

WELCOME
To a Regular Meeting of the
Coeur d'Alene City Council
Held in the Library Community Room at 6:00 P.M.
AGENDA

VISION STATEMENT

Our vision of Coeur d'Alene is of a beautiful, safe city that promotes a high quality of life and sound economy through excellence in government.

The purpose of the Agenda is to assist the Council and interested citizens in the conduct of the public meeting. Careful review of the Agenda is encouraged. Testimony from the public will be solicited for any item or issue listed under the category of Public Hearings. Any individual who wishes to address the Council on any other subject should plan to speak when **Item G - Public Comments** is identified by the Mayor. The Mayor and Council will not normally allow audience participation at any other time.

August 2, 2022

A. CALL TO ORDER/ROLL CALL

B. INVOCATION: David Bond with Compel Church.

C. PLEDGE OF ALLEGIANCE

D. AMENDMENTS TO THE AGENDA: Any items added less than forty-eight (48) hours prior to the meeting are added by Council motion at this time. Action Item.

*****ITEMS BELOW ARE CONSIDERED TO BE ACTION ITEMS, UNLESS OTHERWISE NOTED**

E. ANNOUNCEMENTS:

1. City Council
2. Mayor – Appointment of David Passaro to the Pedestrian and Bicycle Advisory Committee and Jolie Wenglikowski to the Childcare Commission.

F. CONSENT CALENDAR: Being considered routine by the City Council, these items will be enacted by one motion unless requested by a Councilmember that one or more items be removed for later discussion.

1. Approval of Council Minutes for the July 19, 2022 Workshop and Council Meeting.
2. Setting of the General Service/Public Works Committee Meeting for August 8, 2022.
3. Approval of Bills as Submitted.

G. PUBLIC COMMENTS: (Each speaker will be allowed a maximum of 3 minutes to address the City Council on matters that relate to City government business. Please be advised that the City Council can only take official action this evening for those items listed on the agenda.) ([Non-action Item](#))

H. OTHER BUSINESS:

1. **Resolution No. 22-033** - Approving a Construction Manager/General Contractor (CMGC) Contract with Core West, Inc. in the amount of \$40,000, for pre-construction services.

Staff Report by: Police Captain Dave Hagar

2. **Resolution No. 22-034** – Approving the Selection of Six (6) New Art Pieces for the 2022 ArtCurrents Program, and Authorizing Execution of the Art Display Agreements.

Staff Report by: Stephanie Padilla, Accountant

3. **Resolution No. 22-035** – Approving a Professional Services Agreement with Keller Associates, Inc., for the Independence Point Stormwater Improvements.

Staff Report by: Chris Bosley, City Engineer

4. **Resolution No. 22-036** - Setting the Preliminary Budget for Fiscal Year 2022-2023, and Scheduling a Public Hearing for September 6, 2022.

Staff Report by: Vonnie Jensen, Comptroller

I. ADJOURNMENT



Coeur d'Alene CITY COUNCIL MEETING

August 2, 2022

**MEMBERS OF THE CITY COUNCIL:
Jim Hammond, Mayor
Council Members McEvers, English, Evans, Gookin, Miller, Wood**

ANNOUNCEMENTS

Memo to Council

DATE: July 25, 2022

RE: Appointment to Boards/Commissions/Committees

The following appointment is presented for your consideration for the August 2, 2022, Council Meeting:

DAVID PASSARO

Pedestrian and Bicycle Advisory Committee
(Appointment)

A copy of the data sheet has been placed by your mailboxes.

Sincerely,

Sherrie Badertscher
Executive Assistant

cc: Renata McLeod, City Clerk
Monte McCully, Pedestrian and Bicycle Advisory Committee

Memo to Council

DATE: July 27, 2022

RE: Appointment to Boards/Commissions/Committees

The following appointment is presented for your consideration for the August 2, 2022, Council Meeting:

JOLIE WENGLIKOWSKI Childcare Commission (Re-Appointment)

A copy of the data sheet has been placed by your mailboxes.

Sincerely,

Sherrie Badertscher
Executive Assistant

cc: Renata McLeod, City Clerk
 Kelley Setters, Liaison to the Childcare Commission

CONSENT CALENDAR

MINUTES OF A CONTINUED MEETING OF THE
COEUR D'ALENE, IDAHO,
CITY COUNCIL HELD IN THE LIBRARY COMMUNITY ROOM
July 19, 2022, AT 4:30 P.M.

The City Council of the City of Coeur d'Alene met in continued session of said Council in the Library Community Room held at 4:30 p.m. on July 19, 2022, there being present upon roll call a quorum.

James Hammond, Mayor

Dan Gookin) Members of Council Present
Dan English)
Woody McEvers)
Amy Evans)
Christie Wood)
Kiki Miller)

DEPARTMENT HEADS PRESENT: Troy Tymesen, City Administrator; Randy Adams, City Attorney; Renata McLeod, Municipal Services Director/City Clerk; Vonnie Jensen, Comptroller; Ted Lantzy, Building Official; Thomas Greif, Fire Chief; Melissa Tosi, Human Resource Director; Michael Priest, Library Director; Bill Greenwood, Parks & Recreation Director; Sean Holm, Senior Planner; Lee White, Police Chief; Todd Feusier, Streets & Engineering Director; Mike Anderson, Wastewater Superintendent; Terry Pickel, Water Superintendent.

CALL TO ORDER: Mayor Hammond called the meeting to order.

OVERVIEW: Mayor Hammond stated that the purpose of the meeting was to provide input to staff regarding the fiscal year 2022-2023 budget and high-water mark.

City Administrator Troy Tymesen stated his goal for the meeting is to look at numbers, noting that some numbers are still preliminary, so no action necessary, rather an opportunity to inform the Council about the high-water mark. Additionally, he noted the proposed high-water mark includes the property tax options with the end of the Lake Urban Renewal District (District) and a potential 3% property tax increase. Mr. Tymesen noted that the levy rates are going down and the values are going up. The preliminary levy rate equals a \$1.97 tax per \$1,000 in valuation, which was \$3.48 last year. The value of property within the City increased by over 80% in the last year. Generally, as values go up so does one's taxes. With the District closing, using the assessed valuation based on last year's value and the new levy rate, it has reduced the estimated cash flow by over \$1 Million dollars. Since the District is closing and only a portion comes back to the City, with the rest filtered to taxpayers, the City can reduce the property taxes and still seek the 3%. Mr. Tymesen noted that negotiations with the Fire Union and the Police Association are not complete, but medical costs remained in line. However, new growth revenue is estimated aggressively and will need to be adjusted.

STAFF PRESENTATION: Comptroller Vonnie Jensen noted that the County has provided some preliminary numbers and they are lower than she originally thought. She reiterated that she hopes to get input from the Council regarding the high-water mark for the budget. However, it is important to remember that is not what the final budget number has to be, rather it is the maximum amount the City may set the budget. She reviewed the Lake District URD closing amount and how it was dropped substantially due to the legislation passed limiting the City to only being able to take 80% of new growth and that we must use an estimated levy rate. Ignite cda will receive over \$5.3 Million dollars this year, providing over \$3 Million going back to the tax payers next year when the District closes. She reviewed the City's history of forgoing the allowed 3% in property taxes, new construction amounts since 2015, general fund balance projections, and revenue changes. Ms. Jensen reiterated that property taxes will continue to go down and if the City does not take the 3% levy rate, future levy rates will drop and the amount for the closing of the District will be even less. It appears that property taxes will be increased but that is not the case due to the URD funds being passed back as savings to the property owners. She reviewed the estimated fund balance, expenses estimated, ARPA funded purchases and reiterated the difference in revenue expected. Mr. Tymesen noted that the high-water mark includes a large amount for new growth and is based on the closure of an Urban Renewal District and a 3% tax increase. Additionally, they are looking at a 5% cost of living increase for the employees, so they are estimating a large high-water mark, to be on the safe side with all the variables included.

DISCUSSION: Councilmember Gookin noted that Mr. Tymesen was talking about the mechanics of what the legislators did, and that resulted in a tax cut to the constituents by a million dollars. Mr. Tymesen confirmed that was correct. Councilmember Wood reiterated that the City did not take additional property taxes since 2015. Councilmember Gookin noted that if the amount of new growth continues it will be lessened over the years to come and wondered if they should anticipate that as the City grows that the amount will be a smaller percentage of the whole over time, with Ms. Jensen confirming it and noted that growth doesn't always happen and sometime flattens out. She explained that since the City has been using the new growth revenue to balance the budget, when it stops or is unavailable the 3% property tax is needed. Councilmember McEvers noted that the City was banking on that money when the District closed and now those projections have dropped. Councilmember English noted that new growth isn't paying for itself and this compounds it. Councilmember Miller asked about the increase in alcohol tax revenue. Ms. Jensen confirmed they are projecting it to go up, that it goes into general fund revenue, and is not specifically earmarked. Mr. Tymesen noted that the forecast of revenue is included in the numbers presented. Councilmember Wood explained that the law enforcement industry is in a crisis to recruit and train law enforcement officers and wants to know what the City is doing to compete, as other entities are offering sign-on bonuses and we are not proposing anything in this budget. Mr. Tymesen noted that the police chief and he have discussed this and other departments are using savings on vacant positions to offer the bonuses. He noted that the City is looking to enhance the facility and has about five (5) offers out currently, and feels the City is able to continue recruiting. Councilmember Wood expressed concern that the City should plan for future recruitment needs and would like to see a five-year plan and hopes the City will be in a position to offer sign-on bonuses. Mr. Hammond noted that across the nation is not the same as what we experience here, as Coeur d'Alene has one of the largest price increases and housing crisis, so the housing issue needs to be included in the incentive discussion. He noted that the education field is including housing already. Councilmember Miller noted the Regional Housing and Growth Issues group has committees

looking at those specific issues and how ARPA funding can be used toward housing. The group would like to see more ownership of housing that could include buy downs for public safety and health care workers. The ARPA match can be used toward those types of programs and get preference points on grants. She noted that there are tools the Council can use and create specific housing to help alleviate some of those housing burdens. Ms. Jensen noted that the high-water mark is \$123,264,624.00.

Councilmember Wood noted that last year Council had this conversation and she praised the Council for all the years that they didn't take the 3%, but it can't go on forever. Now it is crashing down and City can't go on without including the 3% in the high-water mark and they can continue to work toward cuts. Councilmember English recalls many years at the County wherein Commissioner's focused on the low levy rate and that is just one aspect, and the Council needs to be reasonable and prudent and take care of what needs to be funded to operate. Councilmember Miller asked if staff will be able to look at the recycling contract and parking before the next meeting, with Mr. Tymesen confirming. Councilmember Gookin noted he understands the math, but he is reluctant in raising taxes and believes the nation is in the first quarter of a recession. Councilmember Wood suggested that if the City does not take a 3%, Council would have to prioritize cuts in services. Mayor Hammond noted that the City will continue discussions going forward.

MOTION: Motion by Wood, seconded by Evans, setting the high-water mark with the 3%. Motion carried with Gookin voting no.

MOTION: Motion by McEvers, seconded Gookin, by that there being no other business, this meeting be adjourned. **Motion carried.**

The meeting adjourned at: 5:22 p.m.

ATTEST:

James Hammond, Mayor

Renata McLeod, CMC
City Clerk

MINUTES OF A REGULAR MEETING OF THE CITY
COUNCIL OF THE CITY OF COEUR D'ALENE, IDAHO,
HELD AT THE LIBRARY COMMUNITY ROOM

July 19, 2022

The Mayor and Council of the City of Coeur d'Alene met in a regular session of said Council at the Coeur d'Alene City Library Community Room on July 19, 2022, at 6:00 p.m., there being present the following members:

James Hammond, Mayor

Woody McEvers)	Members of Council Present
Christie Wood)	
Dan Gookin)	
Amy Evans)	
Kiki Miller)	
Dan English)	

CALL TO ORDER: Mayor Hammond called the meeting to order.

INVOCATION: Pastor Pace Hartfield with One Place Church provided the invocation.

PLEDGE OF ALLEGIANCE: Councilmember Miller led the pledge of allegiance.

MAYOR AND COUNCIL COMMENTS:

Councilmember Gookin noted that he would like to discuss the Atlas Mill site Urban Renewal District (URD) and the remediation of Mount Hink at the next Council meeting. He explained that he would like to consider modifying the plan so Council could have input on what to do with the Mount Hink area.

Councilmember Miller noted that the City's Building Official Ted Lantzy spoke at the North Idaho Building Contractors Association (NIBCA) meeting today regarding updated building codes and expressed that he did a great job representing the City.

Mayor Hammond requested the confirmation of the appointments of Warren Bakes and Jim Lien to the Parks and Recreation Commission.

MOTION: Motion by Gookin, seconded by McEvers, to appointment Warren Bakes and Jim Lien to the Parks and Recreation Commission. **Motion carried.**

CONSENT CALENDAR: Motion by McEvers, second by Evans, to approve the consent calendar.

1. Approval of Council Minutes for the July 5, 2022, Council Meeting.
2. Setting of the General Service/Public Works Committee Meeting for July 25, 2022.

3. Approval of Bills as Submitted.
4. Approval of **Resolution No. 22-030**: A RESOLUTION OF THE CITY OF COEUR D'ALENE, KOOTENAI COUNTY, IDAHO, APPROVING THE USE OF THE COOPERATIVE PURCHASING PROGRAM OF SOURCEWELL, INC., FOR THE PURCHASE OF A CUSTOMIZABLE PRECAST RESTROOM FROM CXT, INC., AS A REPLACEMENT FOR THE PERSON FIELD RESTROOM, AND RATIFYING THE PURCHASE THEREOF.

ROLL CALL: McEvers Aye; Gookin Aye; English Aye; Wood Aye; Evans Aye; Miller Aye.
Motion Carried.

PUBLIC COMMENTS:

Justin O'Connell noted he was taken aback by the event fee discussion and expressed worry about Libertarians posing as Republicans. He noted that the entrepreneur spirit of government as it relates to event fees, and expressed concern and worried about the City potentially selling beer and wine and contracting for private security. He noted that Ketchum, Idaho introduced a restrictive funding policy for all events on city property, and it was managed through a contract. Central planning required all funds accrued during events go back to city coffers. He noted that the Ironman model would be embraced by taxing the rich. He expressed concern about ruining the town.

Emily Boyd, stated that she is the Director of Downtown Association. She explained that the downtown area is a nationally accredited main street. The events play a crucial role in the downtown businesses, create a sense of community, bring in over 150,000 people each year from all over the world, and sets our community apart from other communities. Impact varies between businesses; however, events can bring an average increase of 35% of sales to small business with some businesses noting doubled sales on event days. Increasing fees could cause constraints to the downtown businesses if events were unable to be held and asked that the Council keep in mind the benefits to the downtown businesses.

Linda Coppess, President and C.E.O. of the Coeur d'Alene Chamber, expressed appreciation for the Council support of the 4th of July event and to all the departments supporting the event. Specifically, she thanked the Council for entering into the agreement for the shared event parking revenues, noting costs are increasing, and they had a decline in sponsorship dollars, so the revenue increased the funding toward the community fireworks and some of the rising costs. She noted the events provided benefits to the business community and community members at large and understands it's a complicated topic and suggested that event parking fees could be charged for other special events to increase revenue.

Bill Green thanked the Council for their service. He noted that he had recent communication with the CDA School District (District) and encouraged the City to communicate and bridge build with the District. He suggested the City and District discuss how government and schools can work together since growth is bringing in more students to the schools. He suggested the City and District host a joint meeting to talk about those goals.

RESOLUTION NO. 22-031

A RESOLUTION OF THE CITY OF COEUR D'ALENE, KOOTENAI COUNTY, IDAHO, APPROVING AMENDMENT NO. 1 TO THE ENGINEERING CONSULTANT SERVICES AGREEMENT WITH KELLER ASSOCIATES, INC., FOR ENGINEERING DESIGN AND CONSTRUCTION CONSULTANT SERVICES FOR THE BLACKWELL BOOSTER STATION LOCATED ON SOUTH FAIRMONT LOOP.

Staff Report: Water Department Assistant Director Kyle Marine explained that the Blackwell Island public water system was originally constructed as a privately owned system supplied by a well, as the single water source. In 1973, the system requested to be supplied by the City through a wholesale agreement and consequently a transmission main was installed across the river to what is now the Blackwell Marina. The Blackwell system was further expanded in the County for many years. The residents became disenchanted with the private water company and requested direct service by the City in approximately 1992. In 1993, the City was forced by court order to acquire, operate and maintain the Blackwell System as a part of the City's public water system. The Water Department has been struggling with the many deficiencies of the system and are working to improve reliability within budget constraints. The existing booster station, located on a very small parcel at another location, is undersized, failing and does not have the necessary dedicated easements for replacement of water transmission infrastructure. This, and the need to construct a new booster station while the existing booster station is still operating in order to maintain water supplies to the county residents in the area, necessitated procurement of another location. Unfortunately, the steep topography of the area and the lack of available property renders typical construction almost nonexistent. Through a recent development the Water Department was able to negotiate and acquire property fronting an existing water transmission main and street infrastructure for this purpose. Keller Associates, Inc., entered into an engineering consultant services agreement with the City on August 30, 2021, for the amount of \$104,093.00, for the preliminary work on the Blackwell Booster Station project. Keller Associates, Inc., has submitted a proposal for completion of the project engineering services in the amount of \$227,280.00, bringing the total contract price to \$331,373.00. Staff anticipates, with approval of this contract, to get design and bid services done in fiscal years 2022/2023 and 2023/2024.

DISCUSSION: Councilmember English noted that the site is outside the City limits and asked if it will be annexed. Mr. Marine noted that the City was forced to accept the system in the 1970's, and it has failed, so we need to continue to maintain it. He noted that no other water district in the area was willing to take it over as it would be too costly for them. Councilmember McEvers asked if this would include an expansion, with Mr. Marine clarifying that this is just for the benefit of existing customers. Mayor Hammond asked if the core line is being replaced, with Mr. Marine explaining that the new booster station will use the new transition line, so that the old line can be used as a backup as long as possible. Councilmember Miller noted that she thought that there was a land swap that had something to do with the line. Mr. Marine confirmed that they entered into an agreement with a developer to add three (3) more services in exchange for the parcel for the station and the booster line. Councilmember Miller asked if that means

there is potential for more requests. Mr. Marine noted that the City is not obligated to serve any new customers.

MOTION: Motion by McEvers, seconded by English, to approve **Resolution No. 22-031**, approving Amendment No. 1 to the engineering consultant services agreement with Keller Associates, Inc., for engineering design and construction consultant services for a new Booster Station located on S. Fairmont Loop.

ROLL CALL: Gookin Aye; English Aye; Wood Aye; Evans Aye; Miller Aye; McEvers Aye.
Motion carried.

RESOLUTION NO. 22-032

A RESOLUTION OF THE CITY OF COEUR D'ALENE, KOOTENAI COUNTY, IDAHO, APPROVING CONTRACT AMENDMENT NO. 1 TO THE ENGINEERING CONSULTANT SERVICES AGREEMENT WITH J-U-B ENGINEERS, INC., FOR ENGINEERING DESIGN AND CONSTRUCTION CONSULTANT SERVICES FOR THE NORTHEAST WATER STORAGE FACILITY AND INFRASTRUCTURE IMPROVEMENTS LOCATED ON THOMAS LANE.

Staff Report: Water Department Assistant Director Kyle Marine noted that the 2012 Water Comprehensive Plan Update identified the needs for additional water storage as the City continues to grow. On May 3, 2016, the City entered into a contract with J-U-B to assist with identifying possible tank locations and proposed builds using topographical information and the hydraulic study to determine suitable sites. As possible new tank locations were identified, J-U-B helped with a rough draft and layout of tank design along with the negotiation to purchase property. With the recent increase in growth and water demand, staff believes an accelerated schedule is needed to prevent impending water pressure and quantity issues. After identifying different sites, the City struck an agreement to purchase property at the end of Thomas Lane in 2021. This project may be broken into two (2) phases due to its complexity. One phase will be the design, bid and construction of the tank site, and the second phase will be the design, bid and construction of the transmission main. The consultant has developed the next scope of work and relevant contract for design and construction services with this project in mind. J-U-B has submitted a proposal for completion of the project Phase I engineering services for \$1,322,000. The proposal for Phase I includes: Geotechnical evaluation of the property, tank site base pad development, design of the new transmission main, bid award, and construction management of the road, trail and tank site preparation. Phase II will consist of bidding out and awarding the construction of a one-million-gallon tank along with roughly 7,500 feet of transmission main down Thomas Lane to 15th Street. The engineer's cost estimate for construction is approximately \$7,710,000 to \$9,474,000, not including engineering. The current FY 2022 budget line item is \$1,500,000.00. Staff anticipates, with approval of this contract, to get design and bid services done fiscal years 2022-2023 and 2023-2024.

DISCUSSION: Councilmember McEvers clarified this is not a well, only a tank to hold water and transmission line, and wondered if it would cheaper to add a well. Mr. Marine noted that the prairie holds the aquifer and pushing the water into town does not provide the needed pressure

and the City would need many wells for this service, so the tank is better suited to balance the water. Mayor Hammond asked how many gallons this tank will hold with Mr. Marine noting it will hold 2 million gallons. The Mayor noted that the necessity for this tank had been identified a while back.

MOTION: Motion by McEvers, seconded by Evans, to approve **Resolution No. 22-032**, Approval of Amendment No. 1 to the engineering consultant services agreement with J-U-B Engineers, Inc., for engineering design and construction consultant services for a new Northeast Water Storage Facility and Infrastructure Improvements located on Thomas Lane.

ROLL CALL: English Aye; Wood Aye; Evans Aye; Miller Aye; McEvers Aye; Gookin Aye.
Motion carried.

