Department of
Labor & Industries

TONY LIND PAVING LLC

Owner or tradesperson
Principals
LIND, ANTHONY
AESOPH, PARTNER/MEMBER
Doing business as
TONY LIND PAVING LLC

23048 172ND AVE SE
KENT, WA 98042
253-630-7612
KING County

WA UBI No.
602 813 830

Business type
Limited Liability Company

Certifications & Endorsements

OMWBE Certifications
No active certifications exist for this business.

Apprentice Training Agent
Not allowed to have apprentices.

License

Verify the contractor's active registration / license / certification (depending on trade) and any past violations.

Construction Contractor

Active.
Meets current requirements.

License specialties
GENERAL
License no.
TONYLLP922J9
Effective — expiration
04/29/2008— 05/01/2020

Bond
Developers Surety & Indem Co
Bond account no.
674040C

$12,000.00

Received by L&I
11/01/2017

Effective date
11/19/2017
Expiration date
Until Canceled

Bond history

Insurance
Union Insurance Company
Policy no.
CPA603236121

$1,000,000.00

Received by L&I
12/21/2018

Effective date
01/01/2019
Expiration date
01/01/2020

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Insurance history

Savings
No savings accounts during the previous 6 year period.

Lawsuits against the bond or savings
No lawsuits against the bond or savings accounts during the previous 6 year period.

L&I Tax debts
No L&I tax debts are recorded for this contractor license during the previous 6 year period, but some debts may be recorded by other agencies.

License Violations
No license violations during the previous 6 year period.

Workers' comp

Do you know if the business has employees? If so, verify the business is up-to-date on workers' comp premiums.

L&I Account ID
579,346-02

Account is current.

Doing business as
TONY LIND PAVING

Estimated workers reported
Quarter 1 of Year 2019 "11 to 20 Workers"

L&I account contact
T3 / DAVID PRYOR (360)902-4804 - Email: PRYD235@lni.wa.gov

Public Works Requirements

Verify the contractor is eligible to perform work on public works projects.

Required Training– Effective July 1, 2019
Exempt from this requirement.

Contractor Strikes
No strikes have been issued against this contractor.

Contractors not allowed to bid
No debarments have been issued against this contractor.

Workplace safety and health

No inspections during the previous 6 year period.

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Labor & Industries

Contractor Strike List

This is a list of contractors who have one or more strikes (violations) under prevailing wage law, contractor registration law, industrial insurance law, or apprenticeship law. You can search and filter this list using the options presented below.

Company Name: Tony Lind Paving, LLC Principal:

WA UBI Number: 602 813 830 License Number: TONYLLP922J9

RCW: All

From: MM/DD/YYYY To: MM/DD/YYYY

Apply Filters Reset

Download all strike data

Show 25 per page
Showing 0 records
FirstPreviousNextLast

Company Name	UBI	License	Principals	RCW	Effective Date

There are no records that match your search criteria.

Show 25 per page
Showing 0 records
FirstPreviousNextLast

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Washington State Department of Labor & Industries

Debarred Contractors List

A debarred contractor may not bid on, or have a bid considered on, any public works contract. You can search and filter this list using the options presented below.

Company Name: Tony Lind Paving, LLC
WA UBI Number: 602 813 830
License Number:
Principal:
RCW: All
From: MM/DD/YYYY To: 06/28/2019
Penalty Due:
All
Wage Due:
All
Apply Filters Reset
Download all debarment data
Show 25 per page
Showing 0 records
FirstPreviousNextLast

Company Name	UBI	License	Principals	Status	RCW	Debar Begins	Debar Ends	Penalty Due	Wages Due

There are no records that match your search criteria.

Show 25 per page
Showing 0 records
FirstPreviousNextLast

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Washington State Department of Revenue

Services Business Lookup TONY LIND PAVING LLC

Tax Information

New search Back to results

Entity name:	TONY LIND PAVING LLC
Entity type:	Limited Liability Company
Excise tax account ID #:	602-813-830
UBI #:	602-813-830
Opened:	April 1, 2008
Closed:	
Mailing address:	23048 172ND AVE SE KENT WA 98042-4713
NAICS:	237310 - Highway, Street, and Bridge Construction

Reseller Permit(s)

Filter

Reseller permit #	Status	Effective date	Expiration date
A16765719	Active	Jan-01-2018	Dec-31-2019
A16765717	Expired	Jan-01-2016	Dec-31-2017
A16765715	Expired	Jan-01-2014	Dec-31-2015
A16765713	Expired	Jan-01-2012	Dec-31-2013

Business License Locations

Filter

Business name	License account ID #	Location address
TONY LIND PAVING	602813830-001-0001	23048 172ND AVE SE KENT WA 98042-4713

The Business Lookup information is updated nightly. Search date and time: 6/28/2019 12:13:16 PM

Working together to fund Washington's future

SUBCONTRACTORS

Washington State Department of
Labor & Industries

ADVANCED GOVERNMENT SERV INC

Owner or tradesperson
Principals
O'Brien, John R, MEMBER

O'Brien, Arti D, MEMBER

8644 Pacific Ave
TACOMA, WA 98444
253-531-9782
PIERCE County

Doing business as
ADVANCED GOVERNMENT SERV INC

WA UBI No.
603 585 454

Business type
Corporation

Governing persons
ARTI
D
OBRIEN
JOHN R OBRIEN;

Certifications & Endorsements

OMWBE Certifications
Disadvantaged Business Enterprise (DBE)
Minority/Women Business Enterprise (MWBE)

Apprentice Training Agent
Not allowed to have apprentices.

License

Verify the contractor's active registration / license / certification (depending on trade) and any past violations.

Construction Contractor

Active.
Meets current requirements.

License specialties
GENERAL

License no.
ADVANGS834R9

Effective — expiration
12/29/2017— 12/29/2019

Bond

Western Surety Co
Bond account no.
63026730

$12,000.00

Received by L&I
12/29/2017

Effective date
06/02/2017

Expiration date
Until Canceled

Insurance

WESTERN NATIONAL MUTUAL INS
Policy no.

$1,000,000.00

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CCP1157687-02

Received by L&I
12/31/2018

Effective date
01/01/2019
Expiration date
01/01/2020

Insurance history

Savings
No savings accounts during the previous 6 year period.

Lawsuits against the bond or savings
No lawsuits against the bond or savings accounts during the previous 6 year period.

L&I Tax debts
No L&I tax debts are recorded for this contractor license during the previous 6 year period, but some debts may be recorded by other agencies.

License Violations
No license violations during the previous 6 year period.

Workers' comp

Do you know if the business has employees? If so, verify the business is up-to-date on workers' comp premiums.

L&I Account ID
254,819-01

Account is current.

Doing business as
ADVANCED GOVERNMENT SERVICES
Estimated workers reported
Quarter 1 of Year 2019 "31 to 50 Workers"
L&I account contact
T4 / STEPHEN TASSONI (360)902-4819 - Email: TASS235@lni.wa.gov

Public Works Requirements

Verify the contractor is eligible to perform work on public works projects.

Required Training– Effective July 1, 2019
Exempt from this requirement.
Completed the training on 1/18/2019

Contractor Strikes
No strikes have been issued against this contractor.

Contractors not allowed to bid
No debarments have been issued against this contractor.

Workplace safety and health

No inspections during the previous 6 year period.

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Business & Contact Information

BUSINESS NAME	**Advanced Government Services Inc,** DBA **Advanced Government Services Inc**
OWNER	**Arti O'Brien**
ADDRESS	**8644 PACIFIC AVENUE** **Tacoma, WA 98444** Map This Address
PHONE	**206-455-4980**
FAX	**425-427-6332**
EMAIL	**arti@advancedgovernmentservices.com**
COUNTY	**Pierce (WA)**

Certification Information

CERTIFYING AGENCY	**Washington State Office of Minority & Women's Business Enterprises**
CERTIFICATION TYPE	**MWBE - Minority/Women Business Enterprise**
CERTIFIED BUSINESS DESCRIPTION	**Full service Flagging and traffic control services including the installation and removal of Class A and Class B Signs. Computer generated traffic plans. Rental and sales of new and used traffic control equipment including: NCHRP 350 crash worthy signs and stands, arrow boards, trailer & trucks, PCM boards, light towers, traffic control vehicles with flashing beacon, pilot cars, and TMA. In store and online retail sales of safety apparel including gloves, safety glasses, hard hats, vests/jackets, raingear, parkas and light wands.**

Commodity Codes

Code	Description
NAICS 561990	Flagging (i.e., traffic control) services
NAICS 237310	Sign erection, highway, road, street, or bridge
NAICS 448140	Unisex clothing stores
NAICS 452319	Variety stores
NAICS 453310	Used merchandise stores

NAICS 454111	Web retailers
NAICS 532310	General rental centers

Additional Information

UBI #	**603585454**
CERTIFICATION NUMBER	**M4F0024875**

Washington State Department of
Labor & Industries

Debarred Contractors List

A debarred contractor may not bid on, or have a bid considered on, any public works contract. You can search and filter this list using the options presented below.

Company Name:
WA UBI Number: 603 585 454
License Number:
Principal:
RCW: All
From: MM/DD/YYYY To: MM/DD/YYYY
Penalty Due:
All
Wage Due:
All
Apply Filters Reset
Download all debarment data
Show 25 per page
Showing 0 records
FirstPreviousNextLast

Company Name	UBI	License	Principals	Status	RCW	Debar Begins	Debar Ends	Penalty Due	Wages Due

There are no records that match your search criteria.

Show 25 per page
Showing 0 records
FirstPreviousNextLast

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Contractor Strike List

This is a list of contractors who have one or more strikes (violations) under prevailing wage law, contractor registration law, industrial insurance law, or apprenticeship law. You can search and filter this list using the options presented below.

Company Name: Principal:

WA UBI Number: 603 585 454 License Number:

RCW: All

From: MM/DD/YYYY To: MM/DD/YYYY

Apply Filters Reset

Download all strike data

Show 25 per page
Showing 0 records
FirstPreviousNextLast

Company Name	UBI	License	Principals	RCW	Effective Date

There are no records that match your search criteria.

Show 25 per page
Showing 0 records
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Washington State Department of
Labor & Industries

G & G CORPORATION

Owner or tradesperson
Principals
GRAHAM, BONNIE J, PRESIDENT

McDowell, Kamie, VICE PRESIDENT

GRAHAM, BONNIE, AGENT

TENORIO, SIRENA T
(End: 08/01/2014)

GERARD, CHARLES
(End: 08/01/2014)

GRAHAM, PAUL D
(End: 08/01/2014)

18044 SE 224TH ST
KENT, WA 98042
425-432-1325
KING County

Doing business as
G & G CORPORATION

WA UBI No.
601 381 635

Business type
Corporation

Parent company
G & G INCORPORATED

Certifications & Endorsements

OMWBE Certifications
Disadvantaged Business Enterprise (DBE)
Women Business Enterprise (WBE)

Apprentice Training Agent
Not allowed to have apprentices.

License

Verify the contractor's active registration / license / certification (depending on trade) and any past violations.

Electrical Contractor

Active.
Meets current requirements.

License specialties
GENERAL

License no.
GGCOR081MU**

Effective — expiration
07/31/1992— 08/02/2020

Designated administrator
GERARD, DONALD S

Active.
Meets current requirements.

License type
Electrical Administrator

License no.
GERARDS257R6

Bond

Help us improve

No bond accounts during the previous 6 year period.

Savings

(in lieu of bond)
Received by L&I
12/22/2004
Release date
N/A
Savings account ID
253553002630

$4,000.00
Effective date
12/21/2004
Impaired date
N/A

(in lieu of bond)
Received by L&I
10/26/2004
Release date
N/A
Savings account ID
6033431628

$4,000.00
Effective date
09/25/1997
Impaired date
11/01/2004

(in lieu of bond)
Received by L&I

Release date
N/A
Savings account ID
0220026694

$4,000.00
Effective date
07/31/1992
Impaired date
N/A

License Violations

Infraction no.
ESHAU01006
Issue date
09/22/2015
Violation city
KENT
Type of violation
ELECTRICAL CITATION
Description
Failing to request an inspection within 3 business days after completion of the installation or 1 business day after energizing, whichever occurs first as referenced in WAC 296-46B-901. Failing to request an inspection for EWPS- 2402784E, 2402802E, 2402809E, 2402814E, 2402819E & 2402831E.

