

Board of Commissioners

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Scott McClaine – Assistant Secretary/Treasurer

422 Gateway Ave, Suite 100
Astoria, OR 97103
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Workshop Session

September 20, 2022 @ 4:00 PM
10 Pier 1, Suite 209

The meeting location is accessible to persons with disabilities. A request for an interpreter for the hearing impaired or for other accommodations for persons with disabilities should be made at least 48 hours before the meeting by calling the Port of Astoria at (503) 741-3300.

*This meeting will also be accessible via Zoom. Please see page 2 for login instructions.

Agenda

1. CALL TO ORDER
2. ROLL CALL
3. PLEDGE OF ALLEGIANCE
4. CHANGES/ADDITIONS TO THE AGENDA
5. PUBLIC COMMENT:
This is an opportunity to speak to the Commission for 3 minutes regarding any topic. In person, those wishing to speak must fill out a public comment form. Those participating via Zoom may raise their hands during the public comment period.
6. ADVISORY:
 - a. CMGC Contract and Request for Proposal3
7. ACTION:
 - a. Request for Expenditure #0130 – HVAC Unit(s) for 422 Gateway Building.....80
8. COMMISSION COMMENTS
9. EXECUTIVE DIRECTOR COMMENTS
10. UPCOMING MEETING DATES:
 - a. Regular Session – October 4, 2022 at 4:00 PM
 - b. Workshop Session – October 18, 2022 at 4:00 PM
11. ADJOURN

Please Note:

Agenda packets are available online at: <https://www.portofastoria.com/CommissionMeetings/AgendaMinutes.aspx>

Please allow time for the normal posting procedure for agendas and meeting packets.

Board of Commissioners**HOW TO JOIN THE ZOOM MEETING:**

Online: Direct link: <https://us02web.zoom.us/j/86905881635?pwd=amhtTTBFcE9NUElxNy9hYTZFPQTizQT09>
Or go to [Zoom.us/join](https://zoom.us/join) and enter Meeting ID: 869 0588 1635, Passcode: 422

Dial In: (669) 900-6833, Meeting ID: 869 0588 1635, Passcode: 422

This meeting is accessible to persons with disabilities or persons who wish to attend but do not have computer access or cell phone access. If you require special accommodations, please contact the Port of Astoria at least 48 hours prior to the meeting by calling [\(503\) 741-3300](tel:5037413300) or via email at admin@portofastoria.com.

Construction Manager/General Contractor Services Agreement

This Construction Manager/General Contractor Agreement (“Agreement”) is entered into by and between the Port of Astoria (“Owner”) and _____ (“CMGC”). This Agreement will become effective upon signing by both parties hereto.

CMGC Address:

CMGC’s EIN or Tax Identification Number:

CMGC’s Oregon License Type and Number:

CMGC’s Federal Employment Verification Certification:

[The CMGC is registered with, authorized to use, is using and will continue to use, the federal work authorization program throughout the term of the contract, and holds the following authorization:

User Identification Number:

Date of Authorization:

Name of CMGC’s Firm: _____

Mailing Address: _____

Email Address: _____

Federal Tax I.D. #: _____

Construction Contractor's Oregon License Registration No.: _____

General Provisions

Section 1

1.1 Owner's Authorized Representative

The Owner's Authorized Representative ("OAR") for purposes of this Agreement is Will Isom, Executive Director, Port of Astoria. The Owner reserves the right to change the OAR upon Notice in Writing to the CMGC. Unless the context indicates otherwise, upon execution of this Agreement by Owner, all duties, obligations and rights of Owner in this Agreement may be exercised by the OAR or his designee unless a Legal Requirement stipulates otherwise. The OAR, in his sole discretion, may appoint other(s) as his agent(s) in carrying out the Owner's duties, obligations, and rights set forth herein.

1.2 CMGC Representative

The CMGC's Authorized Representative for purposes of this Agreement is _____. The CMGC may designate another Authorized Representative by written consent of the Owner, which consent shall not unreasonably be withheld.

1.3 CMGC Representations

The CMGC represents and warrants to the Owner as of the effective date of this Agreement that:

- 1) It is qualified to do business as a licensed general contractor under the laws of the State of Oregon and has all requisite corporate power and corporate authority to carry on the business described in this Agreement.
- 2) It has full corporate power and corporate authority to enter into and perform the Agreement and to consummate the transactions contemplated hereby; has duly and validly executed and delivered the Agreement to the Owner; and the Agreement constitutes the legal, valid, and binding obligation of the CMGC, enforceable against the CMGC in accordance with its terms.
- 3) The CMGC's execution and delivery of the Agreement and the consummation of the transactions contemplated hereby will not conflict with or result in a material breach of any terms or provisions of, or constitute a material default under, (a) the CMGC's Articles of Incorporation or Bylaws; (b) any note, bond, mortgage, indenture, license, lease, contract, commitment, agreement, or other instrument or obligation to which the CMGC is a party or by which the CMGC may be bound; or (c) any statute, order, writ, injunction, decree, rule, or regulation applicable to the CMGC;
- 4) No material consent, approval, authorization, declaration, or other order of, or registration or filing with, any court or regulatory authority or any third person is required for the valid execution, delivery, and performance of the Agreement by the CMGC, or its consummation of the transactions contemplated hereby; and there is no action, proceeding, suit, investigation, or inquiry pending that questions the validity of the Agreement or that would prevent or hinder the consummation of the transactions contemplated hereby.

1.4 Titles and Headings

The title of this Agreement and the headings to Sections and Subsections contained in this Agreement are for convenience only; they neither form a part of this Agreement nor are they to be used in the construction or interpretation hereof.

1.5 General Conditions

For purposes of clarity and ease of reference in administering this Agreement, incorporation of provisions of the General Conditions shall be made explicit in the specific provisions of this Agreement. Only those terms and provisions of the General Conditions that are so incorporated shall become part of this Agreement; all other provisions of the General Conditions shall not be part of this Agreement. As per Section 18, any ambiguity,

inconsistency, or conflict as between the General Conditions and this Agreement shall be resolved in favor of this Agreement.

1.6 Definitions

Unless defined within the body of the Agreement, capitalized terms in the Contract documents shall have the meaning set forth in this subsection.

1.6.1 Affiliate

Affiliate will mean any subsidiary of the CMGC, and any other entity in which the CMGC has a financial interest, or which has a financial interest in the CMGC (including without limitation parent companies, related businesses under the same holding company, or any other business controlled by, under common control with, or which controls the CMGC).

1.6.2 Agreement

Unless the context explicitly provides otherwise, "Agreement" refers to this Construction Manager/General Contractor Services Agreement, including all amendments, addenda, and schedules attached hereto, but exclusive of and not including all other Contract documents and documents incorporated herein by reference.

1.6.3 Allowance

The individual, itemized costs, of whatever type, for each itemized and individual component and/or subcomponents of the Work listed in the GMP Supporting Documents that, together with subsequent costs as may be developed by the parties as the Project progresses, make up the total GMP.

1.6.4 Application for Payment

The form acceptable to Owner that is to be used by the CMGC during the course of the Work in requesting payment from the Owner and that is to be accompanied by such supporting documentation as is required by the Contract Documents and as requested by the Owner.

1.6.5 As-Built Plans

Drawings submitted by the CMGC, General Contractor (if applicable), or Subcontractor that clearly show the construction of a particular structure, or any element of the Work, as actually completed under the Contract. The As-Built Plans constitute an integral part of the Record Documents without which the Record Documents are incomplete under Section B.9 of the General Conditions.

1.6.6 Change Order

A document that effectively and legally modifies any specification or structural requirement of the Construction Documents or Component Construction Documents after both Parties to this Agreement have approved the Construction Documents or Component Construction Documents. The Change Order shall not be effective, and no modified Work described therein shall be authorized, unless signed by both parties to this Agreement.

1.6.7 Certificate for Payment

A writing issued by the Design Professional confirming that the portions of the Work represented as complete by the CMGC in any Application for Payment are, in fact, complete and that the amount requested by the CMGC is justified in light of the extent of Work completed.

1.6.8 Claim

A demand or assertion by the Owner or the CMGC seeking an adjustment of the Construction Budget, Project Schedule, or both, 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 the CMGC arising out of or relating to the Contract. The responsibility to substantiate a Claim shall rest with the party making the

Claim. A demand for money or services by a third party, including a Trade Contractor, Supplier, other general contractor, or any other party with whom the CMGC has contracted, is ipso facto not a Claim against the Owner.

1.6.9 Component

An element of the Project for which the Design Professional agrees to prepare and segregate Construction Documents as a discrete package to permit procurement of the described items or the commencement of the construction of the described element of the Project.

1.6.10 Component Change Order

A Change Order authorizing the CMGC to proceed to construct a Component pursuant to the Component Construction Documents.

1.6.11 Component Construction Documents

The Construction Documents issued by the Design Professional with respect to a Component.

1.6.12 Construction Budget

That portion of the GMP Amendment that specifies the Cost of the Work.

1.6.13 Construction Manager/General Contractor ("CMGC")

The Person responsible for the proper completion of the activities described in the Contract Documents and who executes this Agreement. Unless the context explicitly indicates otherwise, all references to the "Contractor" in the General Conditions shall refer to the CMGC. The CMGC is at all times and in all contexts under this Agreement an independent contractor and not an agent or employee of the Owner.

1.6.14 CMGC Representative

The individual identified in this Agreement to act on behalf of the CMGC in the construction of the Project and fulfillment of all CMGC obligations under the Contract, and to give and receive all notices and communications required under the Contract.

1.6.15 Construction Documents

The plans, specifications, and all other documents necessary to fully describe, define, and illustrate the entire Project to the extent necessary for the CMGC to complete all Work required under the Contract documents and that are to be prepared by a Design Professional under a separate professional services agreement. "Construction Documents" shall have the same meaning as the term "Plans" in the General Conditions.

1.6.16 Construction Progress Schedule

As required under Section 3.5.3 and Section 6.2, the proposed Project schedule submitted to the Owner with the GMP Proposal.

1.6.17 Construction Phase

That period of Contract performance commencing upon full execution of the GMP Amendment.

1.6.18 Construction Phase Services

All services necessary to complete the Work other than the Preconstruction Phase services, and generally but not exclusively identified in Section 5 ('Construction Phase') of this Agreement. Unless authorized by an Early Work Amendment, Construction Phase services commence only upon execution of the GMP Amendment and Notice to Proceed under Section 5 of this Agreement. By definition, all services provided after the execution of the GMP Amendment are Construction Phase Services and are included in the GMP.

- 1.6.19 **Consultant**
Any individual or firm performing professional services on behalf of the CMGC or Owner.
- 1.6.20 **Consumed**
Consumed means that an item is either incorporated into the Project or is fully depreciated at the time of Project completion. This may include but shall not be limited to equipment, tools, machinery, materials, supplies, or temporary facilities.
- 1.6.21 **Contract**
The entire agreement between the Parties pertaining to the Project, which includes but may not be limited to 1) this Agreement, 2) all amendments, attachments, schedules, addenda, or any other document incorporated into this Agreement by reference, 3) all other documents listed in Section 18 ('Contract Documents'), and 3) all contract amendments and Change Orders as the Parties may execute hereafter.
- 1.6.22 **Contractor**
Unless the context indicates otherwise, "Contractor" as used in the General Conditions shall mean the CMGC. As used in this Agreement, unless the context indicates otherwise, "Contractor" or "contractor" shall mean a Subcontractor or other Person with whom the CMGC has a direct contract.
- 1.6.23 **Cost of the Work**
The sum of all allowable costs, as defined in Section 7.2, necessarily incurred and paid by the CMGC in the actual construction of the Project. The Cost of the Work excludes without limitation the Preconstruction Fee and the Construction Fee. See the Project Cost Matrix for further details.
- 1.6.24 **Days**
Unless otherwise stated, reference to "Days" shall refer to calendar days. If business days are explicitly referenced, a Business Day means any day except a Saturday, Sunday, a federal legal holiday, or any other day on which banks are authorized or required by law to close.
- 1.6.25 **Design Professional**
The architect or engineer or architectural or engineering firm selected by Owner (i) for the design and preparation of the Plans and Specifications, or (ii) for construction contract administration under the Contract Documents, or (iii) for both, all such services and the scope thereof to be set forth in the agreement with the Design Professional. The Design Professional is not an employee of the Owner but is engaged or retained by it for the purpose of performing design and construction administration services for the Project. The term "Design Professional" includes architects, engineers, surveyors, designers, and other Consultants retained by the Design Professional.
- 1.6.26 **Early Work**
Construction Phase Services authorized by amendment to this Agreement, to be completed prior to the execution of the GMP Amendment, and that are not included in the Preconstruction Phase Scope of Work generally but not exclusively outlined in Section 3 of this Agreement. Unless otherwise provided in such amendment, permissible Early Work shall be limited to early procurement of materials and supplies, early release of bid or proposal packages for site development and related activities, and any other advance work related to critical components of the Project for which performance prior to establishment of the GMP will materially affect the schedule of the Project.
- 1.6.27 **Early Work Amendment**
The amendment(s) to this Agreement that authorize(s) Early Work.

- 1.6.28 **Effective Date**
The date on which the last required signature is affixed to this Agreement and the Agreement becomes legally effective as a valid contract between the parties.
- 1.6.29 **Engineer**
Unless otherwise made explicit, all references to “engineer” or “engineering services” are understood to also include the services of an architect and/or any other consultant hired by the Design Professional. The term is also understood to refer to either the engineer in their individual capacity or to the firm or other business entity through which the engineer provides their services.
- 1.6.30 **Field Work**
Portions of the Work of a minor nature and not feasibly part of the subcontracted work due to: exclusions by the Subcontractor not resolved through the Subcontract procurement process, deviations in Work performed or materials delivered by a Subcontractor that do not represent defective or nonconforming work, complexity of coordination of the Work, and other similar reasons typically providing cause for "pick-up" or GC Work under industry standards; provided, however, that (i) the CMGC has reasonably determined that doing such portion of the Work itself is in the best interests of the Owner under Section 2.4, (ii) such Work is segregated and identified as CMGC Field Work in monthly billings and (iii) the CMGC receives prior approval from the OAR as to the allowable scope of such CMGC Field Work.
- 1.6.31 **Float**
An amount of time that a project activity can be delayed without affecting the Project completion date. If a Project activity is said to have zero float, any delay to that activity will result in a corresponding delay to the Project completion date unless recovery measures are taken. If a Project activity has positive float, that activity can be delayed until the float reaches zero, without delaying the Project completion date.
- 1.6.32 **General Conditions**
The contract terms and provisions in that document entitled, “State of Oregon General Conditions for Public Improvement Contracts,” dated January 1, 2012, attached hereto as Addendum AA.1.
- 1.6.33 **General Contractor**
The individual or entity, *if any*, responsible for performing and managing the Construction Services for the CMGC.
- 1.6.34 **Guaranteed Maximum Price, or GMP**
The Guaranteed Maximum Price of this Agreement, as stated in the GMP Amendment and determined under the provisions of Section 6.2. The GMP is the sum of all costs necessary to construct the Project and includes but is not limited to: 1) the cost to complete construction documents; 2) the expected cost to construct the project; 3) a contingency amount that the CMGC believes should be available to cover all necessary changes; 4) Construction Fee.
- 1.6.35 **GMP Proposal**
The CMGC’s proposed GMP, accompanied by the GMP Supporting Documents, submitted to the Owner under Section 6.2.
- 1.6.36 **GMP Amendment**
The amendment to this Agreement formalizing the GMP Proposal and modifications thereto under Section 6.2 and providing authority to proceed beyond the Preconstruction Phase, based on an agreed Guaranteed Maximum Price for the Project.

- 1.6.37 **GMP Supporting Documents**
The documents referenced in the GMP Proposal that serve as the basis for establishing the GMP and the Project Schedule. The GMP Supporting Documents are to expressly identify the Plans and Specifications, assumptions, qualifications, exclusions, conditions, allowances, unit prices, and all other information necessary to establish the GMP.
- 1.6.38 **Legal Requirements**
All applicable federal, state and local laws, codes, ordinances, rules, regulations, orders, permits, and decrees of any government or quasi-governmental unit or political subdivision having jurisdiction over the Project, the Site, or the Work.
- 1.6.39 **Notice in Writing**
Notice in writing by email, personal delivery or mailing the same, postage prepaid, to the CMGC or Owner at the applicable address specified on the signature page of this Agreement. Notice by email is effective on the date the email is sent. Notice by personal delivery shall be deemed to have been issued upon actual delivery. Any notice by mail shall be deemed to have been issued five (5) business days after the date of mailing, defined as the postmark date.
- 1.6.40 **Notice to Proceed**
The official written Notice from the Owner stating that the CMGC is to proceed with the Work defined in the Contract Documents or within any Component thereof. Notwithstanding receipt of the Notice to Proceed, the CMGC shall not be authorized to proceed with the Work or any Component thereof until all initial Contract requirements, including without limitation the required performance, payment, and public works bonds, and certificates of insurance, have been fully executed and submitted to Owner in a suitable form.
- 1.6.41 **Owner**
The Port of Astoria, acting by and through its duly elected commission.
- 1.6.42 **Owner's Representative (OAR)**
The Owner's Authorized Representative, as set forth in Section 1.1 of this Agreement.
- 1.6.43 **Person**
An entity doing business as a sole proprietorship, a partnership, a joint venture, a corporation, a limited liability company or partnership, or any other entity possessing the legal capacity to contract.
- 1.6.44 **Plans and Specifications**
A term inclusive of those Project drawings drafted and approved in final form by the Design Professional and unless the context indicates otherwise, shall only include Schematic Design Documents, Component Construction Documents, and Construction Documents.
- 1.6.45 **Preconstruction Phase**
The period commencing on the Effective Date of this Agreement and ending on commencement of the Construction Phase. Construction Phase services may not be performed during the Preconstruction Phase unless authorized by an Early Work Amendment.
- 1.6.46 **Preconstruction Phase Services**
All services to be provided by the CMGC during the Preconstruction Phase and that are primarily, but not exclusively, defined in Section 3 of this Agreement.

- 1.6.47 **Preliminary Design and Construction Schedule**
The initial Project schedule prepared by the CMGC for review and approval at the Preconstruction Phase Conference under Section 3.2. If the Design Professional has been retained prior to the conference, the CMGC shall draft this schedule in conjunction with the Design Professional. This schedule is the first step in the overall Project scheduling process, with the “Construction Progress Schedule” as step two (2) and “Project Schedule” as step three (3).
- 1.6.48 **Project**
The infrastructure asset to be produced under the Contract Documents and as fully defined by the Plans and Specifications.
- 1.6.49 **Project Schedule**
That portion of the GMP Amendment that defines the timeframe within which the Project will be completed. The documentary end product of the Preliminary Design and Construction Schedule (see 1.6.47) and the Construction Progress Schedule (see 1.6.16) that will be incorporated into the GMP Amendment as a contractual obligation of the CMGC.
- 1.6.50 **Project Site**
That site defined geographical dimensions of the real property, within which the Work is to be performed, including designated contiguous staging areas, if any.
- 1.6.51 **Proposal**
The document package submitted by the CMGC to the Owner in response to the RFP.
- 1.6.52 **Record Documents**
“Record Documents” shall have the same meaning as defined in the General Conditions, Section A.1 and Section B.9.1.
- 1.6.53 **Request for Proposals (“RFP”)**
That package of documents drafted and issued by Owner the purpose of which is to provide sufficient information to enable interested parties to submit a Proposal to Owner that includes but is not limited to an estimate of the cost to provide the services outlined in this Agreement.
- 1.6.54 **Schedule of Values**
The Schedule of Values is defined in subsection E.1 of the General Conditions.
- 1.6.55 **Schedule of Preconstruction Values**
That document outlining and identifying discrete and measurable components of the *Preconstruction Phase Services*, but in all other respects shall be used in the same manner and for the same purpose as the Schedule of Values.
- 1.6.56 **Schematic Design Documents**
The drawings, plans, or other documents that show, illustrate, or otherwise define the Project to the extent necessary for both 1) complete permit applications, and 2) the accurate establishment of the Guaranteed Maximum Price (GMP) for the Project. These documents may also be loosely referred to as “30% design” documents and are to be drafted by a Design Professional under a separate professional services agreement.
- 1.6.57 **Scope of Work**
All Work necessary to complete the Project and secure Owner’s approval for the Certificate of Final Completion. Unless the context indicates otherwise, the Scope of Work shall refer only to the Construction Phase activities to be completed by the CMGC under the Contract.

- 1.6.58 **Separate Contractor**
A contractor hired directly by the Owner to perform Work in connection with the development or completion of the Project or any component thereof.
- 1.6.59 **Subcontractor**
Unless the context clearly indicates otherwise, the term “Subcontractor” as employed herein includes any party having a direct contract with the CMGC the purpose of which is to fulfill any obligation of the CMGC under this Agreement, regardless of the type of contract or type of good or service to be provided. The term “Subcontract” shall refer to the contract(s) so executed.
- 1.6.60 **Supplier**
A Subcontractor who is a manufacturer, fabricator, distributor, supplier, or vendor of goods, materials, or equipment in connection with the Work, or any other party having a contract or purchase order with the CMGC or with a Subcontractor to furnish materials or equipment to be incorporated in the Work by the CMGC or a Subcontractor.
- 1.6.61 **Trade Contractor**
A Subcontractor who furnishes and installs materials according to the Plans and Specifications of this Project but does not include one who merely furnishes materials. The contract between the CMGC and the Trade Contractor shall be referred to as “Trade Contracts.”
- 1.6.62 **Value Engineering**
Alterations in design, materials, methods, finishes, or techniques jointly agreed upon by Owner and the CMGC regarding the design or construction of the Project and resulting in cost savings, improved efficiency, or sustainability.
- 1.6.63 **Work**
Labor, materials, equipment, and services necessary to successfully complete any discrete element of the Project in accordance with the Contract documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce the Project, as required by the Contract documents.