COUNCIL DISCUSSION REGARDING SPECIAL EVENTS

Staff Presentation: Municipal Services Director Renata McLeod provided an overview of the City Codes related to events within the City limits of Coeur d'Alene, specifically Municipal Code (Code) Chapters 4.25; 4.30; 5.44, and 10.60. Additionally, she provided the list of the annual events and their ratings of high, medium, and low impact. She noted there were ten high impact special events on the streets and approximately seven (7) high impact events in the parks, with four (4) connected to the special events that impact the streets. She noted that the Code was most recently amended in 2018. City Attorney Randy Adams explained the constitutionality of the event subject matters and how the City can legally charge fees. He clarified that the general rule is that a fee for service must be reasonably related to, and not in excess of, the actual costs associated with serving that event. He clarified you can't charge a fee for the anticipated response to what the speech may be as it must not be a content-based fee. He noted that the City can issue guidelines within the Code for a fee reduction/waiver. Ms. McLeod provided an overview of the staffing costs associated with high impact event days. She provided options of entering into contracts for high impact events and amending internal processes.

DISCUSSION: Councilmember Wood asked for clarification regarding the large-scale events and the assessment by Police and Fire and need for a lot of public safety coverage. Mr. Adams noted that you could look at the number of people attending the event, not because of its content. In a recent situation, where there were people outside of the event protesting, the courts don't want those costs imposed on those putting on the event because it is a controversial message. The City must look at who is sponsoring the event and impose fees according to their event. Councilmember Wood clarified then, there are some events that the tax payers just have to absorb that expense that is unavoidable, with Mr. Adams confirming that would be the cost of doing business as a governmental entity providing police protection. Councilmember Miller asked if any of the items discussed could be addressed in a contract, with Mr. Adams confirming that a contract could be utilized to address issues.

Councilmember McEvers clarified the reason they wanted to talk about this is that the taxpayers are subsidizing the cost of the events. Councilmember Gookin noted that the community likes the events and the Council wants to have them here and doesn't want to the cost to continue to raise at the cost of the taxpayers. He likes the idea of a contract event and amounts negotiated,

but doesn't want to price everyone out of town. He felt that fees should be raised as the costs are going up and give the taxpayers a break, and renting out parking lots is another option to raise revenue. Mayor Hammond noted that there is a balance that needs to occur, and some of the taxpayers have invested in businesses and need the events to be profitable and the taxes support activities that support businesses. He also noted that within the northwest you would not find cities our size that have a viable downtown. Our downtown is inviting, one can enjoy the culture and ambiance due to the events. He noted that as Council considers the fees and wanting the events, it is not fair to put the cost of protests onto the events. The Mayor noted that the Council should differentiate between a gathering of the people and events that bring in commercial vendors. Councilmember Miller stated that this subject did come up a long time ago and Council has talked about it a number of times. She has been on the organizer side and knows how hard it is to make the event pencil out, but she doesn't think all events are created equal as they are non-profit, fundraiser, or vendor paid. She is in favor of having contracts for high impact events, and within the contract there are a lot of things to put in place such as parking, private services, and she would like to see a better analysis of staff time. Councilmember Miller suggested that the City should consider limiting any new high impact events. She counted 60 medium and low impact events during the summer and would like to give the community a break. In the past we were working to put Coeur d'Alene on the map and we are known now, so it is time to look at a multiple layer approach for contracts and say what serves us all best on a case-by-case basis. Councilmember Gookin noted adding a measurement of a public event such as public versus a non-profit in the contract. Councilmember Miller doesn't think the language needs to be in there but during negotiation you could work it all out, such as a community event like the 4th of July versus an event where the vendor is outnumbering the citizens. Mr. Adams noted that there will always be a subjective element and it would be good to combine codes into one place. Councilmember English felt this was a good discussion and good to have some structure around things but wanted to caution the Council not to over react to something that happens once in a while and keep things in context. Just because an event drew a controversial topic it should not be penalized for that, and we should not write a new rule book. He noted that he was born and raised here and believes the events are the community's values and what we have evolved into. He noted he is generally happy with what we do and doesn't want to over analyze and over structure everything. Councilmember Wood requested staff to get data from other resort communities our size and what they charge. Councilmember Miller would like to see high impact events as contracts and supports doing an assessment of where the fees come from and add in the time card code. Mayor Hammond summarized that the Council would like staff to further review the contract idea and fees should change with inflation annually. Councilmember Evans thanked Mr. Adams for the whitepaper and research he provided, noting that the City of Seattle calculates police fees into six (6) categories to use as calculations and it can be complicated.

MOTION: Motion by Gookin, seconded by English, to direct staff to update the code to combine all related sections into one chapter, research the viability of contracts for high impact events, and increase the fee schedule. **Motion carried.**

LEGISLATIVE PUBLIC HEARING: V-22-05 - VACATION OF A TEN-FOOT STRIP OF RIGHT-OF-WAY ADJOINING THE WESTERLY BOUNDARY LINE OF LOT 5 AND LOT 6, BLOCK 4 OF THE KAESMEYER ADDITION PLAT (316 S. 18TH STREET).

STAFF REPORT: Engineering Project Manager Dennis Grant noted that the applicant, John Hutchins, Unio West LLC, is requesting the of a ten-foot (10') strip of right-of-way adjoining the westerly boundary line of Lot 5 and Lot 6, Block 4 of the Kaesmeyer Addition plat (316 S. 18th Street). The requested right-of-way was originally dedicated to the City of Coeur d'Alene in 1907. The purpose of this request it to allow the lot to be more consistent with the typical sixty-foot (60') right-of-way of a street south of Sherman Avenue. The right-of-way can be incorporated into the development of the adjoining property. Therefore, the vacation of the portion of right-of-way adjoining the parcel would not impact the City and would be a benefit to the property owner, and add 800 square feet to county tax rolls. Mr. Grant noted that he sent out 51 certified mailings and received 1 comment in opposition of the request.

DISCUSSION: Councilmember Gookin asked for clarification that this request is not within the street, with Mr. Grant confirming it is not, that it is within the right-of-way and the property owner will be required to install a sidewalk. Councilmember Miller noted that a citizen contacted her and wanted to clarify that this will not change what type of structure can be built on the parcel. Mr. Grant confirmed the zoning is still R-12 and this action is just taking the property out of the city right-of-way.

PUBLIC COMMENTS: Mayor Hammond opened public comments.

Marshal Teredo noted that he received the meeting notice and didn't understand what the vacation was for and felt the information was vague. He explained that there were a lot of neighbors trying to understand the implications of the actions, which was not provided in the notice. He believes the owner is going to develop this property and worried about the disruption to the neighborhood and asked for the Council to postpone the hearing.

Councilmember Gookin asked if there is anything the owner would do on the property that would not be a deal breaker. Mr. Teredo said he would not have a problem if it doesn't affect the safety of the street.

Ryan Bosch noted he is a neighbor in the area and has an Accessory Dwelling Unit (ADU) in his back yard. He also develops property and builds homes and understands a vacation means the City is relinquishing rights to the land. He believes the City is gifting it to a developer. He likes that the road right-of-way is oversized as he has lived at this location since the 1980's and it is why they like living there. He has a special needs daughter and is concerned about street safety. He noted that there have been seven (7) new houses on the street and they have not requested the vacation of the right-of-way. He asked if the City could place conditions on the vacation, such as that the City's vacated property cannot be used for more density. He felt a bigger house would be alright on the parcel but would not want to see more units.

Todd Butler noted that he requested the same vacation last year and was denied, but wanted to give support for this request as he feels everyone on the street should take advantage of the vacation process. He does not believe the property owner making this request is asking for anything special, as this is a process that is within the code and if the City doesn't need the right-of-way, it can grant a vacation to the abutting property owners. It does not change the street. There are several nonconforming houses on the street and it would have zero impact on safety and encouraged the City to improve the request.

Mr. Grant noted that the letter is required per state code and that it does raise concerns for people. Additionally, the state code does not allow the City to condition a vacation, and confirmed the street will stay the same. The content of the letter could have some additional information such as the zoning and more explanation, as it was very simplified. Councilmember Gookin asked if the Council can determine what the use will be as part of the approval. Mr. Adams stated that they cannot, the only consideration is if the City has a use for the property. Councilmember Wood asked how soon the applicant would need to put in the sidewalk. Mr. Grant stated it would be required with the building permit.

COUNCIL BILL NO. 22-1009

AN ORDINANCE OF THE CITY OF COEUR D'ALENE, KOOTENAI COUNTY, IDAHO, VACATING A PORTION OF 18TH STREET RIGHT-OF-WAY LOCATED IN THE KAESMEYER ADDITION, RECORDED IN BOOK B OF PLATS AT PAGE 129, RECORDS OF KOOTENAI COUNTY, COEUR D'ALENE, IDAHO, GENERALLY DESCRIBED AS THAT TEN-FOOT (10') WIDE STRIP OF LAND ADJOINING THE WESTERLY BOUNDARY OF LOT 5 AND LOT 6, BLOCK 4 OF SAID PLAT; REPEALING ALL ORDINANCES AND PARTS OF ORDINANCES IN CONFLICT HEREWITH; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING FOR THE PUBLICATION OF A SUMMARY OF THIS ORDINANCE AND AN EFFECTIVE DATE HEREOF.

MOTION: Motion by Wood, seconded by Miller, to dispense with the rule and read **Council Bill No. 22-1009** once by title only.

ROLL CALL: Wood Aye; Evans Aye; Miller Aye; McEvers Aye; Gookin Aye; English Aye.
Motion carried.

MOTION: Motion by Wood, seconded by English, to adopt **Council Bill No. 22-1009**.

ROLL CALL: Wood Aye; Evans Aye; Miller Aye; McEvers Aye; Gookin Aye; English Aye.
Motion carried.

QUASI-JUDICIAL PUBLIC HEARING: A-2-22 A PROPOSED +/- 5.9-ACRE ANNEXATION FROM COUNTY AG TO R-5; APPLICANT: ASPEN HOMES & DEVELOPMENT, LLC; LOCATED AT 1808 N. 15TH STREET.

STAFF REPORT: Associate Mike Behary explained that the applicant Aspen Homes and Development LLC is requesting annexation of 5.9 acres zoned from County Agricultural-Suburban to City R-5 (Residential 5 units/acre). The subject site obtains its access off of 15th Street. The subject site is adjacent to the city limits on the west and south sides and will be

subject to the Hillside Ordinance. The applicant is proposing is proposing to build a 25 multifamily unit project that will consist of three buildings. The applicant intends to build on the gently sloping area portion of the property that directly abuts 15th Street. The applicant has indicated that the area they intend to build on has slopes less than 5%. The remainder of the property has significant slope and the applicant is proposing to keep this as a designated open space area. The overall density of the proposed development is 4.23 units per acre. Mr. Behary noted that there are four (4) findings required for the annexation as follows: that the request is or is not in conformance with the Comprehensive Plan policies; that public facilities and utilities are or are not available and adequate for the proposed use; that the physical characteristics of the site do or do not make it an acceptable request at this time; and that the proposal would or would not adversely affect the surrounding neighborhood with regard to traffic, neighborhood character and/or existing land uses. He presented the surrounding zoning, land uses, and applicable Comprehensive Plan objectives and provided staff input regarding the finding categories including traffic and a list of 14 items recommended to be included in the annexation agreement.

DISCUSSION: Councilmember Gookin noted that on the annexation map it appears there are two (2) different lots. Mr. Behary noted that the developer has indicated which portion of the lot will be an open space tract, the development being on one lot, and the open space a separate lot. Councilmember Gookin asked if this was required, with Mr. Behary noting it is not needed but they could do a dedicated easement and just wanted to indicate it would not be developed and be left as open space. Councilmember Gookin noted the place type is listed as single family, but in the narrative, it notes multi-family. Mr. Behary noted that the Planning Commission approved a Planned Unit Development (PUD) as a multi-family development, noting the site plan is approved with conditions, which would have to go back to Planning Commission if amendments were requested. Councilmember Miller clarified this is not a developer agreement, the open space would be private. Councilmember Wood noted that the photo indicates the land next to it is owned by the City. Mr. Behary clarified it was owned by the Eagles as their event center. Councilmember Gookin asked about the flood plain. Mr. Behary noted that there is some portion of the front lot that would be within the flood plain. Councilmember Wood clarified it has only 1.3 buildable acres with 25 units, with Mr. Behary clarifying it is a 5.9-acre parcel in total.

Mayor Hammond opened public comment with the clerk swearing in those who gave testimony.

PUBLIC COMMENTS:

APPLICANT: Gordon Dobler with Dobler Engineering, Coeur d'Alene, stated he is representing the owner and that they originally requested a R-17 Zone from the Planning Commission as only a portion of the lot is buildable, as the sloped area will need to be open space. The Planning Commission was not comfortable with the R-17 density. They want to provide multi-family housing and because the original proposal didn't lock down the open space, they suggested moving forward with the PUD, as the PUD would lock in the site plan with the open space as natural space and changed to an R-5 density. The site plan lays out the development and sets conditions. Mr. Dobler noted that without the PUD, the developer could not lay out the units. He noted that the PUD goes hand and glove with the density and he presented the site plan layout. He explained that 15th Street is a collector street and there are

several duplexes and apartments along the street and believes R-5 is the right zone. The items to be included in the annexation agreement are amenable to the owner and he feels it should be annexed and noted the property already uses City services such as streets and stormwater.

DISCUSSION CONT: Councilmember McEvers asked if the only ingress/egress will be off of 15th Street, with Mr. Dobler noting that it will have a separate access from the Eagles driveway. Councilmember Miller noted that there was another development up the road that has more acreage and less units. Mr. Dobler noted that it has about the same acreage but this project proposes fewer units. Councilmember Miller asked if the units will be for sale or rent, with Mr. Dobler noting that they are all apartments at this time. Councilmember Miller asked if there was any consideration to provide for local workforce housing, with Mr. Dobler stating not at this point.

Lynn Fullbrook, noted she is opposed to the request and shares a property line to the north of this development. She expressed concerns about building townhouses and apartments. She noted that at the June Planning Commission meeting Mr. Dobler was asked if the neighbors to the north were notified and Mr. Dobler stated that they had discussions and that is not true. She is worried that their concerns will not be heeded in the development, since the developer has already been dishonest in their comments. She noted that the traffic count is estimated at 160 trips per day and she already has access issues on 15th Street when turning left at 7:00 a.m. The development plan shows adequate parking but there are cars parked on the street up the road which affects the bike lane and when snow is removed how will a single drive work for this project. There are two (2) main services impacted by increased traffic, the Fire Station and Avista Utility. This type of mixed housing adds to the congestion of the area. She expressed concern about the power line and the height of the buildings and how it will affect their property. She would like a 6' fence abutting their property not just trees. She hopes the Council considers their concerns and postpones this project. She is a public service employee and doesn't see this as a retirement home with the development being approved.

APPLICANT REBUTTAL: Mr. Dobler noted that a lot of the concerns raised were covered within the PUD at the Planning Commission level such as landscaping, access, and noted the Fire Department has approved of the onsite turn around. The traffic is based on apartments and town homes, noted the type of construction was common walls, not condominiums, so it should be classified as all apartments. He noted the traffic count estimate of 160 per day equals one car every three minutes, and 15th Street handles 13,000 cars today and the future design does include a left turn pocket. Councilmember Gookin asked if at the Planning Commission meeting, Mr. Dobler had stated he spoke to the neighbors to the north, with Mr. Dobler stating he does not recall saying that and has not talked to the neighbors to the north. Councilmember McEvers asked if there is wiggle room to include the fencing as requested by the neighbor. Mr. Dobler noted that the trees are within the PUD and exceeds requirements; however, the developer would include fencing as part of the annexation agreement conditions.

MOTION: Motion by McEvers, seconded by Evans, to approve A-2- 22; A Proposed +/- 5.9-Acre Annexation from County Ag to R-5; Applicant: Aspen Homes & Development, LLC; Located at 1808 N. 15th Street, including the recommendations for the annexation agreement and the fencing around the north parcel and to develop the necessary Findings and Order.

DISCUSSION: Councilmember Gookin noted that the PUD is not presented to the Council and he questions the parking, however, the renters cannot park on the street on 15th Street. He feels that it does not blend with the Comprehensive Plan and they squeezed all the density in the front part of the lot, so it looks more like R-32 and can't support this annexation. Councilmember Wood agreed that the density is too much, even if it were 15 units in a little over an acre. Councilmember McEvers stated that he thought it was the perfect place for density, up against the mountain, a block from the freeway access, and 15th Street being able to handle the increased traffic. The park and Fire Department are already impacting the one neighbor and R-5 feels right, so he will support the request.

ROLL CALL: Gookin No; English Aye; Wood No; Evans Aye; Miller No; McEvers Aye.
Motion Carried with the Mayor voting in the affirmative.

ADJOURNMENT: Motion by McEvers, seconded by Gookin, that there being no other business, this meeting be adjourned. **Motion carried.**

The meeting adjourned at 8:10 p.m.

James Hammond, Mayor

ATTEST:

Renata McLeod
City Clerk

OTHER BUSINESS

CITY COUNCIL STAFF REPORT

DATE: AUGUST 2, 2022

FROM: CAPTAIN DAVE HAGAR, POLICE DEPARTMENT

SUBJECT: APPROVAL TO ENTER INTO A CONSTRUCTION
MANAGER/GENERAL CONTRACTOR (CMGC) CONTRACT WITH
CORE CONSTRUCTION IN THE AMOUNT OF \$40,000, FOR PRE-
CONSTRUCTION SERVICES

DECISION POINT: Should Council approve a Construction Manager/General Contractor (CMGC) Contract with CORE West, Inc., in the amount of \$40,000, for pre-construction services for the remodel and expansion of the Police Department building?

HISTORY: Council previously approved \$4,500,000 in American Rescue Plan Act (ARPA) funds for the remodel and addition to the Police Department Headquarters Building. In February of this year, we advertised a RFQ for CM/GC services and, while there was some interest, the City did not receive any Statements of Qualifications. Based on this, the Police Department consulted the City's Legal Department (Legal) and was informed that it could engage directly with any qualified provider and negotiate a contract. The Department began with CORE West, Inc., a national firm that specializes in municipal buildings and, specifically, public safety buildings. This firm is currently constructing the \$44 million Veterans' Home in Post Falls and has built other public safety and government buildings across Idaho. The Department met with representatives of the firm both in-person and virtually several times and has included Building Maintenance Division staff in these discussions. The Department has also worked with Legal in reviewing the contracts. The firm is well-qualified and has already offered several suggestions and alternatives to reduce costs and maximize the value of the proposed remodel and additions.

Pre-construction services include consultation with the City and the Architect on procedures, progress, coordination, and scheduling; advice on proposed site use and improvements, such as selection of materials, building systems, and equipment; recommendations as to constructability, availability of materials and labor, time requirements, and other factors; preparation of a project schedule for phased construction; preparation of cost estimates and procurement schedules; and preparation of value engineering options.

FINANCIAL ANALYSIS: Of the allocated ARPA funds, the initial cost will be \$40,000 in pre-construction costs, and the final total will be determined after we have selected a design firm partner.

PERFORMANCE ANALYSIS: The selection of a CM/GC firm will start the process to move forward and will assist in selecting the design firm to ensure a cohesive team that will maximize the use of public funds for the greatest return.

DECISION POINT: Council should approve a Construction Manager/General Contractor Contract with CORE West, Inc., in the amount of \$40,000, for pre-construction services for the remodel and expansion of the Police Department building.

RESOLUTION NO. 22-033

A RESOLUTION OF THE CITY OF COEUR D'ALENE, KOOTENAI COUNTY, IDAHO, APPROVING A CONSTRUCTION MANAGER/GENERAL CONTRACTOR (CMGC) CONTRACT WITH CORE WEST, INC., IN THE AMOUNT OF \$40,000.00 FOR PRE-CONSTRUCTION SERVICES FOR THE POLICE DEPARTMENT BUILDING REMODEL AND EXPANSION.

WHEREAS, it is recommended that the City of Coeur d'Alene enter into a Construction Manager/General Contractor (CMGC) Agreement with Core West, Inc., in the amount of Forty-Thousand and no/100's Dollars (\$40,000.00) for pre-construction services for the Police Department Building Remodel and Expansion, pursuant to terms and conditions set forth in the Agreement, a copy of which is attached hereto as Exhibit "A" and by reference made a part hereof; and

WHEREAS, it is deemed to be in the best interests of the City of Coeur d'Alene and the citizens thereof to enter into such Agreement.

NOW, THEREFORE,

BE IT RESOLVED by the Mayor and City Council of the City of Coeur d'Alene that the City enter into a Construction Manager/General Contractor (CMGC) Agreement with Core West, Inc., in the amount of Forty-Thousand and no/100's Dollars (\$40,000.00) for pre-construction services for the Police Department Building Remodel and Expansion, in substantially the form attached hereto as Exhibit "A" and incorporated herein by reference, with the provision that the Mayor, City Administrator, and City Attorney are hereby authorized to modify said Agreement to the extent the substantive provisions of the Agreement remain intact.

BE IT FURTHER RESOLVED that the Mayor and City Clerk be and they are hereby authorized to execute such Agreement on behalf of the City.

DATED this 2nd day of August, 2022.

James Hammond, Mayor

ATTEST:

Renata McLeod, City Clerk

Motion by _____, Seconded by _____, to adopt the foregoing resolution.

ROLL CALL:

COUNCIL MEMBER EVANS Voted

COUNCIL MEMBER MILLER Voted

COUNCIL MEMBER GOOKIN Voted

COUNCIL MEMBER ENGLISH Voted

COUNCIL MEMBER MCEVERS Voted

COUNCIL MEMBER WOOD Voted

_____ was absent. Motion _____.

 **AIA**® Document A133™ – 2019

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

AGREEMENT made as of the 25th day of May in the year 2022
(In words, indicate day, month, and year.)

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

City of Coeur d'Alene
710 Mullan Avenue
Coeur d'Alene, ID 83814
P: 208-769-2262

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

CORE West, Inc.
7150 Cascade Valley Court
Las Vegas, NV 89128
P: 702-794-0550

for the following Project:
(Name, location, and detailed description)

Police Department Headquarters Remodel and Expansion
3818 N. Schreiber Way
Coeur d'Alene, ID 83815

The Architect:
(Name, legal status, address, and other information)

None Listed

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

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

AIA Document A201™–2017, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

The Owner and Construction Manager agree as follows.