Satisfied
RCW/WAC
19.28.101 RCW
Violation amount
$250.00

Infraction no.
EMIND00257
Issue date
08/05/2014
Violation city
Kent
Type of violation
ELECTRICAL CITATION
Description
Employing an individual for the purposes of chapter 19.28 RCW who does not possess a valid certificate of competency or training certificate to do electrical work.

Satisfied
RCW/WAC
19.28.271 RCW
Violation amount
$250.00

Workers' comp

Do you know if the business has employees? If so, verify the business is up-to-date on workers' comp premiums.

L&I Account ID
823,490-00

Account is current.

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Doing business as
G & G INCORPORATED
Estimated workers reported
Quarter 1 of Year 2019 "4 to 6 Workers"
L&I account contact
T5 / LINDSAY BARLOW (360)902-4735 - Email: BLIN235@lni.wa.gov

Public Works Requirements

Verify the contractor is eligible to perform work on public works projects.

Required Training– Effective July 1, 2019
Exempt from this requirement.

Contractor Strikes
No strikes have been issued against this contractor.

Contractors not allowed to bid
No debarments have been issued against this contractor.

Workplace safety and health

Check for any past safety and health violations found on jobsites this business was responsible for.

Inspection results date
09/16/2014
Violations
Inspection no.
317401362
Location
120th Ave and NE 6th Street
Bellevue, WA 98005

Inspection results date
09/10/2013
Violations
Inspection no.
316868058
Location
120th Ave NE and NE 6th St
Bellevue, WA 98005

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Debarred Contractors List

A debarred contractor may not bid on, or have a bid considered on, any public works contract. You can search and filter this list using the options presented below.

Company Name:
WA UBI Number: 601 381 635
License Number:
Principal:
RCW: All
From: MM/DD/YYYY To: MM/DD/YYYY
Penalty Due:
All
Wage Due:
All
Apply Filters Reset
Download all debarment data
Show 25 per page
Showing 0 records
FirstPreviousNextLast

Company Name	UBI	License	Principals	Status	RCW	Debar Begins	Debar Ends	Penalty Due	Wages Due

There are no records that match your search criteria.

Show 25 per page
Showing 0 records
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Washington State Department of Labor & Industries

Contractor Strike List

This is a list of contractors who have one or more strikes (violations) under prevailing wage law, contractor registration law, industrial insurance law, or apprenticeship law. You can search and filter this list using the options presented below.

Company Name: Principal:

WA UBI Number: 601 381 635 License Number:

RCW: All

From: MM/DD/YYYY To: MM/DD/YYYY

Apply Filters Reset

Download all strike data

Show 25 per page
Showing 0 records
FirstPreviousNextLast

Company Name	UBI	License	Principals	RCW	Effective Date

There are no records that match your search criteria.

Show 25 per page
Showing 0 records
FirstPreviousNextLast

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Business & Contact Information

BUSINESS NAME	**G & G Incorporated,** DBA **G & G Incorporated**
OWNER	**Ms. Bonnie Graham**
ADDRESS	**18044 SE 224TH ST** **Kent, WA 98042** Map This Address
PHONE	**425-432-1325**
FAX	**425-432-8155**
EMAIL	**gginc1992@aol.com**
COUNTY	**King (WA)**

Certification Information

CERTIFYING AGENCY	**Washington State Office of Minority & Women's Business Enterprises**
CERTIFICATION TYPE	**DBE - Disadvantaged Business Enterprise**
CERTIFIED BUSINESS DESCRIPTION	**Electrical contracting, traffic signals, loops, street lighting, road sign erection, pole removal and installation, concrete cutting for traffic signal work.**

Commodity Codes

Code	Description
NAICS 237310	Concrete paving (i.e., highway, road, street, public sidewalk)
NAICS 237310	Sign erection, highway, road, street, or bridge
NAICS 238210	Communication equipment installation
NAICS 238210	Highway, street and bridge lighting and electrical signal installation
NAICS 238990	Pole (e.g., telephone) removal

Additional Information

UDBE	**Yes**
SBE CERTIFICATION	**Yes**
UBI #	**601381635**
CERTIFICATION NUMBER	**D5F0010391**

City of Fircrest

Alameda Ave Grind & Overlay Project
STPUP-2991(003)

Reference Checks for Tony Lind Paving, LLC

1st Reference:
City of Kirkland
Name of reference: Ralph Utley
"They do a lot of our grind and overlays and we have always been very pleased with their work. Paperwork has never been an issue for them"

2nd Reference:
Boeing
Name of reference: Chet Williams
"We have worked with them on a lot of Boeing work and with municipalities and they do excellent work and we have never had a problem with them in any way."

3rd Reference:
City of Sumner
Name of reference: Andrew Leach
"They worked for us a couple years ago and I remember they were pretty good and we had no problems. We even had some adds on that project and they were good to work with. The project was not Federally Funded."

8% UDBE Goal
% Apprentice Goal – N/A

References checked by Daniel Clark, KPG

ITEM 6. KPG, P.S. Supplement #1 for Construction Management Services

FROM: Jerry Wakefield, Public Works Director

RECOMMENDED MOTION: I move to adopt Resolution No. _____, authorizing the City Manager to execute Supplement #1 to the Local Agency A&E Professional Services Negotiated Hourly Rate Agreement with KPG, P.S. for providing construction management services for the Alameda Avenue Grind and Overlay project.

PROPOSAL: The Council is being asked to authorize the City Manager to enter into supplement #1 to the Local Agency A&E Professional Services Negotiated Hourly Rate Agreement with KPG, P.S. for providing construction management services for the Alameda Avenue Grind and Overlay project. This contract has been reviewed and approved by WSDOT as it is required to be per their contract requirements.

FISCAL IMPACT: The agreement amount will result in a not-to-exceed budget of $37,787.00. This cost is included in the grant monies for this project and has been obligated through WSDOT. There is a 13.5% match monies needed from the City for this phase of the project, which is $5,096.25 and is in this year's budget amount. The obligation from WSDOT includes $178,000.00 for construction. This includes construction cost of $138,793.64 and $37,787.00 = $176,580.64.

ADVANTAGE: Utilizing KPG, P.S. for this phase of work and as authorized by WSDOT will provide the City the support needed during the construction phase of this project.

DISADVANTAGES: None identified.

ALTERNATIVES: Not to proceed with the design and bid call services of the project at this time and return the grant.

HISTORY: In March 2019, the City Council approved the Local Agency A&E Professional Services Negotiated Hourly Rate Agreement with KPG, P.S. for the design phase of this project. As this project now has been authorized for construction, a supplement to the agreement is needed to retain KPG, P.S. for the construction management services. WSDOT has approved this supplement along with the award of the construction contract for this project.

ATTACHMENTS: Resolution
Supplement #1 Agreement

CITY OF FIRCREST
RESOLUTION NO. ____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FIRCREST, WASHINGTON, AUTHORIZING THE CITY MANAGER TO EXECUTE SUPPLEMENT #1 TO THE LOCAL AGENCY A&E PROFESSIONAL SERVICES NEGOTIATED HOURLY RATE AGREEMENT WITH KPG, P.S. FOR PROVIDING CONSTRUCTION MANAGEMENT SERVICES FOR THE ALAMEDA AVENUE GRIND AND OVERLAY PROJECT.

WHEREAS, the City of Fircrest had conducted a selection process and selected KPG, P.S. who prepared the design and bid call services for the Alameda Avenue Grind and Overlay project; and

WHEREAS, the City of Fircrest has secured the necessary funding to finance the work identified in the Alameda Avenue Grind and Overlay project; and

WHEREAS, the City wishes to contract with KPG, P.S., to provide the construction management services for the Alameda Avenue Grind and Overlay project. Now, Therefore,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FIRCREST THAT:

Section 1. The City Manager is hereby authorized and directed to execute supplement #1 to the Local Agency A&E Professional Services Negotiated Hourly Rate Agreement with KPG, P.S. for providing construction management services for the Alameda Avenue Grind and Overlay project in an amount not to exceed $37,787.00.

APPROVED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF FIRCREST, WASHINGTON, at a special meeting thereof this 15th day of July 2019.

APPROVED:

_____
Hunter T. George, Mayor

ATTEST:

_____
Jessica Nappi, City Clerk

APPROVED AS TO FORM:

_____
Michael B. Smith, City Attorney

Washington State Department of Transportation

Supplemental Agreement Number 1	Organization and Address KPG, P.S. 2502 Jefferson Avenue Tacoma, WA 98402 Phone: 253-627-0720	
Original Agreement Number STPUL-2991(003)		
Project Number KPG #19007	Execution Date	Completion Date December 31, 2020
Project Title Alameda Avenue Grind and Overlay Project	New Maximum Amount Payable $75,537	
Description of Work CM Services		

The Local Agency of City of Fircrest
desires to supplement the agreement entered in to with KPG, P.S.
and executed on March 13, 2019 and identified as Agreement No. 19007
All provisions in the basic agreement remain in effect except as expressly modified by this supplement.
The changes to the agreement are described as follows:

I

Section 1, SCOPE OF WORK, is hereby changed to read:

Provide CM services as detailed in Exhibit A, attached.

II

Section IV, TIME FOR BEGINNING AND COMPLETION, is amended to change the number of calendar days for completion of the work to read: No Change - December 31, 2020

III

Section V, PAYMENT, shall be amended as follows:

Original Contract = $37,750 + $37,787 = $75,537 (New contract amount)

as set forth in the attached Exhibit A, and by this reference made a part of this supplement.
If you concur with this supplement and agree to the changes as stated above, please sign in the Appropriate spaces below and return to this office for final action.

By: Terry Wright

Terry Wright
Consultant Signature

By: _____

Approving Authority Signature

Date

DOT Form 140-063
Revised 09/2005

EXHIBIT A-1

Construction Management Services
Scope of Work - Supplement 1
July 1, 2019
City of Fircrest - ALAMEDA AVENUE GRIND & OVERLAY PROJECT
Federal Aid Number: STPUL-2991 (003)

This work will provide construction management services for the construction contract to complete the City of Fircrest Alameda Ave Grind & Overlay project (hereinafter called "Project"). These services will include design support, project management, documentation control, inspection, materials testing, and contract administration during the construction of the project, as detailed below. KPG ("Consultant") will provide to the City of Fircrest ("City") construction management services for the project.

A detailed scope for the Contract follows:

I. INTRODUCTION

The following scope of services and associated costs are based upon the assumptions outlined below.

General Assumptions:

- The **proposed project team** will include a part-time project manager, one part-time documentation control specialist, a part-time project engineer during construction activities, one full-time inspector during construction activities when unit price work is being performed (which is anticipated to be 5 working days) and part time-time inspection during the remaining 10 working days.

- The level of service is based on project duration of approximately 15 working days of which 5 working days will require full time on-site inspection (9hrs/Day) and the remainder will only require part time inspection (3hrs/day).

- This scope of services provides for the management of the ROM and scheduling of required materials testing respectively.

- It is anticipated the Consultant will review all required insurance and bonding information for the contractor, check references and provide a recommendation of Award to the City.

- It is anticipated that all Community Outreach will be completed by the City.

- The design engineers from KPG will be available during construction to answer questions during construction and review RAM's, shop drawings, and answer RFI's that require a level of engineering expertise outside of the capabilities of the City.

- Services will be performed in accordance with the contract plans & special provisions, WSDOT Local Agency Guidelines (LAG), the WSDOT Construction Manual, and City of Fircrest engineering standards.

- City/Field Office: No construction field office will be provided; it is anticipated that all construction meetings will be held at City offices.