Design and Construction Services - General

Section 2

2.1 CMGC General Obligation

The CMGC shall perform all obligations and provide all services set forth in the Contract Documents and perform all other acts and supply all other things necessary to fully and properly perform and complete the Work as required therein.

2.2 Independent Contractor

The CMGC represents and warrants that it is an independent contractor and not an officer, employee, agent, or representative of the Owner. The CMGC shall not enter into, execute, or deliver any agreement, document, or undertaking, or incur any obligation with any Subcontractor or any other Person in the name of the Owner.

2.3 CMGC Representative

The CMGC's Representative shall be reasonably available to Owner's Representative for the duration of the Project and shall have the expertise and experience required to supervise the Work. The CMGC's Representative shall communicate regularly with Owner's Representative and shall have the authority to act on behalf of the CMGC in

all things relating to performance of this Agreement and all other Contract Documents. The CMGC Representative may not be replaced prior to completion of the Project without Owner's prior written consent.

2.4 CMGC Role

The CMGC represents that it accepts a fiduciary role and responsibility with respect to the Owner and that it owes the Owner the duties of good faith, trust, and candor in carrying out the obligations of the Contract Documents. The CMGC will, to its best abilities, act in the best interests of the Owner and the timely completion of the Work and shall exercise a high standard of care in managing money and property. The CMGC shall perform all services in good faith and as expeditiously as is consistent with the highest professional skill, care, and judgment. The CMGC shall furnish all Contract services and use its best efforts to construct the Project in an expeditious and economical manner consistent with the interests of the Owner.

2.5 Owner's Administration of the Contract

Subject only to the modifications and/or additions as provided in this section, subsections B.1.1, B.1.2, and B.1.3 ('Owner's Administration of the Contract') of the General Conditions are hereby incorporated by reference and made a part of this Agreement with the same force and effect as if set forth in full text herein.

2.6 Communication

Unless otherwise provided in the Contract documents, Owner shall direct all its communications to the CMGC through the CMGC's Representative and the CMGC shall direct all communication through the Owner's Authorized Representative. Notice to the respective representative shall be the same as notice to the parties to this Agreement. Except for minor and other administrative matters, all communication shall conform to the Notice in Writing provisions in Section 1.6.39 ("Notice in Writing").

2.7 Progress Meetings

Subsequent to the Preconstruction Conference (see Section 3.2), the CMGC shall schedule and conduct meetings with the Owner, Design Professional, and any other party deemed at the time to be necessary to the progress of the Work, not less than weekly, for the purpose of discussing the status and progress of the Work. At the Owner's discretion, fewer or additional meetings may be held.

The CMGC shall be prepared to discuss the progress of the Work, including but not limited to the following: 1) whether the Work is proceeding according to the Project Schedule and within the limits of the Construction Budget; 2) whether any discrepancies, conflicts, or ambiguities exist among the Contract documents, or within any particular Contract document that require resolution (see Section 5.2.3); 3) all safety issues relating to the Project; 4) any other matter that requires resolution to ensure timely and cost-effective completion of the Work. Upon reasonable prior notice, the CMGC shall be prepared to submit for Owner review documents of whatever type that have any relevance to the Work performed or to be performed under this Agreement.

At least three working days prior to the scheduled meeting, the CMGC shall submit to Owner a comprehensive list of (a) matters that require resolution, (b) matters that require Owner's approval, (c) proposed deviations from the Project Schedule, if any, together with reasons or causes therefore, and (d) proposed issues of value engineering or deviation from the established standards of design.

2.8 Inspection

Subject only to the modifications and/or additions as provided in this section, if any, subsection B.7 ('Inspection') of the General Conditions is hereby incorporated by reference and made a part of this Agreement with the same force and effect as if set forth in full text herein.

2.9 Submittals, Shop Drawings, Product Data, Samples

Subject only to the modifications and/or additions as provided in this section, subsection B.18 ('Submittals, Shop Drawings, Product Data and Samples') of the General Conditions is hereby incorporated by reference and made a part of this Agreement with the same force and effect as if set forth in full text herein.

2.10 Modification to Scope of Responsibilities

The CMGC's responsibilities and scope of authority as set forth in the Contract Documents cannot be modified except by written amendment to this Agreement.

Preconstruction Phase

Section 3

3.1 Preconstruction Phase – General

The CMGC agrees to provide all Preconstruction Phase services as defined primarily but not exclusively in Section 2 and Section 3 of this Agreement on an ongoing basis in support of, and in conformance with, the time frames described in the Project schedules. Commencement of the Construction Phase will not excuse the CMGC from completion of the Preconstruction Phase Services if such services have not been fully performed at commencement of the Construction Phase.

3.2 Preconstruction Conference

Within ten (10) business days of execution of this Agreement, or such other time as the Parties agree, the Owner and CMGC will hold a Preconstruction Conference to review 1) the Contract documents; 2) conditions affecting the Work; 3) the general scope of duty of the Owner, architects, engineers, Consultants and General Contractor (if applicable); 4) the procedures to be followed for handling various administrative details, including Applications for Payment; 5) the procedures to be followed for resolving design questions, scheduling reviews, and communicating approvals; 6) the Preliminary Design and Construction Schedule required under Section 3.5.1; 7) preliminary estimate for the Cost of the Work required under Section 3.6; 8) confirmation of the scope of services outlined in the Contract Documents; 9) permits; and 10) such other matters as the Parties may wish to address. The location for the Preconstruction Conference will be at a place designated by the Owner.

Owner's review of, approval of, or response to any of the matters presented at the Preconstruction Conference and Progress Meetings shall not constitute a waiver of any of Owner's rights under this Agreement, shall not relieve the CMGC of any Contract obligation, nor shall such response be construed as relieving the CMGC of its complete and exclusive control over the means, methods, sequences, and techniques for executing the Work.

3.3 CMGC and Design Professional

3.3.1 Selection

The CMGC shall assist in the selection of the Design Professional. This obligation shall consist of 1) providing information, professional advice, and consulting services as to the selection criteria and other content of the solicitation documents relevant to engineer selection and in furtherance of the Owner's purposes under the Contract Documents; and 2) participating in the selection process, as outlined in the solicitation documents, for the Design Professional.

3.3.2 Collaboration

The CMGC agrees to support the Owner's efforts to create a collaborative and cooperative relationship amongst the CMGC, Design Professional, other Project Consultants, and the Owner. The CMGC shall communicate and collaborate with the Design Professional as necessary and on its own initiative to carry out all CMGC duties under this Agreement.

3.4 Design Consultation

As the Construction Documents progress to completion, the CMGC is the principal Project team member positioned to identify conflicts, omissions, or constructability issues in the documents. Therefore, the principal duty of the CMGC as to design consultation is to provide continuous review of Plans and Specifications and to recommend alternative solutions whenever such matters affect cost, construction feasibility, quality, schedule, or any other matter of importance under the standard defined in Section 2.4, without the CMGC, however, assuming any of the Design Professional's responsibilities. To that end the CMGC agrees to provide the consultation, advice, and expertise necessary for the Design Professional to deliver Plans and Specifications that meet with Owner's approval, and within the time and budget constraints of the Project Schedule and Construction Budget. Such services shall include without limitation ongoing review of in-progress design documents throughout the entire design process and recommendations, without limitation, regarding the following: Site use and improvements; selection of materials, building systems and equipment; construction feasibility; availability of materials and labor as well as actions designed to minimize adverse effects of labor or material shortages; time requirements for procurement, installation, and construction; other factors related to costs (including costs of alternative designs or materials, preliminary budgets and possible economies); life-cycle costs and value engineering analyses and other studies for such purposes; cost containment and cost monitoring; compatibility with Owner's design standards; consistency with the Owner's expectations; appropriate provision of all necessary services and utilities; necessary level of environmental review and documentation.

3.5 Project Scheduling Duties

3.5.1 Preparation of Schedules

The CMGC shall draft: 1) the Preliminary Design and Construction Schedule to be reviewed in the Preconstruction Conference under Section 3.2, 2) the Construction Progress Schedule as part of the GMP Proposal under Section 3.5.3 and Section 6.2, and 3) the final Project Schedule as part of the GMP Amendment under Section 6.2. The CMGC shall continuously monitor the schedule applicable to relevant portions of the Work and recommend any adjustments to ensure completion of the Project in the shortest amount of time possible.

3.5.2 Identification of Project Components

In cooperation with the Design Professional, the CMGC shall identify 1) Components of the Project that may feasibly be separated into discrete portions of the Scope of Work (under a Component Change Order) so as to permit the immediate commencement of Construction Phase services or to facilitate the sequence of construction to further Owner's basic objectives; 2) the sequence in which such Component Construction Documents will be prepared or separated; and 3) a schedule for completion of such Component Construction Documents, consistent with existing Project schedules, that includes the necessary timing for the release of drawings and specifications as needed to support anticipated construction.

3.5.3 Construction Progress Schedule

3.5.3.1 Form and Content

Within the timeframe defined in Section 6.2.1, the CMGC shall submit for review by the Design Professional and approval by the Owner a Construction Progress Schedule that conforms to the requirements of Subsection H.2 of the General Conditions ("Schedule"), is prepared using a CPM (Critical Path Method) process, employs Construction Specification Institute's ("CSI") specification divisions to the extent possible, and will include but not be limited to the following milestone dates: receipt and approval of pertinent information relative to design, dates of design coordination meetings, submittal of Component Change Orders, submittal of the GMP Proposal, preparation and processing of shop drawings and samples, delivery of materials or equipment requiring long lead-time procurement, Owner's occupancy requirements showing

portions of the Project having occupancy priority, if applicable, and proposed date of Final Completion, dates for commencement and completion of the Work required by the Contract Documents, including coordination of mechanical, plumbing, and electrical disciplines, as well as coordination of the various subdivisions of the Work. Milestones must be clearly indicated and sequentially organized to identify the critical path of the Project. The CMGC shall include in the Construction Progress Schedule required review, preparation, and approval periods for the Design Professional and deadlines for Submittals and completion of Component Construction Documents and final Construction Documents, correlating the associated approval dates for the documents with the Construction Progress Schedule. The Construction Progress Schedule will have the minimum number of activities required to adequately represent to the Owner the complete scope of Work and define the Project's (and each Component's) critical path and associated activities.

3.5.3.2 Compatibility with Schedule of Values

The Construction Progress Schedule shall be compatible with the Schedule of Values required under Section E.1 of the General Conditions. "Compatible" here means that the description of Project tasks and Components as between the Construction Progress Schedule and Schedule of Values will be reasonably identical.

3.5.3.3 Basis for Project Schedule

Upon recommendation by the Design Professional and formal approval by the Owner, the Construction Progress Schedule shall be incorporated into the GMP Amendment as the Project Schedule.

3.6 Cost Estimating and Project Cost Duties

3.6.1 Preliminary Estimate

The CMGC shall draft a preliminary estimate for the Cost of the Work with supporting data for review at the Preconstruction Conference under Section 3.2. The preliminary estimate will contain as much detail as is reasonable given the degree of completion of the Plans and Specifications prior to the Conference. The CMGC shall continue to develop and refine the Cost of Work estimate as more information becomes available throughout the Preconstruction Phase and shall update the Owner of additions and changes regularly through the normal processes outlined in this Agreement.

3.6.2 Reconciliation

As part of the development of the Cost of Work estimate, the CMGC shall reconcile the Design Professional's estimate with the CMGC's cost estimate or, if applicable, the Owner's preliminary budget, for the basis of the final GMP. The reconciliation shall include a side-by-side analysis and comparison of the CMGC estimate with the Design Professional's (or Owner's, if applicable) estimate. If any estimate submitted to the Owner exceeds previously approved estimates or the Owner's budget, the CMGC shall make appropriate recommendations to reduce costs.

3.6.3 Construction Budget

The CMGC shall fulfill all GMP development obligations as outlined in Section 6.2.

3.7 Subcontractors and Suppliers

3.7.1 Subcontractor List

The CMGC shall furnish to the Owner and Design Professional a list of possible subcontractors and suppliers, from whom competitive bids, quotes, or proposals (collectively, "offers") will be requested for each principal portion of the Work. Submission of such list is for information and discussion purposes only and not for prequalification. The receipt of such list will not require the Owner or the Design

Professional to investigate the qualifications of proposed subcontractors and suppliers, nor will it waive the right of the Owner to later object to or reject any proposed subcontractor, supplier, or method of procurement.

3.7.2 Division of Labor

The CMGC shall determine the division of Work to facilitate bidding and award of Trade Contracts, considering such factors as bidding climate, improving or accelerating construction completion, minimizing trade jurisdictional disputes, and related issues. The CMGC agrees to work with the Owner in identifying critical elements of the Work that may require special procurement processes, such as prequalification of subcontractors or alternative contracting methods.

3.7.3 Long Lead Time Items

The CMGC shall recommend a schedule for procurement of long-lead time materials as required to meet the Project schedule and expedite the delivery of long-lead time items.

3.7.4 Energy Efficiency

The CMGC shall work with the Owner and the Design Professional to maximize energy efficiency in the Project, including without limitation providing estimating and value engineering support to the Owner's analysis and application for energy related incentive programs offered by local utilities.

The Owner places special emphasis on minimizing the long-term operating costs of the facility. The CMGC will assist the Design Professional to ensure that design decisions will incorporate analysis of energy and operating cost.

3.8 Identification of Permits

Subject to the modifications and/or additions as provided in this Section, if any, Subsections B.4 ("Permits") of the General Conditions are hereby incorporated by reference and made a part of this Agreement with the same force and effect as if set forth in full text herein.

In consultation with Owner and approved Consultant(s), the CMGC shall identify all permits necessary to the construction of the Project and draft Addendum AA.3 (Permit Schedule), the purpose of which is to divide the responsibility to procure each permit as between the CMGC and Owner. Upon approval by the Owner and execution by both parties, Addendum AA.3 shall be incorporated into this Agreement as a contractual obligation of both parties.

Construction Management

Section 4

4.1 Construction Management – General

Throughout the Preconstruction Phase and Construction Phase of the Project, the CMGC shall provide Construction Management ("CM") services, the obligations of which are primarily but not exclusively described in this Section, and which generally consist of coordinating and managing the Project design and construction process as an independent contractor in cooperation with the Owner and Design Professional.

4.2 Project Schedule

Subject only to the modifications and/or additions as provided in this Section, if any, Subsection H.1 ("Contract Period"), H.2 ("Schedule"), and H.3 ("Partial Occupancy") of the General Conditions are hereby incorporated by reference and made a part of this Agreement with the same force and effect as if set forth in full text herein. Applicable Project scheduling duties outlined in Section 3.5.3 shall continue throughout the Construction Phase.

4.3 Permits

In continuation of the duties under Section 3.8, and throughout the Preconstruction and Construction Phase, the CMGC shall fulfill the permit responsibilities outlined here in this subsection.

4.3.1 CMGC Permits

As to permits for which the CMGC is responsible under Addendum AA.3, the CMGC shall integrate and execute the permit application duties with its Project scheduling duties as defined throughout this Agreement so as to secure needed permits by the deadlines necessary for compliance with the Project Schedule.

4.3.2 Owner Permits

As to permits for which the Owner is responsible under Addendum AA.3, the CMGC shall at all times be aware of the current status of all such permits, integrate such knowledge into the CMGC's Project scheduling duties, and advise Owner as to necessary modifications to the Project Schedule, Construction Budget, or any other affected portion of the Work in consequence of such permit status.

4.4 CMGC Review and Analyses Obligations

4.4.1 Phasing of Components

CMGC shall continue those obligations defined in Section 3.5.2 and make recommendations to the Owner and to the Design Professional regarding the division of the Work in the design documents and revisions that would facilitate faster completion of the Work.

4.4.2 Design and Construction

The CMGC shall continue to provide those services outlined in Section 3.4 during the Construction Phase, where applicable, to consult with, advise, and otherwise work with the Owner and the Design Professional to analyze the design, participate in decisions and advise as to selection of construction materials, building systems, construction methods, equipment, and suggest modifications to achieve the goals of providing the Owner with the highest quality Project. The CMGC shall provide recommendations regarding the selection and awarding of Trade Contracts, taking into consideration such factors as time of performance, the availability of labor, overlapping trade jurisdictions, provisions for temporary facilities, and the reduction of areas of conflict and overlapping in the Work to be performed by CMGC or by Trade Contractors. The CMGC shall study and compare all Plans and Specifications or other documents and shall at once report any error, discrepancy, inconsistency that he may discover.

4.4.3 Value Engineering

The CMGC shall provide Value Engineering ("VE") services ongoing through the Project, including but not limited to the development of cost proposals, in the form of additions or deductions from the GMP, including detailed documentation to support such adjustments. The CMGC acknowledges that VE services are intended to improve the value received by the Owner with respect to cost reduction or life cycle of the Project.

4.5 Other Consultants

The CMGC shall cooperate with any and all Consultants hired by the Owner in connection with the Work and shall comply with all requests for information from the Consultants with respect to the Work.

Construction Phase

Section 5

5.1 Construction Phase – General

5.1.1 General Description of Construction Phase Services

Upon execution of the GMP Amendment and receipt of a Notice to Proceed, the CMGC agrees to provide Construction Phase services primarily but not exclusively outlined in Section 5 of this Agreement in support of and in conformance with all Contract documents' provisions. These obligations shall include without limitation providing and paying for all materials, supplies, tools, equipment, labor, transportation, professional and non-professional services, water, light, power and other utilities, and all other acts necessary for the proper execution and completion of the Scope of Work, as required by the Contract Documents, to furnish to the Owner a complete, fully functional Project, capable of being legally occupied and fully used for its intended purposes upon completion of the Work.

5.1.2 Early Work

Unless an Early Work Amendment is negotiated and executed, no physical work may begin on the construction Site until execution of the GMP Amendment and receipt by the CMGC of a Notice to Proceed; any Construction Phase services completed prior to the GMP Amendment and CMGC receipt of a Notice to Proceed will not be reimbursed by Owner. If issuance of the Notice to Proceed is obstructed by nonperformance of the CMGC, the CMGC may be in default.

5.1.3 Methods, Workmanship, Superintendence

Subject only to the modifications and/or additions as provided in this Section, if any, subsections B.2 ('Contractor's Means and Methods; Mitigation of Impacts'), B.3 ('Materials and Workmanship'), B.5 (Compliance with Government Laws and Regulations'), and B.6 ('Superintendence') of the General Conditions are hereby incorporated by reference and made a part of this Agreement with the same force and effect as if set forth in full text herein.

5.2 Construction Management

In addition to the obligations outlined in Section 4, the CMGC shall supervise and administer all construction activities in performance of the Work on the Project. The CMGC shall coordinate all Work activities amongst and between the Port, Design Professional, Subcontractors, or any Person authorized to complete any portion of the Work. The CMGC shall have complete control over, and shall be solely responsible for, construction means, methods, techniques, procedures, and sequential progression of the Work. The CMGC shall be responsible for maintaining the Project Schedule and for any failure to carry out the Work in accordance with the Contract Documents. The CMGC shall be deemed to have complete control over acts or omissions of the General Contractor (if any), Subcontractors, their employees and agents, and of all other Persons performing portions of the construction services. The CMGC shall correct Work that does not conform to the Contract Documents at its own expense.

The CMGC shall require all Trade Contractors and Suppliers to employ only skilled workmen properly qualified by experience and ability to perform the task assigned to them. In addition, Trade Contractors shall employ and assign to the Work, at all times, sufficient staff and personnel to perform their subcontracted services in a skilled, professional, and satisfactory manner so as not to delay the progress of the Work. The CMGC shall immediately replace or cause to be replaced all workmen whose Work, as determined by the CMGC, does not meet such requirements.

5.2.1 Monthly Reports

The CMGC shall submit monthly written report(s) to the OAR. Each report will include, but will not be limited to, Project updates including (a) actual costs and percent completion for the reporting period as compared to the estimate of costs and percent completion; (b) explanations of significant variations; (c) Work completed; (d) Work in progress; (e) Changes in the Work; and (f) other information as

determined to be appropriate by the Owner. Oral or written updates will be provided to the Owner as deemed appropriate by the CMGC or as requested by the Owner.

5.2.2 Cost Control

The CMGC shall develop and implement a system of cost control for the Work acceptable to the OAR, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes, identification of variances between actual and estimated costs, and report the variances and other relevant data to the Owner and Design Team at regular intervals.

5.2.3 Liability for Discrepancies

The CMGC acknowledges and affirms that in the event of CMGC failure to give Owner timely notification of discrepancies, ambiguities, or inconsistency between Contract documents, or within any particular Contract Document, that the CMGC either recognized or reasonably should have recognized, the CMGC shall be responsible for correcting any Work adversely affected by such failure and to maintain conformity to Owner's intended requirements at no additional charge and without additional Contract time.

5.2.4 Daily Record

The CMGC shall maintain a daily log containing a record of weather, subcontractors working on the site, number of workers, work accomplished, problems encountered, safety violations and incidents of personal injury and property damage, and other similar relevant data as the Owner may reasonably require. The log will be available to the Owner and Design Team on request.

5.2.5 Security Program

The CMGC shall develop and implement an effective security program for the Project Site, which program shall require the CMGC and the Trade Contractors to take measures for the protection of their tools, materials, equipment, and structures. As between CMGC and Owner, CMGC shall be solely responsible for security against theft of and damage to all tools and equipment of every kind and nature used in connection with the Work, regardless of ownership.

5.2.6 Safety Program

The CMGC shall draft and submit to the Owner a specific safety program for the Work for the site(s). The CMGC shall establish and require all Trade Contractors or Trade Suppliers to establish reasonable safety programs. The CMGC shall also submit its standard monthly safety reports to the Owner. No imposition of responsibility on the CMGC for safety under this Contract shall relieve any Trade Contractor of its responsibility for safety of persons or property on or near the Project Site.