RE: Resolution No. 22-033

Exhibit "A"

TABLE OF ARTICLES

- 1 INITIAL INFORMATION
- 2 GENERAL PROVISIONS
- 3 CONSTRUCTION MANAGER'S RESPONSIBILITIES
- 4 OWNER'S RESPONSIBILITIES
- 5 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES
- 6 COMPENSATION FOR CONSTRUCTION PHASE SERVICES
- 7 COST OF THE WORK FOR CONSTRUCTION PHASE
- 8 DISCOUNTS, REBATES, AND REFUNDS
- 9 SUBCONTRACTS AND OTHER AGREEMENTS
- 10 ACCOUNTING RECORDS
- 11 PAYMENTS FOR CONSTRUCTION PHASE SERVICES
- 12 DISPUTE RESOLUTION
- 13 TERMINATION OR SUSPENSION
- 14 MISCELLANEOUS PROVISIONS
- 15 SCOPE OF THE AGREEMENT

EXHIBIT A GUARANTEED MAXIMUM PRICE AMENDMENT

EXHIBIT B INSURANCE AND BONDS

ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in this Section 1.1.

(For each item in this section, insert the information or a statement such as "not applicable" or "unknown at time of execution.")

§ 1.1.1 The Owner's program for the Project, as described in Section 4.1.1:

(Insert the Owner's program, identify documentation that establishes the Owner's program, or state the manner in which the program will be developed.)

An expansion of the existing Police Department Headquarters building with a remodel of portions of the Police Department Headquarters building, and an analysis and possible renovation of the current HVAC system.

The program will be completed in phases to allow for continuous operation of the Police facility on a 24/7 basis.

§ 1.1.2 The Owner's budget for the Guaranteed Maximum Price, as defined in Article 6:

(Provide total and, if known, a line item breakdown.)

Owner's preliminarily estimated budget shall be Four Million Dollars (\$4,000,000.00)

§ 1.1.3 The Owner's anticipated Sustainable Objective for the Project:

(Identify and describe the Owner's Sustainable Objective for the Project, if any.)

None.

§ 1.1.4 The Owner identifies the following representative in accordance with Section 4.2:
(List name, address, and other contact information.)

City of Coeur d'Alene
710 E. Mullan Avenue
Coeur d'Alene, ID, 83814
David Hagar, Police Captain
P: 208-769-2262

(Paragraphs deleted)E: dhagar@cdaid.org

§ 1.1.5 The Architect's representative:
(List name, address, and other contact information.)

§ 1.1.6 The Construction Manager identifies the following representative in accordance with Article 3:
(List name, address, and other contact information.)

CORE West, Inc.
7150 Cascade Valley Court
Las Vegas, NV 89128-4055
Seth Maurer, President
P: 702-794-0550
SethMaurer@COREconstruction.com

(Paragraph deleted)

§ 1.1.7 Other Initial Information on which this Agreement is based:

(Paragraphs deleted)

§ 1.2 The Owner and Construction Manager may rely on the Initial Information. Both parties, however, recognize that such information may materially change and, in that event, the Owner and the Construction Manager shall appropriately adjust the Project schedule, the Construction Manager's services, and the Construction Manager's compensation. The Owner shall adjust the Owner's budget for the Guaranteed Maximum Price and the Owner's anticipated design and construction milestones, as necessary, to accommodate material changes in the Initial Information.

(Paragraph deleted)

ARTICLE 2 GENERAL PROVISIONS

§ 2.1 The Contract Documents

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract and are as fully a part of the Contract as if attached to this Agreement or repeated herein. Upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, the Contract Documents will also include the documents described in Section 3.2.3 and identified in the Guaranteed Maximum Price Amendment and revisions prepared by the Architect and furnished by the Owner as described in Section 3.2.8. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or

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oral. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern. An enumeration of the Contract Documents, other than a Modification, appears in Article 15.

§ 2.1.1 Order of Precedence

In case of any inconsistency, conflict, or ambiguity among the Contract Documents, the documents shall govern in the following order: (a) Change Orders and written amendments to this Agreement; (b) the Agreement; (c) the drawings, specifications, and addenda issued prior to the execution of this Agreement; (d) information furnished by the Owner pursuant to Article 4 of the Agreement or Article 2 of the General Conditions of the Contract; (e) other documents listed in this Agreement. Among all the Contract Documents, the term or provision that is most specific or includes the latest date shall control. If any provision of this Agreement conflicts with or is inconsistent with any other provision of other Contract Documents, the provision of this Agreement governs, unless the other provision specifically refers to the provision it supersedes and replaces in this Agreement.

§ 2.2 Relationship of the Parties

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

§ 2.3 General Conditions

§ 2.3.1 For the Preconstruction Phase, AIA Document A201™–2017, General Conditions of the Contract for Construction, shall apply as follows: Section 1.5, Ownership and Use of Documents; Section 1.7, Digital Data Use and Transmission; Section 1.8, Building Information Model Use and Reliance; Section 2.2.4, Confidential Information; Section 3.12.10, Professional Services; Section 10.3, Hazardous Materials; Section 13.1, Governing Law. The term "Contractor" as used in A201–2017 shall mean the Construction Manager.

§ 2.3.2 For the Construction Phase, the general conditions of the contract shall be as set forth in A201–2017, which document is incorporated herein by reference. The term "Contractor" as used in A201–2017 shall mean the Construction Manager.

ARTICLE 3 CONSTRUCTION MANAGER'S RESPONSIBILITIES

The Construction Manager's Preconstruction Phase responsibilities are set forth in Sections 3.1 and 3.2, and in the applicable provisions of A201-2017 referenced in Section 2.3.1. The Construction Manager's Construction Phase responsibilities are set forth in Section 3.3. The Owner and Construction Manager may agree, in consultation with the Architect, for the Construction Phase to commence prior to completion of the Preconstruction Phase, in which case, both phases will proceed concurrently. The Construction Manager shall identify a representative authorized to act on behalf of the Construction Manager with respect to the Project.

§ 3.1 Preconstruction Phase

§ 3.1.1 Extent of Responsibility

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

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

§ 3.1.3 Consultation

§ 3.1.3.1 The Construction Manager shall schedule and conduct meetings with the Architect and Owner to discuss such matters as procedures, progress, coordination, and scheduling of the Work.

§ 3.1.3.2 The Construction Manager shall advise the Owner and Architect on proposed site use and improvements, selection of materials, building systems, and equipment. The Construction Manager shall also provide recommendations to the Owner and Architect, consistent with the Project requirements, on constructability; availability of materials and labor; time requirements for procurement, installation and construction; prefabrication; and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions.

§ 3.1.3.3 The Construction Manager shall assist the Owner and Architect in establishing building information modeling and digital data protocols for the Project, using AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, or other document/exhibit as mutually agreed to, to establish the protocols for the development, use, transmission, and exchange of digital data.

§ 3.1.4 Project Schedule

When Project requirements have been sufficiently identified, the Construction Manager shall prepare and periodically update a Project schedule for the Architect's review and the Owner's acceptance. Construction Manager shall coordinate and integrate the Project schedule with the services and activities of Owner, Construction Manager, Architect, and the requirements of governmental entities. As design proceeds, Construction Manager shall update the Project schedule to indicate proposed activity sequences, durations, or milestone dates for such activities as receipt and approval of pertinent information, issuance of the drawings and specifications, the preparation and processing of shop drawings and samples, delivery of materials or equipment requiring long-lead-time procurement, Owner's occupancy requirements and estimated date of Substantial Completion of the Project. If Project schedule updates indicate that milestone dates contained in prior Project schedules will not be met, Construction Manager shall notify and make recommendations to Owner. Construction Manager shall make recommendations to Owner and Architect regarding the phased issuance of the drawings and specifications.

§ 3.1.5 Phased Construction

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

§ 3.1.6 Cost Estimates

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

§ 3.1.6.2 As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall prepare and update, at appropriate intervals agreed to by the Owner, Construction Manager and Architect, an estimate of the Cost of the Work with increasing detail and refinement. The Construction Manager shall include in the estimate those costs to allow for the further development of the design, price escalation, and market conditions, until such time as the Owner and Construction Manager agree on a Guaranteed Maximum Price for the Work. The estimate shall be provided for the Architect's review and the Owner's approval. The Construction Manager shall inform the Owner and Architect in the event that the estimate of the Cost of the Work exceeds the latest approved Project budget, and make recommendations for corrective action.

§ 3.1.6.3 This paragraph has been intentionally deleted.

§ 3.1.7 As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall consult with the Owner and Architect and make recommendations regarding constructability and schedules, for the Architect's review and the Owner's approval.

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§ 3.1.8 The Construction Manager shall make recommendations to the Owner and Architect regarding equipment, materials, services, and temporary Project facilities for common use by Construction Manager, its Subcontractors, sub-subcontractors, and suppliers.

(Paragraphs deleted)

§ 3.1.11 Subcontractors and Suppliers

§ 3.1.11.1 The Construction Manager shall provide a subcontracting plan, if requested in writing by the Owner prior to the Guaranteed Maximum Price Amendment, for the Owner's review and approval.

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

§ 3.1.11.3 The processes described in Article 9 shall apply if bid packages will be issued during the Preconstruction Phase.

§ 3.1.12 Procurement

The Construction Manager shall prepare, for the Architect's review and the Owner's acceptance, a procurement schedule for items that must be ordered in advance of construction. Upon Owner's written request and Construction Manager's receipt of the fully executed Contract, the Construction Manager shall expedite and coordinate the ordering and delivery of materials that must be ordered in advance of construction and Owner shall compensate pay Construction Manager within 30 days of receipt of Construction Manager's invoice. If the Owner agrees to procure any items prior to the establishment of the Guaranteed Maximum Price, the Owner shall procure the items on terms and conditions acceptable to the Construction Manager. Upon the establishment of the Guaranteed Maximum Price, the Owner shall assign all contracts for these items to the Construction Manager and the Construction Manager shall thereafter accept responsibility for them.

§ 3.1.13 Notices and Compliance with Laws

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

§ 3.1.14 Other Preconstruction Services

Insert a description of any other Preconstruction Phase services to be provided by the Construction Manager, or reference an exhibit attached to this document

(Describe any other Preconstruction Phase services, such as providing cash flow projections, development of a project information management system, early selection or procurement of subcontractors, etc.)

Value engineering options and ideas where cost and timesaving might be achieved.

§ 3.2 Guaranteed Maximum Price Proposal

§ 3.2.1 At a time to be mutually agreed upon by the Owner and the Construction Manager, the Construction Manager shall prepare a Guaranteed Maximum Price proposal for the Owner's and Architect's review, and the Owner's acceptance. The Guaranteed Maximum Price in the proposal shall be the sum of the Construction Manager's estimate of the Cost of the Work, the Construction Manager's contingency described in Section 3.2.4, and the Construction Manager's Fee described in Section 6.1.2.

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

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

- .1 A list of the Drawings and Specifications, including all Addenda thereto, and the Conditions of the Contract;
- .2 A list of the clarifications and assumptions made by the Construction Manager in the preparation of the Guaranteed Maximum Price proposal, including assumptions under Section 3.2.2;

- .3 A statement of the proposed Guaranteed Maximum Price, including a statement of the estimated Cost of the Work organized by trade categories or systems, including allowances; the Construction Manager's contingency set forth in Section 3.2.4; and the Construction Manager's Fee;
- .4 The anticipated date of Substantial Completion upon which the proposed Guaranteed Maximum Price is based; and
- .5 A date by which the Owner must accept the Guaranteed Maximum Price.

§ 3.2.4 In preparing the Construction Manager's Guaranteed Maximum Price proposal, the Construction Manager shall include a contingency for the Construction Manager's exclusive use to cover those costs that are included in the Guaranteed Maximum Price but not otherwise allocated to another line item or included in a Change Order.

§ 3.2.5 The Construction Manager shall meet with the Owner and Architect to review the Guaranteed Maximum Price proposal. In the event that the Owner or Architect discover any inconsistencies or inaccuracies in the information presented, they shall promptly notify the Construction Manager, who shall make appropriate adjustments to the Guaranteed Maximum Price proposal, its basis, or both.

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

§ 3.2.7 The Construction Manager shall not incur any cost to be reimbursed as part of the Cost of the Work prior to the execution of the Guaranteed Maximum Price Amendment, unless the Owner provides prior written authorization for such costs.

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

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

§ 3.3 Construction Phase

§ 3.3.1 General

§ 3.3.1.1 For purposes of Section 8.1.2 of A201–2017, the Date of Commencement of the Work shall mean the date of commencement of the Construction Phase.

§ 3.3.1.2 The Construction Phase shall commence fifteen (15) days from Construction Manager's receipt of the latter of the following:

1. Fully executed Agreement including the GMP Amendment.
2. Evidence of funding satisfactory to Construction Manager.
3. Issuance of Site Permit, Building Permit, and any other permits required to commence the Work.
4. Owner's Notice To Proceed with Construction.

§ 3.3.2 Administration

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

§ 3.3.2.2 Upon the execution of the Guaranteed Maximum Price Amendment, the Construction Manager shall prepare and submit to the Owner and Architect a construction schedule for the Work and a submittal schedule in accordance with Section 3.10 of A201–2017.

§ 3.3.2.3 Monthly Report

The Construction Manager shall record the progress of the Project. On a monthly basis, or otherwise as agreed to by the Owner, the Construction Manager shall submit written progress reports to the Owner and Architect, showing percentages of completion and other information required by the Owner.

§ 3.3.2.4 Daily Logs

The Construction Manager shall keep, and make available to the Owner and Architect, a daily log containing a record for each day of weather, portions of the Work in progress, number of workers on site, identification of equipment on site, problems that might affect progress of the work, accidents, injuries, and other information required by the Owner.

§ 3.3.2.5 Cost Control

The Construction Manager shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The Construction Manager shall identify variances between actual and estimated costs and report the variances to the Owner and Architect, and shall provide this information in its monthly reports to the Owner and Architect, in accordance with Section 3.3.2.3 above.

ARTICLE 4 OWNER'S RESPONSIBILITIES

§ 4.1 Information and Services Required of the Owner

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

§ 4.1.2 Prior to the execution of the Guaranteed Maximum Price Amendment, the Construction Manager may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. After execution of the Guaranteed Maximum Price Amendment, the Construction Manager may request such information as set forth in A201-2017 Section 2.2.

§ 4.1.3 The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Article 7, (2) the Owner's other costs, and (3) reasonable contingencies related to all of these costs. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Construction Manager and Architect. The Owner and the Architect, in consultation with the Construction Manager, shall thereafter agree to a corresponding change in the Project's scope and quality.

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

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

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

§ 4.1.4.3 The Owner, when such services are requested, shall furnish services of geotechnical engineers, which may include test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

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

§ 4.1.6 If the Owner identified a Sustainable Objective in Article 1, the Owner shall fulfill its responsibilities as required per the Contract.

§ 4.2 Owner's Designated Representative

The Owner shall identify a representative authorized to act on behalf of the Owner with respect to the Project. The Owner's representative shall render decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the Construction Manager. Except as otherwise provided in Section 4.2.1 of A201–2017, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

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

§ 4.3 Architect

The Owner shall retain an Architect to provide services, duties and responsibilities as described in AIA Document B133™–2019, Standard Form of Agreement Between Owner and Architect, Construction Manager as Constructor Edition, including any additional services requested by the Construction Manager that are necessary for the Preconstruction and Construction Phase services under this Agreement. The Owner shall provide the Construction Manager with a copy of the scope of services in the executed agreement between the Owner and the Architect, and any further modifications to the Architect's scope of services in the agreement.

ARTICLE 5 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

§ 5.1 Compensation

§ 5.1.1 For the Construction Manager's Preconstruction Phase services described in Sections 3.1 and 3.2, the Owner shall compensate the Construction Manager as follows:

(Insert amount of, or basis for, compensation and include a list of reimbursable cost items, as applicable.)

A Lump Sum value of Forty Thousand Dollars and No/100's (\$40,000.00)

§ 5.1.2 The hourly billing rates for Preconstruction Phase services of the Construction Manager and the Construction Manager's Consultants and Subcontractors, if any, are set forth below.

(If applicable, attach an exhibit of hourly billing rates or insert them below.)

Exhibit C - Construction Manager's Hourly Rates

(Table deleted)

§ 5.1.2.1 Hourly billing rates for Preconstruction Phase services include all costs to be paid or incurred by the Construction Manager, as required by law or collective bargaining agreements, for taxes, insurance, contributions, assessments and benefits and, for personnel not covered by collective bargaining agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, and shall remain unchanged unless the parties execute a Modification.

§ 5.1.3 If the Preconstruction Phase services covered by this Agreement have not been completed within Twelve (12) months of the date of this Agreement, through no fault of the Construction Manager, the Construction Manager's compensation for Preconstruction Phase services shall be equitably adjusted.

§ 5.2 Payments

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

Init.

§ 5.2.2 Invoices must be submitted by the 10th of the month for work done in the previous calendar month. Payment shall be made by the end of each calendar month for invoices timely submitted. Amounts unpaid fifteen (15) days after the end of the month shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Construction Manager.

(Insert rate of monthly or annual interest agreed upon.)

Eight (8.0%) per annum

ARTICLE 6 COMPENSATION FOR CONSTRUCTION PHASE SERVICES

§ 6.1 Contract Sum

§ 6.1.1 The Owner shall pay the Construction Manager the Contract Sum in current funds for the Construction Manager's performance of the Contract after execution of the Guaranteed Maximum Price Amendment. The Contract Sum is the Cost of the Work as defined in Article 7 plus the Construction Manager's Fee.

§ 6.1.2 The Construction Manager's Fee:

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

A lump sum fee equal to Seven and One Half percent (7.5%) of the Guaranteed Maximum Price (GMP)

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

Seven and One Half percent (7.5%) Profit plus bond, insurance and builders risk markups.

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

Ten (10%) Overhead; Five (5%) Profit.

§ 6.1.5 Rental rates for Construction Manager-owned equipment, if any, shall not exceed One Hundred percent (100 %) of the standard rental rate paid at the place of the Project.

§ 6.1.6 Liquidated damages, if any:

(Insert terms and conditions for liquidated damages, if any.)

The Construction Manager understands that if the Date of Substantial Completion of the Work established within the GMP Amendment, as may be amended by subsequent Change Order, is not attained, the Owner will suffer damages which are difficult to determine and accurately specify. The Construction Manager agrees that if the Date of Substantial Completion is not attained, the Construction Manager shall pay the Owner One Thousand and No/100 Dollars (\$1,000.00) as liquidated damages and not as a penalty for each Day that Substantial Completion extends beyond the Date of Substantial Completion. If Construction Manager fails to perform the Work in accordance with and within the time specified in this Contract, Owner will incur some degree of damages. The Parties expressly acknowledge and agree that it would be difficult or impossible to determine with absolute precision the amount of damages that would be incurred by Owner as a result of Construction Manager's failure to perform the Work in accordance with and within the time specified in this Contract. The Parties accordingly agree, having taken into account all factors that they deem appropriate, including all of the respective rights and obligations under this Contract, that liquidated damages are in lieu of actual damages and are the Parties' reasonable estimate of fair compensation for the losses that are reasonably anticipated to be incurred by Owner from Contractor's failure to timely perform in accordance with the Contract, and do not constitute a penalty. The payment of liquidated damages (and, to the extent applicable, termination of the Contract by Owner for default in accordance with the terms hereof) shall be Construction Manager's sole and exclusive obligation and Owner's sole and exclusive remedy with respect to the failure to timely perform in accordance with the guaranteed dates set forth in this Contract.

§ 6.1.7 Other:

(Insert provisions for bonus, cost savings or other incentives, if any, that might result in a change to the Contract Sum.)

To the extent the Cost of the Work is less than the Guaranteed Maximum Price, the Construction Manager and Owner shall share in such savings:

Init.

Percentage Split of Savings: ____% to Owner / ____% to Construction Manager.

Percentage Split of CMAR's Contingency Savings: ____% to Owner / ____% to Construction Manager.

§ 6.2 Guaranteed Maximum Price

The Construction Manager guarantees that the Contract Sum shall not exceed the Guaranteed Maximum Price set forth in the Guaranteed Maximum Price Amendment, subject to additions and deductions by Change Order as provided in the Contract Documents. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Construction Manager without reimbursement by the Owner.

§ 6.3 Changes in the Work

§ 6.3.1 The Owner may, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions. The Owner shall issue such changes in writing. The Construction Manager may be entitled to an equitable adjustment in the Contract Time as a result of changes in the Work.

§ 6.3.1.1 The Architect may order minor changes in the Work as provided in Article 7 of AIA Document A201–2017, General Conditions of the Contract for Construction.

§ 6.3.2 Adjustments to the Guaranteed Maximum Price on account of changes in the Work subsequent to the execution of the Guaranteed Maximum Price Amendment may be determined by any of the methods listed in Article 7 of AIA Document A201–2017, General Conditions of the Contract for Construction.

§ 6.3.3 Adjustments to subcontracts awarded on the basis of a stipulated sum shall be determined in accordance with Article 7 of A201–2017, as they refer to "cost" and "fee," and not by Articles 6 and 7 of this Agreement. Adjustments to subcontracts awarded with the Owner's prior written consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.

§ 6.3.4 In calculating adjustments to the Guaranteed Maximum Price, the terms "cost" and "costs" as used in Article 7 of AIA Document A201–2017 shall mean the Cost of the Work as defined in Article 7 of this Agreement and the term "fee" shall mean the Construction Manager's Fee as defined in Section 6.1.2 of this Agreement.

§ 6.3.5 If no specific provision is made in Section 6.1.3 for adjustment of the Construction Manager's Fee in the case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment provisions of Section 6.1.3 will cause substantial inequity to the Owner or Construction Manager, the Construction Manager's Fee shall be equitably adjusted on the same basis that was used to establish the Fee for the original Work, and the Guaranteed Maximum Price shall be adjusted accordingly.

ARTICLE 7 COST OF THE WORK FOR CONSTRUCTION PHASE

§ 7.1 Costs to Be Reimbursed

§ 7.1.1 The term Cost of the Work shall mean costs necessarily incurred by the Construction Manager in the proper performance of the Work. The Cost of the Work shall include only the items set forth in Sections 7.1 through 7.7.