II. SCOPE OF WORK

The objective and purpose of this Construction Management Services Agreement is for the Consultant to successfully deliver the construction of the Project to the City by ensuring that the improvements are constructed in accordance with the approved Plans and Specifications, as may be amended or revised, that all of the required Project documentation is accounted for, and ultimately that the City receives a successful review by WSDOT Local Programs at the end of the Project.

TASK 1 – MANAGEMENT/COORDINATION/ADMINISTRATION

Provide overall project management, coordination with the City, monthly progress reports, and invoicing. This effort will include the following elements:

1.1 Organize and layout work for project staff. Prepare project instructions on contract administration procedures to be used during construction.

1.2 Review monthly expenditures and CM team scope activities. Prepare and submit project progress letters to the City to accompany invoices that describe CM services provided each month. Prepare and submit reporting required by funding source(s), if any.

Deliverables

- *Monthly invoices and progress reports*

TASK 2 – PRECONSTRUCTION SERVICES

2.1 **Preconstruction Conference:** The Consultant will prepare an agenda for, distribute notices of, and conduct a preconstruction conference in the City's offices. The Consultant's project manager, resident engineer, inspector, and document control specialist will attend the preconstruction conference. The Consultant will prepare a written record of the meeting and distribute copies of the minutes to all attendees and affected agencies, staff, etc.

At the Pre-construction conference, the Consultant shall facilitate discussions with the Contractor concerning the plans, specifications, schedules, issues with utilities, unusual conditions, Federal, State, and local requirements, EEO, DBE and training requirements, and any other items that will result in better project understanding among the parties involved.

Deliverables

- Preconstruction conference agenda with meeting minutes

TASK 3 – CONSTRUCTION SERVICES - FIELD

3.1 The Consultant shall provide the services of part-time resident engineer (16 hours/week) during construction activities, one full time inspector during construction activities, and other duties necessary to monitor the progress of the work. Construction staff shall oversee work on the project site and will observe the technical progress of the construction, including providing day-to-day contact with the Contractor and the City. The following are major items of work anticipated:

- Erosion Control
- Pavement Repair
- HMA overlay
- Coordination of Temporary Traffic control
- And all incidental items necessary to complete the Work as described in the Plans and/or Specifications.

Field inspection staff will perform the following duties as a matter of their daily activities:

a) Observe technical conduct of the construction, including providing day-to-day contact with construction contractor, City, utilities, and other stakeholders, and monitor for adherence to the Contract Documents. The Consultant's personnel will act in accordance with Sections 1-05.1 and 1-05.2 of the Standard Specifications.

b) Observe material, workmanship, and construction areas for compliance with the Contract Documents and applicable codes, and notify construction contractor of noncompliance. Advise the City of any non-conforming work observed while on site.

c) Document all material delivered to the job site in accordance with the WSDOT LAG Manual.

d) Prepare daily inspection reports, recording the construction contractor's operations as actually observed by the Consultant; includes quantities of work placed that day, contractor's equipment and crews, and other pertinent information. All daily inspection reports will adhere to WSDOT Local Agency Guidelines.

e) Interpret Contract Documents in coordination with City and KPG.

f) Resolve questions which may arise as to the quality and acceptability of material furnished, work performed, and rate of progress of work performed by the construction contractor.

g) Establish communications with adjacent property owners. Respond to questions from property owners and the general public.

h) Coordinate with permit holders and insure compliance with approved permits, if applicable.

i) Prepare field records and documents to help assure the Project is administered in accordance with funding agency requirements. The utilities will provide measurement and payment information to the consultant for development of monthly pay estimates.

j) Collect and calculate delivery tickets and salesman's daily reports of aggregate. All tickets will be initialed, and include the correct bid item, as well as identify the stationing (Construction Manual 10-2).

k) Attend and actively participate in regular on-site weekly construction meetings.

l) Take periodic digital photographs during the course of construction, and record locations.

m) Coordinate with the City's traffic operations and maintenance personnel.

n) Conduct wage rate interviews, DBE interviews and training interviews in accordance with the LAG Manual.

o) Upon substantial completion of work, coordinate with the Client and affected agencies to prepare a 'punch list' of items to be completed or corrected. Coordinate final inspection with those agencies.

p) Provide oversight during audits performed by WSDOT Local Programs and others.

Assumptions:

- Consultant will provide observation services for the days/hours that the contractor's personnel are on-site.

- The Consultant's monitoring of the construction contractor's activities is to ascertain whether or not they are performing the work in accordance with the Contract Documents; in case of noncompliance, Consultant will reject non-conforming work, and pursue the other remedies in the interests of the City, as detailed in the Contract Documents. The Consultant cannot guarantee the construction contractors' performance, and it is understood that Consultant shall assume no responsibility for: proper construction means, methods, techniques; project site safety, safety precautions or programs; or for the failure of any other entity to perform its work in accordance with laws, contracts, regulations, or City's expectations.

3.2 **Materials Testing Coordination:** Coordinate the work of the materials testing technicians and testing laboratories in the observation and testing of materials used in the construction; document and evaluate results of testing; and address deficiencies. Frequency of testing shall be as required in the WSDOT Construction Manual and LAG manual.

Qualified tester requirements as identified in WSDOT LAG 52.3.32 illustrate that for projects on non-NHS highway systems, there is no requirement for qualified testers, but the requirements within the manual must be followed if federal funding applies.

Assumptions

It is assumed that no material fabrication inspection per WSDOT LAG 52.3.32 will be required.

3.2 **Substantial Completion:** Upon substantial completion of work, coordinate with the City and other affected agencies, to perform a project inspection and develop a comprehensive list of deficiencies or punchlist of items to be completed. A punchlist and Certificate of Substantial Completion will be prepared by the Consultant and issued by the City.

Deliverables

- Daily Construction Reports with project photos – submitted on a weekly basis
- Punch List, Certificate of Substantial Completion

TASK 4 – CONSTRUCTION SERVICES – OFFICE

4.1 **Document Control.** Original documentation will be housed at the Consultant's office, and filed in accordance with standard filing protocol to meet WSDOT Highways & Local Program Requirements. A copy of working files will be maintained in the field office.

Document Control also consists of preparing Final Project Reports for the City for WSDOT and FHWA acceptance and include:

- Final Estimate (Approving Authority File)
- Comparison of Preliminary and Final Quantities (Approving Authority File)
- Final Records as identified in WSDOT LAG (Approving Authority File)
- Record of Material Samples and Tests
- Materials Certification
- Affidavit of Wages Paid
- Release for the Protection of Property Owners and General Contractor
- DOT Form 422-102 EF, Quarterly Report of Amounts Credited as DBE Participation
- Final Estimate (Approving Authority File)
- Comparison of Preliminary and Final Quantities (Approving Authority File)
- Final Records as identified in WSDOT LAG (Approving Authority File)
- Record of Material Samples and Tests
- Materials Certification
- Affidavit of Wages Paid
- Release for the Protection of Property Owners and General Contractor
- DOT Form 422-102 EF, Quarterly Report of Amounts Credited as DBE Participation

4.2 **Project Coordination**: Liaison with City, construction contractor, engineer, utilities and property owners on a regular basis to discuss project issues and status.

4.3 **Plan Interpretations:** Provide technical interpretations of the drawings, specifications, and Contract Documents, and evaluate requested deviations from the approved design or specifications. Coordinate with City for resolution of issues involving scope, schedule, and/or budget changes.

4.4 **Weekly Meetings:** Lead weekly meetings, including preparation of agenda, meeting minutes, and distribution of minutes to attendees. Outstanding issues will be tracked on a weekly basis. (only two meetings are assumed)

4.5 **Initial Schedule Review**: Perform detailed schedule review of The Contractor provided CPM for conformance with the Contract Documents.

4.6 **Lump Sum Breakdown:** Will not be required due to the short project duration.

4.7 **Monthly Pay Requests:** Prepare monthly requests for payment, review with the City, Contractor, and approve as permitted. Utilize City provided format for pay estimates, or Consultant format. (only one Pay Estimated is assumed)

4.8 **Monthly Schedule Review:** ~~At the monthly cutoff, review contractor's updated schedule and compare with field-observed progress, as described in Section 1-08 of the Special Provisions. In addition, perform schedule analysis on contractor provided CPM updates and review schedule for delays and impacts. Coordinate with Contractor in the development of recovery schedules, as needed, to address delays caused by either events or issues within the Contractor's control or other events or issues beyond the Contractor's control.~~

4.9 **Certified Payroll**: Process and track all certified payroll per WSDOT Highways & Local Program Requirements. This includes verifying the initial payroll for compliance and 10% of all payrolls submitted thereafter and tracking payroll each week. Payroll and payroll logs will adhere to WSDOT LAG requirements.

4.10 **Weekly Statement of Working Days**: Prepare and issue weekly statement of working day report each week.

4.11 **WSDOT & FHWA Reporting**: Prepare and track all necessary reports per WSDOT Highways & Local Program Requirements. This will include DBE condition of award tracking throughout the project, DBE Reporting, EEO reporting, training Goal tracking via certified payroll, DBE on site reviews, Training Questionnaires, and periodically meeting with WSDOT Highways and Local Programs staff as requested to review project status.

4.12 **Subcontractor Documentation**: Process / Approve all required subcontractor documentation per WSDOT Highways & Local Program Requirements. Request to Sublets will be verified and logged. Certification for Federal Aid will be obtained from all subcontractors. This includes checking System Award Management System (SAMS), verifying OM/WBE, verifying business licensing, reviewing insurance documentation, verifying city business licensing, Intent to Pay Prevailing Wage and Affidavit of Wages Paid. All subcontractor documentation will be logged into WSDOT's subcontractor logs.

4.13 **Cost Projections:** Will not be required due to the short project duration.

4.14 **Record Drawings:** It is assumed Record Drawings will not be required.

4.15 **Audit Oversight**: Provide oversight during audits performed by WSDOT Local Programs and others.

4.16 **Physical Completion Letter:** Following completion of all punchlist work, prepare physical completion letter to the contractor and WSDOT, and recommend that City and/or utilities accept the project.

4.17 **Project Closeout:** Transfer all project documents to the City for permanent storage.

- Schedule review comments
- Meeting agendas and notes
- Monthly Pay Estimates
- WSDOT Reporting
- Subcontractor Packets
- Physical Completion Letter
- Final Project Documents

TASK 5 – SUBMITTAL/RFI PROCESSING

5.1 **Submittals:** Coordinate review process for shop drawings, samples, traffic control plans, test reports, and other submittals from the Contractor for compliance with the Contract Documents. Route key submittals to the City for their review and approval. Submittals shall be logged and tracked.

5.2 **Request for Information (RFI):** Review and respond to RFI's. RFI's shall be logged and tracked.

5.3 **Record of Materials (ROM):** Utilize ROM prepared by KPG and update based on special provisions and plans for use on the project, based on the contract specifications and WSDOT/LAG requirements. Maintain the ROM according to WSDOT Highways & Local Program Requirements. The ROM will track all of the materials delivered to the site including manufacturer/supplier, approved RAM's, QPL items, material compliance documentation, and all other required documentation.

Deliverables

- Submittal log
- RFI Log
- Completed Record of Material for Material Certification and updated as needed

TASK 6 – CHANGE MANAGEMENT

6.1 **Case Log:** Develop and maintain a case log which includes change orders, RFP's, Field Work Directives per Highway & Local Programs Guidelines

6.2 **Change Orders:** Develop change orders per Highway & Local Programs Guidelines, provide technical assistance to negotiate change orders, and assist in resolution of disputes which may occur during the course of the project. Each change order will be executed in accordance with WSDOT Local Agency Guidelines and contain the following:

- Change order
- Independent Cost Estimate
- Time Impact Analysis
- Contractor's Pricing
- Verbal Approval Memo

- Change Order Checklist (LAG Manual)
- Change Order Request Form
- Back up documentation

6.3 **Field Work Directives:** Prepare field work directives as necessary in order to keep the contractor on schedule.