5.2.7 Debris

The CMGC shall keep the Project site reasonably free from accumulation of waste materials or rubbish caused by all CMGC operations. At the completion of the Construction Services, the CMGC shall remove all tools, construction equipment, machinery, surplus materials, waste materials and rubbish.

5.3 No Direct Performance

The CMGC shall not directly perform any Work or provide any materials, equipment, or supplies but shall contract for performance of Work and procurement of materials, equipment, or supplies through Trade Contracts and other Subcontracts, with Subcontractors other than CMGC or its affiliates, except as otherwise permitted by Section 8 of this Agreement. No fee shall be payable by Owner to CMGC for self-provided Work or materials except by the procedures outlined in Section 8 of this Agreement.

5.4 Responsibility for Proper Performance

Notwithstanding CMGC's execution of contracts with Trade Contractors, Subcontractors or Suppliers incident to the performance of the whole or any part of the Work, the CMGC shall be responsible to the Owner for the proper performance of the Work in compliance with the Contract Documents unless the Contract Documents expressly provide to the contrary. Unless caused by the Owner or Design Professional, inefficiency, non-performance, improper performance, or other default by any Trade Contractor, Trade Supplier, or other Subcontractor under contract with CMGC, agent, employee, or representative thereof shall not excuse the CMGC from its obligation to assure timely performance in compliance with the Contract Documents. The risk and cost of CMGC's selection of a successful proposer lies exclusively with the CMGC (see Section 8.2.2.3).

5.5 Early Work

The CMGC may proceed with construction-related activities prior to the commencement of the Construction Phase only upon execution of an Early Work Amendment and receipt of the associated Notice to Proceed. Services provided by the CMGC in connection with any Early Work shall not be compensated as part of the Preconstruction Phase services, the eventual GMP, or any other existing cost category. Instead, the Parties must, as part of the Early Work Amendment, agree on a reasonable amount to compensate the CMGC for the portions of the Work that will fall within the scope of the Early Work Amendment. Any such amount will, unless otherwise agreed, be in addition to the costs negotiated under the GMP and all other cost categories under this Agreement.

5.6 Construction Prior to Plan Completion

Subject to approval by Owner and the Design Professional, the CMGC may proceed with construction of duly defined and identified Components of the Project prior to 100% completion of the Construction Documents. Such approval shall not relieve the CMGC of any other obligation under the Contract.

5.7 Materials

5.7.1 Impediments to Title

The CMGC shall not make, cause to be made, or permit, any contract for materials or equipment of any kind or nature whatsoever to be used in connection with the Work on a conditional sales or any other basis whereby the title to the equipment or materials does not pass to the Owner upon delivery to the Site or incorporation in the Project, free and clear of any lien, financing arrangement, or other impediment to title.

5.7.2 Quality of Materials

Unless otherwise specified, all materials shall be new, and both workmanship and materials shall be of good quality. The CMGC shall, if required, furnish satisfactory evidence as to the kind and quality of materials and work. The burden of proof is on the CMGC.

5.8 Liability and Safety

5.8.1 Protection of Workers, Property, and the Public

Subject only to the modifications and/or additions as provided in this section, if any, subsections F.1 thru F.4 of the General Conditions ('Job Site Conditions'), are hereby incorporated by reference and made a part of this Agreement with the same force and effect as if set forth in full text herein.

5.8.2 Liability Generally

The CMGC shall be liable for injury to persons and damage or loss to property caused by the negligence, gross negligence, recklessness, willful, intentional, or otherwise wrongful acts or omissions of the CMGC, employees or agents of the CMGC, anyone directly or indirectly employed by the CMGC, its Consultants, Subcontractors, and agents, in performance of the Contract. This subparagraph shall in no way affect the applicability or diminish the scope of coverage of the bonds and insurance required under Subsections

G.2 and G.3 of the General Conditions or diminish the scope or allocation of responsibility or the indemnity provided for under subsection G.1 of the General Conditions.

5.8.3 Acts and Omissions

The CMGC shall be fully responsible for the acts and omissions of its officers, employees, agents, licensees, Trade Contractors, Subcontractors, Suppliers, invitees and guests (collectively, "Representatives"), as well as their respective Representatives, materialmen, and all other persons performing any of the Work or supplying labor, services, materials, or equipment for or under the Subcontracts entered into by the CMGC. The failure of any CMGC Representative to properly perform shall not excuse the CMGC for any omission from or noncompliance with the requirements of the Contract Documents, nor shall the CMGC be entitled to an extension of time because of the failure of a CMGC Representative, unless such failure was a direct result of some delay of the kind and character for which the CMGC is entitled to receive an extension of time under the Contract Documents.

5.9 Environmental Contamination

Subject only to the modifications and/or additions as provided in this section, if any, Subsections F.5 ('Environmental Contamination') and F.6 ('Environmental Cleanup') of the General Conditions are hereby incorporated by reference and made a part of this Agreement with the same force and effect as if set forth in full text herein.

5.10 Substantial Completion

Owner's Representative will issue a complete Punch List of incomplete or defective items to the CMGC within ten (10) business days after the CMGC's issuance of the Notice of Substantial Completion. The punch list will include a requirement that the CMGC deliver one complete set of Record Documents to Owner, if such documents have not been provided with the notice of Substantial Completion. The CMGC shall complete all punch-list items within thirty (30) days of receipt of the punch list.

5.11 Warranties

Section I of the General Conditions ('Correction of Work') shall be deemed incorporated by reference and made a part of this Agreement with the same force and effect as if set forth in full text herein. In addition to the requirements of Section I of the General Conditions, the CMGC, at Owner's request, shall cooperate and perform warranty and inspection work for the Project through the expiration date of the applicable warranty period.

5.12 General Obligations

The CMGC shall perform all other services set forth in the Contract documents and perform all other acts and supply all other things necessary to fully and properly perform and complete the Work in accordance with the Contract documents.

Compensation; Guaranteed Maximum Price (GMP)

Section 6

6.1 CMGC Compensation

The Owner shall pay the CMGC for services rendered under this Agreement under two broad categories, 'Preconstruction Fee' and 'Construction Fee,' in their respective amounts as defined on Addendum AA.2 (CMGC Compensation), which is hereby incorporated by reference and made a part of this Agreement with the same force and effect as if set forth in full text herein. The Preconstruction Fee and Construction Fee shall be inclusive of overhead, profit, and all other indirect or non-reimbursable costs that apply to each respective phase. The maximum allowable amount for the Preconstruction Fee and Construction Fee shall not be in excess of the

respective amounts specified in Addendum AA.2 (CMGC Compensation). Applications for payment shall meet the requirements of Section 13.

6.1.1 Preconstruction Fee

The Preconstruction Fee shall be paid monthly on a cost-reimbursement basis and in proportion to the services actually performed, as required by Section 13.1, and will cover all Preconstruction Phase services rendered by the CMGC including but not limited to the services defined in Section 3 of this Agreement. Preconstruction Phase costs incurred by the CMGC in excess of the Preconstruction Fee shall not be reimbursed by Owner and shall not relieve CMGC of any Preconstruction Phase obligation. Except to the extent the Parties may expressly agree to the contrary in the GMP Amendment, no Preconstruction Fee or other fee, compensation, or reimbursement will be payable to the CMGC for Preconstruction Services performed after execution of the GMP Amendment. All services provided after the execution of the GMP Amendment are Construction Phase Services and are included in the GMP. The CMGC will not be entitled to any Construction Fee upon the Preconstruction Fee.

6.1.2 Construction Fee

6.1.2.1 Base Fee

The Construction Fee will be a fixed-dollar lump sum, the exact amount to be stated in the GMP Amendment and will be calculated by multiplying a stated percentage ("Construction Fee Rate") by the Cost of the Work. The Construction Fee Rate will be defined in Addendum AA.2 (CMGC Compensation). "Cost of the Work" is defined in Section 1.6.23 and will be that amount as stated in the GMP Amendment. In making such calculation, the estimated Cost of the Work will exclude the Preconstruction Fee, the Construction Fee, and any other cost or expense for which the Contract Documents state is not to be included in calculating the Construction Fee.

6.1.2.2 Fee for Early Work

The CMGC's Fee for Early Work will be a fixed-dollar lump sum, the exact amount to be stated in the Early Work Amendment and will be calculated by multiplying the stated percentage in Addendum AA.2 (CMGC Compensation) by the actual Cost of the Early Work.

6.1.2.3 Fee for Change Order

As the Construction Fee is based on a percentage of the Cost of the Work, any adjustment to such Cost as reflected in a duly approved Change Order or Amendment will adjust the Construction Fee accordingly. If this Agreement is terminated for any reason prior to full completion of the Work (including, without limitation, termination during or following performance of Early Work), the CMGC shall be entitled only to that portion of the Construction Fee earned up through the time of termination and shall be calculated by multiplying the Construction Fee percentage, as defined in Addendum AA.2, by the total amount of Allowances incurred up through the time of termination, provided that Owner's obligation to make such final payment is conditioned on CMGC's compliance with the requirements of Section 13.2 and all other CMGC obligations under the Contract. The Construction Fee will not be subject to adjustment for any other reason, including, without limitation, schedule extensions or adjustments, Project delays, unanticipated costs, or unforeseen conditions.

Applications for payment shall meet the requirements of Section 13.

6.1.3 Fee Adjustment

The CMGC's Fees can only be changed by a written Change Order or Amendment executed by both parties. These Fees can only be adjusted for material changes in the Scope of the Work, which includes without limitation the management of the replacement of an insured or uninsured loss.

6.2 GMP Determination

6.2.1 CMGC GMP Proposal

The CMGC shall deliver to Owner a proposed GMP, along with GMP Supporting Documents, at a time designated by the Owner, but in no case sooner than ten (10) Business Days following completion of the Schematic Design Plans and no later than twenty (20) days prior to the GMP Deadline, as defined in the Construction Progress Schedule. The GMP Proposal shall include a budget proposal that will, at minimum, include all cost categories outlined in Schedule RS.1 ("Project Cost Matrix"), but shall not exceed that number of line items as would violate the standard defined in Section H.2.1 of the General Conditions. The GMP Proposal, once agreed to by the parties, shall serve as the basis for the GMP Amendment.

6.2.2 GMP Supporting Documents

The CMGC shall include with its GMP Proposal a written statement of its basis (the "GMP Supporting Documents"), which shall, at minimum, include the following:

6.2.2.1 Plans and specifications

A list of all Plans and Specifications, including all addenda thereto and the conditions of any relevant Contract Documents, which were used in preparation of the GMP Proposal;

6.2.2.2 Allowances

An itemized list of Allowances and a statement of their basis, including whether the line item is based upon actual bids. If actual bids are not available at the time of the GMP Proposal, the CMGC shall include such further documentation as is necessary to establish a reasonable range of probable costs for that particular line item, as well as a statement of the assumptions on which the costs for that line item are based, which shall include such factors as type, kind, and quality of materials, labor rates, hours to complete, construction methodologies, design constraints, and any other factors the CMGC takes into account in establishing the range for any particular line item of the GMP Proposal.

6.2.2.3 Assumptions

Identification of all general assumptions made by the CMGC that are relevant and applicable to the overall Project, as well as more narrow and specific assumptions that apply to any particular line item necessary to establish with reasonable certainty the basis for such line item;

6.2.2.4 Construction Progress Schedule under Section 3.5.3;

6.2.2.5 Subcontracts

Subcontract offers available during GMP development shall be used in establishing the GMP; such offers are not a valid basis for adjustments to the Construction Contingency account under Section 7.4.5 of this Agreement.

6.2.3 Owner Review

Within ten (10) business days of receiving the GMP Proposal and GMP Supporting Documents, Owner shall meet with the CMGC and Design Professional to review and discuss the GMP proposal. Prior to or at the meeting, if the Owner or Design Professional discover information sufficient to justify adjustment to the GMP Proposal, the CMGC will make appropriate adjustments to the GMP Proposal, its basis, or both. The Owner will authorize and cause the Design Professional to revise the Plans and Specifications to the extent necessary to reflect any agreed-upon modifications to the GMP Proposal.

6.2.4 GMP Acceptance

Upon acceptance of the GMP Proposal by the Owner, both parties shall be obligated to negotiate in good faith the terms and provisions of the GMP Amendment and, upon finalization, execute the same.

6.2.5 Failure to Agree on GMP

If the GMP Proposal exceeds preliminary Cost of Work estimates by an unreasonable amount, or if Owner determines at any time in its sole discretion that the Parties will fail to reach a timely agreement on a GMP acceptable to Owner, Owner may terminate this Agreement without liability, and the CMGC shall not receive additional compensation beyond the Preconstruction Fee under this Agreement and sums due under any Early Work Amendment. Termination under this provision shall proceed under Section J.5 of the General Conditions as a termination for Owner's convenience. The CMGC further agrees that Owner shall not be liable for any damages, whether actual, consequential, or otherwise, for termination of the Agreement under this provision.

6.2.6 Interim Work Prohibited

Prior to the Owner's acceptance of the CMGC's GMP Proposal and the execution of the GMP Amendment, the CMGC shall not incur any cost to be reimbursed as part of the Cost of the Work, except as specifically provided in any Early Work Amendment.

6.2.7 Cost Under-Run Change Order

As soon as possible after selection of the primary Subcontractors, the CMGC shall review projected costs and provide the Owner with a status report showing any projected cost under-runs. The CMGC shall include with its report any underlying documentation requested by Owner used to develop or support the status report. The CMGC shall also consider the reduced risk associated with known subcontracting costs and the impact that reduced risk has on the amount of the CMGC's Contingency. The parties shall then negotiate in good faith to execute a Change Order transferring an appropriate portion of any projected cost under-runs to an Owner-controlled contingency account to pay for additional costs arising from (a) any Owner-directed or approved change to the Work, (b) schedule changes that would otherwise entitle the CMGC to an increase in the GMP, (c) Allowance items after exhaustion of all Allowances, (d) selection by Owner of more expensive alternatives than those used for calculation of the GMP, (e) Owner selection of substitutions that increase the Cost of the Work, or (f) any other costs which otherwise would entitle the CMGC to an increase in the GMP. Any transfer of projected cost under-runs from the CMGC's contingency to the Owner-controlled contingency fund will not affect the CMGC's obligation to complete the Project for the GMP.

6.2.8 Savings Accrue to Owner

If the final Cost of the Work is less than the GMP, the savings shall accrue to the Owner. "Savings" here is defined as a positive difference between the GMP and the Cost of the Work.

6.2.9 CMGC Warranty of GMP

The CMGC warrants that the agreed-upon GMP, as contained within the GMP Amendment, includes the entire cost of all components whatsoever to bring the Project to final completion. Uncertainty or inaccuracy in the data contained within the GMP Supporting Documents or any other data used as a basis for establishment of the GMP, or default of a Subcontractor, shall not relieve the CMGC of its full responsibility to complete the Project within the budget established by the GMP Amendment.

6.2.10 Changes to the GMP

Without limiting the applicability of all other provisions in this Agreement, modification of the GMP after execution of the GMP Amendment shall proceed according to Section 14.3 of this Agreement.

Cost of the Work

Section 7

7.1 Construction Phase Services

“Actual Cost” shall consist of all costs, except those costs excluded by Section 7.3, necessarily incurred by the CMGC in the proper performance of the Work or services described in the Contract Documents for which records are established contemporaneously with the incurring of such cost and properly maintained, and which are not otherwise reimbursed or recovered by CMGC. Such Actual Costs shall be at rates not higher than the standard paid in the locality of the performance required by the Contract Documents except upon the prior written consent of the Owner. The Owner will pay the CMGC for all Actual Costs incurred during the Construction Phase of the Project that are consistent with the GMP and that are specifically allowed under this Section 7.

7.2 Allowable Costs - Reimbursable

7.2.1 Demolition Costs

7.2.2 Labor Costs

7.2.2.1 Actual Wages

Actual wages paid for labor under applicable collective bargaining agreements, or under a wage schedule, not to exceed the prevailing wage rate in the area, agreed upon by the Owner and CMGC and including such Owner-approved welfare or other benefits, if any, as may be payable with respect thereto. Employees of CMGC who are engaged at shops or on the road in expediting the production or transportation of materials or equipment in connection with the performance of the Work shall be considered stationed at the Field Office and their wages paid for that portion of their time spent on such performance.

7.2.2.2 Actual Salaries

When approved in advance by Owner, the actual amount of reasonable salaries paid by CMGC to CMGC’s employees when stationed at the Site Field Office for that portion of the time spent in performing the Work in whatever capacity employed, and CMGC’s employees in its main office for that portion of their time spent in performing estimating, scheduling, procuring, accounting and administrative functions essential for the proper performance of the Work, to the extent such costs are consistent with the staffing plan and wage and salary schedule approved by Owner in advance. Employees of CMGC who are engaged at shops or on the road in expediting the production or transportation of materials or equipment in connection with the performance of the Work shall be considered stationed at the Field Office and their salaries paid for that portion of their time spent on such performance.

7.2.2.3 No Change

No change in such wage or salary schedules shall be made by CMGC without prior approval by Owner in advance. The Owner shall be furnished with a list of employees whom the CMGC assigns to the performance of Work or services under this Contract with an indication of the wages of each employee. The aforesaid employees shall be paid on the basis of timecards to which the Owner shall have ready access.

7.2.2.4 Employee Contributions

Cost of customary benefits, contributions, assessments or taxes for such items as unemployment compensation and social security, insofar as such cost is based on wages, salaries, or other remuneration paid to employees of the CMGC and included in the Actual Cost under Sections 7.2.2.1 and 7.2.2.2.

7.2.3 Subcontracts

The cost of all work performed by Trade Contractors or Trade Suppliers for Work performed or materials procured pursuant to Trade Contracts entered into in accordance with this Agreement and subject to the limitations stated in the Contract Documents. No amount paid by or payable to any Trade

Contractor or Trade Supplier other than the fixed price of its Subcontract shall be included in the Cost of the Work, unless otherwise approved in writing by Owner.

7.2.4 Materials

Costs, including transportation costs, of materials and equipment incorporated in, or to be incorporated in, the completed Work.

7.2.5 Excess Materials

Costs of materials in excess of those actually installed but required in order to provide reasonable allowance for waste and for spoilage. Unused excess materials, if any, shall be delivered to Owner at the completion of the Work or, at Owner's option, sold by the CMGC. Any sale shall be commercially reasonable and the CMGC shall provide accounting for such a sale within fifteen (15) Days of the transaction. Net amounts realized, if any, from such sales shall be credited to Owner as a deduction from the Cost of the Work.

7.2.6 Costs of Miscellaneous Equipment and Other Items; Equipment Rental Charges

7.2.6.1 Capital Provided by CMGC for the Project

Costs, including transportation, installation, maintenance, dismantling and removal, of tools, equipment, machinery, materials, supplies, or temporary facilities provided by the CMGC, fully Consumed in the performance of the Work, and not customarily owned by the construction workers. Items so provided by the CMGC but not fully Consumed shall be either returned or reimbursed at Owner's election. If Owner elects the latter, the CMGC shall reimburse Owner for the salvage value of the items, whether the CMGC sells the items to others or retains them; salvage value means the purchase price minus reasonable, fair market depreciation. The CMGC shall charge no additional administrative or other mark-up for purchased items. The CMGC shall document all tools purchased for the Project via invoices and other necessary documentation in all Applications for Payment and shall document the disposition of purchased tools which have an individual price that exceeds \$75. A copy of such disposition log shall accompany the Application for Payment whenever these items are included in the application.

7.2.6.2 Rental Charges

Rental charges for temporary facilities, machinery, equipment and hand tools not owned by the construction workers, which are provided by the CMGC at the site, whether rented from the CMGC or others, and costs of transportation, installation, minor repairs and replacements, dismantling and removal thereof. Rates and quantities of equipment rented shall be according to industry standards as published by a reputable source acceptable to the Owner, shall not exceed acquisition costs, and for individual items for which the total rental cost will exceed \$1,000.00, will be subject to Owner's prior approval. The CMGC shall deliver to Owner a list of published rates from time to time at Owner's request. For all items rented or leased, the CMGC shall charge Owner only the rental charge incurred by the CMGC with no additional administrative or other mark-up. The CMGC shall make efforts and use its best skills and judgment to procure equipment in the most expeditious and economical manner consistent with the interest of the Owner. Efforts shall include, but not be limited to, providing Owner with a rent/buy analysis so that Owner may elect for CMGC to procure the item in lieu of rental if the item or facility at issue is expected to be rented for six months or longer. Such rent/buy analysis shall include, where available, a leasing rate commensurate with the expected term of rental of the item or facility at issue.

7.2.7 Debris Removal

Costs of removal of debris from the site, both regular clean-up and final clean-up.

7.2.8 Owner-Approved Travel

That portion of the reasonable travel and subsistence expenses of the Owner-approved CMGC personnel, at rates that do not exceed current rates as published by the General Services Administration, incurred while traveling in discharge of duties directly connected with the Work. Main office staff travel will not be reimbursed unless approved in advance by the Owner and at rates acceptable to the Owner.

7.2.9 Other Costs

7.2.9.1 Insurance, Bonds

Direct costs, without markup, for that portion of insurance premiums directly attributable to CMGC obligations under this Agreement and covering risks related solely to the Project, including Builder's Risk and Builder's Risk Installation Floater premiums but excluding premiums for comprehensive general liability, automobile, and workers' compensation coverage, and excluding premiums for Tail or Excess/Umbrella coverage associated with comprehensive general liability, automobile, and workers' compensation coverage.

Direct costs, without markup, for payment, performance, and public works bonds (but excluding premiums for Subcontractor bonds unless authorized by the Owner).

7.2.9.2 Taxes

Sales, use or similar excise taxes imposed by a governmental authority which are directly related to the Work and for which the CMGC is liable. The CMGC shall pay any such taxes.