§ 7.1.2 Where, pursuant to the Contract Documents, any cost is subject to the Owner's prior approval, the Construction Manager shall obtain such approval in writing prior to incurring the cost.

§ 7.1.3 Costs shall be at rates not higher than the standard rates paid at the place of the Project, except with prior approval of the Owner.

§ 7.2 Labor Costs

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

§ 7.2.2 Wages or salaries of the Construction Manager's supervisory and administrative personnel when stationed at the site and performing Work, with the Owner's prior approval.

§ 7.2.2.1 Wages or salaries of the Construction Manager's supervisory and administrative personnel when performing Work directly for the project and stationed at a location other than the site,

Init.

(Paragraphs deleted)
with the Owner's prior approval.

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

§ 7.2.4 Costs paid or incurred by the Construction Manager, as required by law or collective bargaining agreements, for taxes, insurance, contributions, assessments and benefits and, for personnel not covered by collective bargaining agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Sections 7.2.1 through 7.2.3.

§ 7.2.5 If agreed rates for labor costs, in lieu of actual costs, are provided in this Agreement, the rates shall remain unchanged throughout the duration of this Agreement, unless the parties execute a Modification.

§ 7.3 Subcontract Costs

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

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

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

§ 7.4.2 Costs of materials described in the preceding Section 7.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold by the Construction Manager. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

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

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

§ 7.5.2 Rental charges for temporary facilities, machinery, equipment, and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site, and the costs of transportation, installation, dismantling, minor repairs, and removal of such temporary facilities, machinery, equipment, and hand tools. Rates and quantities of equipment owned by the Construction Manager, or a related party as defined in Section 7.8, shall be subject to the Owner's prior approval. The total rental cost of any such equipment may not exceed the purchase price of any comparable item.

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

§ 7.5.4 Costs of the Construction Manager's site office, including general office equipment, supplies, and reasonable petty cash expenses of the site office.

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

§ 7.6 Miscellaneous Costs

§ 7.6.1 Premiums for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to this Contract.

§ 7.6.1.1 Costs for self-insurance, for either full or partial amounts of the coverages required by the Contract Documents, with the Owner's prior approval.

Init.

§ 7.6.1.2 Costs for insurance through a captive insurer owned or controlled by the Construction Manager, with the Owner's prior approval.

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

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

§ 7.6.4 Fees of laboratories for tests required by the Contract Documents; except those related to defective or nonconforming Work for which reimbursement is excluded under Article 13 of AIA Document A201–2017 or by other provisions of the Contract Documents, and which do not fall within the scope of Section 7.7.3.

§ 7.6.5 Royalties and license fees paid for the use of a particular design, process, or product, required by the Contract Documents.

§ 7.6.5.1 The cost of defending suits or claims for infringement of patent rights arising from requirements of the Contract Documents, payments made in accordance with legal judgments against the Construction Manager resulting from such suits or claims, and payments of settlements made with the Owner's consent, unless the Construction Manager had reason to believe that the required design, process, or product was an infringement of a copyright or a patent, and the Construction Manager failed to promptly furnish such information to the Architect as required by Article 3 of AIA Document A201–2017. The costs of legal defenses, judgments, and settlements shall not be included in the Cost of the Work used to calculate the Construction Manager's Fee or subject to the Guaranteed Maximum Price.

§ 7.6.6 Costs for communications services, electronic equipment, and software, directly related to the Work and located at the site, with the Owner's prior approval.

§ 7.6.7 Costs of document reproductions and delivery charges.

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

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

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

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

§ 7.7 Other Costs and Emergencies

§ 7.7.1 Other costs incurred in the performance of the Work, with the Owner's prior approval.

§ 7.7.2 Costs incurred in taking action to prevent threatened damage, injury, or loss, in case of an emergency affecting the safety of persons and property, as provided in Article 10 of AIA Document A201–2017.

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

§ 7.7.4 The costs described in Sections 7.1 through 7.7 shall be included in the Cost of the Work, notwithstanding any provision of AIA Document A201–2017 or other Conditions of the Contract which may require the Construction Manager to pay such costs, unless such costs are excluded by the provisions of Section 7.9.

§ 7.8 Related Party Transactions

§ 7.8.1 For purposes of this Section 7.8, the term "related party" shall mean (1) a parent, subsidiary, affiliate, or other entity having common ownership of, or sharing common management with, the Construction Manager; (2) any entity in which any stockholder in, or management employee of, the Construction Manager holds an equity interest in excess of ten percent in the aggregate; (3) any entity which has the right to control the business or affairs of the Construction Manager; or (4) any person, or any member of the immediate family of any person, who has the right to control the business or affairs of the Construction Manager.

§ 7.8.2 If any of the costs to be reimbursed arise from a transaction between the Construction Manager and a related party, the Construction Manager shall notify the Owner of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction in writing, then the cost incurred shall be included as a cost to be reimbursed, and the Construction Manager shall procure the Work, equipment, goods, or service, from the related party, as a Subcontractor, according to the terms of Article 9. If the Owner fails to authorize the transaction in writing, the Construction Manager shall procure the Work, equipment, goods, or service from some person or entity other than a related party according to the terms of Article 9.

§ 7.9 Costs Not To Be Reimbursed

§ 7.9.1 The Cost of the Work shall not include the items listed below, unless agreed to prior by the Owner or unless the Owner has provided prior approval:

- .1 Salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal office or offices other than the site office, except as specifically provided in Section 7.2, or as may be provided in Article 14;
- .2 Bonuses, profit sharing, incentive compensation, and any other discretionary payments, paid to anyone hired by the Construction Manager or paid to any Subcontractor or vendor, unless the Owner has provided prior approval;
- .3 Expenses of the Construction Manager's principal office and offices other than the site office;
- .4 Overhead and general expenses, except as may be expressly included in Sections 7.1 to 7.7;
- .5 The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work;
- .6 Except as provided in Section 7.7.3 of this Agreement, costs due to the negligence of, or failure to fulfill a specific responsibility of the Contract by, the Construction Manager, Subcontractors, and suppliers, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable;
- .7 Any cost not specifically and expressly described in Sections 7.1 to 7.7;
- .8 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded; and
- .9 Costs for services incurred during the Preconstruction Phase.

ARTICLE 8 DISCOUNTS, REBATES, AND REFUNDS

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

§ 8.2 Amounts that accrue to the Owner in accordance with the provisions of Section 8.1 shall be credited to the Owner as a deduction from the Cost of the Work.

ARTICLE 9 SUBCONTRACTS AND OTHER AGREEMENTS

§ 9.1 Those portions of the Work that the Construction Manager does not customarily perform with the Construction Manager's own personnel shall be performed under subcontracts or other appropriate agreements with the Construction Manager. The Owner may designate specific persons from whom, or entities from which, the Construction Manager shall

obtain bids. The Construction Manager shall obtain bids from Subcontractors, and from suppliers of materials or equipment fabricated especially for the Work, who are qualified to perform that portion of the Work in accordance with the requirements of the Contract Documents. The Construction Manager shall deliver such bids to the Architect and Owner with an indication as to which bids the Construction Manager intends to accept. The Owner then has the right to review the Construction Manager's list of proposed subcontractors and suppliers in consultation with the Architect and, subject to Section 9.1.1, to object to any subcontractor or supplier. Any advice of the Architect, or approval or objection by the Owner, shall not relieve the Construction Manager of its responsibility to perform the Work in accordance with the Contract Documents. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection.

§ 9.1.1 When a specific subcontractor or supplier (1) is recommended to the Owner by the Construction Manager; (2) is qualified to perform that portion of the Work; and (3) has submitted a bid that conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Construction Manager may require that a Change Order be issued to adjust the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Construction Manager and the amount of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

§ 9.2 Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement, and shall not be awarded on the basis of cost plus a fee without the Owner's prior written approval. If a subcontract is awarded on the basis of cost plus a fee, the Construction Manager shall provide in the subcontract for the Owner to receive the same audit rights with regard to the Subcontractor as the Owner receives with regard to the Construction Manager in Article 10.

ARTICLE 10 ACCOUNTING RECORDS

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

ARTICLE 11 PAYMENTS FOR CONSTRUCTION PHASE SERVICES

§ 11.1 Progress Payments

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

§ 11.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month.

§ 11.1.3 Provided that an Application for Payment is received by the Architect not later than the 10th day of a month, the Owner shall make payment of the amount certified to the Construction Manager not later than the last day of the same month. If an Application for Payment is received by the Architect after the application date fixed above, payment of the amount certified shall be made by the Owner not later than the last day of the following month after the Architect receives the Application for Payment.

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

§ 11.1.4 With each Application for Payment, the Construction Manager shall submit evidence required by the Owner or Architect to demonstrate that payments already made by the Construction Manager on account of the Cost of the Work equal or exceed progress payments already received by the Construction Manager, less that portion of the progress payments attributable to the Construction Manager's Fee.

§ 11.1.5 Each Application for Payment shall be based on the most recent schedule of values submitted by the Construction Manager in accordance with the Contract Documents. The schedule of values shall allocate the entire Guaranteed Maximum Price among: (1) the various portions of the Work; (2) any contingency for costs that are included in the

Guaranteed Maximum Price but not otherwise allocated to another line item or included in a Change Order; and (3) the Construction Manager's Fee except that the Construction Manager's Fee and General Conditions costs shall be shown as a single separate line items.

§ 11.1.5.1 The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect may reasonably require. The schedule of values shall be used as a basis for reviewing the Construction Manager's Applications for Payment.

§ 11.1.5.2 The allocation of the Guaranteed Maximum Price under this Section 11.1.5 shall not constitute a separate guaranteed maximum price for the Cost of the Work of each individual line item in the schedule of values.

§ 11.1.5.3 When the Construction Manager allocates costs from a contingency to another line item in the schedule of values, the Construction Manager shall submit supporting documentation to the Architect.

§ 11.1.6 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the percentage of that portion of the Work completed as of the end of the period, obtained by dividing (a) the portion of the Work and for which the Construction Manager has made payment or intends to make payment prior to the next Application for Payment, by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.

§ 11.1.7 In accordance with AIA Document A201–2017 and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

§ 11.1.7.1 The amount of each progress payment shall first include:

- .1 That portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the most recent schedule of values;
- .2 That portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction or, if approved in writing in advance by the Owner, suitably stored off the site at a location agreed upon in writing;
- .3 That portion of Construction Change Directives that the Owner determines, in the Owner's reasonable judgment, to be reasonably justified; and
- .4 The Construction Manager's Fee, computed upon the Cost of the Work described in the preceding Sections 11.1.7.1.1 and 11.1.7.1.2 at the rate stated in Section 6.1.2 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work included in Sections 11.1.7.1.1 and 11.1.7.1.2 bears to a reasonable estimate of the probable Cost of the Work upon its completion.

§ 11.1.7.2 The amount of each progress payment shall then be reduced by:

- .1 The aggregate of any amounts previously paid by the Owner;
- .2 The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld on a Certificate for Payment as provided in Article 9 of AIA Document A201–2017;
- .3 Any amount for which the Construction Manager does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Construction Manager intends to pay;
- .4 For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A201–2017;
- .5 The shortfall, if any, indicated by the Construction Manager in the documentation required by Section 11.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
- .6 Retainage withheld pursuant to Section 11.1.8.

§ 11.1.8 Retainage

§ 11.1.8.1 For each progress payment made prior to Substantial Completion of the Work, the Owner may withhold the following amount, as retainage, from the payment otherwise due:

(Insert a percentage or amount to be withheld as retainage from each Application for Payment. The amount of retainage may be limited by governing law.)

Five percent (5%)

§ 11.1.8.1.1 The following items are not subject to retainage:

(Insert any items not subject to the withholding of retainage, such as general conditions, insurance, etc.)

Construction Manager's Fee, General Conditions costs, Bonds & Insurance costs.

§ 11.1.8.2 Reduction or limitation of retainage, if any, shall be as follows:

(If the retainage established in Section 11.1.8.1 is to be modified prior to Substantial Completion of the entire Work, insert provisions for such modification.)

When the Contract is fifty percent (50%) completed, one-half (1/2) of the amount retained shall be paid to the Construction Manager provided the Contractor is making satisfactory progress on the Contract and there is no specific cause or claim requiring a greater amount to be retained. After the Contract is fifty percent (50%) completed, no more than (5%) of the amount of any subsequent progress payment made under the Contract may be retained provided that the Construction Manager is making satisfactory progress on the Project, except that if the Owner determines satisfactory progress is not being made, all progress payments thereafter shall be subject to ten percent (10%) retention.

§ 11.1.8.3

(Paragraphs deleted)

Intentionally deleted.

§ 11.1.9 If final completion of the Work is materially delayed through no fault of the Construction Manager, the Owner shall pay the Construction Manager any additional amounts in accordance with Article 9 of AIA Document A201–2017.

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

§ 11.1.11 The Owner and the Construction Manager shall agree upon a mutually acceptable procedure for review and approval of payments to Subcontractors. Except with the Owner's prior approval, payments to Subcontractors shall be subject to retention of not less than Five percent (5%). The Construction Manager shall execute subcontracts in accordance with those agreements.

§ 11.1.12 In taking action on the Construction Manager's Applications for Payment the Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Construction Manager, and such action shall not be deemed to be a representation that (1) the Architect has made a detailed examination, audit, or arithmetic verification, of the documentation submitted in accordance with Section 11.1.4 or other supporting data; (2) that the Architect has made exhaustive or continuous on-site inspections; or (3) that the Architect has made examinations to ascertain how or for what purposes the Construction Manager has used amounts previously paid on account of the Contract. Such examinations, audits, and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

§ 11.2 Final Payment

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

- .1 the Construction Manager has fully performed the Contract, except for the Construction Manager's responsibility to correct Work as provided in Article 12 of AIA Document A201–2017, and to satisfy other requirements, if any, which extend beyond final payment;
- .2 the Construction Manager has submitted a final accounting for the Cost of the Work and a final Application for Payment; and
- .3 a final Certificate for Payment has been issued by the Architect in accordance with Section 11.2.2.2.

§ 11.2.2 Within 30 days of the Owner's receipt of the Construction Manager's final accounting for the Cost of the Work, the Owner shall conduct an audit of the Cost of the Work or notify the Architect that it will not conduct an audit.

§ 11.2.2.1 If the Owner conducts an audit of the Cost of the Work, the Owner shall, within 10 days after completion of the audit, submit a written report based upon the auditors' findings to the Architect.

§ 11.2.2.2 Within seven days after receipt of the written report described in Section 11.2.2.1, or receipt of notice that the Owner will not conduct an audit, and provided that the other conditions of Section 11.2.1 have been met, the Architect will either issue to the Owner a final Certificate for Payment with a copy to the Construction Manager, or notify the Construction Manager and Owner in writing of the Architect's reasons for withholding a certificate as provided in Article 9 of AIA Document A201–2017. The time periods stated in this Section 11.2.2 supersede those stated in Article 9 of AIA Document A201–2017. The Architect is not responsible for verifying the accuracy of the Construction Manager's final accounting.

§ 11.2.2.3 If the Owner's auditors' report concludes that the Cost of the Work, as substantiated by the Construction Manager's final accounting, is less than claimed by the Construction Manager, the Construction Manager shall be entitled to request mediation of the disputed amount without seeking an initial decision pursuant to Article 15 of AIA Document A201–2017. A request for mediation shall be made by the Construction Manager within 30 days after the Construction Manager's receipt of a copy of the Architect's final Certificate for Payment. Failure to request mediation within this 30-day period shall result in the substantiated amount reported by the Owner's auditors becoming binding on the Construction Manager. Pending a final resolution of the disputed amount, the Owner shall pay the Construction Manager the amount certified in the Architect's final Certificate for Payment.

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

§ 11.2.4 If, subsequent to final payment, and at the Owner's request, the Construction Manager incurs costs, described in Sections 7.1 through 7.7, and not excluded by Section 7.9, to correct defective or nonconforming Work, the Owner shall reimburse the Construction Manager for such costs, and the Construction Manager's Fee applicable thereto, on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price. If adjustments to the Contract Sum are provided for in Section 6.1.7, the amount of those adjustments shall be recalculated, taking into account any reimbursements made pursuant to this Section 11.2.4 in determining the net amount to be paid by the Owner to the Construction Manager.

§ 11.3 Interest

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

(Insert rate of interest agreed upon, if any.)

Eight percent (8%) per annum

ARTICLE 12 DISPUTE RESOLUTION

§ 12.1 Initial Decision Maker

§ 12.1.1 Any Claim between the Owner and Construction Manager shall be resolved in accordance with the provisions set forth in this Article 12 and Article 15 of A201–2017. However, for Claims arising from or relating to the Construction Manager's Preconstruction Phase services, no decision by the Initial Decision Maker shall be required as a condition precedent to mediation or binding dispute resolution, and Section 12.1.2 of this Agreement shall not apply.

§ 12.1.2 The Architect will serve as the Initial Decision Maker pursuant to Article 15 of AIA Document A201–2017 for Claims arising from or relating to the Construction Manager's Construction Phase services, unless the parties appoint below another individual, not a party to the Agreement, to serve as the Initial Decision Maker.

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

§ 12.2 Binding Dispute Resolution

For any Claim subject to, but not resolved by mediation pursuant to Article 15 of AIA Document A201–2017, the method of binding dispute resolution shall be as follows:

(Check the appropriate box.)

[X] Arbitration pursuant to Article 15 of AIA Document A201–2017
(Paragraphs deleted)

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

ARTICLE 13 TERMINATION OR SUSPENSION

§ 13.1 Termination Prior to Execution of the Guaranteed Maximum Price Amendment

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

§ 13.1.2 In the event of termination of this Agreement pursuant to Section 13.1.1, the Construction Manager shall be compensated for Preconstruction Phase services together with Reimbursable Expenses then due, and Work performed prior to receipt of a notice of termination, in accordance with the terms of this Agreement. In no event shall the Construction Manager's compensation under this Section exceed the compensation set forth in Section 5.1.

§ 13.1.3 Prior to the execution of the Guaranteed Maximum Price Amendment, the Owner may terminate this Agreement upon not less than seven days' written notice to the Construction Manager for the Owner's convenience and without cause, and the Construction Manager may terminate this Agreement, upon not less than seven days' written notice to the Owner, for the reasons set forth in Article 14 of A201–2017.

§ 13.1.4 In the event of termination of this Agreement pursuant to Section 13.1.3, the Construction Manager shall be equitably compensated for Preconstruction Phase services together with Reimbursable Expenses then due, and Work performed prior to receipt of a notice of termination. In no event shall the Construction Manager's compensation under this Section exceed the compensation set forth in Section 5.1.

§ 13.1.5 If the Owner terminates the Contract pursuant to Section 13.1.3 after the commencement of the Construction Phase but prior to the execution of the Guaranteed Maximum Price Amendment, the Owner shall pay to the Construction Manager an amount calculated as follows, which amount shall be in addition to any compensation paid to the Construction Manager under Section 13.1.4:

- .1 Take the Cost of the Work incurred by the Construction Manager to the date of termination;
- .2 Add the Construction Manager's Fee computed upon the Cost of the Work to the date of termination at the rate stated in Section 6.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion; and
- .3 Subtract the aggregate of previous payments made by the Owner for Construction Phase services.

§ 13.1.6 The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Section 13.1.5.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a condition of receiving the payments referred to in this Article 13, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders. All Subcontracts, purchase orders and rental agreements entered into by the Construction Manager will contain provisions allowing for assignment to the Owner as described above.

§ 13.1.6.1 If the Owner accepts assignment of subcontracts, purchase orders or rental agreements as described above, the Owner will reimburse or indemnify the Construction Manager for all costs arising under the subcontract, purchase order or rental agreement, if those costs would have been reimbursable as Cost of the Work if the contract had not been

terminated. If the Owner chooses not to accept assignment of any subcontract, purchase order or rental agreement that would have constituted a Cost of the Work had this agreement not been terminated, the Construction Manager will terminate the subcontract, purchase order or rental agreement and the Owner will pay the Construction Manager the costs necessarily incurred by the Construction Manager because of such termination.

§ 13.2 Termination or Suspension Following Execution of the Guaranteed Maximum Price Amendment

§ 13.2.1 Termination

The Contract may be terminated by the Owner or the Construction Manager as provided in Article 14 of AIA Document A201–2017.

§ 13.2.2 Termination by the Owner for Cause

§ 13.2.2.1 If the Owner terminates the Contract for cause as provided in Article 14 of AIA Document A201–2017, the amount, if any, to be paid to the Construction Manager under Article 14 of AIA Document A201–2017 shall not cause the Guaranteed Maximum Price to be exceeded, nor shall it exceed an amount calculated as follows:

- .1 Take the Cost of the Work incurred by the Construction Manager to the date of termination;
- .2 Add the Construction Manager's Fee, computed upon the Cost of the Work to the date of termination at the rate stated in Section 6.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- .3 Subtract the aggregate of previous payments made by the Owner; and
- .4 Subtract the costs and damages incurred by the Owner under Article 14 of AIA Document A201–2017.

§ 13.2.2.2 The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Section 13.2.2.1.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a condition of receiving the payments referred to in this Article 13, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders.

§ 13.2.3 Termination by the Owner for Convenience

If the Owner terminates the Contract for convenience in accordance with Article 14 of AIA Document A201–2017, then the Owner shall pay the Construction Manager a termination fee as follows:

(Insert the amount of or method for determining the fee, if any, payable to the Construction Manager following a termination for the Owner's convenience.)

As per Section 14.4.3 of AIA Document A201-2017.

§ 13.3 Suspension

The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2017; in such case, the Guaranteed Maximum Price and Contract Time shall be increased as provided in Article 14 of AIA Document A201–2017, except that the term "profit" shall be understood to mean the Construction Manager's Fee as described in Sections 6.1 and 6.3.5 of this Agreement.

ARTICLE 14 MISCELLANEOUS PROVISIONS

§ 14.1 Terms in this Agreement shall have the same meaning as those in A201–2017. Where reference is made in this Agreement to a provision of AIA Document A201–2017 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

§ 14.2 Successors and Assigns

§ 14.2.1 The Owner and Construction Manager, 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 14.2.2 of this Agreement, and in Section 13.2.2 of A201–2017, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 14.2.2 The Owner may, without consent of the Construction Manager, 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 Construction Manager shall execute all consents reasonably required to facilitate the assignment.