6.4 **Minor Change Orders:** Develop minor change orders per WSDOT Highways & Local Program Requirements. Each minor change order will be executed in accordance with WSDOT Local Agency Guidelines and contain the following:

- Independent Cost Estimate
- Verbal Approval Memo
- Back up documentation

6.5 **Force Account:** Track contractor force account labor, equipment and materials and provide payment according to WSDOT requirements. All force account calculations will be verified by the engineer and double checked by the documentation specialist per WSDOT LAG Manual.

Deliverables

- Change Order(s)
- ~~Case Management Log~~
- ~~RFI Log~~
- Minor Change Order(s)
- Force Account Records

KPG
Architecture
Landscape Architecture
Civil Engineering

FEE SUMMARY
Supplement #1

Project: **City of Fircrest**
Alameda Ave Grind & Overlay
Construction Services Fee - (7/1/19)
STPUL-3118(001)

Description			Estimated Fee
Task 1 - Management/Coordination/Administration		$	2,132.00
Task 2 - Preconstruction Services		$	2,602.00
Task 3 - Construction Services - Field		$	12,640.00
Task 4 - Construction Services - Office		$	13,595.00
Task 5 - Submittal/RFI Processing		$	3,918.00
Task 6 - Change Management		$	2,900.00
	Subtotal:	$	37,787.00
Task 7 - Management Reserve	MR:	$	-
	Total:	**$**	**37,787.00**

HOUR AND FEE ESTIMATE

Project: **City of Fircrest**
Alameda Ave Grind & Overlay
Construction Services Fee - (7/1/19)
STPUL-2991(003)
15 = working days
3 Weeks

KPG
Architecture
Landscape Architecture
Civil Engineering

Task	Description	Principal	Resident Engineer	*Const Observer II	*Doc Specialist	*Const Office Eng	*Const Assistant	Total Fee
		Labor Hour Estimate						
		$ 232.00	$ 125.00	$ 110.00	$ 115.00		$ 77.00	Fee
Task 1 - Management/Coordination/Administration								
1.1	Project Organization and Layout	2			2		8	$ 1,310
1.2	Monthly Review and Invoicing (2 month	2					4	$ 772
	Reimbursable expenses - see breakdown for details							$ 50
	Task Totals	**4**	**0**	**0**	**2**	**0**	**12**	**$ 2,132**
Task 2 - Preconstruction Services								
2.1	Preconstruction Conference	1	4	4	12			$ 2,552
								$ -
	Reimbursable expenses - see breakdown for details							$ 50
	Task Total	**1**	**4**	**4**	**12**	**0**	**0**	**$ 2,602**
Task 3 - Construction Services - Field								
3.1	Construction Observation			75				$ 8,250
3.2	Material Testing		6		2			$ 980
3.3	Substantial Completion		4	2	6			$ 1,410
	Reimbursable expenses - (Materials Testing)							$ 2,000
	Task Total	**0**	**10**	**77**	**8**	**0**	**0**	**$ 12,640**
Task 4 - Construction Services - Office								
4.1	Document Control				24		12	$ 3,684
4.2	Project Coordination	1			2			$ 462
4.3	Plan Interpretation		2					$ 250
4.4	Weekly Meetings (2)	2	4		8		6	$ 2,346
4.5	Initial Schedule Review		1		1			$ 240
4.6	Lump Sum Breakdown							$ -
4.7	Monthly Pay Requests (est. 1)		2		6		2	$ 1,094
4.8	~~Monthly Schedule Review~~							$ -
4.9	Certified Payroll				6		4	$ 998
4.10	Weekly Statement of Working Days				3			$ 345
4.11	WSDOT & FHWA Reporting				4			$ 460
4.12	Subcontractor Documentation				6		2	$ 844
4.13	~~Cost Projections~~							$ -
4.14	~~Check Record Drawings Progress~~							$ -
4.15	~~Audit Oversight~~							$ -
4.16	Physical Completion Letter	1	2		2			$ 712
4.17	Project Closeout	1	4		8		4	$ 1,960
	Reimbursable expenses - see breakdown for details							$ 200
	Task Total	**5**	**15**	**0**	**70**	**0**	**30**	**$ 13,595**
Task 5 - Submittal/RFI Processing								
5.1	Submittals		4		8			$ 1,420
5.2	Request for Information (RFI)	1	2		2			$ 712
5.3	Record of Materials (ROM)		2		8		8	$ 1,786
	Reimbursable expenses - see breakdown for details							$ -
	Task Total	**1**	**8**	**0**	**18**	**0**	**8**	**$ 3,918**
Task 6 - Change Management								
6.1	Case Log							$ -
6.2	Change Orders		8		4			$ 1,460
6.3	Field Work Directives							$ -
6.4	Minor Change Orders		4		2			$ 730
6.5	Force Account		2		4			$ 710
	Reimbursable expenses - see breakdown for details							$ -
	Task Total	**0**	**14**	**0**	**10**	**0**	**0**	**$ 2,900**
							Total:	**$ 37,787**

HOUR AND FEE ESTIMATE

KPG
Architecture
Landscape Architecture
Civil Engineering

Project: **City of Fircrest**
Alameda Ave Grind & Overlay
Construction Services Fee - (7/1/19)
STPUL-2991(003)

Reimbursable Breakdown		Cost
Task 1 - Management/Coordination/Administration		
Mileage	$	50.00
Reproduction		
Task 1 - Total	**$**	**50.00**
Task 2 - Preconstruction Services		
Mileage	$	50.00
Reproduction		
Task 2 - Total	**$**	**50.00**
Task 3 - Construction Services - Field		
Construction Vehicle (@ $750/mo)	$	-
Misc. Field Supplies	$	-
Materials Testing	$	2,000.00
	$	-
Task 3 - Total	**$**	**2,000.00**
Task 4 - Construction Services - Office		
Mileage	$	200.00
Misc Office Supplies	$	-
Task 4 - Total	**$**	**200.00**
Task 5 - Submittal/RFI Processing		
Mileage	$	-
Reproduction	$	-
Task 5 - Total	**$**	**-**
Task 6 - Change Management		
Mileage	$	-
Reproduction	$	-
Task 6 - Total	**$**	**-**
Total Reimbursable Costs:	**$**	**2,300.00**

ITEM 7. Caselle Software Presentation and Discussion

FROM: Scott Pingel, City Manager

RECOMMENDED MOTION: None, for information purposes only.

BACKGROUND: Here is a brief powerpoint regarding our current software, what we should be looking for in new software, and our impressions of Caselle Software. We are not able "show" the Council the software as it is proprietary so we can't demonstrate it in a public meeting, but we will discuss some of the shortcomings of our current software and how we believe those shortcomings are overcome by making a change.

City staff have visited Rainer View Water Company to see the Caselle Utility Billing module in action and discuss their experience will Caselle so far. City staff will also be visiting the City of Arlington, who recently converted to Caselle.

Moving forward, City staff will also demo other available software to ensure we are getting the right fit for the City of Fircrest.

ATTACHMENT: PowerPoint Presentation

Current Software

- Developed by a farmer with a focus on financials.
- It is relatively sufficient software. Better than previous software used by the City.
- Financial modules are okay.
  - The financial modules provide a software solution that provides the ability to apply, track and monitor financial information.
  - State reporting is relatively easy.
  - Pulling information for financial audits is also seamless.
  - While sufficient, using the software is not intuitive.
  - It does not seem to keep up with other software options in the market.

Current Software Continued

- No real HR options comparable to other software solutions.
- Utility Billing and Community Development modules seem like afterthoughts.
  - Again, these modules are okay and better than nothing, but not intuitive compared to other solutions in the market.
- Utility Billing module is not user-friendly.
  - As we have strived to train a backup to utility billing, the challenges with our current software have become more apparent.
    - Not intuitive
    - No practical instructions from the software provider, and subpar support.
    - Without the regular training of a backup, it would be nearly impossible to have a new employee walk in and “figure out” utility billing.

Important considerations in selecting a new Software Company?

- DOES THE SOFTWARE FIT YOUR NEEDS?
- LONGEVITY
- SUPPORT AVAILABILITY
- ADDITIONAL EDUCATION

DOES THE SOFTWARE FIT YOUR NEEDS?

- FOCUS ON GOVERNMENT
- 40+ INTEGRATED SOLUTIONS
- MICROSOFT PARTNER
- SQL BASED
- SERVER AND HOSTED OPTIONS
- FLEXIBLE REPORTING

CASELLE
Commitment to Community

LONGEVITY

- ESTABLISHED IN 1978
- DEVELOPED BY A CPA/AUDITOR
- AVERAGE TENURE OF EMPLOYEES IS 10 YEARS
- CPA'S ON STAFF
- DEBT FREE COMPANY
- 1250+ CUSTOMERS NATIONWIDE
- SOFTWARE FOR LIFE

CASELLE
Commitment to Community

SUPPORT AVAILABILITY

- 24 HOUR SUPPORT
- UNLIMITED CALLS TO SUPPORT
- ONLINE CUSTOMER INCIDENT MANAGEMENT SYSTEM (CIMS)
- ONLINE KNOWLEDGE BASE

CASELLE
Commitment to Community

ADDITIONAL EDUCATION

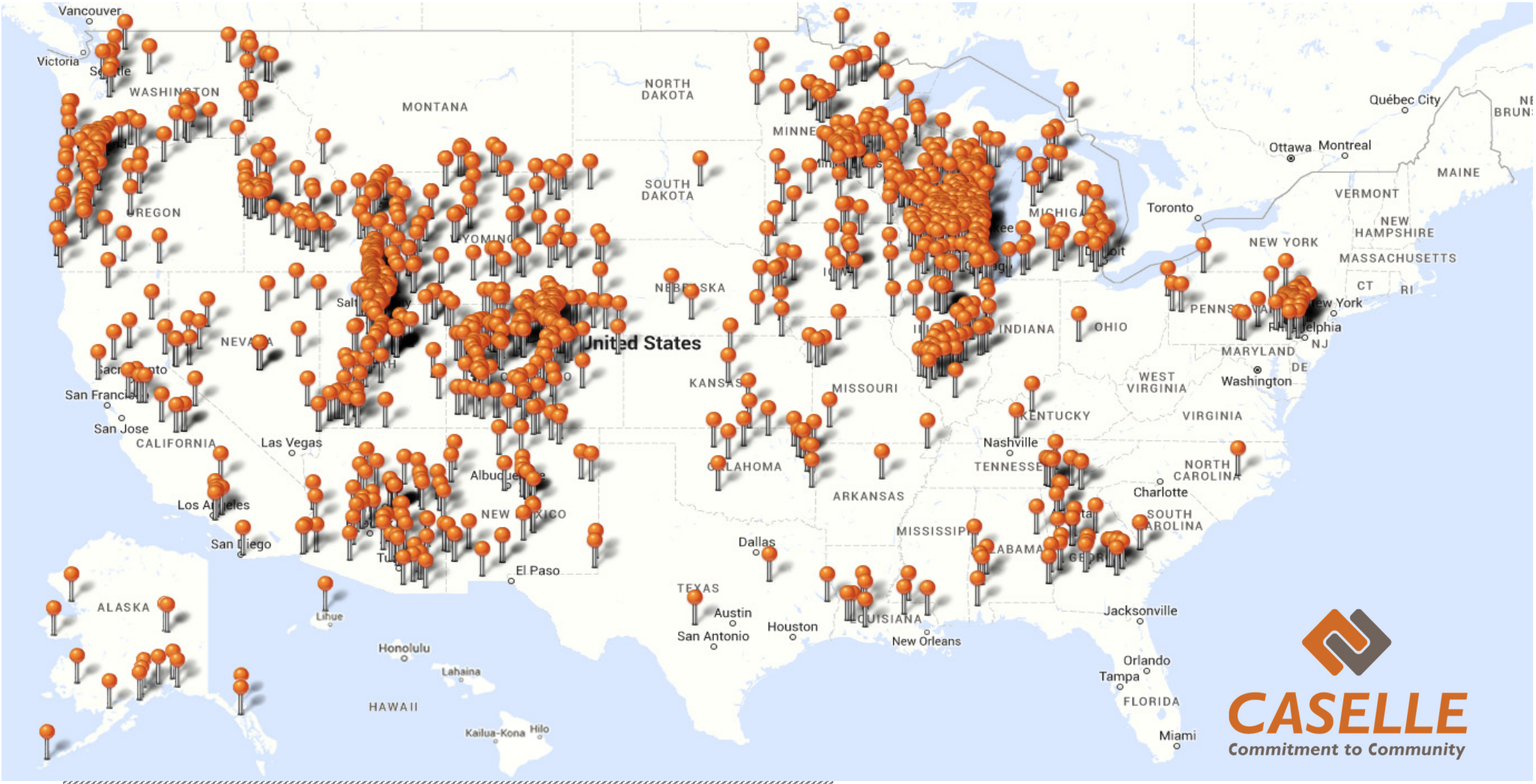
- ANNUAL CONFERENCE
- USER GROUPS
- WEBINARS
- KNOWLEDGE BASE

CASELLE
Commitment to Community

General Impressions from the Full-day Demonstration

- Intuitive Navigation: Caselle Logic
- General consensus that Caselle is more efficient than our current software and would streamline several of our functions, namely Utility Billing.
- Tabs format: Multi-tasking
- Utility Billing backup: Support and Training
- While Caselle may not be everything to everyone, what may be most impressive is that the software is adaptable enough that we can make the software what we need it to be.