7.2.9.3 Permits

Fees and assessments for all permits that are the responsibility of the CMGC under this Agreement, as defined on Addendum AA.3, Permit Schedule. CMGC will also pay for all licenses and inspections imposed by Legal Requirements incident to the proper completion of the Project.

7.2.9.4 Other Owner-Approved Costs

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

7.2.9.5 Mitigation of Perils

Costs which are incurred by the CMGC in taking reasonable action to prevent threatened damage, injury or loss in case of emergency to persons and property. If feasible, CMGC shall obtain Owner approval prior to incurring expenditures under this subsection.

7.2.10 Costs Subject to Audit

Cost reimbursements shall be subject to final audit adjustment in order to ensure that all costs are allowable, properly allocated and reasonable.

7.3 Not Allowed – Non-Reimbursable Costs:

The following items are specifically excluded from the Cost of the Work:

7.3.1 Other CMGC Personnel

Wages, salaries, and other compensation paid by CMGC for officers, directors, and partners of CMGC, whether or not stationed at the Site Field Office, except as provided in Section 7.2.2.

Wages, salaries, and other compensation of CMGC's personnel stationed at CMGC's principal office or offices other than the Project Site, unless agreed to by Owner or as noted in Section 7.2.2 above.

- 7.3.2 **Employment Taxes**
Costs of customary benefits, contributions, assessments, or taxes for such items as unemployment compensation and social security paid by CMGC, insofar as such costs are based on wages, salaries, or other remuneration paid to officers, directors, partners, or employees of the CMGC under Section 7.3.1.
 - 7.3.3 **Overhead**
Any general and overhead expenses including but not limited to all expenses incurred to support the CMGC's principal office and off-site offices.
 - 7.3.4 **Capital**
The CMGC's capital expenses, including interest on the CMGC's capital employed for the Work.
 - 7.3.5 **Rental Costs**
Rental cost of machinery and equipment, except as provided in Section 7.2.6.
 - 7.3.6 **Avoidable Costs**
Costs which arise as a result of the default, breach, delinquency, oversight, negligence, or lack of due care by CMGC or any of its Employees, Consultants, officers, Trade Contractors, Trade Suppliers or any other Person or party which performs services for the CMGC in connection with the Work, including without limitation expenses incurred under Section 14.4 of this Agreement.
 - 7.3.7 **Cure Nonconforming Work**
The cost to correct any nonconforming Work, defective Work, or Work under warranty.
 - 7.3.8 **Incentive Payments**
Profit sharing, bonuses, merit, safety, or other similar compensation of any kind, paid by CMGC to its Employees or Subcontractors, or any expenses in connection therewith.
 - 7.3.9 **Fines and Penalties**
Any fine or penalty that the CMGC is liable for or becomes liable for in the course of the Work.
 - 7.3.10 **Preconstruction Phase Work**
With the exception of Work authorized by an Early Work Amendment, all Preconstruction Phase services.
 - 7.3.11 **Lost or Stolen Equipment**
The cost of replacing lost or stolen equipment of any kind, tools, including hand and small tools, or materials of any kind.
 - 7.3.12 **Legal Fees**
 - 7.3.13 **Contingency Costs**
Any contingency costs not covered by Section 7.4.
 - 7.3.14 **Excess Costs**
Any cost associated with the Project not specifically and expressly described in Section 7.2 and/or any costs in excess of the GMP.
- 7.4 **Construction Contingency Costs**
- 7.4.1 **Contingency Account**
The estimated Cost of the Work, as itemized in the Construction Budget and part of the GMP Amendment established under Section 6.2 of this Agreement, will include the CMGC's Contingency, a

sum established by the CMGC for the CMGC's use, subject to Owner approval, to cover costs which are properly reimbursable as part of the Cost of the Work but which are not the basis for a Change Order.

7.4.2 Payment from the CMGC Contingency Account

Prior to the Design Professional's Certificate of Final Completion, the CMGC shall be entitled to payment as a Construction Contingency Cost item for the Construction Contingency Costs defined in Section 7.4.3. The amount of the Construction Contingency account shall be determined by the Construction Budget and may be adjusted only under the provisions in Section 7.4.5 or as otherwise expressly agreed by the parties.

7.4.3 Allowable Contingency Costs

7.4.3.1 Unanticipated Events

Costs arising from unanticipated events, including, for purposes of illustration, unanticipated local market labor or materials conditions.

7.4.3.2 Trade Proposer Defaults

Costs incurred as a result of defaults by proposers who submit proposals to CMGC for Trade Contracts or as a result of defaults by Trade Contractors or Trade Suppliers.

7.4.3.3 Legal Fees

Legal fees incurred by CMGC in connection with the performance of its services under this Agreement but in no event legal fees incurred in the negotiation of or any dispute arising out of the relationship between Owner and CMGC.

7.4.3.4 Acceleration Costs

Costs incurred or charged by CMGC to accelerate the performance of Work by a Trade Contractor so as to achieve final completion of such work in advance of the time stated for same in the applicable Trade Contract. Costs incurred under this paragraph shall be subject to Owner's prior approval and may not be incurred by the CMGC to mitigate a negative Float balance.

7.4.3.5 Reexamination Costs

Costs for uncovering, reexamining, retesting and replacing any Work which the Design Professional demands be uncovered for its observation and which the Design Professional did not inspect within 72 hours of CMGC's issuance of a notice of readiness for inspection under Contract Documents, so long as such Work, when uncovered, is found to be in accordance with the Contract Documents.

7.4.3.6 Liens

Subject to prior approval of the Owner and the surety, costs of liens against Subcontractors, pending recovery of costs from the Subcontractor at fault.

7.4.4 Contingency Limitations

The Construction Contingency Costs defined in Section 7.4.3 shall not be reimbursed to the CMGC unless all the following conditions are met:

- 7.4.4.1 The Costs are reasonably incurred as an incident to the performance of the Work.
- 7.4.4.2 The Costs are incurred prior to the Certificate of Substantial Completion.
- 7.4.4.3 The Costs are not otherwise reimbursable or recoverable by CMGC.
- 7.4.4.4 The Costs are not attributable to CMGC's gross negligence or willful misconduct.
- 7.4.4.5 The CMGC establishes and maintains records of the Costs.
- 7.4.4.6 The aggregate of Contingency Costs does not exceed the Construction Contingency Component of the Cost of the Work, as defined in a Change Order or the GMP Amendment, as the case may be, and as adjusted pursuant to Section 7.4.5.
- 7.4.4.7 The request for reimbursement from the Construction Contingency Cost must be made prior to issuance of the Certificate of Final Completion.

7.4.5 Adjustments to the Construction Contingency

7.4.5.1 Basis of Adjustments

The contingency costs incurred by CMGC under Section 7.4.3 shall be reimbursable to CMGC from the Construction Contingency. The amount of the Construction Contingency shall be increased by the net amount of (i) the aggregate by which Subcontracts entered into by CMGC are less than line-item amounts stated in Construction Budget for each Subcontract, less (ii) the aggregate amount by which Subcontracts entered by the CMGC exceeds the line-item amount stated in the Construction Budget for each Subcontract. All net amounts saved, if any, shall be added to the existing Construction Contingency amount and shall be available for all purposes permitted under Sections 7.4.3, but subject to the conditions in Section 7.4.4.

7.4.5.2 Limitations on Adjustments

7.4.5.2.1 CMGC Self-Performed Work

Claims for adjustments to the Construction Contingency account that arise from portions of the Work self-performed by the CMGC under Section 8.3 of this Agreement shall be governed by Section 14 of this Agreement.

7.4.5.2.2 Excess Costs

No claim shall be paid for any Construction Contingency costs in excess of the established contingency account plus any adjustments as specified in Section 7.4.5.1 to the CMGC for any reason, including a default by Owner, or payment of additional compensation to CMGC, or any other circumstance which would otherwise permit an increase in the Guaranteed Maximum Price under a GMP Amendment. The Design Professional shall not have any jurisdiction to decide any such claim other than to reject and thereby deny such a claim.

7.4.6 Release of Construction Contingency

7.4.6.1 Periodic Review

After approval of the GMP Amendment, the Owner and the CMGC shall review for approval each transfer to and from the Construction Contingency on a periodic basis as requested by the CMGC, but not less than quarterly. The Owner shall determine if the transfer is in compliance with the contract, and if so, the Owner shall not unreasonably withhold approval of the transfer. Additionally, the CMGC shall periodically review its accrued and anticipated Construction Contingency Costs and shall promptly inform Owner of CMGC's determination of the extent to which the remaining Construction Contingency exceeds CMGC's reasonably anticipated Construction Contingency Costs expected to be incurred prior to the issuance of the Certificate of Final Completion.

7.4.6.2 Confirmation of Balance

The amount of any balance of Construction Contingency shall be confirmed by the written certification of the CMGC to the Owner at each review.

7.4.6.3 Gross Negligence

In no event shall CMGC be entitled to reimbursement of any cost attributable to CMGC's gross negligence or willful misconduct.

7.4.7 Final Disposition of Construction Contingency

The amount of any funds remaining in the Construction Contingency upon the issuance of a Certificate of Final Completion, or upon the earlier termination of this Agreement, shall be confirmed by the written certification of the CMGC to the Owner at the time of the issuance of the Certificate of Final Completion and any funds remaining in the Construction Contingency at the time of the issuance of the Certificate of Final Completion shall be returned to the Owner.

7.4.8 Discounts, Rebates, Etc.

The CMGC shall provide the Owner an opportunity to provide funds to take advantage of discounts for prompt payment of materials, supplies, equipment, etc. Any trade or quantity discounts, rebates, refunds, and/or proceeds from the sale of surplus materials or equipment shall be credited to the owner-controlled contingency account established in Section 6.2.7.

Procurement of Subcontracts

Section 8

8.1 General Subcontracting Requirements

8.1.1 Conflict of Interest

The CMGC will subcontract the Work to subcontractors other than the CMGC and its Affiliates. The CMGC may award a Trade Contract or other Subcontract to an Affiliate of the CMGC or the CMGC itself only under the provisions of Section 8.3

Prior to opening offers, the CMGC agrees to disclose in writing to the Owner any financial interest it has in any Subcontractor whenever such Subcontractor intends to compete for any contract to be executed by the CMGC for work on the Project, directly or indirectly, including whether such party is an Affiliate of the CMGC.

8.1.2 Parties and Process

The parties to Subcontracts shall be the CMGC and the Subcontractor; in no case shall the Owner be a party to a Subcontract. All Subcontracts shall be entered into only after the CMGC's completion of the selection process required by this Section 8. For each selection, the CMGC, in consultation with the Design Professional and the Owner, shall develop appropriate selection criteria for the selection of the Trade Contractor or Trade Supplier.

8.1.3 Legal Requirements

The CMGC shall ensure that all Subcontracts comply with all applicable Legal Requirements, including but not limited to the applicable requirements itemized in Section 19 below.

8.2 Subcontractor Selection Process

8.2.1 Competitive Bidding

Unless otherwise provided under this Section 8, the selection of all Subcontractors will be made by competitive offers in a manner that will not encourage favoritism or substantially diminish competition.

While not subject to the competitive procurement requirements of ORS Chapter 279C, the process will conform to the following procedures, in general compliance with the open and competitive nature of public procurement and taking into account industry subcontracting practices.

8.2.2 Procurement Process Obligations to Owner

8.2.2.1 General Obligation

Owner reserves the right to monitor the selection of Subcontractors by the CMGC, provided that such monitoring will not excuse the CMGC from compliance with the subcontracting requirements of this Agreement. The CMGC will cooperate in all respects with the Owner's monitoring. The CMGC shall keep the Owner advised as to the status of all subcontracting activities and be given the opportunity to exercise its rights under this Agreement with respect to the subcontracting process, most but not all of which are stated in this subsection. Generally, the CMGC shall provide sufficient information and documentation necessary for Owner to protect its own interests and confirm the CMGC's compliance with the Contract Documents and with applicable statutes, administrative and other Legal Requirements.

8.2.2.2 Procurement Document Review

Owner reserves the right to review proposed procurement documents and provide comments before they are issued for solicitation. The CMGC will consider and respond to all Owner comments regarding any proposed offer packages.

8.2.2.3 Selection Notification

Owner reserves the right to require the CMGC to notify the Owner in writing in advance before award of any proposed Subcontract, which notice will include analyses, summaries, or abstracts in a form acceptable to the Owner of all offers received. The Owner reserves the right in its sole and absolute discretion to disapprove any proposed Subcontractor, Supplier, or Subcontract or supply contract awards. The Owner will not unreasonably disapprove any proposed Subcontractor or Supplier, and increased costs due to the Owner's disapproval will be cause for an increase in the GMP. The risk and cost of CMGC's selection of a successful proposer lies exclusively with the CMGC (see Section 5.4).

8.2.2.4 Award

Unless the Owner exercises its rights under subsection 8.2.2 of this Agreement or Section B.11.2 of the General Conditions, which is hereby incorporated by reference and made a part of this Agreement with the same force and effect as if set forth in full text herein, CMGC shall award the Work to a responsible Trade Contractor or Trade Supplier of CMGC's choosing and proceed with the preparation of a purchase order or Subcontract incorporating all necessary terms and conditions of the Contract Documents. Upon execution by CMGC, and if requested by the Owner, CMGC shall send a copy of the executed purchase order or Trade Contract to the Owner.

8.2.2.5 Subcontracts' Provisions Requirements

8.2.2.5.1 General Conditions

In addition to the Subcontract incorporation requirements Section 19 of this Agreement, CMGC shall comply with subsection B.11.1 of the General Conditions (under 'Subcontracts and Assignment'), which is hereby incorporated by reference and made a part of this Agreement with the same force and effect as if set forth in full text herein.

8.2.2.5.2 Indemnification for Failure to Incorporate

The CMGC will indemnify the Owner for any additional cost based on a Subcontractor claim which results from the failure of the CMGC to incorporate the provisions of this Agreement into each Subcontract.

8.2.2.5.3 Other Required Provisions

CMGC shall include in all Subcontracts those provisions required by Section 8.7.

8.2.3 Procurement Process Obligations to Proposers

8.2.3.1 Submittal Form

Unless other prior arrangement has specifically been made with the Owner, all offers must be publicly announced and submitted to a specific location at a specific time, both of which to be communicated to the Owner. The CMGC will timestamp all offers as received. Subcontractors must be qualified to perform the Work for this Project by being appropriately registered with the Construction Contractors Board.

8.2.3.2 Insufficient offers

If fewer than three (3) offers are submitted in response to any solicitation (inclusive of any offer submitted by the CMGC), prior written approval by the Owner will be required to accept the offer.

8.2.3.3 Review and Re-Solicitation

The CMGC will document any and all discussions, questions and answers, modifications, and responses to any offeror and ensure that the same are distributed to all offerors; the Owner will be entitled to inspect such documentation on request.

The CMGC will review all offers and will work with offerors to clarify offers, reduce exclusions, verify scope and quantities, and seek to reduce the risk of Work awarded via the Change Order process.

The Owner may, at its sole discretion, require the CMGC to re-solicit for offers based on the same or modified documents.

8.2.3.4 Selection Standard

Unless the selection criteria agreed to under Section 8.1.2 specify otherwise, the CMGC will select the lowest qualified offer for each solicitation that meets the CMGC's reasonable performance standards for the components of the Work at issue. Award by the CMGC of a Subcontract on a basis other than lowest price shall require prior written authorization of the Owner. As a condition to its authorization, the Owner may require the CMGC's agreement to establish and implement qualification and performance criteria for offerors, including a scoring system within requests for proposals.

8.2.3.5 CMGC Records Not Public Records

The CMGC's subcontracting records will not be considered public records, provided, however, that the Owner and other agencies of the State will retain the right to audit and monitor the subcontracting process in order to protect the Owner's interests.

8.2.3.6 Retainage from Subcontractors

Except with the Owner's prior approval, payments to Subcontractors will be subject to retainage of no more than five (5) percent. The Owner and the CMGC will agree upon a mutually acceptable procedure for review and approval of payments and retainage for Subcontractors.

8.2.3.7 Other Requirements

The CMGC shall comply with all other provisions of ORS 279C.337(3).

8.3 CMGC Personal Performance

8.3.1 Intent to Compete

If the CMGC or any of its affiliates intends to submit an offer for any portion of the Work, such intent must be publicly announced with the solicitation for offers required by Section 8.2.1 and the Owner notified in writing. All offers for this portion of the Work must be delivered directly to the Owner and publicly opened by the Owner at an announced time, date, and place. Selection of the Subcontractor lies in the sole discretion of the Port and will conform to the selection process established by the CMGC in other solicitation for other portions of the Work provided that the Owner retains sole discretion under these circumstances to modify the solicitation documents or process.

8.3.2 Failure of Proposal Process

8.3.2.1 Failure of Proposals

After the acceptance of the GMP Amendment by the Owner, and in the event the lowest responsible and responsive proposal received by CMGC exceeds the allocation for such Work in the Construction Budget, or in the event that no proposal is received, and any permitted redesign does not eliminate the budget shortfall or result in the submission of an acceptable proposal, the CMGC has the following options:

8.3.2.1.1 Exceeds Budget

In the case where the lowest responsible and responsive proposal exceeds the allocation for such Work in the Construction Budget, and with the prior approval of the Owner, the CMGC may perform such Work with its own forces for the amount allocated for the Work in the Construction Budget.

8.3.2.1.2 Lack of Acceptable Proposal

In the case where no responsible and responsive proposal is received, the CMGC shall perform such Work with its own forces for the amount allocated for such Work in the Construction Budget. The amount so allocated shall be deemed to be a proposal submitted by the CMGC for such Work for which, in accordance with Section 8.3, and subject to approval by Owner, the CMGC will undertake to perform such Work for the amount so stated and on a lump sum basis. The CMGC shall not be entitled to any additional Fee calculated on such lump sum. No action permitted under this Paragraph shall increase the Guaranteed Maximum Price.

8.3.2.2 Default of Trade Contractor

The CMGC may with its own forces perform Work encompassed within any Trade Contract between CMGC and any Trade Contractor upon the termination of such Trade Contract by CMGC by reason of the default or abandonment of the Work by the Trade Contractor, but the CMGC shall perform such Work or the balance thereof remaining at the time of termination for an amount not exceeding the contract sum specified in the Trade Contract or the unexpended balance thereof remaining at the time of termination and CMGC's Fee shall not be reduced, or increased on account of the Work performed under this subsection.

8.3.2.3 Other Compelling Circumstances

In certain compelling circumstances, upon the request of the CMGC and the recommendation of the Design Professional, Owner may permit, in its sole and unfettered discretion where such approval is in the best interest of the Owner, CMGC to perform specified work with its own forces. The allocation for such Work stated in the Construction Budget, or less, shall be deemed to be a proposal submitted by the CMGC for such Work for which, in accordance with this subsection and subject to approval by Owner, the CMGC will undertake to perform on a lump

sum basis. CMGC shall not be entitled to any additional CMGC Fee calculated on such lump sum. No action permitted under this subsection shall increase the Guaranteed Maximum Price.

8.3.2.4 CMGC Field Work

Subject to the provisions of Section 1.6.30, the CMGC or its Affiliate may provide the CMGC Field Work required to complete the Project with its own forces, without the necessity of subcontracting such work.

8.4 Duty to Continue Work

Notwithstanding any dispute between the Owner and CMGC or between CMGC and any Subcontractor, or between such Subcontractors, it shall be the responsibility of CMGC to continue to prosecute all of the Work and perform all of its services diligently in a good and workmanlike manner in conformity with this Contract, and the CMGC and/or Subcontractor shall have no right to cease performance hereunder or to permit the prosecution of the Work to be delayed so long as Owner does not default hereunder. So long as the CMGC continues performance under this Contract, the Owner shall continue to pay CMGC in accordance with this Agreement.

8.5 CMGC Responsible for Subcontractors' Acts and Omissions

The CMGC agrees to incur the same degree and extent of responsibility for the acts and omissions of its Subcontractors, Subcontractors' agents, and of Persons either directly or indirectly employed by them, as the CMGC incurs for the acts and omissions of Persons directly employed by the CMGC. The failure of a Subcontractor or its employees or agents to perform shall not be asserted by the CMGC as an excuse for any omission from or noncompliance with requirements of the Contract documents; nor shall the CMGC be entitled to an extension of time because of failure of a Subcontractor or its employees or agents to perform unless said failure was a direct result of some delay to the Subcontractor of the kind and character described in this Agreement for which the CMGC shall have requested and received an extension of time. No Subcontract shall relieve the CMGC of any of its obligations or liabilities under the Contract. The CMGC shall not assert negligence, inefficiency, insolvency, bankruptcy, or incompetence of any Subcontractor or its employees or agents as excuse for the existence of any noncompliance with or omission to fulfill any obligation under the Contract either as to timely performance or as to compliance with methods and materials designated in the Contract Documents.

No claim or protest shall be made by the CMGC solely on the ground that a Subcontractor has made a claim or protest against the CMGC. The CMGC must maintain its Claim or protest against the Owner based upon the provisions of the Contract Documents and independent of any right the Subcontractor has against the CMGC. The CMGC shall defend the Owner from any claims or protests submitted by a Subcontractor asserted in violation of, or contrary to any provision of the Contract Documents.

8.6 Subcontractor Procurement Protests

The procurement process for Subcontracts established by the CMGC shall include a protest process for Subcontractors that are competing offerors, which process will be subject to approval by the Owner. The CMGC will be solely responsible for resolving the procurement protests of Subcontractors. The CMGC will indemnify, defend, protect, and hold harmless the Owner from and against any such procurement protests and resulting claims or litigation. The provisions of this Section 8.6 are solely for the benefit of the Owner, and do not grant any rights or remedies (including third-party beneficiary rights) to any offeror or other protester in connection with any procurement protest or claim.