§ 14.3 Insurance and Bonds

§ 14.3.1 Preconstruction Phase

The Construction Manager shall maintain the following insurance for the duration of the Preconstruction Services performed under this Agreement. If any of the requirements set forth below exceed the types and limits the Construction Manager normally maintains, the Owner shall reimburse the Construction Manager for any additional cost.

§ 14.3.1.1 As per the attached Exhibit B.1 – Construction Manager's Provided Insurance.

§ 14.3.1.2 The Construction Manager shall provide certificates of insurance to the Owner that evidence compliance with the requirements in this Section 14.3.1.

(Paragraphs deleted)

(Table deleted)

(Paragraphs deleted)

§ 14.3.2 Construction Phase

After execution of the Guaranteed Maximum Price Amendment, the Owner and the Construction Manager shall purchase and maintain insurance as set forth in AIA Document A133™–2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price, Exhibits B & B.1, Insurance and Bonds, and elsewhere in the Contract Documents.

§ 14.3.2.1 The Construction Manager shall provide bonds as set forth in AIA Document A133™–2019 Exhibit B, and elsewhere in the Contract Documents.

(Paragraphs deleted)

ARTICLE 15 SCOPE OF THE AGREEMENT

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

§ 15.2 The following documents comprise the Agreement:

- .1 AIA Document A133™–2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price
- .2 AIA Document A133™–2019, Exhibit A, Guaranteed Maximum Price Amendment, if executed
- .3 AIA Document A133™–2019, Exhibit B, Insurance and Bonds
- .4 AIA Document A201™–2017, General Conditions of the Contract for Construction
- .5 Other Exhibits, if any, listed below:

(Paragraphs deleted)

A133–2019, Exhibit B.1, Construction Manager's Insurance Requirements

(Table deleted)


- .7 Other documents, if any, listed below:

Exhibit C, Construction Managers Hourly Rates

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

OWNER (Signature)
James Hammond, Mayor

(Printed name and title)


CONSTRUCTION MANAGER (Signature)
Seth Maurer, President

(Printed name and title)



Init.

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Exhibit A

Guaranteed Maximum Price Amendment

This Amendment No. 1 dated the « » day of « » in the year « », is incorporated into the executed AIA Document A133™–2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price dated « » (the “Agreement”)

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

«Police Department Headquarters Remodel and Expansion »
«3818 N. Schreiber Way
Coeur d'Alene, ID 83815 »

THE OWNER:
(Name, legal status, and address)

«City of Coeur d'Alene »
«710 Mullan Avenue »
«Coeur d'Alene, ID 83814 »

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

«CORE West, Inc. »
«7150 Cascade Valley Court »
«Las Vegas, NV 89128 »

TABLE OF ARTICLES

- A.1 GUARANTEED MAXIMUM PRICE
- A.2 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION
- A.3 INFORMATION UPON WHICH AMENDMENT IS BASED

ARTICLE A.1 GUARANTEED MAXIMUM PRICE

§ A.1.1 Guaranteed Maximum Price

Pursuant to Section 3.2.6 of the Agreement, the Owner and Construction Manager hereby amend the Agreement to establish a Guaranteed Maximum Price. As agreed by the Owner and Construction Manager, the Guaranteed Maximum Price is an amount that the Contract Sum shall not exceed. The Contract Sum consists of the Construction Manager’s Fee plus the Cost of the Work, as that term is defined in Article 6 of the Agreement.

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

§ A.1.1.2 Itemized Statement of the Guaranteed Maximum Price. Provided below is an itemized statement of the Guaranteed Maximum Price organized by trade categories,

ADDITIONS AND DELETIONS:
The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An Additions and Deletions Report that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

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

AIA Document A201™–2017, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

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including allowances; the Construction Manager's contingency; alternates; the Construction Manager's Fee; and other items that comprise the Guaranteed Maximum Price as defined in Section 3.2.1 of the Agreement.
(Provide itemized statement below or reference an attachment.)

«See attached Exhibit A.1 – GMP Summary Sheet, Dated _____, _ page »

Notwithstanding the itemization above, there is one overall Guaranteed Maximum Price and the individual line items are not separate price maximums. The Construction Manager shall be permitted to reallocate the individual line items and to provide an updated Schedule of Values to the Owner that reflects any such reallocation at its sole discretion, provided that it does not exceed the Guaranteed Maximum Price.

§ A.1.1.3 The Construction Manager's Fee is set forth in Section 6.1.2 of the Agreement.

§ A.1.1.4 The method of adjustment of the Construction Manager's Fee for changes in the Work is set forth in Section 6.1.3 of the Agreement.

§ A.1.1.5 Alternates

§ A.1.1.5.1 Alternates, if any, included in the Guaranteed Maximum Price:

Item

See attached Exhibit A.2 – Basis of GMP, dated _____, _ page(s).

§ A.1.1.5.2 Intentionally deleted.

§ A.1.1.6 Unit prices, if any:

(Identify the item and state the unit price and quantity limitations, if any, to which the unit price will be applicable.)

Item

Units and Limitations

Price per Unit (\$0.00)

N/A

ARTICLE A.2 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ A.2.1 The Date of Commencement of the Work shall be pursuant to Section 3.3.1.2 of the Agreement.

§ A.2.2 Unless otherwise provided, the Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work. The Contract Time shall be measured from the Date of Commencement of the Work.

§ A.2.3 Substantial Completion

§ A.2.3.1 Subject to adjustments of the Contract Time as provided in the Contract Documents, the Construction Manager shall achieve Substantial Completion of the entire Work:

(Check one of the following boxes and complete the necessary information.)

[] Not later than « » (« ») calendar days from the Date of Commencement of the Work.

§ A.2.3.2 Subject to adjustments of the Contract Time as provided in the Contract Documents, if portions of the Work are to be completed prior to Substantial Completion of the entire Work, the Construction Manager shall achieve Substantial Completion of such portions by the following dates:

Portion of Work

Substantial Completion Date

See attached Exhibit A.4 – Project Baseline Schedule, _____ page(s).

§ A.2.3.3 If the Construction Manager fails to achieve Substantial Completion as provided in this Section A.2.3, liquidated damages, if any, shall be assessed as set forth in Section 6.1.6 of the Agreement.

ARTICLE A.3 INFORMATION UPON WHICH AMENDMENT IS BASED

§ A.3.1 The Guaranteed Maximum Price and Contract Time set forth in this Amendment are based on the Contract Documents and the following:

§ A.3.1.1 The following Supplementary and other Conditions of the Contract:

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User Notes:

(1983471975)

Document	Title	Date	Pages
N/A			

§ A.3.1.2 The following Specifications:
(Either list the Specifications here, or refer to an exhibit attached to this Amendment.)

«See attached Exhibit A.3 – Enumeration of Documents, dated ____, ____ page(s).»

§ A.3.1.3 The following Drawings:
(Either list the Drawings here, or refer to an exhibit attached to this Amendment.)

«See attached Exhibit A.3 – Enumeration of Documents, dated ____, ____ page(s).»

§ A.3.1.4 The Sustainability Plan, if any:
(If the Owner identified a Sustainable Objective in the Owner’s Criteria, identify the document or documents that comprise the Sustainability Plan by title, date and number of pages, and include other identifying information. The Sustainability Plan identifies and describes the Sustainable Objective; the targeted Sustainable Measures; implementation strategies selected to achieve the Sustainable Measures; the Owner’s and Construction Manager’s roles and responsibilities associated with achieving the Sustainable Measures; the specific details about design reviews, testing or metrics to verify achievement of each Sustainable Measure; and the Sustainability Documentation required for the Project, as those terms are defined in Exhibit C to the Agreement.)

Title	Date	Pages
N/A		

Other identifying information:

§ A.3.1.5 Intentionally deleted.

§ A.3.1.6 Allowances, Assumptions and Clarifications, if any, upon which the Guaranteed Maximum Price is based:
(Identify each assumption and clarification.)

«See attached Exhibit A.2 – Basis of GMP, dated ____, ____ page(s).»

§ A.3.1.7 The Guaranteed Maximum Price is based upon the following other documents and information:
(List any other documents or information here, or refer to an exhibit attached to this Amendment.)

« »

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

OWNER *(Signature)*

« »« »

(Printed name and title)

CONSTRUCTION MANAGER *(Signature)*

« »« »

(Printed name and title)



Document A133™ – 2019 Exhibit B

Insurance and Bonds

This Insurance and Bonds Exhibit is part of the Agreement, between the Owner and the Construction
(Paragraphs deleted)
Manager.

TABLE OF ARTICLES

- B.1 GENERAL
- B.2 OWNER'S INSURANCE
- B.3 CONSTRUCTION MANAGER'S INSURANCE AND BONDS
- B.4 SPECIAL TERMS AND CONDITIONS

ARTICLE B.1 GENERAL

The Owner and Construction Manager shall purchase and maintain insurance, and provide bonds, as set forth in this Exhibit. As used in this Exhibit, the term General Conditions refers to AIA Document A201™–2017, General Conditions of the Contract for Construction.

ARTICLE B.2 OWNER'S INSURANCE

§ B.2.1 General

Prior to commencement of the Work, the Owner shall secure the insurance, and provide evidence of the coverage, required under this Article B.2 and, upon the Construction Manager's request, provide a copy of the property insurance policy or policies required by Section B.2.3. The copy of the policy or policies provided shall contain all applicable conditions, definitions, exclusions, and endorsements.

§ B.2.2 Liability Insurance

The Owner shall be responsible for purchasing and maintaining the Owner's usual general liability insurance.

§ B.2.3 Required Property Insurance

§ B.2.3.1 This obligation is placed on the Construction Manager pursuant to Section B.3.3.2.1, the Owner shall purchase and maintain, from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located, as per the attached Exhibit B.1 – Construction Manager's Provided Insurance. The property insurance shall be maintained until Substantial Completion and thereafter as provided in Section B.2.3.1.3, unless otherwise provided in the Contract Documents or otherwise agreed in writing by the parties to this Agreement.

§ B.2.3.1.1 Causes of Loss. The insurance required by this Section B.2.3.1 shall

(Paragraphs deleted)

be per the attached Exhibit B.1 – Construction Manager's Provided Insurance

(Table deleted)

§ B.2.3.1.2 Specific Required Coverages. The insurance required by this Section B.2.3.1 shall

(Paragraphs deleted)

be per the attached Exhibit B.1 – Construction Manager's Provided Insurance.

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.

This document is intended to be used in conjunction with AIA Document A201™–2017, General Conditions of the Contract for Construction. Article 11 of A201™–2017 contains additional insurance provisions.

Init.

(Table deleted)

§ B.2.3.1.3 Unless the parties agree otherwise, upon Substantial Completion, the Owner shall continue the insurance required by Section B.2.3.1 or, if necessary, replace the insurance policy required under Section B.2.3.1 with property insurance written for the total value of the Project that shall remain in effect until expiration of the period for correction of the Work set forth in Section 12.2.2 of the General Conditions.

(Paragraph deleted)

§ B.2.3.2 Occupancy or Use Prior to Substantial Completion. The Owner's occupancy or use of any completed or partially completed portion of the Work prior to Substantial Completion shall not commence until the insurance company or companies providing the insurance under Section B.2.3.1 have consented in writing to the continuance of coverage. The Owner and the Construction Manager shall take no action with respect to partial occupancy or use that would cause cancellation, lapse, or reduction of insurance, unless they agree otherwise in writing.

§ B.2.3.3 Insurance for Existing Structures

If the Work involves remodeling an existing structure or constructing an addition to an existing structure, the Owner shall purchase and maintain, until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, "all-risks" property insurance, on a replacement cost basis, protecting the existing structure against direct physical loss or damage from the causes of loss identified in Section B.2.3.1, notwithstanding the undertaking of the Work. The Owner shall be responsible for all co-insurance penalties.

§ B.2.4 Optional Extended Property Insurance.

The Owner shall purchase and maintain the insurance selected and described below:

N/A

(Paragraphs deleted)

§ B.2.5 Other Optional Insurance.

The Owner shall purchase and maintain the insurance selected below.

N/A

(Paragraphs deleted)

ARTICLE B.3 CONSTRUCTION MANAGER'S INSURANCE AND BONDS

§ B.3.1 General

§ B.3.1.1 Certificates of Insurance. The Construction Manager shall provide certificates of insurance acceptable to the Owner evidencing compliance with the requirements in this Article B.3 at the following times: (1) prior to commencement of the Work; (2) upon renewal or replacement of each required policy of insurance; and (3) upon the Owner's written request. An additional certificate evidencing continuation of commercial liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment and thereafter upon renewal or replacement of such coverage until the expiration of the periods required by Section B.3.2.1 and Section B.3.3.1. The certificates will show the Owner as an additional insured on the Construction Manager's Commercial General Liability and excess or umbrella liability policy or policies.

§ B.3.1.2 Deductibles and Self-Insured Retentions. The Construction Manager shall disclose to the Owner any deductible or self-insured retentions applicable to any insurance required to be provided by the Construction Manager.

§ B.3.1.3 Additional Insured Obligations. As per the attached Exhibit B.1 – Construction Manager's Provided Insurance.

§ B.3.2 Construction Manager's Required Insurance Coverage

§ B.3.2.1 The Construction Manager shall purchase and maintain the following types and limits of insurance and Property Insurance as per the attached Exhibit B.1 – Construction Manager's Provided Insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located.

(Paragraphs deleted)

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§ B.3.4 Performance Bond and Payment Bond

The Construction Manager shall provide surety bonds, from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located, as follows:

(Specify type and penal sum of bonds.)

Type	Penal Sum (\$0.00)
Payment Bond	100% of the GMP Amount.
Performance Bond	100% of the GMP Amount.

Payment and Performance Bonds shall be AIA Document A312™, Payment Bond and Performance Bond, or contain provisions similar to AIA Document A312™, current as of the date of this Agreement.

ARTICLE B.4 SPECIAL TERMS AND CONDITIONS

Special terms and conditions that modify this Insurance and Bonds Exhibit, if any, are as follows:

The Contractor shall deliver the required bonds to the Owner within ten (10) days of the fully executed GMP Amendment to this Contract.

A133 – 2019 Exhibit B.1

CONSTRUCTION MANAGER PROVIDED INSURANCE

Construction Manager shall purchase insurance, as indicated below, with carriers licensed to do business in the state in which the Project is located and rated by AM Best with at least an A- rating and a minimum Financial Size Category of VIII. The insurance coverage shall be maintained during the construction phase period and for a minimum of two years following completion of construction. Claims-made coverage, other than for Professional Liability (E & O), will not be acceptable.

Coverage for General Liability (GL) must include Additional Insured coverage in favor of the Owner for both ongoing and completed operations utilizing the combination of forms CG 20 10 04 13 and CG 20 37 04 13 or their equivalents. GL coverage must be on a primary/non-contributory basis and have a per project aggregate endorsement.

The following limits and coverages are required:

Worker's Compensation	Statutory in the state in which the project is located
Employer's Liability	\$1,000,000 Ea. Accident, \$1,000,000 Disease \$1,000,000 Policy limit
General Liability	\$1,000,000 per occurrence \$2,000,000 general aggregate \$2,000,000 products/completed operations aggregate
Excess Liability	\$2,000,000 per occurrence and general aggregate
Automobile Liability	\$1,000,000 Combined Single Limit
Professional Liability (E&O Coverage)	\$1,000,000 per claim and in the aggregate

Such insurance shall be evidenced by certificate on an Acord-25 form. Construction Manager shall provide evidence of coverage prior to the start of construction.

Construction Phase Property Insurance:

Construction Manager shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a builders risk "all-risk" or equivalent policy form in the amount of the initial contract sum, plus value of subsequent contract modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis. This insurance shall include interests of the Owner, the Construction Manager, Subcontractor and its subcontractors in the Project, and shall include insurance against the perils of fire and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal, including demolition occasioned by enforcement of any applicable legal requirements. Such property insurance shall be maintained until a written notice of Substantial Completion, at which time Owner shall install permanent insurance on the property.

Owner and Construction Manager waive all rights against each other and against all Subcontractors, Sub-subcontractors, Material Suppliers and the Architect/Engineer, for damages caused by fire or other perils covered by Builder's Risk or any other property insurance, except such rights as they may have to the proceeds of such insurance. Such insurance may be subject to an amount deductible from the sums otherwise payable thereunder and the burden of such deduction shall be borne by the Owner. The Owner or Construction Manager, as appropriate, shall require of the Architect, Architect's consultants, separate contractors, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein.



EXHIBIT C CONSTRUCTION MANAGER HOURLY RATES

The following agreed to hourly rates will be used to determine and define "Actual Costs". The Actual Costs for each of the agreed to rates includes all normal and customary payroll paid by the Construction Manager plus all fringe benefits, taxes and insurances.

	<u>Standard Rate</u>	<u>Overtime Rate</u>
Project Principal	275	-
Pre-Construction:		
Director of PreConstruction	187	-
Sr. PreConstruction Manager	143	
PreConstruction Manager	116	-
PreConstruction Assistant Manager	105	
PreConstruction Coordinator	77	-
Project Management:		
Project Director	154	-
Sr. Project Manager	143	-
Project Manager	116	-
Asst. Project Manager	105	-
Scheduler	105	-
Construction Coordinator	77	-
Project Accountant	72	-
Contracts Manager	94	-
Assistant Contracts Manager	44	-
Intern	44	66
Field Operations:		
Director of Field Operations	187	-
General Superintendent	165	
MPE Manager	121	
Sr. Superintendent	143	-
Superintendent	127	-
Asst. Superintendent	105	-
Safety Director	105	-
Carpenters	88	132
Water Truck Driver	99	149
Laborers	83	124

AIA[®] Document A201[®] – 2017

General Conditions of the Contract for Construction

for the following PROJECT:

(Name and location or address)

Police Department Headquarters Remodel and Expansion
3818 N. Schreiber Way
Coeur d'Alene, ID 83815

THE OWNER:

(Name, legal status and address)

City of Coeur d'Alene
710 Mullan Avenue
Coeur d'Alene, ID 83814

THE CONSTRUCTION MANAGER:

(Name, legal status and address. The Term "Contractor" as used in A201-2017 shall mean the Construction Manager)

CORE West, Inc.
7150 Cascade Valley Court
Las Vegas, NV 89128

THE ARCHITECT:

(Name, legal status and address)

None Listed

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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User Notes:

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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.

§ 1.1.8 Initial Decision Maker

Pursuant to Section 12.1.2 the Architect will serve as the Initial Decision Maker 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. Notwithstanding the foregoing, in the event the Architect's alleged liability is at issue for the Drawings and Specifications, the Architect shall not serve as the Initial Decision Maker and no initial decision shall be required under Article 12.

§ 1.2 Correlation and Intent of the Contract Documents

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

§ 1.2.1.1 The invalidity of any provision of the Contract Documents shall not invalidate the Contract or its remaining provisions. If it is determined that any provision of the Contract Documents violates any law, or is otherwise invalid or unenforceable, then 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 may mutually agree to 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 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, 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 increasing the Contract Sum by five percent (5%) or more. 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 pay for building permit, secure and pay for necessary

approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

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

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

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

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

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

§ 2.4 Owner's Right to Stop the Work

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

§ 2.5 Owner's Right to Carry Out the Work

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

ARTICLE 3 CONTRACTOR

§ 3.1 General

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

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

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

§ 3.2 Review of Contract Documents and Field Conditions by Contractor

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

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

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

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

§ 3.3 Supervision and Construction Procedures

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

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

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

§ 3.4 Labor and Materials

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

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

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

§ 3.5 Warranty

§ 3.5.1 The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and 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. If sales, consumer, use and similar taxes and/or tariffs not accounted for in the Contract Sum, no matter when effective, increase the cost and/or time of the Work, Owner hereby agrees to enter into a Change Order Commensurate with said escalation in the price of maters and/or time for the Work.

§ 3.7 Permits, Fees, Notices and Compliance with Laws

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

§ 3.8 Allowances

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

§ 3.8.2 Unless otherwise provided in the Contract Documents,

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

§ 3.8.4 Escalation Allowance for potentially price-impacted material. The parties acknowledge certain markets providing essential materials to the Project are experiencing or are expected to experience significant, industry-wide economic fluctuation during the performance of this Contract that may impact price increases due to escalation of materials, equipment, or products costs. The Contractor shall give the Owner written notice and documentation of the increased costs.

§ 3.9 Superintendent

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

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

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

§ 3.10 Contractor's Construction and Submittal Schedules

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

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

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

§ 3.11 Documents and Samples at the Site

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

§ 3.12 Shop Drawings, Product Data and Samples

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

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

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

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

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

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

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

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

minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples, or similar submittals, by the Architect's approval thereof.

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

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

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

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

§ 3.13 Use of Site

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

§ 3.14 Cutting and Patching

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

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

§ 3.15 Cleaning Up

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

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

§ 3.16 Access to Work

The Contractor shall provide the Owner and Architect with access to the Work in preparation and progress wherever located. Contractor recognizes the importance of performing the Work in a safe manner so as to assist with preventing damage, injury or loss to, all individuals at the Site, whether working or visiting, shall report to the Contractor's field office and sign in before entering the Project Site.

§ 3.17 Royalties, Patents and Copyrights

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

§ 3.18 Indemnification

§ 3.18.1 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable. 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.

Notwithstanding anything to the contrary in this Section, Contractor's obligations hereunder do not extend to any claims, damages, losses and expenses arising out of or resulting from the negligence of an Indemnitee.

§ 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.

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

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

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

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

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

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

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

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

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

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

ARTICLE 5 SUBCONTRACTORS

§ 5.1 Definitions

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

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

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

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

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

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

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

§ 5.3 Subcontractual Relations

By appropriate written agreement, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work that the Contractor, by these Contract Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract

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

§ 5.4 Contingent Assignment of Subcontracts

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

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

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

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

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

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

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

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

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

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

§ 6.2 Mutual Responsibility

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

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

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

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

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

§ 6.3 Owner's Right to Clean Up

If a dispute arises among the Contractor, Separate Contractors, and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may, after reasonable notice, 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:

- .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 (excluding Construction Manager's overhead or Fee) 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.