CUSTOMER MAP



Mi-Excel

"It's the best invention since Youtube!"

- Rochelle Roaden, City Manager – Dayton, OR

Mi-Excel

FY2018-2019 YTD Budget Vs Actual.xlsx - Excel

FILE | HOME | INSERT | PAGE LAYOUT | FORMULAS | DATA | REVIEW | VIEW | MIEXCEL | ACROBAT

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A15 | 100.000.412.300

	A	B	C	D	E	F
1			Actual	Budget		Actual
2			07/18-8/18	2018-2019	YTD	2017-2018
3	Budget vs Actual for FY 2018-2019		Cur YTD	Cur Year	% of	Pri Year
4					Budget	
5						
6	General Fund					
7						
8	100.000.400.000	Working Capital	668,974	550,210	121.6%	586,084
9	100.000.402.000	Levied Taxes (Prior Years)	6,569	6,500	101.1%	6,894
10	100.000.404.000	Interest	4,217	1,500	281.1%	6,709
11	100.000		1,650	2,000	82.5%	6,054
12	100.000		4,595	20,000	23.0%	20,997
13	100.000		3,496	5,000	69.9%	6,968
14	100.000.412.200	Franchise-Electric Service	0	60,000	0.0%	69,239
15	100.000	munications	8,981	4,000	224.5%	12,872
16	100.000	ees Water	0	0	0.0%	0
17	100.000	ees Sewer	0	0	0.0%	0
18	100.000		11,261	15,000	75.1%	35,278
19	100.000		1,799	7,000	25.7%	15,953
20	100.000	s	500	1,500	33.3%	3,750
21	100.000	s	0	3,500	0.0%	0
22	100.000		11,696	3,000	389.9%	3,472
23	100.000	e Tax	25	100	25.4%	279
24	100.000	mit Fee	0	100	0.0%	153
25	100.000		0	0	0.0%	0
26	100.000	s	18,152	34,000	53.4%	39,461
27	100.000	es	1,692	3,000	56.4%	3,061
28	100.000	k	1,825	7,500	24.3%	0
29	100.000	Taxes	52,980	60,000	88.3%	59,517
30	100.000	Reimbursement	5,660	6,000	94.3%	11,067
31	100.000		115	450	25.6%	614
32	100.000	hared Costs	1,592	5,000	31.8%	5,278
33	100.000		1,000	1,000	100.0%	1,000
34	100.000		12,465	13,000	0.0%	0
35	100.000		0	1,000	0.0%	0
36	100.000	Revenue Sh	0	0	0.0%	0
37	100.000	enue	6,036	500	1207.3%	21,936
38	100.000	ntal Fees	0	1,000	0.0%	0
39	100.000	tion Fees	0	0	0.0%	0
40	100.000.460.300	Community Center Rental Fees	13,395	35,000	38.3%	32,360
41	100.000.485.000	Public Contributions	0	50	0.0%	30
42	100.000.499.300	Taxes Collected	169,216	200,000	84.6%	207,356
43						
44			1,007,892	1,046,910	96.3%	1,156,380

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Summary Sheet | Budget vs actual calc sheet

Mi-Excel

FY2018-2019 YTD Budget Vs Actual.xlsx - Excel

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A15 | 100.000.412.300

	A	B	C	D		
1			Actual	Budget		
2			07/18-8/18	2018-2019		
3	Budget vs Actual for FY 2018-2019		Cur YTD	Cur Year		
4						
5						
6	General Fund					
7						
8	100.000.400.000	Working Capital	668,974	550,210		
9	100.000.402.000	Levied Taxes (Prior Years)	6,569	6,500		
10	100.000.404.000	Interest	4,217	1,500		
11	100.000.410.000	Bus/Amusemenrt License	1,650	2,000		
12	100.000.412.000	Franchise-Cable TV	4,595	20,000		
13	100.000.412.100	Franchise-Solid Waste	3,496	5,000		
14	100.000.412.200	Franchise-Electric Service	0	60,000		
15	100.000.412.300	Franchise-Telecommunications	8,981	4,000		
16	100.000.412.400	In Lieu Franchise Fees Water	0	0		
17	100.000.412.500	In Lieu Franchise Fees Sewer	0	0		
18	100.000.416.000	Building Permits	11,261	15,000		
19	100.000.416.010	Plan Check Fees	1,799	7,000		
20	100.000.416.020	Type A Permit Fees	500	1,500		
21	100.000.416.030	Type B Permit Fees	0	3,500		
22	100.000.416.100	Planning Fees	11,696	3,000		
23	100.000.416.200	Construction Excise Tax	25	100		
24	100.000.416.300	Encroachment Permit Fee	0	100		
25	100.000.417.000	Lien Search Fees	0	0		
26	100.000.426.000	State Alcohol Taxes	18,152	34,000		
27	100.000.428.000	State Cigarette Taxes	1,692	3,000		
28	100.000.428.100	State Marijuana Tax	1,825	7,500		
29	100.000.429.000	Transient Lodging Taxes	52,980	60,000		
30	100.000.430.000	CCRLS Use Based Reimbursement	5,660	6,000		
31	100.000.430.100	Library Fees/Fines	115	450		
32	100.000.432.000	Dayton Rural FD Shared Costs	1,592	5,000		
33	100.000.436.000	Library Grant	1,000	1,000		
34	100.000.444.000	CLG Grant	12,465	13,000		
35	100.000.445.000	DLCD Grant	0	1,000		
36	100.000.459.700	Transfer from State Revenue Sh	0	0		
37	100.000.480.000	Miscellaneous Revenue	6,036	500	1207.3%	21,936
38	100.000.480.100	City Hall Annex Rental Fees	0	1,000	0.0%	0
39	100.000.480.200	Community Recreation Fees	0	0	0.0%	0
40	100.000.480.300	Community Center Rental Fees	13,395	35,000	38.3%	32,360
41	100.000.485.000	Public Contributions	0	50	0.0%	30
42	100.000.499.300	Taxes Collected	169,216	200,000	84.6%	207,356
43						
44			1,007,892	1,046,910	96.3%	1,156,380

Summary Sheet | Budget vs actual calc sheet

General Ledger Account Detail

Account Information

Account 100.000.412.300

Title Franchise-Telecommunications

YTD Actual ($5,623.43) **YTD Budget** ($4,000.00)

Period Dates

- (●) **Year to Date**
- ( ) **Range**

From

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Account Options

- [ ] **Include Encumbrances**
- [ ] **Include Report Only**

Account	Pd Date	GL Pd	Journal	Ref	Seq	Date	Type	Description	Amount
100.000.412.300	7/31/2018	718	CR	2082846	1	7/23/2018	Actual	Telecommunications - Frontier	($466.44)
100.000.412.300	9/30/2018	918	CR	2083958	1	9/10/2018	Actual	Telecommunications - McMinnville...	($3,265.44)
100.000.412.300	11/30/2018	1118	CR	2085806	1	11/20/2018	Actual	Telecommunications - Comcast	($4,643.85)
100.000.412.300	11/30/2018	1118	CR	2085608	1	11/14/2018	Actual	Telecommunications - Frontier	($605.52)
100.000.412.300	1/31/2019	119	CR	2087331	1	1/22/2019	Actual	Telecommunications - Ringcentral I...	($172.56)
100.000.412.300	2/28/2019	219	CR	2088056	1	2/20/2019	Actual	Telecommunications - Frontier	($657.75)
100.000.412.300	2/28/2019	219	JE	7	23	2/28/2019	Actual	Recl Comcast Franchise fee	$4,643.85
100.000.412.300	5/31/2019	519	CR	2090256	1	5/21/2019	Actual	Telecommunications - Frontier	($455.72)

Sum=($5,623.43)

Next Steps

- Due Diligence
  - City staff will overview demo other software solutions to see how they compare.
  - City staff have visited Rainier View Water Company to look at their utility billing using Caselle Software.
  - City staff will be visiting the City of Arlington this week to view how they employ Caselle with the other modules the City is interested in.
- RFP
  - Once City staff find a preferable solution, we will put out an RFP and work through that process prior to bringing a recommendation for Council approval.

ITEM 8. Financial Policies Discussion

FROM: Colleen Corcoran, Finance Director

RECOMMENDED MOTION: None, for information purposes only.

PROPOSAL: Review proposed Financial Policies.

FISCAL IMPACT: Written financial policies will help during the bond rating process, thus potentially lowering our interest rate when issuing bonds.

ADVANTAGE: Written, adopted financial policies have many benefits, such as assisting the elected officials and staff in the financial management of the City, saving time and energy when discussing financial matters, engendering public confidence, and providing continuity over time as elected officials and staff members change.

DISADVANTAGES: None identified.

HISTORY: City staff are not recommending any changes to current policies or procedures with this policy. Per the emails from our Bond Underwriter, Jim Nelson, we need an overall financial policy to prepare to present to bond rating agencies. As you can see from the emails with Jim Nelson, S&P Global considered Dupont's policy to be strong and robust. We have modeled our policy after Dupont's while staying true to how we operate. Jim also expressed that an updated or formal financial policy is a key factor from a rating agency perspective.

ATTACHMENTS: Draft Financial Policies
E-mails from bond counsel

THE CITY OF FIRCREST

Financial Policies

DRAFT

Resolution No. _____

Approved _____, 2019
Effective _____, 2019

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City of Fircrest
Financial Policies

Statement of Purpose

The financial integrity of our City government is of utmost importance. To discuss, write, and adopt a set of financial policies is a key element to maintaining this integrity. Our City has evolved with a variety of financial policies that can be found in many different sources including: City Council Resolutions and Ordinances; Budget documents; and Capital Improvement Programs. The set of policies within this document serve as a central reference point of the most important of our policies, which are critical to the continued financial health of our local government.

Written, adopted financial policies have many benefits, such as assisting the elected officials and staff in the financial management of the City, saving time and energy when discussing financial matters, engendering public confidence, and providing continuity over time as elected officials and staff members change. While these policies will be amended periodically, they will provide the foundation and framework for many of the issues and decisions facing the City. They will promote sound financial management and assist in the City's stability, efficiency, and effectiveness.

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Financial Goals

The City of Fircrest's financial goals seek to:

- Ensure the financial integrity of the City.
- Manage the financial assets in a sound and prudent manner.
- Improve financial information for decision makers at all levels:
  - Policy makers as they contemplate decisions that affect the City on a long-term basis.
  - Managers as they implement policy on a day-to-day basis.
- Maintain and further develop programs to ensure the long-term ability to pay all costs necessary to provide the level and quality of service required by the citizens.
- Maintain a spirit of openness and transparency while being fully accountable to the public for the City's fiscal activities.