8.7 Owner and Subcontractor

8.7.1 No Contractual Relationship

Nothing contained in this Agreement creates a contractual relationship between the Owner and any Person other than the CMGC. However, the Owner and CMGC agree that the Owner is an intended and express third-party beneficiary of all contracts for construction services and all Subcontracts, purchase

orders, and other agreements between the CMGC and third parties in connection with the Work. The CMGC shall include language in all such agreements that expressly names the Owner as an intended third-party beneficiary of such agreements.

8.7.2 Conditional Assignment

Every Subcontract for any portion of the Work is hereby irrevocably assigned by the CMGC to the Owner, provided that such assignment is effective only upon termination of this Agreement by the Owner and only for those Subcontracts which the Owner accepts by notifying the Subcontractor and the CMGC in writing. Upon such Notice, the Owner shall succeed to the rights and obligations of the CMGC under each Subcontract. The CMGC shall include a provision in each Subcontract providing for such assignment under this subsection.

8.7.3 Assignment of Warranties

Without limiting CMGC's post-construction obligations pursuant to this Agreement, CMGC shall assign to Owner all post-construction warranties resulting from CMGC's agreements with third parties, subject to CMGC's reservation of rights under such warranties to the extent necessary to enable CMGC to fulfill its obligations to Owner hereunder. Moreover, CMGC shall protect Owner's interest in all such warranties and shall take no action nor commit an act or omission that renders such warranties void or voidable.

8.7.4 Owner Not Obligated to Pay Subcontractors

The Owner is not obligated to pay, or see to the payment of, any sums to any Subcontractor, Supplier, laborer, employee, or any Person supplying labor, materials, machinery or equipment to the Project.

8.7.5 No Claim Against Owner

Nothing in this Agreement shall be construed to confer the right on a Subcontractor to pursue any type of Claim or dispute against the Owner. The Subcontractors' sole remedy is against the CMGC under the terms of the agreement between the Subcontractor and the CMGC. Any provision in any contract between the CMGC and any Subcontractor pursuant to which the CMGC is obliged to present to the Owner any claim of any Subcontractor shall be invalid.

8.7.6 Subcontractor Claims

The procedures and mechanisms related to the resolution of Subcontractor Claims shall be established in the agreement between the CMGC and Subcontractor with certainty, including the CMGC's roles and responsibilities in this process and whether the CMGC's subcontracting records are considered to be public records.

Discounts, Rebates, Refunds

Section 9

9.1 Discounts, Rebates, Refunds

Cash discounts obtained on payments made by the CMGC shall accrue to Owner. Trade discounts, rebates, refunds and net amounts received from sales of surplus materials and equipment shall accrue to Owner, and the CMGC shall make provisions so that they can be secured.

9.2 Amounts Credited to Owner

Amounts which accrue to Owner in accordance with the provisions of Section 9.1 shall be credited to the Owner-controlled contingency account, as established in Section 6.2.7.

Insurance, Bonding, Indemnity

Section 10

10.1 General Provisions

10.1.1 Contract Price

Throughout Section 10, the GMP amount, as stated in the GMP Amendment, shall be synonymous with the term "Contract Price" as used in the General Conditions.

10.1.2 Early Work

the CMGC shall provide to the Owner an additional or supplemental bond in the amount of such increase prior to performance of the additional Work.

As a condition of the CMGC's right and obligation to perform any portion of the Work under any approved and duly executed Early Work Amendment, the CMGC shall provide to the Owner additional or replacement bonds for the Work covered by the Amendment, and in a sufficient amount so that the total bonded sum equals or exceeds the total amount of the Early Work or GMP. In the event of a scope change that increases the Early Work or GMP, the CMGC shall provide to the Owner an additional or supplemental bond in the amount of such increase prior to performance of the additional Work.

10.2 Indemnity

Subject only to the modifications and/or additions as provided in this Subsection, if any, indemnity obligations of the CMGC shall be governed by subsection G.1 of the General Conditions ('Responsibility for Damages / Indemnity'), which are hereby incorporated by reference and made a part of this Agreement with the same force and effect as if set forth in full text herein.

10.3 Bonding

Subject only to the modifications and/or additions as provided in this subsection, the CMGC's obligations regarding bonds shall be governed by section G.2 of the General Conditions ('Performance and Payment Security; Public Works Bond'), which are hereby incorporated by reference and made a part of this Agreement with the same force and effect as if set forth in full text herein.

The bonds under this subsection shall not be required until execution of the GMP Amendment. Owner's obligation to issue the Notice to Proceed after execution of the GMP Amendment is conditioned upon receipt of the bonds required under this subsection. Owner's issuance of the Notice to Proceed prior to receipt of said bonds shall not waive the Owner's rights under Section 1.6.40.

10.4 Insurance

Subject only to the modifications and/or additions as provided in this subsection, if any, the CMGC's obligations regarding insurance shall be governed by section G.3 of the General Conditions ('Insurance'), which are hereby incorporated by reference and made a part of this Agreement with the same force and effect as if set forth in full text herein.

10.4.1 Employer's Liability

Subsection G.3.2 of the General Conditions is modified to require Employer's Liability Insurance with a combined single limit per occurrence of not less than \$500,000, and annual aggregate limits of not less than \$1,000,000.

10.4.2 Additional Insured

The Certificates of Insurance, except for Workers' Compensation, shall provide that the policies have been endorsed/amended so that the Port of Astoria and its institutions, officers, and employees are

Additional Insureds with respect to all of the CMGC's services to be provided under the Contract. The CMGC shall provide Owner with copies of all policy endorsements/amendments confirming the Owner's status as Additional Insured.

10.5 Termination of Obligation to Insure

Unless otherwise expressly provided to the contrary, the obligation to insure as provided herein shall not terminate until the Design Professional shall have executed the Certificate of Final Completion.

Work Product

Section 11

11.1 Ownership of Contract Documents

Copies of plans, specifications, reports, or any other documents and materials to be produced under this Agreement, including without limitation materials identified as "instruments of service" in any agreement between the CMGC and any of its Consultants or Subcontractors ("Work Product") shall be the exclusive property of Owner. Owner and the CMGC intend that such Work Product be deemed "work made for hire," for which Owner shall be deemed the author. If for any reason such Work Products are not deemed "work made for hire," the CMGC hereby irrevocably assigns to Owner all of its right, title and interest in and to any and all of such Work Products, whether arising from copyright, patent, trademark, trade secret, or any other state or federal intellectual property law or doctrine. The CMGC shall ensure and shall confirm to Owner that the CMGC's agreements with its Consultants, Subcontractors, employees and agents conform to the requirements of this Section 11 and agrees further to execute such further documents and instruments as Owner may reasonably request in order to fully vest such rights in Owner. The CMGC forever waives, for itself, its Consultants, Subcontractors, employees and agents, any and all rights relating to such Work Product, including without limitation, any and all rights arising under 17 USC § 106A or any other rights of identification of authorship or rights of approval, restriction or limitation on use of subsequent modifications.

11.2 Right of Use

The CMGC, despite other conditions of this Section 11, shall have the right to use such Work Product in its brochures or other literature that it may employ for its sales and in addition, unless specifically otherwise prohibited, the CMGC may use standard line drawings, specifications and calculations on other unrelated projects.

11.3 Use of Plans

Subject only to the modifications and/or additions as provided in this Section 11, if any, subsection B.20 ('Use of Plans and Specifications') of the General Conditions is hereby incorporated by reference and made a part of this Agreement with the same force and effect as if set forth in full text herein.

Records

Section 12

12.1 General Conditions

Subject only to the modifications and/or additions as provided in this section, if any, Subsection B.9 ('Access to Records') is hereby incorporated by reference and made a part of this Agreement with the same force and effect as if set forth in full text herein.

12.2 Owner Access to CMGC Records

The CMGC shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under the Contract; the accounting and control systems shall be satisfactory to Owner. Owner and

Owner's representatives, including the Oregon Secretary of State accountants and auditors, shall be afforded reasonable and regular access to the Record Documents, CMGC's financial and accounting records, and other books, correspondence, instructions, drawings, receipts, subcontracts, purchase orders, vouchers, memoranda and other data relating to the Contract, including records pertaining to Overhead and indirect costs, for the purpose of making audit, examination, excerpts and transcripts. The CMGC shall preserve these for a period of ten (10) years after final payment, or until the resolution of any dispute, if any, involving the Contract, or for such longer period as may be required by law. The Owner and/or its agents shall continue to be provided full access to the records during litigation

12.3 Audit

At the discretion of and request of the Owner, the CMGC shall allow the Owner to select an auditor to examine and inspect the CMGC's books, records, and any and all accounts and similar data related to the Project and the Project budget. The Owner shall bear the cost of such audit. The auditor may sign a confidentiality agreement before conducting any such audit. Approval of an Application for Payment by the Owner, including Final Payment, shall not foreclose the right of the Owner to examine the books and records and their backup documents in accordance with the Contract Documents to determine the correctness and accuracy of any item.

Payments and Retainage

Section 13

13.1 Preconstruction Phase Payments

13.1.1 Preconstruction Schedule of Values' Submission and Approval

The CMGC shall prepare and submit the Schedule of Preconstruction Values at least ten (10) days prior to its first Application for Payment under the scope of Preconstruction Phase services. This Schedule shall serve as the basis for payment in the same manner as the Schedule of Values shall so serve as to the Construction Phase (see Section 13.2). Upon the request of and at the sole discretion of the Owner, the CMGC shall revise this Schedule until satisfactory to the Owner.

13.1.2 Preconstruction Phase Invoices

The Preconstruction Fee payable under Section 6 shall be paid monthly in proportion to the services actually performed and the costs and expenses actually incurred. The invoice shall include itemization of costs and expenses it has incurred according to and consistent with the Schedule of Preconstruction Values. The CMGC shall submit not later than the tenth (10th) day of any month an invoice for the proportionate part of the Preconstruction Fee that represents the services actually performed for the period subsequent to the period covered by any prior invoice to the end of the preceding month. No retainage shall be withheld from payments for Preconstruction Phase services.

13.2 Construction Phase Payments

13.2.1 General Conditions

Payments to the CMGC shall be on a cost-reimbursement basis and, subject to the modifications and/or additions as provided in this section, shall be governed by subsections E.1 ('Schedule of Values'), E.2 ('Applications for Payment'), E.4 ("Dual Payment Sources"), and E.6 ('Final Payment') of the General Conditions, all of which are hereby incorporated by reference and made a part of this Agreement with the same force and effect as if set forth in full text herein.

13.2.2 Schedule of Values Standard

The Schedule of Values, upon Owner approval, will be used as a basis for reviewing the CMGC's Applications for Payment. The itemization of Work in the Schedule of Values shall break up the Project tasks into reasonable, measurable, and unambiguously defined components of the Work and each component assigned a dollar value that represents a portion of the GMP. Each line item in the Application for Payment shall be clearly allocable to a component of the Work as defined in the Schedule of Values. Both the Application for Payment and the Schedule of Values shall be consistent with the itemization of Work as stated in the Project Schedule. "Consistent" here means without limitation that the description of the portions of the Work on each Application for Payment line item are reasonably identical to the description of the corresponding portions of the Work as provided on the Schedule of Values and the Project Schedule.

13.2.3 Documentation

Each Application for Payment shall be prepared in such form and supported by sufficient data to substantiate its accuracy and conformance to Section 7 of this Agreement as the Owner may require. Only those costs that are authorized under this Agreement shall be reimbursed to the CMGC.

13.2.4 Defective Application

An Application for Payment that fails to conform to these standards may be deemed defective under subsection E.2 of the General Conditions ('Applications for Payment'). Owner reserves the right to withhold payment under a defective Application for Payment until the defects are cured by the CMGC. Owner also reserves the right to require modification of the Schedule of Values if, in its sole discretion, it determines that such modification would assist in curing any defect in an Application for Payment.

13.2.5 Basis of Payment

Subject to other provisions of the Contract Documents, the amount of each progress payment will be computed according to the following provisions and NOT according to Subsection E.2.5 of the General Conditions.

(a) Take that portion of the GMP properly allocable to completed Work, as determined by multiplying the percentage of actual completion of each component of the Work under the Schedule of Values by the share of the GMP allocated to that portion of the Work in the Schedule of Values. The percentage completion of Work claimed by the CMGC must be validated by the Design Professional according to a rationale and basis of calculation acceptable to the Owner;

(b) Add that portion of the GMP properly allocable to materials and equipment delivered and suitably stored and otherwise in compliance with the Contract Documents;

(c) Add the Construction Fee, which will be calculated by multiplying the Construction Fee percentage defined in Addendum AA.2 (CMGC Compensation) by the sum of the amounts in Clauses (a) and (b) above.

(d) Subtract the aggregate of previous payments made by and retained by the Owner;

(e) Subtract the shortfall, if any, indicated by the documentation required to substantiate prior Applications for Payment under Subsection 13.2.3, or resulting from errors subsequently discovered by the Owner in such documentation;

(f) Subtract any amounts for which the OAR has withheld or nullified payment as provided in Section E.2.4 of the General Conditions or other Contract Documents; and

(g) Subtract five (5) percent retainage on the entire progress payment.

13.2.6 Representation by CMGC

The CMGC's Application for Payment(s) shall constitute the CMGC's representation that the quantity of Work has reached the level for which payment is requested, that the Work has been properly installed or performed in strict compliance with the Contract, and that the CMGC knows of no reason why payment should not be made as requested.

13.2.7 Engineer Evaluation of Payment Request

Subject only to the modifications and/or additions as provided in this section, if any, Subsection B.1.4 of the General Conditions is hereby incorporated by reference and made a part of this Agreement with the same force and effect as if set forth in full text herein. Owner's receipt of the Certificate for Payment that applies to an Application for Payment shall be a condition precedent to the Owner's obligation to make payment.

13.3 Dispute of Payment Amount

An Application for Payment not accompanied by the Certificate of Payment from the Design Professional, as required under Section 13.2.7, will not be deemed to have been received by the Owner. Within fifteen (15) business days of proper receipt of an Application for Payment, the Owner will notify the CMGC of any disputed amounts. The Owner and the CMGC agree to use their best efforts to resolve all disputes concerning the disputed amounts within thirty (30) days of the Owner's notice to the CMGC of the dispute. Owner's notification to the CMGC of a dispute shall toll the commencement of interest accrual on payments, as provided in Section E.2.1 of the General Conditions, until the dispute is settled.

13.4 Payments Withheld

With respect to Subsections E.2.4(a) and (b) of the General Conditions, the Owner may agree to payment upon receipt of a satisfactory Bond to Discharge Claim in the amount of double the claim. At the option of the Owner, adherence to the Project Schedule shall be a condition precedent to the right of the CMGC to demand payment of an Application for Payment. No omission on the part of the Owner to exercise the aforesaid option shall be construed to be a waiver of breach of the Project Schedule or acquiescence therein, and the Owner may exercise its option from time to time and as often as may be expedient.

The Owner shall not be liable to pay CMGC any amount for Fees or Cost of Work performed after the date of the GMP Amendment that, after the payment of such amount or any portion thereof, would cause the aggregate amount paid to CMGC hereunder to exceed the Guaranteed Maximum Price.

13.5 Retainage

Subject only to the modifications and/or additions as provided in this subsection, if any, retainage withheld from payments will be governed by Subsection E.5 of the General Conditions ('Retainage'), which is hereby incorporated by reference and made a part of this Agreement with the same force and effect as if set forth in full text herein.

13.6 Effect of Payment

Approval of an Application for Payment or issuance of a progress payment, release of retainage, final payment, or partial or entire use or occupancy of the Project by the Owner does not constitute acceptance of Work not conforming to the Contract Documents, or waiver the right to assert overpayment.

13.7 Final Payment

Final Payment shall be governed by Subsection E.6 of the General Conditions.

13.8 Payment upon Termination

Upon termination of this Agreement under any provision that provides for termination not caused by the fault of either party, payment shall be governed by this Section 13.

13.9 Tax Withholding

Subsection A.6 (“Retirement System Status and Taxes”) of the General Conditions is hereby incorporated by reference and made a part of this Agreement with the same force and effect as if set forth in full text herein.

Changes to the Work

Section 14

14.1 Changes to Work - General

Subject to the modifications, deletions, and/or additions as provided in this section, changes to the Work shall be governed by Subsections D.1 (‘Changes in Work’) and B.19 (‘Substitutions’) of the General Conditions, both of which are hereby incorporated by reference and made a part of this Agreement with the same force and effect as if set forth in full text herein.

14.1.1 Adjustments to Compensation under Change Order

Selection of the appropriate compensation calculation for any particular Change Order under Section D.1.3 of the General Conditions shall be at the discretion of the Owner.

14.1.2 Cost Reimbursement Basis for Adjustment to Compensation

If the Owner elects the cost reimbursement basis for adjustment to compensation under any particular Change Order, as outlined in Subsection D.1.3(c) of the General Conditions, this Subsection 14.1.2 shall govern the adjustment process and not Subsection D.1.3(c) of the General Conditions.

14.1.2.1 Method of Adjustment under Cost Reimbursement Basis

Compensation for changes to the Work, if applicable, shall be calculated on the basis of the actual, reasonable and allowable cost of labor, equipment, and material furnished to the Project, provided that all costs shall be subject to the limitations of Section 7 of this Agreement. Adjustment in the Construction Fee shall be subject to Section 6.1.2 of this Agreement.

14.2 Component Change Orders

The requirements of Section 14.1 of this Agreement shall apply only after the Construction Documents and/or applicable Component Construction Documents have been approved by the Design Professional, the Owner, and the CMGC, which approval shall be effective only upon Owner and CMGC signature on a stamped, official copy of the applicable plans issued by the Design Professional. Upon Approval, the CMGC shall have no authority to modify the design or construction of the Project except by Change Order under Section 14.1 of this Agreement. Prior to Approval, changes in the design shall be made through normal processes including but not limited to those provided in sections 2.7, 3.4, and 4.4 of this Agreement.

14.3 Adjustments to GMP

Adjustments to the GMP after execution of the GMP Amendment may be made only (i) in the event of changes to the Scope of Work, or (ii) as otherwise expressly provided in this Agreement, and then only in accordance with the following provisions:

14.3.1 CMGC to Monitor Plans

The CMGC shall review and monitor changes to the Plans and Specifications as they are prepared to determine whether, in the opinion of the CMGC, they result in a change to the Scope of Work sufficient to warrant an adjustment to the GMP.

14.3.2 GMP Change Request Notice

Changes to the GMP must be initiated by Notice in Writing from one party to the other (“GMP Change Request”). The CMGC shall deliver any such GMP Change Request to the Owner promptly after

becoming aware of grounds sufficient to justify an adjustment to the GMP. The GMP Change Request shall include, at minimum, a full description of the changes to the Scope of Work and the amount of the requested adjustment to the GMP.

14.3.3 GMP Change Request Deadline

The CMGC shall not be entitled to claim a GMP increase unless the CMGC submitted a GMP Change Request to Owner within the earlier of (a) fifteen (15) Days after the CMGC has received the information constituting the basis for the claim; (b) as to Work not yet bid or proposed, prior to submission of solicitations for such Work; (c) as to Work already solicited, prior to commencement of the portion of the Work for which the CMGC intends to claim a change in the Scope of Work.

14.3.4 Reconciliation of Justified GMP Change

The CMGC shall work with the Owner to reconcile all differences in the parties' respective opinions as to the amount of the GMP change that is justified. During the reconciliation process, the CMGC agrees to make all records, calculations, drawings and any other document or item relevant to the GMP Change Request available to Owner and to allow Owner access and opportunity to view such documents. The reconciliation request shall include, at minimum, the following: 1) confirmation that both parties share the same assumptions; 2) confirmation that both parties are basing their opinion of value on the same underlying data or facts; 3) identification of reasons for the CMGC's opinion as to the amount of the requested GMP change. The CMGC agrees to disclose all documentation necessary for Owner to confirm the basis for the GMP adjustment, which includes but is not limited to estimates, receipts, and invoices from Subcontractors and Suppliers.

The CMGC shall submit a reconciled GMP Change Request upon conclusion of the reconciliation process outlined above. Owner receipt of the reconciled GMP Change Request shall be a condition precedent to any CMGC claim for a GMP increase.

If the reconciled GMP Change Request is not acceptable to the Owner, the CMGC agrees to work with the Owner and the Design Professional to provide a GMP Change Request that is acceptable to the Owner.

GMP increases, if any, will not exceed the increased Cost of the Work arising from the scope change (regardless of the basis for the GMP change).

Increases to the Construction Fee shall be governed by Section 6.1.2 of this Agreement.

14.3.5 GMP Change Request from Owner

Owner may, at any time, submit a GMP Change Request requesting a reduction of the GMP, which shall include Owner's basis for such request. Such bases may include but not be limited to reduction of the CMGC's Contingency after further development of the Construction Plans that formed the basis for the original GMP Amendment, or unused Allowances.

14.4 Delays

Subject only to the modifications and/or additions as provided in this Section, if any, Subsection D.2 of the General Conditions ('Delays') is hereby incorporated by reference and made a part of this Agreement with the same force and effect as if set forth in full text herein.

14.5 Owner Discretion to Issue Change Order

Owner may at any time and at its discretion issue a construction change directive adding to, modifying or reducing the Scope of Work. CMGC and Owner shall negotiate the need for any additional compensation or additional time to complete the Project or any Component thereof related to the change, subject to the procedures for submitting requests or Claims for additional compensation or additional time. Unless otherwise directed by the Owner, the

CMGC shall proceed with the Work while any request or Claim is pending, including but not limited to, a request or Claim for additional compensation or additional time resulting from Work under a Change Order or construction change directive. Regardless of the review period or the final decision of the Owner, the CMGC shall continue to diligently pursue the Work as identified in the Contract Documents. In no case is the CMGC justified or allowed to cease Work without a written stop work order from the Owner.