§ 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, Adverse Weather Delays, 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 and related overhead expenses shall be extended for such reasonable time as the . Any time gained by the Contractor on the Project Schedule shall not be offset against any delays as described herein.

§ 8.3.1.1 When adverse weather conditions occur and delay critical path activities, Contractor shall be entitled to an extension of the Contract Time, granted on a day-by day basis, for each day the adverse weather condition occurs along with each subsequent day that construction phase Work of the site and building(s) are delayed due to such adverse condition.

§ 8.3.1.2 Wood-frame construction will have microbial growth present as milled wood is a natural, nutrient-rich product and it is not practical to eliminate naturally occurring microbial growth during construction. Contractor shall not be liable for natural microbial growth during the course of construction, other than to clean materials consistent with industry standards and shall be responsible for same through Substantial Completion. If Owner decides to remediate naturally occurring microbial growth beyond industry standards prior to Substantial Completion, Owner agrees to do so at Owner's own expense and any delay to Contractor as a result of same shall entitle Contractor to additional Contract Time and General Conditions costs.

§ 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.

§ 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 or covered by insurance or basis of Change Order;
- .3 failure of the Contractor to make payments properly to Subcontractors or suppliers for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a Separate Contractor not covered by insurance;
- .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.

§ 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.

§ 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

- .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 to the extent caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly

employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3. The Contractor may make a Claim for the cost to remedy the damage or loss to the extent such damage or loss is attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

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

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

§ 10.2.8 Injury or Damage to Person or Property

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

§ 10.3 Hazardous Materials and Substances

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

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

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

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

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

§ 10.3.6 If, without negligence on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance 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 expiration. Upon receipt of notice from the Contractor, the Owner shall, unless the lapse in coverage arises from an act or omission of the Owner, have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by the Contractor. The furnishing of notice by the Contractor shall not relieve the Contractor of any contractual obligation to provide any required coverage.

§ 11.2 Owner's Insurance

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

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

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

§ 11.3 Waivers of Subrogation

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

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

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

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

§11.5 Adjustment and Settlement of Insured Loss

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

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

dispute, the Owner may issue a Construction Change Directive for the reconstruction of the damaged or destroyed Work.

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 Uncovering of Work

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

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

§ 12.2 Correction of Work

§ 12.2.1 Before Substantial Completion

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

§ 12.2.2 After Substantial Completion

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

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

§ 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.

§ 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. Wood-frame construction will have microbial growth present as milled wood is a natural, nutrient-rich product and it is not practical to eliminate naturally occurring microbial growth during construction. Contractor shall not be liable for natural microbial growth during the course of construction. If Owner decides to remediate naturally occurring microbial growth, Owner agrees to do so at Owner's own expense and any delay to Contractor as a result of same shall entitle Contractor to additional Contract Time and General Conditions.

§ 13.5 Interest

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

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 Termination by the Contractor

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

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

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

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

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

§ 14.2 Termination by the Owner for Cause

§ 14.2.1 The Owner may terminate the Contract if the Contractor

- .1 repeatedly 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 paid for by the Owner;
- .2 Accept assignment of subcontracts pursuant to Section 5.4; and
- .3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

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

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

§ 14.3 Suspension by the Owner for Convenience

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

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

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

§ 14.4 Termination by the Owner for Convenience

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

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

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

§ 14.4.3 In case of such termination for the Owner's convenience, the Owner shall pay the Contractor for Work properly executed; mobilization costs and 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.

§ 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, increased financing costs, 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. This subparagraph 15.1.7 shall take precedence over any other provision of the Contract Documents which provides that the Contractor is responsible for expenses, costs or damages.

§ 15.2 Initial Decision

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

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

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

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

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

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

§ 15.2.6.1 Either party may, within 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. In order to preserve the quality of the proceedings, unless it is agreed to otherwise by the parties, the Arbitrator(s) selected shall have Construction Litigation experience of at least fifteen (15) years.

§ 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. The cost of any binding dispute resolution procedure and reasonable attorneys' fees shall be borne by the non-prevailing Party, as determined by the adjudicator of the dispute.

§ 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

Init.

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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CITY COUNCIL MEETING STAFF REPORT

DATE: AUGUST 2, 2022

FROM: STEPHANIE PADILLA, CITY ACCOUNTANT/ARTS COMMISSION
LIAISON

SUBJECT: APPROVAL OF SELECTED ART PIECES FOR THE 2022
ARTCURRENTS PROGRAM

DECISION POINT: Should Council approve art display agreements, for a period of one-year, with the option to extend for an additional year, for six (6) new art pieces selected through the 2022 ArtCurrents program?

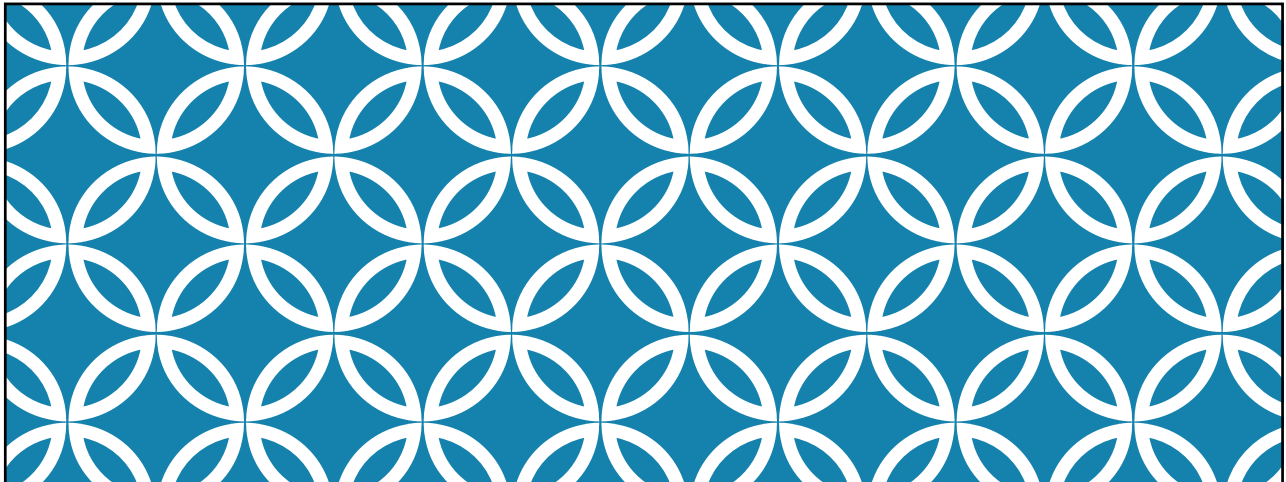
HISTORY: The City of Coeur d’Alene Public Art Program Policy, adopted by the City Council pursuant to Resolution No. 00-101, on November 2, 1999, amended by Resolution No. 08-017, on April 1, 2008, and amended by Resolution No. 17-027, on May 2, 2017, designates the Coeur d’Alene Arts Commission (Commission) as the standing committee charged by the City Council to oversee the Public Art program. Oversight responsibilities of the Commission include selection of art for display on public property around the City through the ArtCurrents program.

The Commission established an ArtsCurrents subcommittee. A “Call to Artists” was published through CaFÉ, and was open to local artists residing in the states of Idaho, Montana, Utah, Wyoming, Washington, Oregon, and the Canadian Province of British Columbia. The criteria required that the submitted art pieces be a minimum of 36” high, that the artist provide a photo of the front and back of the art piece, and include a brief explanation of, and inspiration for, the piece. The call closed on July 8, 2022, and a total of eleven (11) art pieces from nine (9) artists were submitted. The ArtsCurrents subcommittee met and selected seven (7) pieces, and the Arts Commission is recommending to Council six (6) of the selected pieces.

The newly selected ArtCurrents pieces will be displayed for a maximum of two years beginning in October 2022 and concluding in September 2024. Each artist will receive \$1,000 per art piece for each year the art is on display.

FINANCIAL: Funding for the ArtCurrents program comes from ignite cda. The total budgeted amount for the ArtCurrents program is \$20,000 over a two-year fiscal year budget (\$10,000 for each fiscal year).

DECISION POINT/RECOMMENDATION: Council should approve the selection of the six (6) new art pieces for the ArtCurrents program as recommended by the ArtsCurrents subcommittee and Arts Commission.



ARTCURRENTS 2022



Mi Paloma II (Dove) - side view
stainless steel and cast glass
5' x 5' x 5'

"Mi Paloma II (Dove)"
Artist: Lin McJunkin
5' x 5' x 5'
Stainless Steel & Cast Glass
Price: \$8,000

"What the world needs now are peaceful transitions from all the sickness and shouting to healing and positive change. We chose the dove, a universal symbol of peace, to convey our hopes for a healthy, prosperous and meaningful future for all of us."



Reins_dL_wip

"Reins"
 Artist: Francis Fox
 65" x 19" x 15"
 Bronze
 Price: \$25,000

"The horse is important in the American West, not only because of its dutiful service but also because of its "space changing" effect on our human psyche. I hope this sculpture captures a sense of wild nobility while creating energy between its vertical expression and a perceived sense of space.

'Reins' is comprised of a single band of cast bronze. The working process starts with a solid form and a band of wax. At first, the original form determines the direction that the band travels, but soon, it starts to respond to its own structure. Intersections emerge as secondary forms and the traveling line responds to these in turn. The result is a history of the original form intrinsically combined with an explicit depiction of the boundary between form and space.

I aim to make sculptures that resonate with our physical nature while at the same time create a sense of wonder and possibility."



Reins_wip
 Bronze
 65" x 19" x 15"



O'Keefe 8 A

"O'Keefe 8 & 9"
 Artist: Patrick Sullivan
 3' x 1' x 1'
 Marble
 Price: \$8,500 each

"Public art that engages and interacts with people while maintaining visual integrity with surrounding architecture and natural landscape. My submission for this project is O'Keefe 8 & 9. Three feet (3') high realized in Nootka Marble – 2021. They are part of the series in stone honoring the work of American artist Georgia O'Keefe. I use stone, the most organic and environmentally sustainable material in history, accessing the power of earth for positive community involvement. Stone is climate friendly with zero harmful emissions or toxic materials created during fabrication."



O'Keefe 9 A



Full size elk
Mild steel
96" x 96" x 60"

"Responding to a Rival"

Artist: Jason Paul

96" x 60" x 96"

Mild Steel

Price: \$12,500



Responding To a Rival
Mild steel
96" x 60" x 96"

"This piece was inspired by one of the northwest's icons; the regal and majestic elk that live throughout the region. True Northwesterners love this symbol of northwest and really appreciate the large antlers that they wear as a crown. The piece captures that majestic look and provides the opportunity to see up close, just how big these animals are by creating the piece in life size form."

5



Solidarity
Welded steel
42" x 10" x 10"

"Solidarity"

Artist: Rick Davis

42" x 10" x 10"

Fabricated Steel

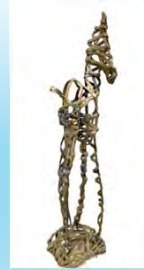
Price: \$7,800

"I was inspired to create this piece because I find it to be a powerful contemporary and historic symbol of solidarity with those who struggle for human rights and stand with marginalized groups. The symbol has been used by movements for equality and civil rights around the world and is a global icon for those who fight against oppression and authoritarianism. In using reclaimed metal to sculpt this piece, I am also expressing solidarity with those who use the earth's resources responsibly. I am fascinated with making scrap metal come to life and fashioning it into icons of the human spirit. I hope when people look at my pieces they see the creative power that can come from sculpting industrial hardware and metal stock into art."

6



Questions?



RESOLUTION NO. 22-034

A RESOLUTION OF THE CITY OF COEUR D'ALENE, KOOTENAI COUNTY, IDAHO, AUTHORIZING SIX (6) ART DISPLAY AGREEMENTS, EACH FOR A TERM OF ONE-YEAR WITH THE OPTION TO EXTEND FOR AN ADDITIONAL ONE YEAR, FOR NEW ART PIECES PURSUANT TO THE 2022 ARTCURRENTS PROGRAM.

WHEREAS, the City Administrator for the City of Coeur d'Alene and the Coeur d'Alene Arts Commission have recommended that the City of Coeur d'Alene enter into Art Display Agreements, pursuant to terms and conditions set forth in the standard agreement, a copy of which is attached hereto as Exhibit "A" and by reference made a part hereof; and

WHEREAS, the Arts Commission has recommended the following works of art for display:

1. "Mi Paloman II (Dove)" by Lin McJunkin
2. "Reins" by Francis Fox
3. "O'Keefe 8" by Patrick Sullivan
4. "O'Keefe 9" by Patrick Sullivan
5. "Responding to a Rival" by Jason Paul
6. "Solidarity" by Rick Davis

and

WHEREAS, it is deemed to be in the best interests of the City of Coeur d'Alene and the citizens thereof to enter into such agreements.

NOW, THEREFORE,

BE IT RESOLVED by the Mayor and City Council of the City of Coeur d'Alene that the City enter into Art Display Agreements with the above-named artists for the above-named art works, in substantially the form attached hereto as Exhibit "A" and incorporated herein by reference, with the provision that the Mayor, City Administrator, and City Attorney are hereby authorized to modify said Agreements to the extent the substantive provisions of the Agreements remain intact.

BE IT FURTHER RESOLVED that the Mayor and City Clerk be and they are hereby authorized to execute such Agreements on behalf of the City.

DATED this 2nd day of August, 2022.

James Hammond, Mayor

ATTEST:

Renata McLeod, City Clerk

Motion by _____, Seconded by _____, to adopt the foregoing resolution.

ROLL CALL:

COUNCIL MEMBER MCEVERS Voted

COUNCIL MEMBER MILLER Voted

COUNCIL MEMBER GOOKIN Voted

COUNCIL MEMBER EVANS Voted

COUNCIL MEMBER ENGLISH Voted

COUNCIL MEMBER WOOD Voted

_____ was absent. Motion _____.

ART DISPLAY AGREEMENT

This Art Display Agreement (hereinafter referred to as the “Agreement”) is made and entered into this _____ day of _____, 20____, by and between the City of Coeur d’Alene, a municipal corporation created and existing under the laws of the state of Idaho (hereinafter referred to as the “City”), and _____, (hereinafter referred to as the “Artist”).

WHEREAS, the City has established a program to promote, sustain, and cultivate public art through the display of art pieces in public spaces in Coeur d’Alene, Idaho; and

WHEREAS, in exchange for a stipend, as set forth herein, the Artist shall lend his/her Artwork (depicted and described in Exhibit “A,” attached hereto) for display at the site designated by the City (hereinafter referred to as the “Site”), for the period of time set out herein; and

WHEREAS, the Artist is qualified and able to perform the services as described in this Agreement; and

WHEREAS, the City has investigated and determined that it would be beneficial and in the best interests of the City and its citizens to allow the Artist to place the Artwork at the Site to promote visual arts in the City.

NOW, THEREFORE, in consideration of the promises and the agreements contained herein, the Parties hereby agree as follows:

1. Artwork. The Artist agrees to lend his/her Artwork for display at the Site. No modification or addition to the Artwork shall be allowed unless agreed to in writing by the City. The Artist acknowledges and agrees that all Artwork submitted for display is subject to the final approval of the City Administrator or designee.

2. Consideration. The City agrees to pay, and the Artist agrees to accept, the sum of One Thousand Dollars (\$1000.00) as full consideration for the right of the City to display the Artwork under this Agreement, hereinafter referred to as the “stipend fee.”

If the Artwork is purchased during, or as a direct result of its display at the Site, the Artist shall pay the City a twenty-five percent (25%) commission, which commission shall inure to the benefit of the Coeur d’Alene Arts Commission.

3. Display Site. The Artwork will be located at _____. The City reserves the right to move the Artwork at any time during the term of this Agreement when such move is deemed to be in the best interests of the City and the program.

4. Loan Period. The Artist hereby agrees that the Artwork may be displayed for the time period of October 1, 2022 through September 30, 2023 (with the option to extend).

5. Delivery, Installation, and Removal. The Artist shall, at his/her sole cost and expense, be responsible for the delivery and removal of the Artwork to and from the Site.

The Artist shall be solely responsible for any damage to the Artwork during transportation to and from the City. If the artist will not be present for installation, the Artwork shall be delivered to 3800 N. Ramsey Road, Coeur d'Alene, Idaho, prior to the first day of installation or as otherwise specified by the City. Artists that will directly transport the Artwork and be present for installation shall bring the Artwork to the installation location or as otherwise specified by the City.

The Artist shall remove the Artwork from the Site no later than ten (10) days after the City provides notice that the Artwork is ready for removal. Notice shall be deemed given on the date it is deposited, postage prepaid, in the United States Mail or on the date of personal service. If the Artist fails to remove the Artwork within ten (10) days after notice, the City shall have the right to dispose of the Artwork and any other items related thereto in any manner deemed appropriate in the sole discretion of the City. The Artist shall be responsible for any and all costs and expenses associated with the City's disposal of the Artwork and the related materials, equipment, and any other items associated or used in conjunction with the Site.

If the Artist elects to remove the Artwork prior to the expiration of this Agreement, the Artist shall be responsible for all costs associated with uninstalling the Artwork and shall reimburse the City for the entire stipend fee.

6. Installation. The City shall securely and effectively install all the Artwork. The Artist shall, upon request, assist the City in the installation of the Artwork. In advance of the installation, the Artist shall provide to the City a written description of the manner of preferred installation, including a statement of details addressing any preparatory work which must be performed to prepare the Site. However, the City shall make the final determination of how, when, and where the Artwork shall be installed and displayed.

The Artist shall securely attach the Artwork to a metal base if the City determines that it is to be bolted or welded to an appropriate pedestal or concrete base upon installation.

7. Maintenance of Artwork. The maintenance of the Artwork shall be the sole responsibility of the Artist. Any and all costs associated with or related to the maintenance of the Artwork shall be the sole responsibility of the Artist. If the City determines that maintenance is necessary or advisable, the City shall notify the Artist who will perform the maintenance requested. In the event of an emergency, the City may, in its sole discretion, undertake reasonable actions to makes repairs to the Artwork or to preserve it for repair by the Artist. By displaying the Artwork at the Site, the Artist represents and agrees that the Artwork is appropriate for the Site conditions.

8. No Security; Assumption of Liability. The Artist acknowledges and agrees that the City will not provide any security for the Artwork. The Artist hereby assumes liability for, and agrees that the City shall not, for any reason, be liable for the loss of, the theft of, or damage to the Artwork, or any related materials, equipment, or any other items associated or used in conjunction with the Artwork.

9. Insurance. The City shall provide limited insurance for damage to or destruction of the Artwork, up to ten thousand dollars (\$10,000) per piece. All damages in excess of ten thousand dollars (\$10,000) are the sole responsibility of the Artist.

10. Photographic Rights. The Artist hereby grants permission to the City to photograph or videotape, or to authorize others to photograph or videotape, the Artwork for any non-commercial use.

11. Relationship between the Artist and the City. The Parties agree that the City is not, under any circumstance, acting as the Artist's agent, dealer, or exclusive seller. The Artist shall not be considered an employee of the City for any purpose.

12. Representations and Warranties Regarding Copyright. The Artist hereby warrants and represents that the Artwork is an original creation of the Artist and will not infringe the copyright, trademark, or other intangible or intellectual rights of any third party.

13. Termination/Waiver of Damages. The City may terminate this Agreement at any time, and for any reason or no reason at all. Should the City terminate this Agreement, the Artist hereby releases the City, and its officers, agents, representatives, and employees from any claims, causes of action, or damages whatsoever arising from the termination. Nothing herein shall be construed to guaranty the Artist that his/her Artwork will be displayed for the entire term of this Agreement.

14. Governing Jurisdiction; Venue. This Agreement is governed by the laws of the State of Idaho. In any action brought involving this Agreement, venue shall be in the First Judicial District of the State of Idaho, in and for the County of Kootenai

15. Miscellaneous Provisions.

a. **Assignment.** This Agreement is not assignable without the prior written consent of the City.

b. **Notices.** Any notice required or permitted to be given under this Agreement must be in writing and may be served by depositing the same in the United States Mail, addressed to the party to be notified, or by delivering the same in person to such party via a hand-delivery service. For purposes of notice, the addresses of the parties shall be as follows:

If to Artist: _____

If to the City: City of Coeur d'Alene
Attn: City Clerk
710 E. Mullan Ave.
Coeur d'Alene, ID 83814

c. **Entire Agreement.** This Agreement contains the entire agreement of the parties with respect to the matters contained herein and may not be modified or terminated except upon the mutual written agreement of the parties hereto.

d. **Severability.** In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable, such invalidity, illegality or unenforceability shall not affect any other provision thereof, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

IN WITNESS WHEREOF, the parties have executed this Agreement and caused this Agreement to be effective on the latest day as reflected by the signatures below.

CITY OF COEUR D'ALENE

ARTIST:

By _____

By _____

(Print Name) _____

(Print Name) _____

EXHIBIT “A”

(Photo)

Name of Art Piece

**CITY COUNCIL
STAFF REPORT**

DATE: **AUGUST 2, 2022**

FROM: **CHRIS BOSLEY – CITY ENGINEER**

SUBJECT: KELLER ASSOCIATES PROFESSIONAL SERVICES AGREEMENT

=====

DECISION POINT: Should Council approve a Professional Services Agreement with Keller Associates, Inc., for the Independence Point Stormwater Improvements?

HISTORY: In 2021, the City of Coeur d’Alene was awarded \$695,000 from the Idaho Department of Environmental Quality for the Building Idaho’s Future grant (now called the Leading Idaho Subaward Program). The goal of the program is to fund projects that will reduce phosphorus loading into Lake Coeur d’Alene. The City was awarded funding for three stormwater reduction projects in three separate drainage areas: Mullan Road, Sanders Beach/11th Street Marina, and Independence Point. Independence Point is the largest of the three with approximately 131 acres draining to the outfall. Staff met with Keller Associates to discuss this project and prepare a cost estimate to perform a hydraulic analysis of the stormwater system and develop a conceptual stormwater design that will reduce the amount of stormwater entering Lake Coeur d’Alene. This would likely be accomplished through a combination of swales and subsurface storage/filtration units, but will be ultimately determined during design.