Financial Policies

Fircrest's financial policies address the following major areas:

I. **General Policies**
II. **Revenue Policies**
III. **Expenditure Policies**
IV. **Operating Budget Policy**
V. **Capital Management Policy**
VI. **Accounting Policy**
VII. **Debt Policy**
VIII. **Cash Management/Investment Policy**
IX. **Reserve Policy**

I. General Policies

1. The City Council may adopt resolutions or ordinances to set financial policies to assure the financial strength and accountability of the City.
2. The City Manager shall develop administrative policies and general procedures for implementing the City Council's financial policies.
3. All City Departments will share in the responsibility of meeting policy goals and ensuring long-term financial health. Future service plans and programs will be developed to reflect current policy directives, projected resources, and future service requirements.
4. To attract and retain employees necessary for providing high quality services, the City shall establish and maintain a competitive compensation and benefit package with the public and private sectors.
5. Efforts will be coordinated with other governmental agencies to achieve common policy objectives, share the cost of providing governmental services on an equitable basis, and support favorable legislation at the state and federal level.
6. Initiate, encourage, and participate in economic development efforts to create job opportunities and strengthen the local economy.
7. The City will strive to maintain fair and equitable relationships with its contractors and suppliers.

II. Revenue Policies

Design, maintain, and administer a revenue system that will assure a reliable, equitable, diversified, and sufficient revenue stream to support desired City services.

A. General Revenues

1. Current expenditures will be funded by current revenues. The City will try to maintain a diversified and stable revenue system to protect programs from short-term fluctuations in any single source.
2. Budgeted revenues will be estimated conservatively using accepted standards and estimates provided by the state, other governmental agencies or reliable economic forecasters when available.
3. General Fund and other unrestricted revenues will not be earmarked for specific purposes, activities or services unless otherwise authorized by City Council or required by law, or generally accepted accounting practices (GAAP). All non-restricted revenues will be deposited into the General Fund and appropriated by the budget process.
4. If revenues from "one-time" or limited duration sources are used to balance the City's annual operating budget, it is to be fully disclosed and explained at the time the budget is presented. It is the City's goal to not rely on these types of revenues to balance the operating budget.
5. The City will not use deficit financing and borrowing to support on-going operations in the case of long-term (greater than one year) revenue downturns. Revenue forecasts will be revised, and expenses will be reduced to conform to the revised long-term revenue forecast or revenue increases will be considered.
6. The City will follow an aggressive and professional policy of collecting revenues. When necessary, discontinuing service, small claims court, collection agencies, foreclosure, liens and other methods of collection, such as imposing penalties, collection and late charges, may be used.

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B. Fees and Charges

1. Enterprise and Internal Service operations will be self-supporting.
2. The City will maximize the use of service users' charges in lieu of ad valorem (property) taxes and subsidies from other City funds, for services that can be identified and where costs are directly related to the level of service provided.
    a. Charges for providing utility services shall be sufficient to finance all operating, capital outlay, and debt service expenses of the City's enterprise funds, including operating contingency, planned capital improvements, and reserve requirements.
    b. User charges shall fund 100% of the direct cost of development review and building activities. User charges include, but are not limited to, land use, engineering inspection, building permit and building inspection fees.
    c. Park recreation programs shall be funded by a users' charge. User charges shall consider the cost of comparable services where practical.
    d. Other reimbursable work performed by the City (labor, meals, contracted services, equipment and other indirect expenses) shall be billed at actual or estimated actual cost.
    e. Charges for services shall accurately reflect the actual or estimated cost of providing a specific service. The cost of providing specific services shall be recalculated periodically, and the fee adjusted accordingly. The City shall maintain a current schedule of fees and charges, showing when the fees were last reviewed and/or recalculated. Fees, charges, and utility rates will be reviewed every three (3) years at a minimum.
    f. The City will consider market rates and charges levied by other municipalities for like services in establishing rates, fees, and charges.
    g. Certain fees, such as rental fees, will be based upon market conditions and are not subject to the limitations of cost recovery.

C. Grants and Gifts

1. Grant funding for programs or items which address the City's current priorities and policy objectives should be considered to leverage City funds. Inconsistent and/or fluctuating grants should not be used to fund on-going programs.
2. Before accepting any grant, the City shall thoroughly consider the implications in terms of ongoing obligations that will be required in connection with acceptance of said grant.
3. All grants and other federal and state funds shall be managed to comply with the laws, regulations, and guidance of the grantor, and all gifts and donations shall be managed and expended in accordance with the City's Donation Policy (Ordinance No. 1633) and the wishes and instructions of the donor.

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III. Expenditure Policies

Identify priority services, establish appropriate service levels, and administer the expenditure of available resources to assure fiscal stability and the effective and efficient delivery of services.

1. The City will strive to adopt an annual General Fund budget in which current expenditures do not exceed current projected revenues. Capital expenditures may be funded from one-time revenues.
2. Department Directors are responsible for managing their budgets within the total appropriation for their department.
3. The City will take immediate corrective actions if at any time during the fiscal year expenditure and revenue re-estimates are such that an operating deficit is projected at year-end. Corrective actions can include a hiring freeze, expenditure reductions, or fee increases. The City Council may approve a short-term interfund loan or use of one-time revenue sources to address temporary gaps in cash flow, although this will be avoided if possible.
4. Long-term debt or bond financing shall not be used to finance current operating expenditures.
5. The City will assess funds for services provided internally by other funds. Interfund service fees charged to recover these costs will be recognized as revenue to the providing fund.
6. Emphasis will be placed on improving individual and work group productivity rather than adding to the work force. The City will invest in technology and other efficiency tools to maximize productivity. The City will hire additional staff only after the need for such positions has been demonstrated and documented.
7. All compensation planning and collective bargaining will focus on the total cost of compensation which includes direct salary, health care benefits, pension contributions, and other benefits which are a cost to the City.
8. Periodic comparisons of service delivery will be made to ensure that quality services are provided to our citizens at the most competitive and economical cost. Privatization and contracting with other governmental agencies will be evaluated as alternatives to service delivery where appropriate. Programs that are determined to be inefficient and/or ineffective shall be reduced in scope or eliminated.
9. Whenever feasible, government activities will be considered enterprises if so doing will increase efficiency of service delivery or recover the cost of providing the service from the benefiting entity by user fees.
10. The City will make every effort to maximize any discounts offered by creditors/vendors. Staff will also use competitive bidding per the Purchasing Policy to attain the best possible price on goods and services.

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IV. Operating Budget Policies

1. The City Council will adopt and maintain a balanced annual operating budget.
2. The City will strive to adopt a budget where current annual operating revenues will be equal to or greater than current operating expenditures.
3. Balanced revenue and expenditure forecasts will be prepared to examine the City's ability to absorb operating costs due to changes in the economy, service demands, contractual obligations, and capital improvements. The forecast will encompass five (5) years and will be updated annually.
4. In the event a balanced budget is not attainable, and the cause of the imbalance is expected to last for no more than one year, the planned use of reserves to balance the budget is permitted. If a budget shortfall is expected to continue beyond one year, the planned use of reserves must be developed as part of a corresponding strategic financial plan to close the gap through revenue increases or expenditure decreases.
5. Any year-end operating surpluses will revert to unappropriated balances for use in maintaining reserve levels set by policy and will be available for capital expenditures and/or "one-time" only General Fund expenditures.
6. The City will provide for adequate maintenance and the orderly replacement of capital assets and equipment. Fleet and equipment replacement will be accomplished using a "rental" rate structure. The rates will be revised annually to ensure that charges to operating departments are sufficient for the replacement of the vehicles and equipment.
7. The operating budget shall serve as the annual financial plan for the City. It will serve as the policy document of the City Council for implementing Council goals and objectives. The budget will provide for staff and resources necessary to accomplish City Council determined service levels.
8. The City Manager shall annually present to the City Council a proposed operating budget at the second Council meeting in September. The City Council must adopt by ordinance a final balanced budget no later than December 31 of each year.
9. Funds may not be expended or encumbered for the following fiscal year until the budget has been adopted by the City Council.
10. Budget control and accountability is maintained at the departmental level.
11. The City Manager has the authority to approve appropriation transfers between programs or departments within a fund. In no case may total expenditures of a fund exceed that which is appropriated by the City Council without a budget amendment. Amendments to the budget are approved by the City Council.

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V. Capital Management Policies

Review and monitor the state of the City's capital equipment and infrastructure, setting priorities for its replacement and renovation based on needs, funding alternatives, and availability of resources.

A. Capital Facilities Plan

1. The City will develop a Capital Facilities Plan (CFP) as defined and required by RCW 36.70A.070 which is consistent with the City Comprehensive Plan. The plan shall be for a period of six (6) years.
2. The CFP will include all projects to maintain public capital facilities required to maintain service levels at standards established by the City Council. It may also include for consideration such other projects as requested by the City Council.
3. The CFP will provide details on each capital project plan including estimated costs, sources of financing and a full description of the project.
4. The City will finance only those capital improvements that are consistent with the adopted CFP and City priorities. All capital improvement operating and maintenance costs will be included in operating budget forecasts.
5. A status review of the CFP will be conducted annually, and a report will be presented by the Public Works Director or his/her designee, to the City Council.

B. **Capital Asset Management**

1. The City will maintain its capital assets at a level adequate to protect the City's capital investments and to minimize future maintenance and replacement costs.
2. The budget will provide for adequate maintenance and orderly replacement of capital assets from current revenues where possible.
3. The capitalization threshold used in determining if a given asset qualifies for capitalization is $1,000 per item with a useful life of over one year. All capital assets shall have a City of Fircrest property tag affixed to it when placed into service.
4. Minor equipment that falls below the $1,000 threshold but is subject to shrinkage shall have a City of Fircrest property tag affixed to it when placed into City service and will be accounted for on the "Small and Attractive" inventory list.
5. The Finance Department will conduct an annual physical count/inspection of all capital assets.
6. Adequate insurance will be maintained on all capital assets consistent with the results of the annual physical count/inspection.

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VI. Accounting Policies

Comply with prevailing federal, state, and local statutes and regulations. Conform to a comprehensive basis of accounting in compliance with Washington State statutes and with generally accepted accounting principles (GAAP) as promulgated by the Governmental Accounting Standards Board (GASB), and the Government Finance Officers Association (GFOA) where applicable.

1. The City uses the cash basis of accounting which is a departure from generally accepted accounting principles (GAAP).
2. The City will maintain expenditure categories according to state statute and administrative regulations. The City will use the "Budgeting, Accounting & Reporting System" (BARS) prescribed by the State Auditor for its revenue and expenditure classification.
3. Quarterly budget reports showing the status of revenues and expenditures will be prepared and presented to Council in a timely manner and made available for public inspection.
4. Electronic financial systems will be maintained to monitor revenues, expenditures, and program performance on an ongoing basis.
5. The Annual Financial Report will be prepared and submitted to the State Auditor's Office no later than 150 days from the end of the preceding fiscal year.
6. The Annual Financial Report will be prepared on a cash basis of accounting that demonstrates compliance with Washington State statutes and the BARS manual prescribed by the State Auditor, which is a comprehensive basis of accounting other than generally accepted accounting principles. The report will provide full disclosure of all financial activities and related matters.
7. An annual audit shall be performed by the Washington State Auditor's Office, which will issue an official opinion on the annual financial statements, along with a report on accountability for public resources and compliance with state laws and regulations and its own policies and procedures.
8. The City's budget should satisfy criteria as a financial and programmatic policy document, as a comprehensive financial plan, as an operations guide for all organizational units, and as a communications device for all significant budgetary issues, trends and resources.

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VII. Debt Policies

Establish guidelines for debt financing that will provide needed capital equipment and infrastructure improvements while minimizing the impact of debt payments on current revenues.