14.6 Design Professional Authority as to Change Orders

Notwithstanding any provision in the Contract Documents to the contrary, the Design Professional has no authority to execute Change Orders or Amendments on behalf of the Owner, and only duly authorized personnel of the Owner may do so.

Contract Suspension or Termination

Section 15

15.1 Suspension of Work

Subject only to the modifications and/or additions as provided in this Section, Subsections J.1 thru J.3 of the General Conditions (under 'Suspension and/or Termination of the Work') shall be deemed incorporated by reference and made a part of this Agreement with the same force and effect as if set forth in full text herein.

15.1.1 Owner's Right to Suspend Work

If the suspension was required due to acts or omissions of CMGC, the CMGC shall not be entitled to any adjustments or modifications to the Project Schedule and may be subject to payment of Liquidated Damages under Section 15.4. If the suspension was caused by acts or omissions of the Owner, or through no fault of either the Owner or the CMGC, the CMGC shall be entitled to an appropriate extension of time to complete the Work and modification to the Project Schedule.

15.1.2 Owner's Suspension Right Independent of Design Professional's Right

The rights granted to Owner under this subsection 15.1 are independent of the duty and obligation of the Design Professional to stop the Work for nonconforming work or to issue orders of condemnation for nonconforming work.

15.2 Termination of Work

Subject to the modifications and/or additions as provided in this section, Subsections J.4 thru J.6 of the General Conditions (under 'Suspension and/or Termination of the Work') shall be deemed incorporated by reference and made a part of this Agreement with the same force and effect as if set forth in full text herein. Notwithstanding incorporation of Subsections J.4 thru J.6 of the General Conditions, the provisions of this Section 15.2 prevail in the event of termination by the Owner.

15.2.1 Lack of Funding

Owner may terminate the Contract, in whole or in part, immediately upon notice to the CMGC, or at such later date as Owner may establish in such Notice, upon Owner's failure to receive funding, appropriations, anticipated grant funding, or expenditure authority at levels sufficient to pay any of the Owner's payment obligations under this Agreement.

Owner reasonably believes that sufficient funds are anticipated to be available to pay all amounts due hereunder and hereby covenants and agrees that it will use its best efforts to obtain and properly request and pursue funds from which payments hereunder may be made, including making provisions for such payments to the extent necessary in the Owner's budget and to use all reasonable efforts to secure the approval of the budget.

If, despite reasonable efforts, Owner does not receive sufficient funds to continue the Project and make payments hereunder, Owner may terminate the Contract without penalty, by Notice to the CMGC; if not so terminated Owner will remain fully obligated for all amounts owing hereunder. Such termination shall not constitute an event of default under any other provision of the Contract, but Owner shall be obligated to pay all costs properly incurred up to the date of Termination. Owner shall give the CMGC Notice of such non-availability of funds within thirty (30) Days after it received notice of such non-availability.

15.2.2 Lack of Authority

Owner may terminate the Contract, in whole or in part, immediately upon notice to the CMGC, or at such later date as Owner may establish in such notice, upon the occurrence of any of the following events:

15.2.2.1 Funding Source Regulations

Modification or interpretation of Federal or state laws, regulations or guidelines in such a way that either the Preconstruction or Construction Services performed under the Contract are prohibited, or Owner is prohibited from paying for such services, by regulations governing the planned funding source;

15.2.2.2 Government Order

Issuance of an order of a court or other public authority having jurisdiction;

15.2.2.3 An act of government

Any other act of government that substantially interferes with the capacity of Owner to fund the Project.

15.2.3 Owner's Right to Terminate Prior to Execution of GMP Amendment

Prior to execution by both Parties of the GMP Amendment, the Owner may terminate this Contract at any time without cause. Upon such termination, the amount to be paid to the CMGC will not exceed the Preconstruction Fee owed the CMGC under Section 13.1 to the date of termination plus the amounts due under any Early Work Amendment, if applicable, to the date of termination. If the Owner terminates for convenience during the Preconstruction Phase, the Owner will be entitled to copies of, and will have the right to use, all Work product of the CMGC and its Subcontractors performed to the date of termination, and the CMGC will deliver copies of the same to the Owner on request.

15.2.4 Owner's Right to Terminate after GMP Amendment

After the GMP Amendment is executed by both Parties and upon seven (7) business days' written notice, the Owner may terminate the Contract without penalty, in which case the CMGC will be entitled to payment in proportion to the Work completed to the date of termination but otherwise shall be governed by Section 13 of this Agreement, and in any event not in excess of the GMP.

15.2.5 Owner's Termination for Cause

In the event of termination of this Contract by the Owner for default pursuant to the Contract, the amount, if any, to be paid to the CMGC will not exceed the amount the CMGC would be entitled to receive under Section 15.2.4.

15.2.6 CMGC Termination for Cause

The CMGC acknowledges that disputes regarding payments and Change Orders may occur as part of the construction process, and the CMGC agrees that the Owner's nonpayment of disputed amounts will not be grounds for suspension of the Work or termination for cause by the CMGC. If the CMGC terminates

this Contract for the Owner's material breach, the amount to be paid to the CMGC will not exceed the amount the CMGC would have been entitled to receive under Section 13.

15.3 No Consequential Damages

In the event of Termination, regardless of which party terminates and regardless of the provision under which it is executed, neither Party shall be entitled to consequential damages, exemplary damages, compensation for lost opportunity, or lost profits.

15.4 Liquidated Damages

Notwithstanding provisions in the Contract Documents providing for extensions of time to the Project Schedule, the Owner and the CMGC agree that timely completion of the Work is essential to the success and grant-funding eligibility of the Project, and that approval for time extension will be granted only as a last resort. The CMGC agrees to make every effort to maintain the Project on schedule and a Float balance greater than zero.

The CMGC acknowledges that the Owner will sustain damages as a result of the CMGC's failure to substantially complete the Project in accordance with the Contract Documents. These damages may include, but are not limited to, delays in use of the Project, additional Contract administration costs, additional overhead and general administrative costs, concessions to tenants of the Owner as compensation for lack of access to production facilities, and use of temporary facilities. The CMGC and the Owner acknowledge that the actual amount of damages would be difficult to determinate accurately and agree that the following liquidated damages figure represents a reasonable estimate of such damages and is not a penalty. Liquidated damages will be \$300.00 for each day that Substantial Completion exceeds the required date of Substantial Completion. The CMGC agrees to pay to the Owner the Liquidated Damage sums set forth above for each day of delay or any fraction thereof, and further agrees that the Owner may deduct such sums from payments the Owner otherwise owes to the CMGC under the Contract. If such deduction does not result in payment to the Owner of the assessed Liquidated Damages in full, the CMGC will promptly pay and all remaining sums due to the Owner upon demand.

15.5 Compromise of Grant Award

As outlined in Section 15.2.1, the CMGC acknowledges that the Project may be partially financed by state or federal grant funds and that completion of the Project in full conformance with the Contract Documents is highly likely to be a condition precedent to the Owner's eligibility to receive reimbursement under any grant agreement between the Port and the grant agency providing funds for the Project. The CMGC hereby agrees to be liable for the full amount of all grant-eligible Project costs for which reimbursement is denied due to delay in Project completion or any other failure of conformance to the Contract Documents that results in any such denial of reimbursement to the Owner under any such grant agreements. Upon Notice to the CMGC of any such denial, and submission of appropriate supporting documents, the CMGC agrees to promptly remit payment to the Owner for the full amount of such losses to the Owner as are described in this subsection.

15.6 Continuation of the Work

Unless otherwise agreed in writing, and notwithstanding any other rights or obligations of either of the Parties under any Contract Documents, the CMGC must carry on with the performance of its contract services and the Work, including all duties and obligations hereunder, during the pendency of any Claim, dispute, or other matter in question, or during any alternative dispute resolution proceeding, court proceeding, or other proceeding to resolve any claim, dispute, and other matter in question. During the pendency of any such claim, dispute, matter in question, or alternative dispute resolution process, Owner will continue to make payments in accordance with the Contract Documents. The Owner, however, is under no obligation to make payments on or against such claims, disputes, and other matters in question during the time required to resolve such claims, disputes, and other matters in question.

Contract Adjustments; Disputes

Section 16

16.1 Claim Process

16.1.1 Initial Request; Time Limit

If circumstances arise that the CMGC believes warrant an adjustment in the Contract terms, Cost of the Work, Project Schedule, or other relief, the CMGC shall make a request for such adjustment or modification to the Owner by Notice in Writing. The request must be made within fourteen (14) days after such circumstance arise or should have been first observed. Any and all requests not made within fourteen (14) days are barred, waived, released, and discharged. Denial of the request by the Owner shall trigger the provisions of the Claims process, which, with the exception of those modifications or additions in this Subsection, shall be governed by Section D.3 of the General Conditions ("Claims Review Process"), which are hereby incorporated into this Agreement by reference and made a part of this Agreement with the same force and effect as if set forth in full text herein.

16.1.2 Litigation

Any Claim between Owner and Contractor that arises from or relates to this Contract and that is not resolved through the Claims Review Process in Section D.3 of the General Conditions shall be brought and conducted solely and exclusively within the Circuit Court of Clatsop County for the State of Oregon; provided, however, if a Claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. In no event shall this section be construed as a waiver by the State of Oregon on any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any claim or from the jurisdiction of any court. CONTRACTOR BY EXECUTION OF THIS CONTRACT HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF THE COURTS REFERENCED IN THIS SECTION 16.1.2.

16.2 Other Contracts

Subject only to the modifications and/or additions as provided in this section, if any, Subsections B.13 ('Owner's Right to do Work') and B.14 ('Other Contracts') are hereby incorporated by reference and made a part of this Agreement with the same force and effect as if set forth in full text herein.

The Owner reserves the right at any time and from time to time upon notice to CMGC to perform, or cause to be performed by Separate Contractors, other work at the Project Site in connection with the development of the Project that is not contemplated hereby or that is contemplated hereby if the CMGC and the Owner shall be unable to agree upon a Change Order incorporating such work as Work of the CMGC under this Contract. In either case, the Owner shall assure that such personnel or contractors do not cause any conflict with the Work of CMGC. CMGC shall afford the Owner and other contractors a reasonable opportunity for the introduction, protection, and storage of material and equipment at the Site and the execution of work, and shall properly coordinate its work with theirs. If any work by the Owner or its other contractors increases CMGC's costs or extends the time of performance, CMGC shall be entitled upon timely claim to a Change Order for payment by Owner of any reasonable costs actually incurred by CMGC as a result thereof and to an extension of time for performance for such reasonable time as the Design Professional shall determine. CMGC has no responsibility hereunder to certify the suitability or correctness of any work performed by Owner's own personnel or Separate Contractors.

Contract Close Out

Section 17

Subject only to the modifications and/or additions as provided in this section, Section K of the General Conditions (“Contract Close Out”) shall be deemed incorporated by reference and made a part of this Agreement with the same force and effect as if set forth in full text herein.

The CMGC shall deliver to Owner a full-size copy of all As-Built Plans, including drawings, plans, or other documents - similar in size to the Construction Documents but in no event larger than 30" x 40" - reflecting changes in the Construction of the Project made during construction and based on marked-up prints, drawings or other data. The CMGC shall also provide CAD drawings in appropriate electronic form – and compatible with AutoCAD 2000 or the current release in use by the Design Professional.

The Record Documents shall be delivered to Owner on hard drive (“thumb drive,” “flash drive,” or USB stick”) and in paper format upon completion of the Construction services and as a condition to final payment. The CMGC is solely responsible to Owner for the accuracy of the Record Documents and the information upon which the Record Documents are based.

Contract Documents

Section 18

18.1 Consistency of Contract Documents Presumed

The Contract Documents comprise the entire agreement listed below are intended to work together as one consistent and harmonious agreement. Wherever possible, all Contract documents will be construed as consistent with each other. If apparently conflicting provisions cannot be reasonably construed as consistent, the agreement between the Parties shall be governed by the provisions of the document highest in the order of preference listed below, the lowest number having the highest priority. Section A.3.1 of the General Conditions are not incorporated into this Agreement; this section supersedes the provisions of section A.3.1 of the General Conditions. The list below is not intended to be an exhaustive list of every possible Contract document that governs the entire agreement between the parties.

1. Contract Amendments, with those of a later date having precedence over those of an earlier date
2. Change Orders, with those of a later date having precedence over those of an earlier date
3. This Agreement, including all exhibits and material incorporated herein by reference
4. Construction Plans and Specifications
5. Permits and Orders issued by any government or quasi-governmental unit or political subdivision having jurisdiction over the Project, the Site, or the Work
6. Project Schedule
7. General Conditions
8. Documents incorporated into the Contract by reference
9. The RFP issued by the Port of Astoria for the rehabilitation of Pier 2 West
10. The complete Proposal submitted by the CMGC in response to the RFP for this Project.

18.2 Incorporation of Proposal Certification Statement

Addendum RA.4 (Proposer Information and Certification Statement) to the CMGC’s Proposal is hereby incorporated by reference and made a part of this Agreement with the same force and effect as if set forth in full text herein.

Required Provisions

Section 19

19.1 Recycle and Salvage

19.1.1 Recycled Materials

As required by ORS 279A.125, the CMGC shall give preference to the use of recycled materials if recycled materials are available, meet applicable standards, the cost does not exceed the comparable non-recycled material by more than 5%, and the recycled alternative can feasibly be substituted.

19.1.2 Construction Debris

As required under ORS 279C.510(1), the CMGC shall salvage or recycle construction and demolition debris, if feasible and cost-effective.

19.2 Payment

19.2.1 Prompt Payment

19.2.1.1 CMGC Payment to Subcontractors

As required by ORS 279C.505(1), the CMGC shall:

(a) *Make payment promptly*, as due, to all Persons supplying to the contractor labor or material for the performance of the work provided for in the contract.

(b) Pay all contributions or amounts due the Industrial Accident Fund from the contractor or subcontractor incurred in the performance of the contract.

(c) Not permit any lien or claim to be filed or prosecuted against the state or a county, school district, municipality, municipal corporation or subdivision thereof, on account of any labor or material furnished.

(d) Pay to the Department of Revenue all sums withheld from employees under ORS 316.167.

19.2.1.2 Late CMGC Payment to Subcontractors - Penalty

As required by ORS 279C.515(2), if the contractor or a first-tier subcontractor fails, neglects or refuses to pay a Person that provides labor or materials in connection with the public improvement contract *within 30 days after receiving payment from the contracting agency or a contractor*, the contractor or first-tier subcontractor owes the Person the amount due plus *interest charges that begin at the end of the 10-day period within which payment is due under ORS 279C.580 (4)* and that end upon final payment, unless payment is subject to a good faith dispute as defined in ORS 279C.580. The rate of interest on the amount due is *nine percent per annum*. The amount of interest may not be waived.

19.2.1.3 Contract between CMGC and Subcontractors – Required Provisions

19.2.1.3.1 Late Payment Penalty Clause

As required by ORS 279C.580(4), the CMGC shall include a payment clause and an interest penalty clause in each of the first-tier subcontractor's subcontracts that conforms to the standards defined in ORS 279C.580(3). In addition, the CMGC shall also require each of the CMGC's first-tier subcontractors to include the same clauses in the first-tier subcontractors' subcontracts with each lower-tier subcontractor or supplier.

19.2.1.3.2 Complaint Clause

As required by ORS 279C.515(3), the CMGC shall include a clause in every contract related to this Agreement that if the contractor or a subcontractor fails, neglects or refuses to pay a person that provides labor or materials in connection with the public improvement contract [the Work], the person may file a complaint with the

Construction Contractors Board, unless payment is subject to a good faith dispute as defined in ORS 279C.580.

19.2.2 Owner may Charge Contractor for Failure to Pay

As required by ORS 279C.515(1), if the contractor fails, neglects or refuses to pay promptly a person's claim for labor or services that the person provides to the contractor or a subcontractor in connection with the public improvement contract as the claim becomes due, the proper officer that represents the state or a county, school district, municipality or municipal corporation or a subdivision of the state, county, school district, municipality or municipal corporation may pay the amount of the claim to the person that provides the labor or services and charge the amount of the payment against funds due or to become due the contractor by reason of the contract.

19.3 Medical Payments by CMGC

As required by ORS 279C.530(1), the CMGC shall promptly, as due, make payment to any person, copartnership, association or corporation furnishing medical, surgical and hospital care services or other needed care and attention, incident to sickness or injury, to the employees of the contractor, of all sums that the contractor agrees to pay for the services and all moneys and sums that the contractor collected or deducted from the wages of employees under any law, contract or agreement for the purpose of providing or paying for the services.

19.4 Drug Testing Program

As required under ORS 279C.505(2), the CMGC shall demonstrate that an employee drug testing program is in place.

19.5 Worker's Compensation

As required under ORS 279C.530(2), the CMGC attests that it is either a subject employer required to comply with ORS 656.017 (worker's compensation), or an employer that is exempt under ORS 656.126. If the CMGC employs subject Workers who provide Work under this Agreement in the State of Oregon, Contractor shall comply with ORS 656.017 and provide the required Worker's Compensation coverage, unless such employers are exempt under ORS 656.126. Contractor shall ensure that each of its subcontractors complies with these requirements.

19.6 Hours of Labor

As required under ORS 279C.520 and ORS 279C.540, the CMGC shall ensure that no person is employed for more than 10 hours in any one day, or 40 hours in any one week, except in cases of necessity, emergency or when the public policy absolutely requires it, and in such cases, except in cases of contracts for personal services as defined in ORS 279C.100, the employee shall be paid at least time and a half pay:

(a)

(A) For all overtime in excess of eight hours in any one day or 40 hours in any one week when the work week is five consecutive days, Monday through Friday; or

(B) For all overtime in excess of 10 hours in any one day or 40 hours in any one week when the work week is four consecutive days, Monday through Friday; and

(b) For all work performed on Saturday and on any legal holiday specified in ORS 279C.540.

Each employer performing work under this Agreement must give written notice to employees who work on the project of the number of hours per day and days per week that the employees may be required to work. Such notice must be given either at the time of hire or before commencement of work on the contract, or by posting a notice in a location frequented by employees.

19.7 Prevailing Wage

19.7.1 Contracts Must State Prevailing Wages

Pursuant to ORS 279C.830(1)(a), all contracts or subcontracts entered into by the CMGC under this Agreement shall state the Oregon prevailing wage in effect at the time the work under this Agreement was first advertised. This provision may be complied with by referencing the current source of prevailing wages at the Oregon BOLI website located here:

<https://www.oregon.gov/boli/employers/Pages/prevailing-wage-rates.aspx>

For purposes of compliance with this provision as to this Agreement, the posted rates are herein incorporated by above reference.

19.7.2 Contracts Must Require Payment of Prevailing Wages

As required by ORS 279C.83(1)(c), all contracts or subcontracts entered into by the CMGC under this Agreement must provide that the workers must be paid not less than the specified minimum hourly rate of wage in accordance with ORS 279C.838 and 279C.840.

19.7.3 CMGC Must Pay Prevailing Wages

As required by ORS 279C.840, the hourly rate of wage that the CMGC or any contractor or subcontractor performing Work under this Agreement must pay to workers may not be less than the prevailing rate of wage as referenced above in this subsection.

19.7.4 Federal Prevailing Wages

The CMGC is hereby notified that due to the possibility of federal funding for the Project to be completed under this Agreement, the CMGC shall, in addition to the other requirements in this subsection:

- (a) state the federal prevailing wage rates required under the Davis-Bacon Act (40 U.S.C 3141 et seq.) in effect at the time the work under this Agreement was first advertised;
- (b) require payment of federal prevailing wage rates, if applicable, in its contracts and subcontracts entered into under this Agreement;
- (c) as required by ORS 279C.830(1)(b) and (d) and ORS 279C.838, pay the higher of the applicable state or federal prevailing rate of wage to all workers on the public works.

19.7.5 Prevailing Wage Certification

19.7.5.1 Payroll Certification Requirement

Pursuant to ORS 279C.845, by the fifth business day of the month following performance of work under this Agreement, the Contractor or subcontractor, as appropriate, shall deliver or mail to the Port written, certified statements, on a form prescribed by the BOLI Commissioner, certifying: (a) The hourly rate of wage paid each worker whom the contractor or the subcontractor has employed upon the public works; and (b) That no worker employed upon the public works has been paid less than the prevailing rate of wage or less than the minimum hourly rate of wage specified in the contract.

The certified statements shall set out accurately and completely the payroll records for the prior week, including the name and address of each worker, the worker's correct classification, rate of pay, daily and weekly number of hours worked, deductions made and actual wages paid. The certified statement shall be verified by the oath of the Contractor or the contractor's surety, or subcontractor or the subcontractor's surety, that the Contractor or subcontractor has read the certified statement and knows the contents thereof and that the same is true to the Contractor's or subcontractor's knowledge.

Compliance with this provision may be satisfied by submission of the completed Form WH-38, attached to this Agreement as Exhibit AE.1.

19.7.5.2 Port to Retain 25% when Certification not Filed

Pursuant to ORS 279C.845(7), and notwithstanding and in addition to any other rights to retainage under this Agreement, the Port shall retain 25 percent of any amount earned by the Contractor under this Agreement until the Contractor has filed with the Port the certified statements as required under this subsection 19.7.5. The Port shall pay the Contractor the amount retained under this provision within 14 days after the Contractor files the certified statements, regardless of whether a subcontractor has failed to file certified statements as required by ORS 279C.845(8). The Port has no obligation to verify the truth of the contents of the certified statements so filed.

19.7.5.3 Contractor to Retain 25% when Certification not Filed

As required by ORS 279C.845(8), the CMGC shall retain 25 percent of any amount earned by a first-tier subcontractor on the Project until the subcontractor has filed with the Port the certified statements as required by this Section 19.7.5. The contractor shall verify that the first-tier subcontractor has filed the certified statements before the contractor may pay the subcontractor any amount retained under this subsection. The contractor shall pay the first-tier subcontractor the amount retained under this subsection within 14 days after the subcontractor files the certified statements as required by this section. The CMGC is not required to verify the truth of the contents of certified statements filed by a first-tier subcontractor under this subsection.