FINANCIAL ANALYSIS: The cost for the design is \$36,900, which would be funded through the IDEQ grant.

PERFORMANCE ANALYSIS: Approval of this agreement will enable Keller Associates to begin analysis of the stormwater system and develop a conceptual design. Once the concept is developed and potentially refined, construction documents can be prepared under a supplemental agreement with construction anticipated for 2023.

DECISION POINT/RECOMMENDATION: Council should approve the Professional Services Agreement with Keller Associates, Inc., for the Independence Point Stormwater Improvements.

Stormwater Outfall Volume Reduction Program



**Independence Point
August 2, 2022**



Independence Point Outfall



Staff recommends that City Council approve the Professional Services Agreement with Keller Associates.



RESOLUTION NO. 22-035

A RESOLUTION OF THE CITY OF COEUR D'ALENE, KOOTENAI COUNTY, IDAHO, APPROVING A PROFESSIONAL SERVICES AGREEMENT WITH KELLER ASSOCIATES FOR THE INDEPENDENCE POINT STORMWATER IMPROVEMENTS.

WHEREAS, the City Engineer has recommended that the City of Coeur d'Alene enter into a Professional Services Agreement with Keller Associates, Inc., for the Independence Point Stormwater Improvements pursuant to the terms and conditions set forth in said Agreement, a copy of which is attached hereto as Exhibit "1" and by reference made a part hereof; and

WHEREAS, it is deemed to be in the best interests of the City of Coeur d'Alene and the citizens thereof to enter into such Professional Services Agreement.

NOW, THEREFORE,

BE IT RESOLVED by the Mayor and City Council of the City of Coeur d'Alene that the City enter into a Professional Services Agreement for the Independence Point Stormwater Improvements with Keller Associates, Inc., in substantially the form attached hereto as Exhibit "1" and incorporated herein by reference, with the provision that the Mayor, City Administrator, and City Attorney are hereby authorized to modify said Professional Services Agreement to the extent the substantive provisions of the Agreement remain intact.

BE IT FURTHER RESOLVED that the Mayor and City Clerk be and they are hereby authorized to execute such Professional Services Agreement on behalf of the City.

DATED this 2nd day of August, 2022.

James Hammond, Mayor

ATTEST:

Renata McLeod, City Clerk

Motion by _____, Seconded by _____, to adopt the foregoing resolution.

ROLL CALL:

COUNCIL MEMBER MILLER Voted

COUNCIL MEMBER ENGLISH Voted

COUNCIL MEMBER GOOKIN Voted

COUNCIL MEMBER EVANS Voted

COUNCIL MEMBER MCEVERS Voted

COUNCIL MEMBER WOOD Voted

_____ was absent. Motion _____.

PROFESSIONAL SERVICES AGREEMENT

between

CITY OF COEUR D'ALENE

and

KELLER ASSOCIATES, INC.

for

INDEPENDENCE POINT STORMWATER PROJECT

THIS Agreement is made and entered into this ____ day of _____, 2022, between the CITY OF COEUR D'ALENE, Kootenai County, Idaho, a municipal corporation organized and existing under the laws of the state of Idaho, hereinafter referred to as the "City," and Keller Associates, Inc., hereinafter referred to as the "Consultant."

WITNESSETH:

WHEREAS, the Consultant will provide stormwater engineering planning and design services for the Coeur d'Alene Independence Stormwater Improvement Project. The intent of the project is to plan and design improvements that reroute an existing Lake Coeur d'Alene stormwater outfall to not discharge to the Lake.

Section 1. Definitions.

In this agreement:

- A. The term "City" means the city of Coeur d'Alene, 710 Mullan Avenue, Coeur d'Alene, Idaho 83814.
- B. The term "Consultant" means Keller Associates, Inc. 601 Sherman Avenue, Suite 1 Coeur d'Alene, ID 83814
- C. The term "Mayor" means the mayor of the city of Coeur d'Alene or his authorized representative.
- D. The term "Agent" means the City Engineer with budget authority on behalf of the City of Coeur d'Alene or his authorized representative.

Section 2. Employment of Consultant. The City hereby agrees to engage the Consultant and the Consultant hereby agrees to perform the services hereinafter set forth.

Section 3. Scope of Services.

A. The Consultant shall perform the services described in the Scope of Services attached hereto and incorporated herein by reference as Attachment "A".

B. Area Covered: The Consultant shall perform all the necessary services provided under this Agreement respecting the tasks set forth in the Scope of Services.

Section 4. Personnel.

A. The Consultant represents that it has or will secure at its own expense all personnel required to perform its services under this Agreement. Such personnel shall not be employees of or have any contractual relationship with the City.

B. All of the services required hereunder will be performed by the Consultant or under his direct supervision, and all personnel engaged in the work shall be fully qualified and shall be authorized under state and local law to perform such services.

C. The Consultant agrees to maintain Worker's Compensation coverage on all employees, including employees of subcontractors, during the term of this Agreement as required by Idaho Code Sections 72-101 through 72-806. Should the Consultant fail to maintain such insurance during the entire term hereof, the Consultant shall indemnify the City against any loss resulting to the City from such failure, either by way of compensation or additional premium liability. The Consultant shall furnish to the City, prior to commencement of the work, such evidence as the City may require guaranteeing contributions which will come due under the Employment Security Law including, at the option of the City, a surety bond in an amount sufficient to make such payments.

Section 5. Time of Performance.

The services of the Consultant shall commence upon execution of this Agreement by the City and shall be completed in accordance with the Scope of Services. The period of performance may be extended for additional periods only by the mutual written agreement of the parties.

Section 6. Compensation.

A. Subject to the provisions of this Agreement, the City shall pay the Consultant a sum not to exceed Thirty-six thousand nine hundred dollars (\$36,900), unless authorized in writing by the City.

B. Except as otherwise provided in this Agreement, the City shall not provide any additional compensation, payment, use of facilities, service or other thing of value to the Consultant in connection with performance of agreement duties. The parties understand and agree that, except as otherwise provided in this Section, administrative overhead and other indirect or direct costs the

Consultant may incur in the performance of its obligations under this Agreement have already been included in computation of the Consultant's fee and may not be charged to the City.

Section 7. Method and Time of Payment.

Monthly progress payments must be submitted by the 15th of the month for work done in the previous calendar month. Partial payment shall be made by the end of each calendar month for the work completed in the previous calendar month. Final payment shall be made thirty (30) days after completion of all work and acceptance by the City Council.

Section 8. Termination of Agreement for Cause.

If, through any cause within Consultant's reasonable control, the Consultant shall fail to fulfill in a timely and proper manner its obligations under this Agreement, or if the Consultant shall violate any of the covenants, agreements, or stipulations of this Agreement, the City shall, after providing Consultant reasonable time to remedy the deficiency, thereupon have the right to terminate this Agreement by giving written notice to the Consultant of such termination and specifying the effective date thereof, at least five (5) days before the effective date of such termination. In that event, all finished or unfinished hard copy documents, data, studies, surveys, and reports or other material prepared by the Consultant under this agreement shall at the option of the City become its property, and the Consultant shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents and materials. Equitable compensation shall not exceed the amount reasonably billed for work actually done and expenses reasonably incurred.

Section 9. Termination for Convenience of City.

The City may terminate this Agreement at any time by giving thirty (30) days written notice to the Consultant of such termination and specifying the effective date of such termination. In that event, all finished or unfinished documents and other materials as described in Section 8 above shall, at the option of the City, become its property. The Consultant shall be entitled to receive compensation not to exceed the amount reasonably billed for work actually done and expenses reasonably incurred as of the effective date of the termination.

Section 10. Modifications.

The City may, from time to time, require modifications in the general scope of services of the Consultant to be performed under this Agreement. The type and extent of such services cannot be determined at this time; however, the Consultant agrees to do such work as ordered in writing by the City, and the City agrees to compensate the Consultant for such work accomplished by written amendment to this Agreement.

Section 11. Equal Employment Opportunity.

A. The Consultant will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin, sexual orientation and/or gender identity/expression. The Consultant shall take affirmative action to ensure that applicants are

employed and that employees are treated during employment without regard to their race, color, religion, sex, or national origin, sexual orientation and/or gender identity/expression. Such actions shall include, but not be limited to the following: employment, upgrading, demotions, or transfers; recruitment or recruitment advertising; layoffs or terminations; rates of pay or other forms of compensation; selection for training, including apprenticeship; and participation in recreational and educational activities. The Consultant agrees to post in conspicuous places available for employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause. The Consultant will, in all solicitations or advertisements for employees placed by or on behalf of the Consultant, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin, sexual orientation and/or gender identity/expression. The Consultant will cause the foregoing provisions to be inserted in all subcontracts for any work covered by this agreement so that such provisions will be binding upon each sub-consultant, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.

B. To the extent permitted by applicable law, the Consultant shall keep such records and submit such reports concerning the racial and ethnic origin of applicants for employment and employees as the City may require.

Section 12. Interest of Members of City and Others.

No officer, member, or employee of the City and no member of its governing body, and no other public official of the governing body shall participate in any decision relating to this Agreement which affects his personal interest or the interest of any corporation, partnership, or association in which he is, directly or indirectly, interested or has any personal or pecuniary interest, direct or indirect, in this Agreement or the proceeds thereof.

Section 13. Assignability.

A. The Consultant shall not assign any interest in this Agreement and shall not transfer any interest in the same (whether by assignment or novation) without the prior written consent of the City thereto. Provided, however, that claims for money due or to become due to the Consultant from the City under this Agreement may be assigned to a bank, trust company, or other financial institution without such approval. Notice of any such assignment or transfer shall be furnished promptly to the City.

B. The Consultant shall not delegate duties or otherwise subcontract work or services under this Agreement without the prior written approval of the City.

Section 14. Interest of Consultant.

The Consultant covenants that neither it nor its owners or officers presently have an interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement. The Consultant further covenants that, in the performance of this Agreement, no person having any such interest shall be employed.

Section 15. Findings Confidential.

Any reports, information, data, etc., given to or prepared or assembled by the Consultant under this Agreement which the City requests to be kept confidential shall not be made available to any individual or organization by the Consultant without the prior written approval of the City.

Section 16. Publication, Reproduction and Use of Materials.

No material produced, in whole or in part, under this Agreement shall be subject to copyright in the United States or in any other country. The City shall have unrestricted authority to publish, disclose, distribute and otherwise use, in whole or in part, any reports, data or other materials prepared under this Agreement. Consultant shall provide copies of such work products to the City upon request. City may make and retain copies of Documents for information and reference in connection with use on the Project by the City. Such Documents are not intended or represented to be suitable for reuse by City or others on extensions of the Project or on any other project. Any such reuse or modification without written verification or adaptation by the Consultant, as appropriate for the specific purpose intended, will be at the City's sole risk and without liability or legal exposure to the Consultant and Consultant's sub-consultants. To the extent allowed by law, the City shall indemnify and hold harmless the Consultant and Consultant's sub-consultants from all claims, damages, losses, and expenses, including attorney's fees arising out of or resulting therefrom.

Section 17. Audits and Inspection.

Consultant shall provide access for the City and any duly authorized representatives to any books, documents, papers, and records of the consultant that are directly pertinent to specific agreement for the purpose of making audit, examination, excerpts, and transcriptions. Consultant shall retain all records pertinent to the project for three years after final payment and all other pending matters are closed.

Section 18. Jurisdiction; Choice of Law.

Any civil action arising from this Agreement shall be brought in the District Court for the First Judicial District of the State of Idaho at Coeur d'Alene, Kootenai County, Idaho. The law of the state of Idaho shall govern the rights and obligations of the parties.

Section 19. Non-Waiver.

The failure of the City at any time to enforce a provision of this Agreement shall in no way constitute a waiver of the provisions, nor in any way affect the validity of this Agreement or any part thereof, or the right of the City thereafter to enforce each and every protection hereof.

Section 20. Permits, Laws and Taxes.

The Consultant shall acquire and maintain in good standing all permits, licenses and other documents necessary to its performance under this Agreement. All actions taken by the Consultant

under this Agreement shall comply with all applicable statutes, ordinances, rules, and regulations. The Consultant shall pay all taxes pertaining to its performance under this Agreement.

Section 21. Relationship of the Parties.

The Consultant shall perform its obligations hereunder as an independent contractor of the City. The City may administer this Agreement and monitor the Consultant's compliance with this Agreement but shall not supervise or otherwise direct the Consultant except to provide recommendations and to provide approvals pursuant to this Agreement.

Section 22. Integration.

This instrument and all appendices and amendments hereto embody the entire agreement of the parties. There are no promises, terms, conditions, or obligations other than those contained herein; and this Agreement shall supersede all previous communications, representations or agreements, either oral or written, between the parties.

Section 23. City Held Harmless.

A. The Consultant shall save, hold harmless, indemnify, and defend the City, its officers, agents and employees from and against any and all damages or liability arising out of the acts, errors, omissions, or negligence, including costs and expenses, for or on account of any and all legal actions or claims of any character resulting from injuries or damages sustained by any person or persons or property arising from Consultant's performance of this Agreement and not arising from Consultant's professional services. To this end, Consultant shall maintain general liability insurance in at least the amount set forth in Section 25A.

B. The Consultant shall save, hold harmless, and indemnify the City, its officers, agents, and employees from and against damages or liability arising out of the Consultant's negligent acts, errors, or omissions, including costs and expenses for or on account of any and all legal actions or claims of any character resulting from injuries or damages sustained by persons or property to the extent arising from Consultant's negligent performance of this Agreement, including but not limited to Consultant's professional services. To this end, Consultant shall maintain Errors and Omissions insurance in at least the amounts set forth in Section 25B.

Section 24. Notification.

Any notice under this Agreement may be served upon the Consultant or the City by mail at the address provided in Section 1 hereof.

Section 25. Standard of Performance and Insurance.

A. Consultant shall maintain general liability insurance naming the City, its entities, and its representatives as additional insureds in the amount of at least \$500,000.00 for property damage or personal injury, death or loss as a result of any one occurrence or accident

regardless of the number of persons injured or the number of claimants, it being the intention that the minimum limits shall be those provided for by Idaho Code 6-924.

B. In performance of professional services, the Consultant will use that degree of care and skill ordinarily exercised under similar circumstances by members of the Consultant's profession. Should the Consultant or any of the Consultants' employees be found to have been negligent in the performance of professional services from which the City sustains damage, the Consultant has obtained Errors and Omission Insurance in at least the amount of five hundred thousand dollars (\$500,000.00) per claim and in the aggregate. The Consultant shall maintain, and furnish proof thereof, coverage for a period of two years following the completion of the project.

C. The Consultant shall obtain and maintain auto liability insurance in the amount of \$500,000.00 for the duration of the project.

D. Prior to work under this Agreement, the Consultant shall furnish to the City certificates of the insurance coverages required herein, which certificates must be approved by the City Attorney. Certificates shall provide cancellation notice information that assures at least thirty (30) days' notice prior to cancellation of the policy for any reason in which case the Consultant shall promptly notify the City.

Section 26. Non – Discrimination.

During the performance of this contract, the Consultant, for itself, its assignees and successors in interest (hereinafter referred to as the "Consultant") agrees as follows:

A. The Consultant shall comply with the Regulations relative to non-discrimination in federally assisted programs of United States Department of Transportation (USDOT), Title 49, Code of Federal Regulations, part 21, as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract. In addition, the Consultant shall comply with the requirements of Title 9, Chapter 9.56, Coeur d'Alene City Code.

B. The Consultant, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, national origin, sexual orientation, and/or gender identity/expression, in the selection and retention of sub-consultants, including procurement of materials and leases of equipment. The Consultant shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations or discrimination prohibited by Title 9, Chapter 9.56, Coeur d'Alene City Code.

C. In all solicitations either by competitive bidding or negotiations made by the Consultant for work to be performed under a subcontract, including procurement of materials or leases of equipment, each potential sub-consultant or supplier shall be notified by the Consultant of the Consultant's obligations under this contract and the Regulations and City Code relative to non-discrimination on the grounds of race, color, sexual orientation and/or gender identity/expression, national origin, sexual orientation, and/or gender identity/expression.

D. The Consultant shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information and its facilities as may be determined by the contracting agency or the appropriate federal agency to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a Consultant is in the exclusive possession of another who fails or refuses to furnish this information, the Consultant shall so certify to ITD or the USDOT as appropriate, and shall set forth what efforts it has made to obtain the information.

E. In the event of the Consultant's non-compliance with the non-discrimination provisions of this contract, the contracting agency shall impose such contract sanctions as it or the USDOT may determine to be appropriate, including, but not limited to:

- Withholding of payments to the Consultant under the contract until the Consultant complies, and/or;
- Cancellation, termination, or suspension of the contract, in whole or in part.

The Consultant shall include the provisions of paragraphs (A) through (E) in every subcontract, including procurement of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The Consultant shall take such action with respect to any sub-consultant or procurement as the contracting agency or USDOT may direct as a means of enforcing such provisions including sanctions for non-compliance. Provided, however, that in the event a Consultant becomes involved in, or is threatened with, litigation with a sub-consultant or supplier as a result of such direction, the Consultant may request ITD enter into such litigation to protect the interests of the state and, in addition, the Consultant may request the USDOT enter into such litigation to protect the interests of the United States.

IN WITNESS WHEREOF, this agreement executed the day and year first written above.

CITY OF COEUR D'ALENE

KELLER ASSOCIATES, INC.

_____, President

ATTEST:

ATTEST:

Attachment A

City of Coeur d'Alene Independence Point Stormwater Improvements Scope of Work

The City of Coeur d'Alene (“Owner”) has contracted with Keller Associates (“Consultant”) to provide stormwater engineering planning and design services for the Coeur d'Alene Independence Stormwater Improvement project. The Owner was awarded stormwater funding through State of Idaho for projects that reduce phosphorous pollution to Lake Coeur d'Alene. This project focuses on eliminating a storm outfall into Lake Coeur d'Alene from the Independence Point Stormwater basin area and outfall. The goal of this project will be to check the storm basin boundary, develop design conditions, and identify potential improvements to reroute storm to treatment and/or infiltration facilities prior to reaching the lake.

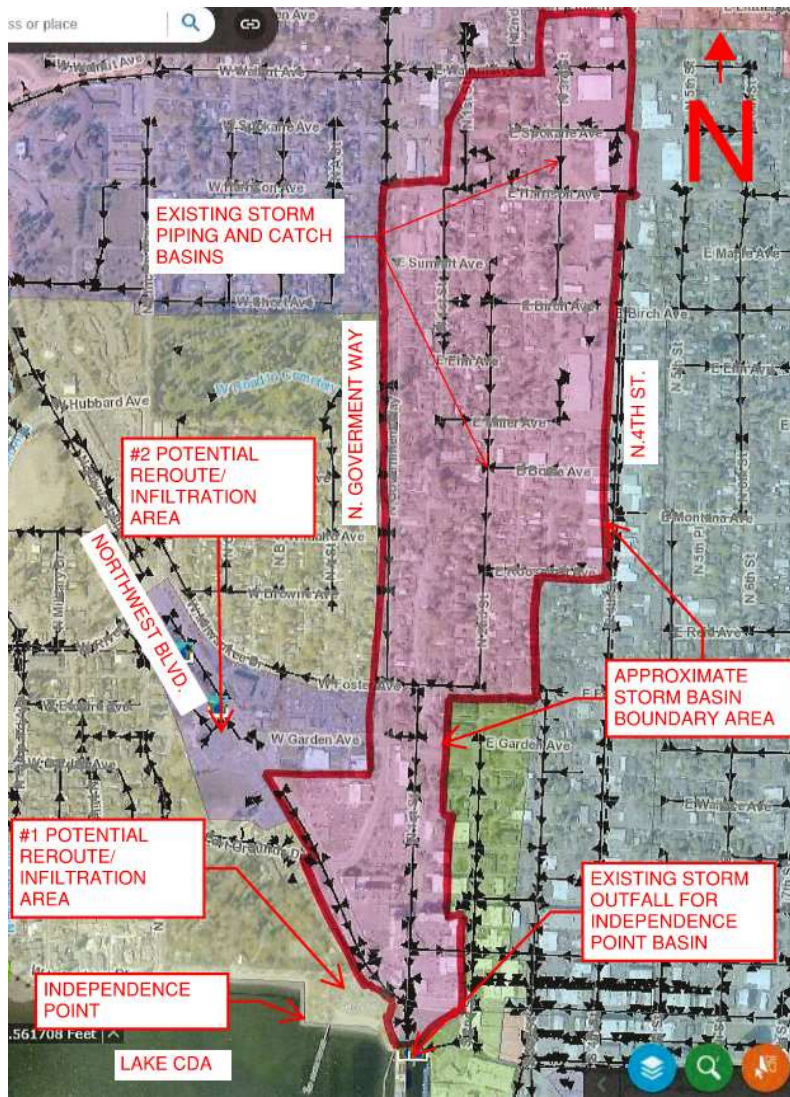


Figure 1 – Project Overview

Task 1: Project Management

Consultant Responsibilities:

- 1.1 Project Administration. Project administration services include contract administration, project accounting, maintaining project schedule, and internal project administration.
- 1.2 Request for Information (RFI). The Consultant will prepare an RFI to request available City/County GIS mapping information including contour data, existing stormwater record drawings, utilities, right-of-way (ROW), and easement information within the project boundary. Other pertinent information that may be helpful in the planning and design process will also be included in the RFI.
- 1.3 Meeting #1 – Project Kickoff. The Consultant will oversee and lead meetings. The purpose of this first meeting is to kickoff the project, discuss the project planning criteria, basin boundary, areas for treatment and infiltration, storm infrastructure, and potential options for treatment and infiltration. Subsequent meetings are included as part of later tasks.

Owner Responsibilities:

- Provide electronic copy of available GIS storm data, as-builts, and other pertinent information.
- Administer State of Idaho project funding for phosphorous reduction in Lake Coeur d'Alene.
- Assign members from City (stormwater staff, parks staff, etc.) to attend and participate in meetings.
- Provide input on potential treatment/disposal storm areas to be considered.