1. The City will not use long-term debt to pay for current operations. The use of bonds or certificates of participation will only be considered for significant capital and infrastructure improvements.
2. The term of the debt shall never extend beyond the useful life of the improvements to be financed.
3. General obligation debt will not be used for self-supporting enterprise activity.
4. The general policy of the City is to fund general-purpose public improvements and capital projects that cannot be financed from current revenues with voter approved general obligation debt. Non-voter approved debt may be utilized when a dedicated revenue source other than general revenue can be identified to pay debt service expenses.
5. The general policy of the City is to establish debt repayment schedules that use level annual principal and interest payments.
6. Interest earnings on bond proceeds will be limited to:
    a. funding the improvements specified in the authorizing bond ordinance, or
    b. payment of debt service on the bonds.

7. Proceeds from debt will be used in accordance with the purpose of the debt issue. Funds remaining after the project is completed will be used in accordance with the provisions stated in the bond ordinance that authorized the issuance of the debt.
8. The City will use the most prudent methods of acquiring capital outlay items, including the use of lease-purchase agreements. In no case will the City lease- purchase equipment whose useful life is less than the term of the lease.
9. The City will maintain its bond rating at the highest level fiscally prudent, so that future borrowing costs are minimized and access to the credit market is preserved. The City will encourage and maintain good relations with financial bond rating agencies and will follow a policy of full and open disclosure.

VIII. Cash Management and Investment Policies

Manage and invest the City's operating cash to ensure its legality, safety, provide for necessary liquidity, avoid imprudent risk, and optimize yield.

1. Cash and Investment programs will be maintained in accordance with the City's Investment Policy (Resolution #480) that ensures that proper controls and safeguards are maintained. City funds will be managed in a prudent and diligent manner with an emphasis on safety of principal, liquidity, and financial return on principal, in that order.
2. Currently the Local Government Investment Pool (LGIP), which is an investment vehicle maintained by the State Treasurer's Office to help local governmental entities achieve higher rates of return by pooling local funds for economies of scale, and federal bonds are the investment vehicles used for the City.
3. The City will maintain written guidelines on cash handling, accounting, segregation of duties, and other financial matters.
4. Monthly reports will be prepared and distributed to all departments and the City Council showing cash position, and year-to-date budgeted and actual expenditures.
5. The City will conduct annual reviews of its internal controls and cash handling procedures.
6. Internal controls will be tested on a quarterly basis at a minimum.

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IX. Reserve Policies

Maintain the reserves and ending fund balances of the various operating funds at levels sufficient to protect the City's credit as well as its financial position from emergencies.

1. At each fiscal year end the remaining dollars left in each fund that are undesignated and unencumbered constitute available reserves of the City.
2. The City will include all fund balances in the annual budget.

A. Cumulative Reserve (created by Ordinance No. 956)

1. The City's goal shall be to maintain a Cumulative Reserve Fund as established by Ordinance No. 956.
2. The reserve is defined as an emergency or cash flow reserve to fund one-time, emergency, or unanticipated expenditure requirements or offset unanticipated revenues fluctuations occurring in the fiscal year or one-time revenue losses.
3. Contributions will be budgeted from fund resources as available to establish and maintain reserve levels.
4. All expenditures drawn from the reserve account shall require prior Council approval by ordinance.

B. General Fund

1. The City's goal shall be to maintain a General Fund ending fund balance of at least three (3) months of the General Fund adopted operating expenditures.

C. Enterprise Funds

1. The City's Enterprise Funds goal will be to maintain reserves equal to at least three (3) months of their adopted operating expenditures.

D. Equipment Rental & Replacement Fund

1. Sufficient reserves will be maintained to provide for the scheduled replacement of City vehicles and capital equipment at the end of their useful lives.
2. Contributions will be made through assessments to the operating departments and maintained on a per asset basis.

E. Additional Reserves

1. Additional reserve accounts may be created by the City Council to be set aside for specific purposes or special projects, for known significant future expenditures, or as general operational reserves.

DRAFT

From: Jim Nelson <jnelson@dadco.com>
Sent: Monday, May 20, 2019 10:39 AM
To: Scott Pingel; Colleen Corcoran
Subject: Financial Management Policy
Attachments: suggested updates to the City of DuPont's 2015 Financial Policies 7-31-2018.docx; City of DuPont updated Financial policies (including Water & Sewer System) approved by Council on 9-11-2018.pdf

Hi Scott and Colleen,

As discussed, attached is the City of DuPont's updated Financial Management Policy. S&P Global Ratings Group considered DuPont's Financial Management Policy strong and "very robust" when compared to other "AA+" rated municipalities around the nation. The suggested updates we provided to DuPont are highlighted in color.

I would be happy to meet with you to further discuss the policy, as well as review your various policies.

Sincerely,

JIM NELSON | Senior Vice President
E-mail: jnelson@dadco.com
Office: 206.389.4062 | Toll Free: 888.389.8001 | Cell: 206.713.9354

D.A. Davidson & Co. | Columbia Center
701 5th Avenue, Suite 4050 **|** Seattle, WA 98104

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FIXED INCOME CAPITAL MARKETS

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Subject: FW: example of Schedule of Events and draft Financial Management Policies
Attachments: Bond Buyer Index 5-17-2019.pdf; draft SOE City of Fircrest UTGO Bonds 5-30-2019.docx; draft City of Fircrest Financial Management Policies 5-30-2019.docx; City of Fircrest - UTGO Bond Financing - Information Request 5-30-2019.docx

From: Jim Nelson <jnelson@dadco.com>
Sent: Thursday, May 30, 2019 9:49 AM
To: Scott Pingel <spingel@cityoffircrest.net>; Colleen Corcoran <ccorcoran@cityoffircrest.net>
Subject: RE: example of Schedule of Events and draft Financial Management Policies

Hi Scott and Colleen,

For discussion purposes, attached is a draft Schedule of Events showing target dates if the City were to receive voted bond proceeds (approximately $8,500,000) on September 12, 2019. The bond interest rate market has dropped 0.75% over the last 6 months (see the attached chart). If the City did not need bond proceeds on September 12th, other Delivery Dates to consider are October 16th or December 3rd.

Using the City of DuPont's Financial Management Policies, which are considered very robust by S&P Global Ratings, we inputted information for the City of Fircrest's draft Financial Management Policies and highlighted certain sections for the City to review, edit or update. (An updated or formal Financial Management Policy is a key factor from a rating agency perspective.) Some dates to consider for the City Council to approve formal Financial Management Policies are June 25th or July 9th.

Colleen - is the City on cash basis accounting or accrual basis accounting?
Is the City on an annual audit cycle?

If the City wants to receive bond proceeds on September 12th, then the attached information request would need to be completed by July 2nd.

Let me know if would like to schedule a meeting or conference call to further discuss the information and the attachments.

Sincerely,

JIM NELSON | Senior Vice President
E-mail: jnelson@dadco.com
Office: 206.389.4062 | Toll Free: 888.389.8001 | Cell: 206.713.9354

D.A. Davidson & Co. | Columbia Center
701 5th Avenue, Suite 4050 | Seattle, WA 98104

Unless otherwise agreed to, the primary role of Davidson, as an underwriter/placement agent, is to purchase securities for resale to investors, in an arm's-length commercial transaction between the Issuer and Davidson or to arrange for placement of securities with an investor. As underwriter/placement agent Davidson is not acting as a fiduciary to the Issuer and Davidson has financial and other interests that may differ from those of the Issuer.

ITEM 9. Pool and Bathhouse Bid Award Discussion

FROM: Scott Pingel, City Manager

RECOMMENDED MOTION: None, for information purposes only.

BACKGROUND: Included in the packet is the Owner/Contractor Contract along with the General Conditions of the contract, which were also in the July 9th council packets. What I would like to accomplish at the Study Session is walking through what will be a part of the contract without going through all 357 pages of plans and specs, so that once we open bids and have a low bidder, we can potentially be prepared to have the council award the bid and approve the contract at the July 23rd City Council meeting. I will put the plans and specs document (which includes front end docs for bidding, the contract, general conditions, various administrative forms and the specs) up on the screen so that we can walk through what is in it. All of it essentially becomes a part of the contract.

ATTACHMENT: Contract and Conditions

OWNER/ CONTRACTOR CONTRACT

THIS AGREEMENT, made and entered into in duplicate, this _____day of _____, 20____ by and between City of Fircrest, hereinafter called the Owner, and _____hereinafter called the Contractor,

WITNESSETH:
That in consideration of the terms and conditions contained herein, and attached and made a part of this agreement, the parties hereto covenant and agree as follows:

I. The Contractor shall do all work and furnish all tools, materials, and equipment for FIRCREST COMMUNITY POOL AND BATHHOUSE PROJECT in accordance with and as described in the attached plans and specifications which are by this reference incorporated herein and made a part hereof, and shall perform any alterations in or additions to the work provided under this contract and every part thereof.

Work shall be completed within two hundred and eighty-eight (288) calendar days from Notice to Proceed. The project site will be available as early as August 19, 2019 and the project needs to have Substantial Completion by June 1, 2020 and Final Completion by June 12th, 2020.

If said work is not completed within the time specified, the Contractor agrees to pay to the Owner, as liquidated damages, the sum ONE THOUSAND FIVE HUNDRED DOLLARS ($1,500) for each and every calendar day the work remains incomplete, exclusive of those days wherefore the Owner has granted an extension of time.

The Contractor hereby agrees the amount set forth above is a reasonable estimate of actual damage which would be caused by the failure to substantially complete the work on time.

The Contractor shall provide and bear the expense of all equipment, work and labor of any sort whatsoever that may be required for the transfer of materials and for constructing and completing the work provided for in this contract and every part thereof, except such as are mentioned in the specifications to be furnished by the City of Fircrest.

II. The City of Fircrest hereby promises and agrees with the Contractor to employ, and does employ the Contractor to provide the materials and to do and cause to be done the above described work and to complete and finish the same according to the attached plans and specifications and the terms and conditions herein contained; and hereby contracts to pay for the same according to the attached specifications for the itemized bid price of $_____, at the time and in the manner and upon the conditions provided for in this contract.

The parties shall be bound by the Constitution and Laws of the State of Washington, and the Fircrest Municipal Code, and by all applicable federal laws and government regulations, which provisions are incorporated by reference herein.

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For the convenience of the parties of this Contract it is mutually agreed that any claims or causes of action which the Contractor has against the Owner arising from this Contract shall be brought within 180 calendar days from the Completion Date of the Contract. It is further agreed by the parties that any such claims, disputes, or causes of action which cannot be resolved pursuant to the procedures set forth in the Contract Documents shall be brought only in the Superior Court of Pierce County. The parties understand and agree that the Contractor's failure to bring suit within the time period provided shall be a complete bar to any such claims or causes of action.

III. In accordance with RCW Chapter 39.12 and the Project Manual, the Contractor shall pay, or cause to be paid to persons employed on or in connection with the Fircrest Community Pool and Bathhouse Project, not less than the prevailing rate of wage for an hour's work specified for the labor performed.

IV. The Contractor for himself, and for his/her heirs, executors, administrators, successors, and assigns, does hereby agree to the full performance of all the covenants herein upon the part of the Contractor.

V. It is further provided that no liability shall attach to the City of Fircrest by reason of entering into this contract, except as expressly provided herein.

VI. The Contractor shall not discriminate against any person, firm, partnership, or organization as it pertains to race, color, religion, sex, age, national origin, marital status, sexual orientation, medical condition, physical handicap or disability. Any person, firm, partnership, or organization contracting with, or doing business with, the City shall be in conformity with the City's policy on non-discrimination.

VII. If the Contractor violates any material covenant or provision of this Contract the Owner may: withhold payment due on any work done under the Contract until the Contractor complies with the Contract; order that work be stopped, and/or terminate the Contract.