19.8 Public Works Bond

19.8.1 As to CMGC

As required under ORS 279C.830(2) and OAR 137-049-0815, the CMGC shall have a public works bond filed with the Construction Contractors Board before starting work on the Project, unless the CMGC is exempt under ORS 279C.836 (4), (7), (8) or (9).

19.8.2 As to subcontracts

As required under ORS 279C.830(2), the CMGC shall require that every Subcontractor have a public works bond filed with the Construction Contractors Board before starting work on the project, unless the Subcontractor is exempt under ORS 279C.836 (4), (7), (8) or (9). Further, every Subcontract that the CMGC or Subcontractor awards in connection with this Agreement must require any Subcontractor to have a public works bond filed with the Construction Contractors Board before starting work on the public works project, unless the Subcontractor is exempt under ORS 279C.836 (4), (7), (8) or (9)

19.9 Construction Contractors Board

The CMGC shall provide certification, in a form acceptable to the Port, that both the CMGC as well as all subcontractors are registered with the Construction Contractor's Board or will be so registered prior to commencing any Work under this Agreement.

19.10 Disadvantaged Business Enterprise

Due to the possibility of federal funds assisting in the financing of the Project, the CMGC must comply with the DBE program requirements of 49 C.F.R. part 26, when applicable. As part of such compliance, the following contract clause shall be required in all subcontracts: "The contractor, subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor, subrecipient or subcontractor shall carry out applicable requirements of 49 C.F.R. part 26 in the award and administration of any subcontracts that may be awarded by the contractor, subrecipient or

subcontractor. Failure by the contractor, subrecipient or subcontractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the Owner deems appropriate.

19.11 Other Laws

Without limiting the generality of the foregoing, the CMGC expressly agrees to comply with the following laws, regulations and executive orders to the extent they are applicable to the Agreement: (i) Titles VI and VII of the Civil Rights Act of 1964, as amended; (ii) Sections 503 and 504 of the Rehabilitation Act of 1973, as amended; (iii) the Americans with Disabilities Act of 1990, as amended; (iv) Executive Order 11246, as amended; (v) the Health Insurance Portability and Accountability Act of 1996; (vi) the Age Discrimination in Employment Act of 1967, as amended, and the Age Discrimination Act of 1975, as amended; (vii) the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended; (viii) ORS Chapter 659, as amended; (ix) all regulations and administrative rules established pursuant to the foregoing laws; and (x) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations. These laws, regulations and executive orders are incorporated by reference herein to the extent that they are applicable to the Agreement and required by law to be so incorporated.

Miscellaneous Provisions

Section 20

20.1 Governing Law; Jurisdiction; Venue.

The Contract between the Parties shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively "Claim") between Owner and the CMGC that arises from or relates to the Contract shall be brought and conducted solely and exclusively within the Circuit Court of Clatsop County for the State of Oregon; provided, however, if a claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. In no event shall this subsection be construed as a waiver by the Port of Astoria of any form of defense or immunity, whether based on sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the United States Constitution or otherwise. CMGC, BY EXECUTION OF THIS DESIGN BUILD AGREEMENT, CONSENTS TO THE PERSONAL JURISDICTION OF SUCH COURTS.

20.2 Notices

Except as otherwise expressly provided in this Agreement or in any of the Contract documents, all notices given by either party in the performance of the Contract shall be Notices in Writing as defined in Section 1.6.39 ("Notice in Writing").

20.3 Disclosure of Federal Tax ID Number

The CMGC shall provide its federal tax ID number to Owner, to be used solely for the administration of state, federal and local tax laws, and grant administration requirements.

20.4 Severability

The Parties agree that if any term or provision of the Contract is declared by a court of competent jurisdiction to be illegal, in conflict with any law, or otherwise invalid, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if the Contract did not contain the particular term or provision held to be invalid.

20.5 Failure to Enforce is not Waiver

The failure of any of the parties hereto to at any time enforce any of the provisions of this Agreement shall not be deemed or construed to be a waiver of any such provision, nor to in any way effect the validity of this Agreement

or any provision hereof or the right of any of the parties hereto to thereafter enforce each and every provision of this Agreement. No waiver of any breach, non-compliance or non-fulfillment of any of the provisions of this Agreement shall be effective unless set forth in a written instrument executed by the party or parties against whom or which enforcement of such waiver is sought; and no waiver of any such breach, non-compliance or non-fulfillment shall be construed or deemed to be a waiver of any other or subsequent breach, non-compliance or non-fulfillment.

20.6 Media Contacts; Confidentiality

The CMGC shall provide no news release, press release, or any other statement to a member of the news media regarding this Project, without Owner's prior written authorization. Furthermore, except in the case where Owner specifically authorizes disclosure of Owner's confidential information in writing, the CMGC shall maintain the confidentiality of Owner's information pertaining to the Project, unless withholding such information would violate the law, create the risk of significant harm to the public or prevent the CMGC from establishing a claim or defense in an adjudicatory proceeding. The CMGC shall require all of its Subcontractors to maintain a similar level of confidentiality of Owner's information.

20.7 Conflict of Interest

The CMGC covenants that it presently has no interest and shall not acquire any interest, direct or indirect, that would compromise the CMGC's professional judgment with respect to this Project or conflict in any manner or degree with the performance required under this Agreement. The CMGC further covenants that, in the performance of this Agreement, it will not employ or enter into any contract with any Person having any such interest.

20.8 Assignment

This Agreement and all rights and obligations hereunder may not be assigned without the written consent of the Owner. Contractor shall not assign, sell, or transfer its rights, or delegate its responsibilities under this Agreement, in whole or in part, without the prior written approval of the Owner. No such written approval shall relieve the CMGC of any obligations of this Agreement, and any transferee shall be considered the agent of the Contractor and bound to perform in accordance with the Contract documents. Unless explicitly negotiated otherwise in the assignment documents, the CMGC shall remain liable as between the original parties to the Agreement as if no assignment had occurred.

The provisions of this Agreement shall be binding upon and shall accrue to the benefit of the parties to this Agreement and their respective permitted successors and assigns.

20.9 Merger

The Contract Documents constitutes the entire agreement between the parties. The terms of the Contract cannot be waived, altered, modified, supplemented, or amended, in any manner whatsoever, except by written instrument signed by both parties. Any such waiver, alteration, modification, supplementation, or amendment, if made, shall be effective only in the specific instance and for the specific purpose given. There are no understandings, agreements, or representations, oral or written, regarding the Contract between the parties except as contained, incorporated, or referenced therein. The CMGC, by the signature below of its authorized representative, hereby acknowledges that it has read this Agreement and other documents that comprise the Contract between the parties, understands it, and agrees to be bound by its terms and conditions. This Agreement may be executed in several counterparts, each of which shall be an original, and all of which shall constitute but one and the same instrument.

20.10 No Third-Party Beneficiaries

This Agreement is intended for the benefit of the parties hereto and their respective permitted successors and assigns, and is not for the benefit of, nor may any provision hereof be enforced by, any other person. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide, any benefit or right, whether

directly, indirectly, or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Agreement.

20.11 Time is of the Essence

The parties hereby agree that time is of the essence with respect to performance of each of the parties' obligations under this Agreement. The parties agree that in the event that any date on which performance is to occur falls on a Saturday, Sunday or state or national holiday, then the time for such performance shall be extended until the next business day thereafter occurring.

20.12 Force Majeure

Subject only to the modifications and/or additions as provided in this subsection, if any, subsection F.7 ('Force Majeure') of the General Conditions is hereby incorporated by reference and made a part of this Agreement with the same force and effect as if set forth in full text herein.

Signatures

IN WITNESS WHEREOF, the parties have executed this Construction Manager/General Contractor agreement, which shall be effective as of the last date written below.

Construction Management/General Contractor (CMGC):

By: _____ Date: _____

Title: _____

Port of Astoria

By: _____ Date: _____

Title: _____

Approved as to Legal Sufficiency Eileen Eakins, Attorney for Port of Astoria:

By: _____ Date: _____

Request for Proposals (“RFP”)

Port of Astoria

Construction Manager/General Contractor

Pier 2 West Rehabilitation

ISSUE DATE: August 1, 2022

Ignore the dates: these will be updated once the Port decides the exact date of RFP issuance.

PROPOSAL DEADLINE: **September 30, 2022, at 5:00 P.M. PDT**

CONTACT (Project Manager) Matt McGrath, Deputy Director
422 Gateway Ave, Suit 100
Astoria, OR 97103
mmcgrath@portofastoria.com
Phone: 503-741-3336
Fax: 503-741-3345

1 General Announcement

1.1 Services Requested

The Port of Astoria ("Port") requests proposals from experienced Construction Manager/General Contractors ("CMGC") for the design and rehabilitation of Pier 2 West (the "Project"). The Port intends to enter into a contract with the selected CMGC Contractor for both Preconstruction and Construction Phase services, the latter based on a Guaranteed Maximum Price (GMP). At the completion of the Preconstruction Phase, the CMGC will submit a GMP proposal, and if acceptable, the Port and the CMGC will execute a GMP Amendment for construction services.

1.2 Critical Deadlines

MANDATORY PRE-PROPOSAL CONFERENCE. See Section 4.1.7 below.

PROPOSAL SUBMISSION DEADLINE. The deadline for submissions (Closing) is provided in the Selection Schedule (Addendum RA.2), attached hereto. Proposals received after Closing will be returned unopened and will not be considered. Sealed Proposals will be accepted in the manner described in this RFP during the Port's normal business hours of 8 am to 5 pm Pacific Time (legal holidays excepted). Each Proposer is solely responsible for ensuring its Proposal is received in accordance with the RFP requirements. The Port of Astoria is not responsible for delays in mail or by common carriers, transmission errors, or mistaken delivery. A Proposal submitted by any means not authorized will be rejected. Proposals will be publicly opened shortly after Closing, and the names of all Proposers will be disclosed at that time. Submitted proposals will be available for public inspection only after the Notice of Intent to Award has been issued. Proposal preparation costs are the responsibility of the proposing firm.

1.3 Pre-Requisites

OREGON CONSTRUCTION CONTRACTORS BOARD. All Proposers must be registered with the Oregon Construction Contractors Board prior to submitting Proposals. Failure to provide proof of registration will be cause to reject a Proposal as non-responsive.

PREVAILING WAGES. The provisions of ORS 279C.800 through 279C.870 (regarding prevailing wage rates) apply to the Project. Both the CMGC and all subcontractors must comply with these requirements.

RIGHT TO REJECT. The Port reserves the right to reject any proposal not in compliance with all prescribed requirements. The Port may reject for good cause any or all proposals if, in the Port's sole discretion, it is in the public interest to do so.

1.4 RFP AVAILABILITY

In an effort to simplify the overall process and ensure that all Proposers receive a complete RFP (i.e., including all addenda, exhibits and schedules), this RFP document will include all such ancillary documents within [this] main RFP document itself, *with the sole exceptions of the 'Construction Manager/General Contractor Services Agreement' (attached as Exhibit RE.1 and hereafter, "Agreement") and the Construction Documents (Exhibit RE.3)*. The Port seeks to ensure that Proposers may properly certify to the receipt of all such ancillary documents in accordance with Section 3 of the Certification Sheet (Addendum RA.4).

1.5 Authority

The Port of Astoria is issuing this RFP under the authority of ORS 279C.337, the Port's Public Contracting Rules (Resolution 2017-07), and Resolution 2022-03, declaring an exemption from traditional competitive bidding and authorizing the use of an alternative method of contracting.

1.6 Solicitation Protests and Requests

Pursuant to OAR 137-049-0260, a Proposer may submit written questions, file a written protest, or make a written request for changes to any part of the RFP package. All questions, protests, or change requests must be delivered in writing to Matt McGrath on or before the 'Deadline for Written Questions,' as defined on Addendum RA.2 (Selection Schedule). The Port will consider each protest or request, amend the RFP accordingly if warranted, and will notify in writing each prospective Proposer of any change.

No amendment to this RFP shall be effective unless made in writing and signed by the authorized Port representative.

1.7 Cancellation of RFP

The Port reserves the right to terminate this solicitation prior to the execution of a contract if the Port finds that cancellation is in the public interest.

2 Project Overview & Background

2.1 Pier 2 West Structure

Originally built in the 1940s, Pier 2 West is an elevated timber dock fronting a finger of land and retained by a vertical steel bulkhead wall. The steel bulkhead wall extends along the back (east) edge of the timber dock and runs the full length of the dock along Pier 2 West. A long, pre-engineered steel framed warehouse, along with multiple building additions, are located on the fill behind the bulkhead wall. It is estimated that the last major renovation work was completed in the 1960s. When first constructed, the cedar piling - some more than 90 feet long - directly supported the deck of the pier. Over time, the upper portions of the piling decayed, necessitating the removal of a short section of the upper, non-buried portion of the piling. A "mud sill" must then be installed on top of the cut-off piling and the intervening space fitted with a "post" to take the place of the previously decayed piling. Consequently, the current configuration of the pier generally consists of cedar piling, sill plates, posts, caps, girders, and decking (see Exhibit RE.2, Diagram 2).

2.2 Pier 2 West Condition

The dock and the seawall are in poor to critical condition. Sixty-two percent of the bents were rated as "Urgent" or "Critical" by the Oregon Dept of Transportation in 2017. Weight restrictions were imposed, and sections of the dock cordoned off and prohibited from use because of bearing loss. Thirty-one percent of the posts need to be replaced. Eight hundred and forty discrete areas of the dock have suffered bearing loss. Localized seawall failures have caused sudden, catastrophic subsidence (very similar to a sinkhole) on the west side of the warehouse, damaging capital infrastructure, interrupting production, and necessitating immediate, expensive repairs. Together, the ground subsidence and deteriorating dock are negatively impacting tenant operations and pose increasing risk to the users and the warehouse structures in the vicinity.

2.3 Project Purpose

The purpose of the project is to rehabilitate Pier 2 West under a design that maximizes structural integrity and functionality with the least expensive option and restore full operational viability in order to maintain existing seafood processing operations. Partial design work has been completed (existing design documents – see Exhibit RE.3). Five rehabilitation options, all based on the two basic variables of a) seawall location, and b) timber vs steel piling, were identified by the engineer and briefly summarized here: 1a) new seawall near existing seawall location and existing [timber] dock repaired with timber components; 1b) new seawall near existing seawall location and dock replaced with new steel and concrete elevated dock; 2) new seawall installed at existing face of dock and back-filled and paved; 3a) new seawall installed half-way between existing seawall and existing face of dock and remaining elevated dock repaired with timber components; 3b) new seawall installed half-way between existing seawall and existing face of dock and remaining dock replaced with steel and concrete. Part of the CMGC’s responsibility will be to identify the most cost-effective solution.

3 Services To Be Provided

3.1 Description of Services

Preconstruction Phase Services. The CMGC, in consultation with the Design Professional and the Port, will provide all services outlined in the Agreement (Exhibit RE.1) that pertain to the Preconstruction Phase, most but not all of which are outlined in Section 3 & 4 of the Agreement. The CMGC will provide consulting services to the Port and the Design Professional necessary to select the best rehabilitation option in light of the Port’s purposes and budget constraints; assist in advancing the design documents to completion; and finalize the Project Schedule and Construction Budget. The Schedule and Budget will be incorporated into the GMP Amendments provided in the Agreement.

Construction Phase Services. Upon execution of the GMP Amendment, the CMGC shall provide all services in the Agreement pertaining to construction of the new pier, including but not limited to those outlined in Sections 4 & 5 of the Agreement. During this phase the CMGC shall provide all materials, tools, equipment, labor, and professional and non-professional services, and shall perform all other acts and supply all other things necessary to perform and complete the Work, as required by the Contract Documents. The CMGC will also be responsible for ongoing management and monitoring of the Construction Budget and Project Schedule.

The selected CMGC will be required to document good faith efforts to develop business opportunities for Minority Owned, Women Owned, and Emerging Small Business Enterprises, as well as report the results of these efforts, as required by ORS 200.045 (2) & (3).

3.2 Sample Contract and Negotiations

If a contract is awarded, the successful proposer will enter into a contract with the Port substantially in the form attached hereto as Exhibit RE.1 (the Agreement).

The selected CMGC will be required to comply with the current Oregon prevailing wage rates.

Prior to entering into a contract, the selected CMGC will be required to submit sufficient documentation for the Port to verify that the selected CMGC is licensed, insurable and financially sound.

The Port reserves the right to engage in negotiations with top-ranked proposers under OAR 137-049-0650. (See Section 7 below and Addendum RA.3).

4 Proposal Requirements

4.1 Procedural Submittal Requirements

4.1.1 Deadline & Proposal Opening

The deadline (Closing) for Proposal submission is no later than 12:00 *p.m.* (PDT) on the date specified in the Selection Schedule (Addendum RA.2). *Sealed* Proposals may be mailed or personally delivered to Port offices at the address indicated on page one of this RFP document. No facsimile (fax) or electronic proposals will be accepted. Regardless of method, Proposals received after the deadline will be rejected. All Proposals will be publicly opened at Port offices on the date specified in the Selection Schedule.

4.1.2 Form of Submission

The Proposal must be the original work of the Proposer and bear the Proposer's authorized representative's signature. Three (3) paper copies must be submitted, as well as an electronic copy on electronic media such as thumb drive or CD. The electronic copy of the Proposal may only include files with the following formats: .pdf (Adobe Acrobat, Foxit, etc.), .doc or .docx (Microsoft Word), .xls or .xlsx (Microsoft Excel), or ODF files (Apache Open Office: .odt or .ods). Proposals must be received at the address listed on page one (1) of this RFP document. All written materials must be 8-1/2" x 11" format, bound vertically (11" side) in a type no smaller than 11 point. No other material may be submitted. Proposals must not include extensive artwork, unusual printing or other materials not essential to the utility and clarity of the Proposal.

4.1.3 First-Tier Subcontractor Disclosure

Because this RFP is issued under an Alternative Contacting Method as defined in OAR 137-049-0610, first-tier subcontractor disclosure requirements of OAR 137-049-0360 do not apply. Under the CM/GC alternative contracting method, the CMGC will solicit and contract with subcontractors.

4.1.4 Proposal Certification Statement.

The Proposal Certification Statement (Addendum RA.4) must be completed, signed and included at the beginning of each Proposal. Failure to submit a signed Proposal Certification Statement will result in disqualification of the proposing firm.

4.1.5 Modification or Withdrawal of Proposal

Any Proposal may be modified or withdrawn by providing notice to the Port in a signed writing delivered on or before the date and time of Closing.

4.1.6 Written Questions and Addenda

Questions regarding the information contained in this RFP must be submitted by mail, fax, or email to the designated contact no later than the deadline for written questions specified in the Selection Schedule (Addendum RA.2). All questions must be submitted in writing and received by the specified date and time. No oral questions will be accepted other than at the mandatory pre-proposal conference. All questions received, the response to which materially affects this RFP, will be answered by Amendment issued to all Proposers. Amendments will be published on the Port's website *only* and will *not* be advertised by newspaper or trade journal. Proposers must check the Port's website regularly in order to ensure timely notice of any Amendments issued under this RFP.

4.1.7 Mandatory pre-proposal conference

A mandatory Pre-Proposal Conference will be held on the date specified in the Selection Schedule

(Addendum RA.2) at the Port of Astoria offices indicated on page one (1) of this RFP. A representative of each proposer's firm is required to attend. Proposals from firms who fail to attend this conference will not be considered. The pre-proposal conference will be the Proposers' primary opportunity to discuss the Project with the Port and the Project Manager. The Pre-Proposal Conference is expected to be held in person at the Port's administrative offices; however, the Port reserves the right to conduct the Pre-Proposal Conference virtually ("Zoom" or similar technology), in which case the Port will issue notice of such change on its website. If necessary, an Amendment will be issued following the conference to formalize any Port responses to Proposers' questions. Statements made by any Port representative at the pre-proposal conference, or at any time during the course of verbal deliberations, negotiations, and discussion concerning the Project, are not binding upon the Port unless confirmed in writing.

4.1.8 Insurance Requirements

During the term of the Agreement between the Port and a [successful] Proposer for the services outlined in this RFP, the Proposer must maintain in force each insurance policy as outlined in the Agreement. A contract will not be executed, and the Port will not issue a notice to proceed, until acceptable proof of coverage is received.

4.1.9 Bonding Capacity

Each Proposer must be capable of providing a 100% performance bond, 100% payment bond, and public works bond in accordance with the Agreement.

4.1.10 Public Records & Confidentiality

Proposals submitted to the Port are public records open to public inspection. If a Proposer believes any of its Proposal is exempt from disclosure under Oregon law, the Proposer must 1) clearly identify those portions of the Proposal it believes to be exempt from disclosure, and 2) draft the Proposal in such a manner as to separate the exempt material from the non-exempt portions of the Proposal., clearly marked as follows: "This data constitutes a trade secret under ORS 192.345(2) and shall not be disclosed except in accordance with the Oregon Public Records Law, ORS Chapter 192."

Failure to identify a portion of the Proposal as a trade secret shall be deemed a waiver of any future claim of that information as a trade secret. The Port will take reasonable steps to protect information claimed to be confidential but makes no guarantee of confidentiality if disclosure is required by law or ordered by the court or other authorized body.

4.1.11 Bid Bond

Bids must be accompanied by a Bid Bond made payable to the Owner in an amount that is ten (10) percent of the total bid. Bonds must be in substantially the same form as the Bid Security Form attached hereto (Exhibit RE.5).

4.2 Substantive Proposal Requirements

The Proposal must respond to each numbered question/subject listed below, in the same sequence as presented, and with each numbered item contained in its own section to facilitate side-by-side comparison of proposals. Direct, concise answers are encouraged. The Port seeks the most qualified Proposer with the best Proposal. Price will be considered but will be weighted as outlined in Addendum RA.1 (Selection Criteria).