Assumptions:

- Consultant's scope does not include funding administration.
- Submit all documents electronically, unless directed otherwise.
- A three-month project duration is anticipated for a draft concept design report.
- Consultant shall be entitled to rely on the accuracy and completeness of any and all information provided by Owner, information from public records, and information ordinarily or customarily furnished by others.

Deliverables:

- Request for Information – electronic copy
- Kickoff meeting agenda and minutes – electronic copy

Task 2: Field Work

Consultant Responsibilities:

- 2.1 Field Work. Consultant to check stormwater basin boundary by reviewing existing GIS mapping, field investigation, and reviewing City topographic maps to understand catchment area. Consultant to survey and field check up to 30 key pipe inverts and provide elevation spot checks



using survey-grade GPS and compare with City GIS information. Additionally, elevation spot checks using survey-grade GPS may be completed during this task for development of alternatives. Consultant to provide findings to City for updates to GIS, if any. Scope includes up to three days of field time with some additional engineering time for GIS/Mapping research.

Owner Responsibilities:

- Provide input on boundary area and stormwater collection system per the above project boundary.
- Provide for Consultant's right to enter the property owned by the Owner, including ROW, to fulfill the services outlined above.
- Identify local benchmark(s) the Owner would like the survey to reference, if any.
- Provide Consultant with desired horizontal and vertical survey datums.

Assumptions:

- Consultant's review of boundary is not an exhaustive check and relies on the City's existing GIS system and data gathered in the field.
- Groundwater elevations will be assumed based on the Lake Coeur d'Alene water surface elevations.
- Field work on private property is not included.

Deliverables:

- Updated basin boundary map (PDF).
- Pipe inverts from survey (PDF and Excel).

Task 3: Preliminary Design Report

Consultant Responsibilities:

- 3.1 Preliminary Design Report. Prepare a preliminary stormwater design report. Report will include a basin description, design criteria and conditions, design alternatives and analysis, implementation recommendation, opinions of probable construction cost, a proposed schedule, and supporting attachments.
- a. Planning Area and Runoff Characterization. The planning area boundary is anticipated to largely correspond to the drainage area shown in Figure 1 – Project Overview. The basin boundaries will be refined using Owner-provided contour data and Consultant field data collection efforts. Consultant will utilize existing contour data, land use information, aerial photography, and NRCS soils data to develop runoff characteristics.
 - b. Hydrologic Evaluation. Consultant will use the planning area and runoff characterization to develop a hydrologic evaluation of the drainage area. Design storm, rainfall amount, duration, and treatment requirements per City Code will be followed, as discussed at the project Kickoff Meeting. It is anticipated that a hydrologic evaluation using SCS Method will be used to estimate runoff flow rate and volume.



- c. Hydraulic Evaluation. Only new storm improvements will be hydraulically evaluated which are anticipated to include pipe routing and treatment/infiltration facilities. Existing stormwater pipe facilities within the project boundary will not be evaluated and are assumed to fully capture and appropriately convey stormwater within the drainage basin.
- d. Conceptual Improvement Alternatives. Consultant will explore improvement alternatives for eliminating the storm discharge point to Lake Coeur d'Alene. Alternatives considered may include rerouting storm to treatment facilities (i.e. swales, infiltration basins, subsurface detention facilities, and dry wells). Up to three improvement alternatives will be considered. Improvements to briefly address the items below:
 1. Permits required
 2. Cursory review of utility impacts
 3. Disturbance to public and/or private properties
 4. Anticipated treatment benefits and drawbacks
 5. Maintenance of improvements
 6. Costs
 7. Construction considerations
- e. Concept Design Plans. Consultant will prepare planning level Concept Design Layouts for Owner review and use in making selection of alternatives (one plan sheet per alternative). Preferred alternative will advance to a Concept Design Plan to include site access, approximate dimensions, and key facilities/components (one plan and profile sheet).
- f. Concept Level Opinion of Probable Construction Cost. Consultant will prepare a concept level opinion of probable construction cost for each improvement alternative. Actual costs may vary, and cost estimates should be further refined through subsequent design activities. Costs to include planning level contingencies.
- g. Report. Develop a report that summarizes the above.
- h. Meeting #2 – Concept Design Review. The purpose of this meeting will be to review the Concept Design, discuss findings, review benefits and drawbacks, and ultimately identify the Owner's preferred alternative.

Owner Responsibilities:

- Provide review and comments on concept design report
- Select preferred stormwater improvement alternative(s).
- Attend and participate in meetings.
- Provide timely review of deliverables.

Assumptions:

- Hydraulic analysis will only be for new storm pipe routing and treatment facilities. If supplemental hydraulic analysis is needed, it can be performed by the Consultant as an additional service.



- No easement or property acquisition services is anticipated.
- Concept design plans will utilize the Owner's GIS contour data, record drawings, and NRCS soils for concept design assumptions.
- Flow monitoring and model calibration is not included.
- Since Consultant has no control over the cost of labor, materials, equipment, or services furnished by others, or over the Owner's and other contractor's methods of determining prices, or over competitive bidding or market conditions, the Consultant does not guarantee that proposals, bids, or actual construction cost will not vary from opinions of probable cost prepared by the Consultant.
- Hydrologic and hydraulic analyses of new stormwater conveyance facilities will be designed using City Code requirements for stormwater runoff.
- Assume one submittal to Owner and one resubmittal with responses to comments. No environmental or cultural reports will be completed for these tasks.

Deliverables:

- Concept Design Report and Concept Design Layouts – electronic copy
- Concept Design Plan & Profile – electronic copy
- Meeting agenda and minutes – electronic copy

FUTURE SERVICES

The following tasks are anticipated to be added after the preliminary design report is complete and City has selected improvement(s) to proceed with. Below are the anticipated future services:

- Topographic Survey
- Geotechnical Investigation
- Final Design Plans and Contract Documents
- Bid Support Services
- Construction Administration Services
- Construction Inspection Services

SCHEDULE

Consultant intends to have a preliminary stormwater design report within three months of contract execution and notice by Owner. This schedule assumes that the City will provide requested information within two weeks of Consultant's request. Additional services and changes in the contract are subject to change the proposed schedule.

COMPENSATION

As compensation for services to be performed by Consultant, Owner will pay Consultant as described in the following table.



TASK	Cost	Type
Task 1 – Project Management	\$3,800	LS
Task 2 – Field Work	\$7,900	LS
Task 3 – Preliminary Design Report	\$25,200	LS
Future Tasks – To be Determined	TBD	TBD
Total	\$36,900	



CITY COUNCIL STAFF REPORT

DATE: AUGUST 2, 2022

FROM VONNIE JENSEN, COMPTROLLER

SUBJECT: FISCAL YEAR 2022-23 FINANCIAL PLAN

DECISION POINT:

Should Council approve Resolution No. 22-036, which sets the public hearing date and the high dollar amount (\$123,852,624) in expenditures for the 2022-2023 Fiscal Year Financial Plan (Annual Appropriation)?

HISTORY:

Idaho law requires that the City Council approve an appropriations ordinance each year. The purpose of the ordinance is to establish a ceiling for expenditures and disclose the potential property tax revenue necessary to balance the budget. The financial plan or budget is the guide and detailed report for establishing these numbers.

FINANCIAL ANALYSIS:

The Financial Plan is an estimate of revenues and expenditures for the upcoming year. The expenditures are classified by department as well as by fund or service, and the revenues are classified by source. Included in the budget document pursuant to Idaho Code § 50-1002 are actual revenues and expenditures from the prior two (2) fiscal years, budgeted revenues and expenditures for the current fiscal year, and proposed revenues and expenditures for the upcoming fiscal year. The revenue includes \$27,114,123 in property tax revenue – an increase of \$2,560,166 over the previous year. The increase comes from the closing of the Lake Urban Renewal District and new growth throughout the rest of the City.

DECISION POINT:

Council should approve Resolution No. 22-036, which sets the public hearing date and the high dollar amount (\$123,852,624) in expenditures for the 2022-2023 Fiscal Year Financial Plan (Annual Appropriation).

Financial Plan

Fiscal Year 2022-2023



History

Tax Year	Amount Taken of 3% Allowed
2023 Proposed	\$710,216 3%
2022	\$-0-
2021	\$-0-
2020	\$655,361 3%
2019	\$-0-
2018	\$-0-
2017	\$490,533 2.5%
2016	\$-0-
2015	\$-0-
2014	\$-0-

New Construction Year over Year

Tax Year	Tax Dollars
2023 URD Lake District Closure - estimated	\$891,661
2023 – Regular New Growth – estimated	\$975,231
2022	\$315,941
2021	\$454,272
2020	\$404,623
2019	\$492,918
2018	\$375,549
2017	\$325,934
2017 Deannexation	\$538,311
2016	\$827,349
2015	\$669,966

General Fund Fund Balance Projections

Projected Unassigned Fund Balance at 9-30-2022	\$11,151,484
FY 2022-23 Budgeted Revenues	\$55,174,539
FY 2022-23 Budgeted Expenses	(\$56,560,939)
Estimated Fund Balance at 9-30-2023	\$9,765,084
Would put Fund Balance at 17% of budgeted expenses	
Two Months Worth of Revenues would be	\$9,195,757

Significant Revenue Changes

Total Increase in General Fund Revenue	\$9,966,158
3% Tax Increase	\$710,216
New Growth / Annexation / URD Closing	\$1,866,892
Increase in Use of Fund Balance	\$130,822
Increase in Federal Grant Funding	\$5,472,769
Total coming from Fund Balance:	
\$1,386,400	
Increase in State Funding	\$1,605,820

Significant Expense Changes

Total Increases in General Fund Expenses	\$10,131,980
Merit Increases - Contractual	\$171,727
Preliminary COLA Increases - 5%	\$1,431,462
Health Insurance Increase - Contractual - 3.5%	\$160,265
Additional Staff	\$522,830
Increase to Services and Supplies	\$2,181,160
Automation & Software Licensing - \$544,568	
Citywide - Fuels - \$159,220	
Streets - Overlay - \$750,000	
Increase to Capital Outlay	\$5,559,770

Proposed Personnel Changes – General Fund

Communications Specialist	+1 FTE	\$83,590
IT Technician	+1FTE	\$82,474
Legal Dept - Reorganization	+0 FTE	(\$60,220)
Building Maintenance – decrease in part time	-1.13 FTE	(\$41,774)
Police – Applications Analyst	+1FTE	\$81,126
Streets – HEO & Electrician Apprentice plus decrease to part time	+1.87 FTE	\$160,718
Firefighter	+1 FTE	\$105,298
Parks – 2 Maint Workers & Dept Support plus decrease to part time	-2.19 FTE	\$111,619
Total	2.55 FTE	\$522,831

Proposed Capital Purchases – General Fund

Building Maintenance	Street Shop – Flooring / Lighting / Windows /HVAC	\$90,000
Police Department	Station Expansion	\$3,000,000
Police Department	Vehicles (equipment \$303,400)	\$280,000
Fire Department	Self Contained Breathing Apparatus	\$986,610
Street Department	Shop Remodel	\$1,000,000
Street Department	Vehicle & Equipment Replacement	\$452,000
Building Department	Vehicle Replacement	\$62,000
Parks & Recreation Department	Vehicle & Equipment Replacement	\$229,000
Total		\$6,099,610

All Capital Outlay items to be funded by grant funds or fund balance not by budgeted property taxes

Proposed FY 2022-23 Purchases Using ARPA \$

Building Maintenance	Street Shop – Flooring / Lighting / Windows / HVAC	\$77,000
Police Department	Station Expansion	\$3,000,000
Legal Department	Integrated Case Management System	\$71,850
Fire Department	Self Contained Breathing Apparatus	\$986,610
Street Department	Shop Remodel	\$600,000
Street Department	Vehicle & Equipment Replacement	\$362,000
Building Department	Inspection Vehicle	\$62,000
Parks & Recreation Department	Vehicle & Equipment Replacement	\$229,000
Municipal Services	Network Upgrade	\$547,855
Water Department	Telemetry Security & Admin Server Upgrades	\$320,000
	Total for FY 2022-23	\$6,256,315

Previous and Future Proposed Purchases Using ARPA \$

Police Department	Station Expansion – FY 2023-24 Carryover	\$1,600,000
Legal Department	Integrated Case Management System – FY 2023-24 Carryover	\$8,625
	Total for FY 2023-24	\$1,608,625
Street Department	Dump Truck FY 2021-22	\$247,086
Municipal Services	Wireless AP Replacement Project FY 2021-22	\$39,175
	Total for FY 2021-22	\$286,261
	Remaining ARPA Dollars if Proposal is Approved	\$508,128

Questions?

RESOLUTION NO. 22-036

A RESOLUTION OF THE CITY OF COEUR D’ALENE, KOOTENAI COUNTY, IDAHO, ESTABLISHING A NOTICE OF TIME AND PLACE OF PUBLIC HEARING OF THE PROPOSED BUDGET FOR FISCAL YEAR 2022-2023, AND INCLUDING PROPOSED EXPENDITURES BY FUND AND/OR DEPARTMENT, A STATEMENT OF THE ESTIMATED REVENUE FROM PROPERTY TAXES AND THE TOTAL AMOUNT FROM SOURCES OTHER THAN PROPERTY TAXES OF THE CITY FOR THE ENSUING FISCAL YEAR, AND A LISTING OF EXPENDITURES AND REVENUES DURING EACH OF THE TWO (2) PREVIOUS FISCAL YEARS, AND PROVIDING FOR PUBLICATION OF THE SAME.

WHEREAS, it is necessary, pursuant to Idaho Code § 50-1002, for the City Council of the City of Coeur d’Alene, prior to passing the Annual Appropriation Ordinance, to list expenditures and revenues during each of the two (2) previous fiscal years, prepare a Budget, tentatively approve the same, and enter such Budget at length in the journal of the proceedings and hold a public hearing.

NOW, THEREFORE,

BE IT RESOLVED by the Mayor and City Council of the City of Coeur d’Alene that the following be and the same is hereby adopted as an Estimate of Expenditures and Anticipated Revenue of the City of Coeur d’Alene for the fiscal year beginning October 1, 2022:

	FY 2019-20 ACTUAL	FY 2020-21 ACTUAL	FY 2021-22 BUDGET	FY 2022-23 PROPOSED
GENERAL FUND EXPENDITURES:				
Mayor and Council Administration	\$269,535	\$249,875	\$269,845	\$259,163
Finance Department	210,139	215,458	223,074	320,486
Municipal Services	1,197,052	1,242,197	1,298,646	1,398,397
Human Resources	2,113,650	1,942,987	2,221,228	3,000,885
Legal Department	387,192	411,248	434,882	452,421
Planning Department	1,336,658	1,258,520	1,313,540	1,361,438
Building Maintenance	830,680	730,489	714,518	759,266
Police Department	686,061	483,773	702,899	694,637
Drug Task Force	15,344,192	15,810,518	17,946,242	22,027,526
Police Department Grants	4,034	1,868	35,000	
Fire Department	65,810	67,522	77,961	84,594
General Government	11,225,392	11,022,716	11,596,133	13,325,161
Streets/Garage	2,360,530	1,318,366	47,180	626,300
Parks Department	5,273,946	4,404,075	5,170,563	7,858,838
Recreation Department	2,377,602	2,227,875	2,617,467	3,041,376
Building Inspection	630,131	644,878	755,417	815,215
TOTAL GENERAL FUND EXPENDITURES:	930,449	939,758	1,004,364	1,123,236
	\$45,243,053	\$42,972,123	\$46,428,959	\$57,148,939

	FY 2019-20 ACTUAL	FY 2020-21 ACTUAL	FY 2021-22 BUDGET	FY 2022-23 PROPOSED
SPECIAL REVENUE FUND EXPENDITURES:				
Library Fund	\$1,737,510	\$1,660,835	\$1,796,065	\$1,948,445
Community Development Block Grant	295,904	511,564	550,372	780,243
Impact Fee Fund	320,288	151,851	769,000	554,446
Parks Capital Improvements	1,401,401	669,336	465,460	463,614
Annexation Fee Fund	99,000	184,000	175,000	355,000
Cemetery Fund	371,613	325,591	414,040	363,711
Cemetery Perpetual Care Fund	190,494	165,035	166,500	86,000
Jewett House	10,613	16,004	26,353	139,700
Reforestation/Street Trees/Community Canopy	89,173	66,182	120,000	120,000
Public Art Funds	98,452	126,322	461,300	468,500
TOTAL SPECIAL FUNDS:	\$4,614,448	\$3,876,720	\$4,944,090	\$5,279,659
ENTERPRISE FUND EXPENDITURES:				
Street Lighting Fund	\$697,852	\$700,997	\$658,900	\$760,130
Water Fund	11,993,999	12,830,278	12,306,910	14,326,675
Wastewater Fund	14,786,078	18,335,519	24,913,490	23,738,871
Water Cap Fee Fund	673,182	2,953,446	2,650,000	3,850,000
WWTP Cap Fees Fund	813,792	1,890,784	3,840,853	2,777,660
Sanitation Fund	4,256,480	4,493,292	4,562,297	5,520,365
City Parking Fund	1,742,068	1,545,666	1,718,619	1,864,965
Drainage	1,370,477	1,039,657	2,121,738	2,504,859
TOTAL ENTERPRISE EXPENDITURES:	\$36,333,928	\$43,789,639	\$52,772,807	\$55,343,525
FIDUCIARY FUNDS:	\$3,078,427	\$3,156,336	\$3,276,235	\$3,492,454
STREET CAPITAL PROJECTS FUNDS:	1,348,887	330,476	1,400,000	1,707,964
DEBT SERVICE FUNDS:	878,931	876,281	878,408	880,083
GRAND TOTAL OF ALL EXPENDITURES:	\$91,497,674	\$95,001,575	\$109,700,499	\$123,852,624
ESTIMATED REVENUES:				
	FY 2019-20 ACTUAL	FY 2020-21 ACTUAL	FY 2021-22 BUDGET	FY 2022-23 PROPOSED
Property Taxes:				
General Levy	\$21,162,243	\$16,102,305	\$21,801,829	\$24,054,774
Library Levy	1,764,571	1,638,497	1,622,045	1,777,266
Fireman's Retirement Fund Levy	250,000	250,000	250,000	250,000
Policemen's Retirement Fund Levy				152,000
2015 G.O. Bond Levy	889,924	884,817	878,408	880,083
TOTAL REVENUE FROM PROPERTY TAXES:	\$24,066,738	\$18,875,619	\$24,552,282	\$27,114,123

	FY 2019-20 ACTUAL	FY 2020-21 ACTUAL	FY 2021-22 BUDGET	FY 2022-23 PROPOSED
ESTIMATED OTHER REVENUES:				
Interfund Transfers	\$3,803,259	\$3,466,447	\$10,518,451	\$10,693,352
Beginning Balance	51,148,192	64,051,510	24,214,160	31,768,521
Other Revenue:				
General Fund	26,948,713	25,050,892	20,148,354	27,651,019
Library Fund	25,258	25,207	16,891	14,050
Community Development Block Grant	295,848	511,564	550,372	780,243
Parks Capital Improvement Fund	119,808	411,860	175,153	167,750
Cemetery	169,657	289,035	195,324	239,150
Annexation Fee Fund	1,556	88,988	175,000	-
Impact Fee Fund	1,134,188	1,224,292	567,000	650,000
Cemetery Perpetual Care Fund	48,346	1,970	10,000	7,000
Jewett House	1,893	122,149	12,353	20,200
Reforestation	2,488	2,488		
Street Trees	75,269	56,732	80,800	57,200
Community Canopy	447	149	1,500	1,500
Public Art Funds	200,077	125,543	138,300	16,000
Street Lighting Fund	597,449	634,210	620,500	684,000
Water Fund	6,534,236	7,782,718	6,677,500	7,386,024
Wastewater Fund	12,045,110	13,357,740	12,557,800	13,248,000
Water Capitalization Fees	1,057,863	1,380,324	1,165,000	1,225,000
WWTP Capitalization Fees	2,200,852	2,931,071	1,515,000	2,000,000
Sanitation Fund	4,339,868	4,532,620	4,457,000	4,603,000
City Parking Fund	854,536	1,001,779	850,500	971,000
Drainage	1,117,819	1,079,824	1,058,000	1,763,200
Fiduciary Funds	2,908,315	3,067,347	3,017,950	3,238,900
Capital Projects Fund	317,953	176,737	551,000	1,148,000
Debt Service Fund	10,596	729		
TOTAL REVENUE OTHER THAN PROPERTY TAXES:	\$115,959,596	\$131,373,925	\$89,273,908	\$108,333,109
SUMMARY:				
	FY 2019-20 ACTUAL	FY 2020-21 ACTUAL	FY 2021-22 BUDGET	FY 2022-23 PROPOSED
PROPERTY TAXES	\$24,066,738	\$18,875,619	\$24,552,282	\$27,114,123
OTHER THAN PROPERTY TAXES	115,959,596	131,373,925	89,273,908	108,333,109
TOTAL ESTIMATED REVENUES	\$140,026,334	\$150,249,544	\$113,826,190	\$135,447,232

BE IT FURTHER RESOLVED that the same be spread upon the Minutes of this meeting and published in two (2) issues of the Coeur d'Alene Press, seven (7) days apart, to be published on August 10, 2022, and August 17, 2022.

BE IT FURTHER RESOLVED that a Public Hearing on the Budget be held on the 6th day September, 2022, at the hour of 6:00 o'clock p.m. on said day, at which time any interested person may appear and show cause, if any he has, why the proposed Budget should or should not be adopted.

DATED this 2nd day of August, 2022.

James Hammond, Mayor

ATTEST:

Renata M. McLeod, City Clerk

Motion by _____, Seconded by _____, to adopt the foregoing resolution.

ROLL CALL:

COUNCIL MEMBER EVANS	Voted
COUNCIL MEMBER MILLER	Voted
COUNCIL MEMBER GOOKIN	Voted
COUNCIL MEMBER ENGLISH	Voted
COUNCIL MEMBER MCEVERS	Voted
COUNCIL MEMBER WOOD	Voted

_____ was absent. Motion _____.