VIII. The Contractor shall be responsible for maintaining, during the term of this Agreement and at its sole cost and expense, the types of insurance coverage and in the amounts described below. The Contractor shall furnish evidence, satisfactory to the City, of all such policies. During the term hereof, the Contractor shall take out and maintain in full force and effect the following insurance policies:

A. Comprehensive public liability insurance, including General Liability, insuring the City and the Contractor against loss or liability for damages for personal injury, death or property damage arising out of or in connection with the performance by the Contractor of its obligations hereunder, with minimum liability limits of $5,000,000 combined single limit for personal injury, death or property damage in any one occurrence.
B. Such workmen's compensation and other similar insurance as may be required by law.
C. Professional liability insurance with minimum liability limits of $1,000,000.

Any payment of deductible shall be the sole responsibility of the Contractor. City shall be named as a primary non-contributory additional insured on the General Liability policies described above. The insurance policies shall (1) state that coverage shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability; (2) shall be primary insurance with

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regard to City; and (3) shall state that the City will be given at least 30 days prior written notice of any cancellation, suspension or material change in coverage. The limits of liability required above are minimum required limits only and do not relieve the Contractor of claims that may exceed these minimum limits.

IX. With the exception of the sole negligence of the City, Consultant shall protect, defend, indemnify and hold harmless the City, its employees, directors, officers, and Councilmembers from any and all claims, demands, losses, actions, and liabilities to or by any person or entity arising out of or resulting from the acts or omissions of Consultant, its officers, and employees and its agents in performing this Agreement.

IN WITNESS WHEREOF the parties hereto have caused this agreement to be executed the day and year first hereinabove written.

By _____
(City Manager)

By _____
(Contractor)

Approved as to Legality:

_____
(City Attorney)

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AIA® Document A201™ – 2017

General Conditions of the Contract for Construction

for the following PROJECT:

Fircrest Pool and Bathhouse
545 Contra Costa Street
Fircrest, WA 98466

THE OWNER:

City of Fircrest
Parks and Recreation
555 Contra Costa Street
Fircrest, WA 98466

THE ARCHITECT:

ARC Architects, Inc.
119 S. Main Street, #200
Seattle, WA 98104
206-322-3322

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

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

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

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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 Basic Definitions

§ 1.1.1 The Contract Documents

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

§ 1.1.2 The Contract

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

§ 1.1.3 The Work

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

§ 1.1.4 The Project

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

§ 1.1.5 The Drawings

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

§ 1.1.6 The Specifications

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

§ 1.1.7 Instruments of Service

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

§ 1.1.8 Initial Decision Maker

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

§ 1.2 Correlation and Intent of the Contract Documents

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

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§ 1.2.1.1 The invalidity of any provision of the Contract Documents shall not invalidate the Contract or its remaining provisions. If it is determined that any provision of the Contract Documents violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable. In such case the Contract Documents shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Contract.

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

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

§ 1.3 Capitalization

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

§ 1.4 Interpretation

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

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

§ 1.5.1 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and retain all common law, statutory, and other reserved rights in their Instruments of Service, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' reserved rights.

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

§ 1.6 Notice

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

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

§ 1.7 Digital Data Use and Transmission

The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form. The parties will use AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.

§ 1.8 Building Information Models Use and Reliance

Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document

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G202™–2013, Project Building Information Modeling Protocol Form, shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

ARTICLE 2 OWNER

§ 2.1 General

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

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

§ 2.2 Evidence of the Owner's Financial Arrangements

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

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

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

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

§ 2.3 Information and Services Required of the Owner

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

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

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

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

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

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

§ 2.4 Owner's Right to Stop the Work

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

§ 2.5 Owner's Right to Carry Out the Work

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

ARTICLE 3 CONTRACTOR

§ 3.1 General

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

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

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

§ 3.2 Review of Contract Documents and Field Conditions by Contractor

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

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

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

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

§ 3.3 Supervision and Construction Procedures

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

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

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

§ 3.4 Labor and Materials

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

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

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

§ 3.5 Warranty

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

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

§ 3.6 Taxes

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

§ 3.7 Permits, Fees, Notices and Compliance with Laws

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

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

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

§ 3.7.4 Concealed or Unknown Conditions

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

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

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§ 3.8 Allowances

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

§ 3.8.2 Unless otherwise provided in the Contract Documents,

- .1 allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- .2 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit, and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and
- .3 whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.

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

§ 3.9 Superintendent

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

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

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

§ 3.10 Contractor's Construction and Submittal Schedules

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

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

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

§ 3.11 Documents and Samples at the Site

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

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delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

§ 3.12 Shop Drawings, Product Data and Samples

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

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

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

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

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

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

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

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

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

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

§ 3.12.10.1 If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall be entitled to rely

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

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

§ 3.13 Use of Site

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

§ 3.14 Cutting and Patching

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

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

§ 3.15 Cleaning Up

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

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

§ 3.16 Access to Work

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

§ 3.17 Royalties, Patents and Copyrights

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

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§ 3.18 Indemnification

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

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

ARTICLE 4 ARCHITECT

§ 4.1 General

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

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

§ 4.2 Administration of the Contract

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

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

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

§ 4.2.4 Communications

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

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

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

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

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

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

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

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

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

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

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

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ARTICLE 5 SUBCONTRACTORS

§ 5.1 Definitions

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

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

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

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

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

§ 5.2.3 If the Owner or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

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

§ 5.3 Subcontractual Relations

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

§ 5.4 Contingent Assignment of Subcontracts

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

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

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

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

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

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

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

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

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

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

§ 6.1.4 Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces or with Separate Contractors, the Owner or its Separate Contractors shall have the same obligations and rights that the Contractor has under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6, and Articles 10, 11, and 12.

§ 6.2 Mutual Responsibility

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

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

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

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

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

§ 6.3 Owner's Right to Clean Up

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

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 General

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

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

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

§ 7.2 Change Orders

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

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

§ 7.3 Construction Change Directives

§ 7.3.1 A Construction Change Directive is a written order prepared by the Architect and signed by the Owner and Architect, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

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

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

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

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

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

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

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

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

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

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

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

§ 7.4 Minor Changes in the Work

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

ARTICLE 8 TIME

§ 8.1 Definitions

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

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

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

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

§ 8.2 Progress and Completion

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

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

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

§ 8.3 Delays and Extensions of Time

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

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

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

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 Contract Sum

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

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

§ 9.2 Schedule of Values

Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit a schedule of values to the Architect before the first Application for Payment, allocating the entire Contract Sum to the various portions of the Work. The schedule of values shall be prepared in the form, and supported by the data to substantiate its accuracy, required by the Architect. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment. Any changes to the schedule of values shall be submitted to the Architect and supported by such data to substantiate its accuracy as the Architect may require, and unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's subsequent Applications for Payment.

§ 9.3 Applications for Payment

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

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

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

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

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

§ 9.4 Certificates for Payment

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

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

§ 9.5 Decisions to Withhold Certification

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

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims, unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or suppliers for labor, materials or equipment;

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.4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
.5 damage to the Owner or a Separate Contractor;
.6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
.7 repeated failure to carry out the Work in accordance with the Contract Documents.

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

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

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

§ 9.6 Progress Payments

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 9.9 Partial Occupancy or Use
§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect.

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

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

§ 9.10 Final Completion and Final Payment

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

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

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

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

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

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

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 Safety Precautions and Programs

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

§ 10.2 Safety of Persons and Property

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

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

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

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

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

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

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

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

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

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

§ 10.3.2 Upon receipt of the Contractor's notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of the material or substance or who are to perform the task of removal or safe containment of the material or substance. The Contractor and the Architect will

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promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable additional costs of shutdown, delay, and start-up.

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

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

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

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

§ 10.4 Emergencies

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

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 Contractor's Insurance and Bonds

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

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

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

§ 11.1.4 Notice of Cancellation or Expiration of Contractor's Required Insurance. Within three (3) business days of the date the Contractor becomes aware of an impending or actual cancellation or expiration of any insurance required by the Contract Documents, the Contractor shall provide notice to the Owner of such impending or actual cancellation or

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

§ 11.2 Owner's Insurance

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

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

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

§ 11.3 Waivers of Subrogation

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

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

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§ 11.4 Loss of Use, Business Interruption, and Delay in Completion Insurance
The Owner, at the Owner's option, may purchase and maintain insurance that will protect the Owner against loss of use of the Owner's property, or the inability to conduct normal operations, due to fire or other causes of loss. The Owner waives all rights of action against the Contractor and Architect for loss of use of the Owner's property, due to fire or other hazards however caused.

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

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

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

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

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

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

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

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that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.5.

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

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

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

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

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

§ 12.3 Acceptance of Nonconforming Work

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

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 Governing Law

The Contract shall be governed by the law of the place where the Project is located, excluding that jurisdiction's choice of law rules. If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 15.4.

§ 13.2 Successors and Assigns

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

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

§ 13.3 Rights and Remedies

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

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

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§ 13.4 Tests and Inspections

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

§ 13.4.2 If the Architect, Owner, or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection, or approval not included under Section 13.4.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection, or approval, by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect of when and where tests and inspections are to be made so that the Architect may be present for such procedures. Such costs, except as provided in Section 13.4.3, shall be at the Owner's expense.

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

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

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

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

§ 13.5 Interest

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

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 Termination by the Contractor

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

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

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

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

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

§ 14.2 Termination by the Owner for Cause

§ 14.2.1 The Owner may terminate the Contract if the Contractor

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

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

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

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

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

§ 14.3 Suspension by the Owner for Convenience

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

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

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

§ 14.4 Termination by the Owner for Convenience

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

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

- **.1** cease operations as directed by the Owner in the notice;

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.2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and

.3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

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

ARTICLE 15 CLAIMS AND DISPUTES

§ 15.1 Claims

§ 15.1.1 Definition

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

§ 15.1.2 Time Limits on Claims

The Owner and Contractor shall commence all Claims and causes of action against the other and arising out of or related to the Contract, whether in contract, tort, breach of warranty or otherwise, in accordance with the requirements of the binding dispute resolution method selected in the Agreement and within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all Claims and causes of action not commenced in accordance with this Section 15.1.2.

§ 15.1.3 Notice of Claims

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

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

§ 15.1.4 Continuing Contract Performance

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

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

§ 15.1.5 Claims for Additional Cost

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

§ 15.1.6 Claims for Additional Time

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

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

§ 15.1.7 Waiver of Claims for Consequential Damages

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

.1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and

.2 damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit, except anticipated profit arising directly from the Work.

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

§ 15.2 Initial Decision

§ 15.2.1 Claims, excluding those where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2 or arising under Sections 10.3, 10.4, and 11.5, shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation of any Claim. If an initial decision has not been rendered within 30 days after the Claim has been referred to the Initial Decision Maker, the party asserting the Claim may demand mediation and binding dispute resolution without a decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

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

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

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

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

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

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§ 15.2.6.1 Either party may, within 30 days from the date of receipt of an initial decision, demand in writing that the other party file for mediation. If such a demand is made and the party receiving the demand fails to file for mediation within 30 days after receipt thereof, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.

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

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

§ 15.3 Mediation

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

§ 15.3.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section 15.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 15.3.3 Either party may, within 30 days from the date that mediation has been concluded without resolution of the dispute or 60 days after mediation has been demanded without resolution of the dispute, demand in writing that the other party file for binding dispute resolution. If such a demand is made and the party receiving the demand fails to file for binding dispute resolution within 60 days after receipt thereof, then both parties waive their rights to binding dispute resolution proceedings with respect to the initial decision.

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

§ 15.4 Arbitration

§ 15.4.1 If the parties have selected arbitration as the method for binding dispute resolution in the Agreement, any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. The Arbitration shall be conducted in the place where the Project is located, unless another location is mutually agreed upon. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

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

§ 15.4.2 The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

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§ 15.4.3 The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement, shall be specifically enforceable under applicable law in any court having jurisdiction thereof.

§ 15.4.4 Consolidation or Joinder

§ 15.4.4.1 Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

§ 15.4.4.2 Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

§ 15.4.4.3 The Owner and Contractor grant to any person or entity made a party to an arbitration conducted under this Section 15.4, whether by joinder or consolidation, the same rights of joinder and consolidation as those of the Owner and Contractor under this Agreement.

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