4.2.1 Project Experience

4.2.1.1 Provide a list, in chronological order, of your firm's completed pier, dock, or other marine-related projects (at least five (5) but no more than ten (10)), within the last ten (10) years. Include the following information:

- (1) Name of the owner, contact person, and current phone number
- (2) The architect or engineer and current phone number
- (3) Location of the project and completion date
- (4) A brief description of the project
- (5) Amount of Contract award or negotiated GMP (if applicable)
- (6) Final contract amount, and total amount of change orders
- (7) Total project claims going to litigation/arbitration and their disposition
- (8) Clearly identify projects completed as a Construction Manager/General Contractor project.

4.2.1.2 For contractors expected to be a key part of the construction team, provide the same information as above.

4.2.2 Safety

Provide a general description of your firm's safety programs, as well as your most recent Workers Compensation Insurance Experience Modifier.

4.2.3 Staffing & Staff Qualifications

4.2.3.1 Provide a simple Project organization chart showing your proposed staff for the Project, including all staff to be involved in design and construction consultation, project management, company oversight and administration, estimating, and on-site construction supervision.

4.2.3.2 Include resumes for key individuals listed in the chart and indicate the proposed percentage that each person will work on this Project during each phase of the Project. Resumes must include each individual's education, work history, length of tenure with the firm, and prior work experience with similar projects and any experience working with public sector CM/GC projects.

4.2.4 Project Approach

Describe your firm's overall plan to complete the Project, identifying your services and deliverables to the Owner during the Preconstruction Phase. Preconstruction services shall include, but are not limited to, reviewing the program and budget, recommendations on feasibility, alternate designs, drawings, constructability reviews, value engineering, scheduling, cost estimating, bidding market, etc. Discuss in detail your plan during the Construction Phase Services, identifying your services and deliverables to the Owner during this phase. Construction services shall include, but are not limited to creating bid packages, bidding, scheduling the work, managing the construction, meetings, written reports, cost control, etc., in order to provide the Owner with the best possible customer service and ensure the greatest possible value for the construction budget.

Include a description of any unique or creative strategies your firm proposes that may i) maximize the quality and utility of the rehabilitated pier, ii) reduce the cost or permitting burden, or iii) reduce the time necessary to complete the Project. An estimate of the Cost of the Work under such alternative repair scheme is not necessary but may be requested should the Port elect to enter into discussion and negotiation with top-ranked Proposers and request revised Proposals (see Selection Process, Addendum RA.3).

4.2.5 Project Costs & Timeline

- 4.2.5.1 CMGC Fees
Include a statement of proposed Fees, itemized as outlined on Schedule RS.1, "Project Cost Matrix." Fees must be inclusive of the CMGC's personal services, overhead, profit, and all other indirect and non-reimbursable costs.
- 4.2.5.2 Cost of Work
Direct costs for the construction of the rehabilitated pier must be enumerated as specified on Schedule RS.1. Project cost will be a factor in the evaluation of Proposals and will be accorded the relative weight as outlined in Addendum RA.1 (Selection Criteria).
Proposers should base their estimate on the 30% design document included in Exhibit RE.3.
- 4.2.5.3 Project Schedule
Include a Project schedule with as much detail as possible. The final completion date will be the primary factor in evaluating this criterion.
- 4.2.5.4 Construction Documents
Construction documents are listed in Table 1 and are available on the Port's website as Exhibit RE.3 (Construction Documents).

Table 1 - Construction Documents
Below Documents are Included in Exhibit RE.3
Whittington, Stephen, PE, SE, and Matt Hoffman, PE. "Structural Assessment of Port of Astoria Facility, Pier 2 West." KPFF Consulting Engineers, December 18, 2019.
KPFF Alternatives. KPFF Consulting Engineers. "Port of Astoria Pier 2 West Rehabilitation, Alternatives Analysis Report." KPFF Consulting Engineers, April 7, 2021.
KPFF Env Memo. "Port of Astoria, Pier 2 West Rehabilitation, Project Design Alternatives Memorandum." KPFF Consulting Engineers, August 27, 2021.
KPFF 30% Design Drawings. "Port of Astoria, Pier 2 West Reconstruction 30% Design." KPFF Consulting Engineers, November 19, 2021.
KPFF 30% Design Narrative. "30% Design Narrative for Port of Astoria Pier 2 West Improvements Project." KPFF Consulting Engineers, November 19, 2021.

4.2.6 Public Entity Experience

Describe your firm's experience with Oregon prevailing wage requirements, including but not limited to advertising and contract requirements for subcontractors, reporting to the Bureau of Labor and Industries (BOLI), and certifying payroll consistent with legal requirements.

4.2.7 Other Requirements

4.2.7.1 Resident Bidder

The Proposal must state whether the Proposer is a "resident Bidder," as defined in ORS 279A.120.

- 4.2.7.2 Other Provisions
The Proposal must state that the Contractor agrees to be bound by and will comply with all applicable state and federal laws, including but not limited to ORS 279C.838, 279C.840 and 40 U.S.C. 3141 to 3148.
- 4.2.7.3 Asbestos Abatement
To the best knowledge and belief of the Port of Astoria, the Proposer is not required to be licensed under ORS 468A.700 thru 468A.760 for asbestos abatement projects.
- 4.2.7.4 Subcontractor Selection Procedure
Describe the methods or conditions under which the CMGC will (a) qualify and select subcontractors; (b) identify portions of the Work that will not be subject to the qualification and selection process; (c) identify conditions under which the CMGC, or an affiliate or subsidiary of the CMGC, may perform or compete with other prospective subcontractors; (d) announce successful subcontract bidders; and (e) discuss the qualification and selection process with subcontractor bidders that were not selected. These provisions will be made part of the agreement with the CMGC by written amendment sometime after execution.

5 Evaluation Criteria

Proposals will be evaluated in accordance with the Oregon Attorney General's Model Public Contracting Rules and the criteria outlined in Addendum RA.1 (Selection Criteria).

6 Selection Process

6.1 Selection Timeline & Process

Addendum RA.2 (Selection Schedule) outlines the expected schedule for the Selection Process. The Selection Schedule is a reasonable estimate of the time necessary to complete the selection process; however, the Port reserves the right to adjust the Schedule as needed. Such adjustments will be posted on the Port's website; Proposers will not be individually notified.

Addendum RA.3 (Selection Process) illustrates the selection process.

6.2 Preliminary Competitive Range

Supplemented by any Clarifications requested by the Port, all Proposals will be evaluated in accordance with Addendum RA.1 (Selection Criteria) and assigned a relative rank based on the resulting score. All Proposers with a score of 90 or higher shall be deemed within the Initial Competitive Range. The Port reserves the right to adjust this value in order to bring all closely competitive Proposals, or those Proposals with a reasonable chance of being determined the best Proposer after the Port's evaluation of revised Proposals, within the Initial Competitive Range (as per OAR 137-049-0650(2)(c) and 0650(4)(a)(B)).

6.3 Interview and Competitive Range Finalization

Firms within the Initial Competitive Range may be invited for an interview. The interview process will be used to supplement and clarify the information contained in the Proposal (but not to modify the Proposal). Initial rankings may be adjusted based on information obtained during the interview. Final ranking will be based on initial ranking, information obtained during the interviews, and results of reference checks.

6.4 Competitive Range Protest

Upon conclusion of the interviews and adjustments, if any, to the relative rankings, the Port will issue a Notice of Competitive Range to all affected Proposers. A Proposer shall have seven (7) calendar days to file a written protest as set forth in OAR 137-049-0450(2) & (5). Protests must be delivered to the Port of Astoria via regular mail, hand-delivery, or by email. The Protest must include at minimum the following: Proposer's name and contact information; signature by an authorized representative; and the specific grounds for the protest. The Port will address all timely submitted protests within a reasonable time and will issue a written decision to the respective Proposer.

7 Interview Information

The Port may conduct interviews of the top-ranked proposer or proposers as provided in Addendum RA.2. Dates are proposed and are subject to change. Firms to be interviewed will be notified of the exact time and place for the interviews. The format of the interview will start with the firm's presentation, followed by a question-and-answer period. The CMGC's key personnel (see Section 4.2.3.2) must be present at the interview.

The information obtained through the interviews will be evaluated as discussed in Section 6.3. The Proposer must address any exceptions to the Agreement (Exhibit RE.1) at the time of the interview.

7.1 Initial Competitive Range & Option to Revise, Negotiate, or Award

At the conclusion of the question period, the Port will finalize the Competitive Range. Thereafter, the Port reserves the right, in its sole discretion, to:

- 1) enter into discussion and negotiation with the top ranked Proposers, issue guidance for and accept revised proposals, establish a revised Competitive Range based on the revised Proposals, followed by either i) negotiation with the top-ranked Proposer (and negotiation with second-ranked Proposer if negotiations are unsuccessful), or ii) issue Notice of Intent to Award; OR
- 2) enter into discussion and negotiation with the top ranked Proposer (and negotiation with second-ranked Proposer if negotiations are unsuccessful), and issue Notice of Intent to Award upon conclusion of the negotiations, OR
- 3) issue a Notice of Intent to Award.

Refer to Addendum RA.3 (Selection Process) for an illustration of the process.

If the Port elects to enter into negotiation with any top-ranked Proposer, regardless whether under the Initial Competitive Range or Revised Competitive Range, the scope of negotiated terms will be restricted to the those terms included in OAR 137-049-0640(3).

If at any time during negotiations, the Port, in its sole discretion, determines that negotiations are likely to be unsuccessful, the Port reserves the right to terminate negotiations and commence negotiations with the next highest ranked Proposer.

7.2 Intent to Award and Protest

The Port will notify all Proposers in writing of its intent to award a contract to the selected Proposer. An affected Proposer shall have seven (7) calendar days from the date of the Notice of Intent to Award to file a written protest and specify the grounds for the protest as set forth in ORS 279C.110(8). Protests must be delivered to the Port of Astoria via regular mail, hand-delivery, or email. The protest must contain, at a

minimum, the following: Proposer's name and contact information; signature by an authorized representative; and the specific basis for the protest. The Port will respond to all timely submitted protests within a reasonable time and will issue a written decision to the respective Proposer.

8 Required Provisions

8.1 Environmental and Natural Resources

As required by ORS 279C.525, if the successful bidder awarded the project is delayed or must undertake additional work by reason of existing ordinances, rules or regulations dealing with the prevention of environmental pollution and the preservation of natural resources that are not cited in the Agreement, or due to the enactment of new or the amendment of existing statutes, ordinances, rules or regulations relating to the prevention of environmental pollution and the preservation of natural resources occurring after the submission of the successful bid, the Port may: (a) Terminate the contract; (b) Complete the work itself; (c) Use nonagency forces already under contract with the contracting agency; (d) Require that the underlying property owner be responsible for cleanup; (e) Solicit bids for a new contractor to provide the necessary services under the competitive bid requirements of this chapter; or (f) Issue the contractor a change order setting forth the additional work that must be undertaken.

8.2 Disclosure of Known Environmental Conditions

As required under ORS 279C.525, Proposers are hereby notified that ordinances, rules or regulations dealing with the prevention of environmental pollution and the preservation of natural resources that may affect the performance of the contract have been enacted by the Environmental Protection Agency and the Oregon Department of Environmental Quality. With the exception of the reasonably anticipated conditions of the environmental permits (the primary one to be issued by the U.S. Army Corps of Engineers) under which the Project will be constructed, the Port is not aware of any exceptional environmental conditions at the construction site that may require the successful bidder to comply with any environmental ordinances, rules or regulations that will substantially alter the scope of Work under the eventual agreement with the successful Proposer.

8.3 Savings

As required by ORS 279C.337(2)(e), any savings the CMGC realizes in performing this Agreement will accrue to the Port, unless this provision is negotiated otherwise.

8.4 GMP Determination

As required by ORS 279C.337(2)(f) and (g), the Guaranteed Maximum Price will be determined as outlined in the Agreement. Further, the Port will not pay any amount that exceeds the GMP unless the increase results from material changes to the scope of work as set forth in the Agreement of other Contract documents.

8.5 Compliance with Public Contracting Procedures

The Port of Astoria may reject any offer not in compliance with all prescribed Public Contracting procedures and requirements, including the requirement to demonstrate the Bidder's responsibility under ORS 279C.375(3)(b), and may reject for good cause all offers after finding that doing so is in the public interest.

**Request for Proposals - Port of Astoria
Pier 2 West Rehabilitation**

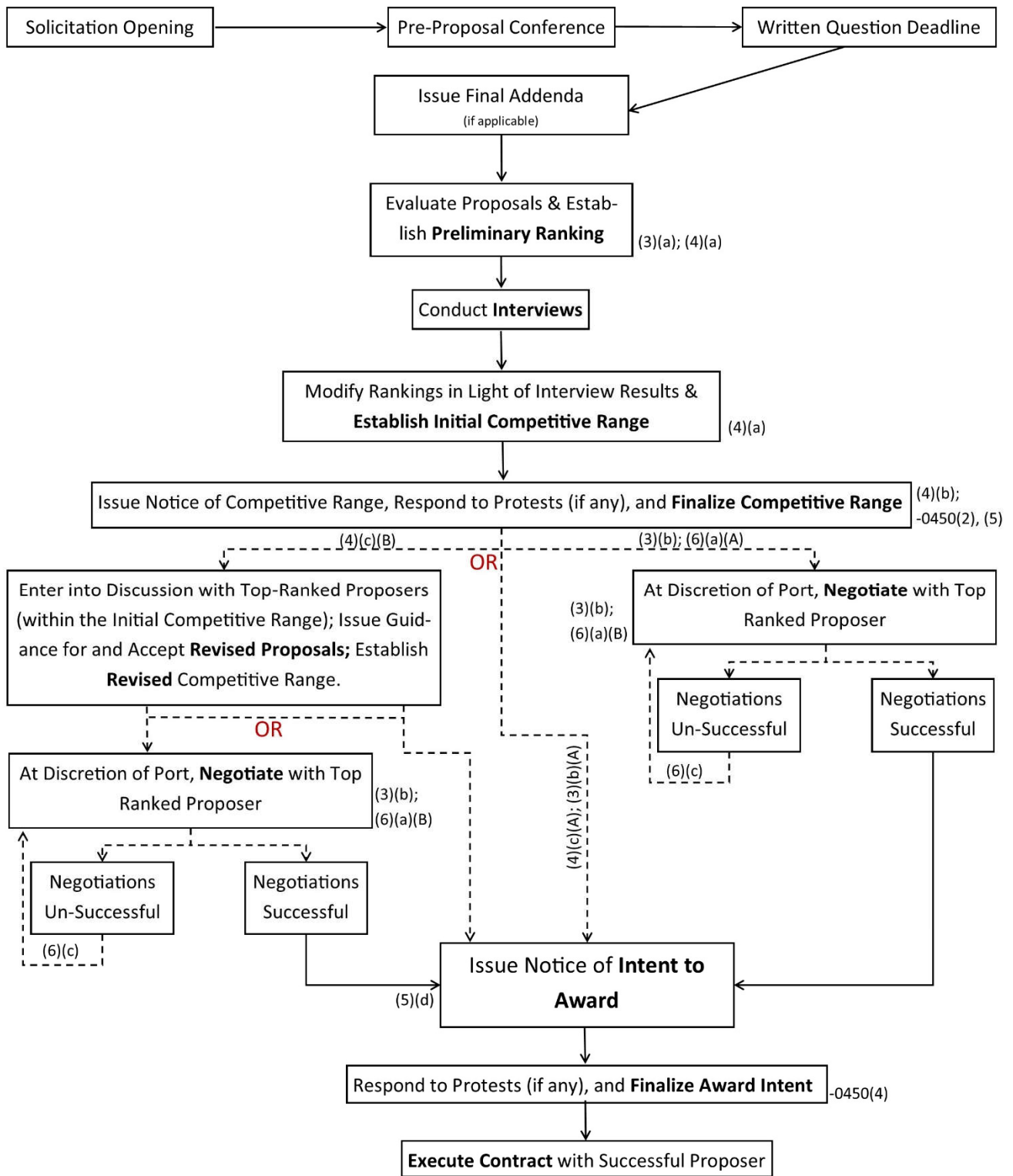
Addendum RA.1 - Selection Criteria

Project History	25%
Safety	10%
Staffing and Staff Qualifications	16%
Project Approach	19%
Project Schedule and Cost of Work	21%
Public Entity Experience	9%

Ignore the dates: these will be updated once the Port decides the exact date of RFP issuance.

Request for Proposals - Port of Astoria Pier 2 West Rehabilitation		
Addendum RA.2 - Selection Schedule		
Process	Event	Date (of Completion)
Common Route	Issue RFP	8/29/2022
	Pre-Proposal Conference	9/5/2022
	Deadline for Written Questions	9/12/2022
	Issue Final Addenda (if applicable)	9/19/2022
	Proposal Submission Deadline (Closing)	9/26/2022
	Opening of Offers	9/26/2022
	Evaluation Period; Interviews	10/10/2022
	Identification of Competitive Range	10/14/2022
	Issue Notice of Competitive Range	10/17/2022
	Competitive Range Finalization (Protest Period)	10/24/2022
Revised Proposal Route	Discussion w/ Top Ranked Proposers; Issue Guidance for Revised Proposals' Requirements	11/7/2022
	Issue Notice of Revised Proposal Deadline	11/7/2022
	Revised Proposal Deadline	11/14/2022
	Negotiation with Highest Ranked Proposer	11/21/2022
	Issue Notice of Intent to Award	11/21/2022
	Deadline for Selection Protests	11/28/2022
	Award Contract/Decision	11/29/2022
	Execute Contract	11/30/2022
Immediate Negotiation Route	Negotiation with Highest Ranked Proposer	10/31/2022
	Issue Notice of Intent to Award	10/31/2022
	Deadline for Selection Protests	11/7/2022
	Award Contract/Decision	11/8/2022
	Execute Contract	11/9/2022
Immediate Award Route	Issue Notice of Intent to Award	10/24/2022
	Deadline for Selection Protests	10/31/2022
	Award Contract/Decision	11/1/2022
	Execute Contract	11/2/2022

**Request for Proposals - Port of Astoria - Pier 2 West Rehabilitation
ADDENDUM RA.3 - SELECTION PROCESS**



All references are to OAR 137-049-0650 unless otherwise specified

**ADDENDUM RA.4
PROPOSER INFORMATION AND CERTIFICATION STATEMENT**

The undersigned hereby acknowledges she/he has read and understands all requirements and specifications of the Request for Proposals (RFP), including all attachments of whatever type.

OFFICIAL CONTACT: The Port requests that the Proposer designate one person as authorized to receive, on behalf of the Proposer, all communication from the Port of Astoria regarding the attached Proposal. Identify the Contact name and fill in the information below. Please print clearly.

Legal Name of Proposer	
Address	
City, State, Zip	
State of Entity Registration	
Entity Type	
Contact Name	
Phone	
Email	
OR Business Registry No. (if applicable)	

By its submission of this Proposal and authorized signature below, Proposer certifies to the following:

1. (a) The above information is true and correct and Proposer grants permission to the Port of Astoria to contact the above-named person (Contact Name) to verify the information contained therein and for all other purposes in connection with the Proposal. (b) The information contained within the Proposal is true and accurate.

2. (a) The Proposal has been developed independently, without consultation, communication or agreement with any employee, agent, or consultant to the Port. (b) The Proposal has been developed independently, without consultation, communication or agreement with any other Proposer or other parties for the purpose of restricting competition or any other illicit purpose. (c) No attempt has been made or will be made by the Proposer to induce any other Proposer to submit or not to submit a Proposal for the purpose of restricting competition. (d) No relationship exists or will exist during the contract period between Proposer and the Port or any other State agency that interferes with fair competition or constitutes a conflict of interest.

3. (a) Proposer acknowledges receipt of any and all addenda, exhibits, or other attachments to this RFP. (b) Proposer understands and accepts the procedures, evaluation criteria, and other requirements of this RFP. (c) If selected for award of the contract, Proposer agrees to the contract terms contained within the Construction Manager/General Contractor Services Agreement (Exhibit RE.1), except for those terms and conditions that Port has reserved for negotiation.

4. (a) Proposal is a Firm Offer for 180 days following the Closing. (b) If selected for award of the contract, Proposer agrees to be bound by the rates and fees submitted with this Proposal, including but not limited to the Preconstruction Fee and Construction Fee Rate.
5. Proposer is not in violation of any tax laws of the state or a political subdivision of the state that are itemized in ORS 305.380(4).
6.
 - (a) Proposer does not discriminate in its employment practices with regard to race, creed, age, religious affiliation, gender, disability, sexual orientation, national origin. When awarding subcontracts, Proposer does not discriminate against any business certified under ORS 200.055 as a disadvantaged business enterprise, a minority-owned business, a woman-owned business, a business that a service-disabled veteran owns or an emerging small business. If applicable, Proposer has, or will have prior to contract execution, a written policy and practice, that meets the requirements described in ORS 279A.112 (formerly HB 3060), of preventing sexual harassment, sexual assault and discrimination against employees who are members of a protected class. Agency may not enter into a contract with an anticipated contract price of \$150,000 or more with a Proposer that does not certify it has such a policy and practice. See <https://www.oregon.gov/DAS/Procurement/Pages/hb3060.aspx> for additional information and sample policy template.
 - (b) Proposer complies with ORS 652.220. If selected for award under this RFP, Proposer's continuing compliance with ORS 652.220 constitutes a material element of the contract entered into between Owner and CMGC ("Agreement") and failure to comply constitutes a breach that entitles The Port to terminate the Agreement for cause.
 - (c) The CMGC may not prohibit any of CMGC's employees from discussing the employee's rate of wage, salary, benefits, or other compensation with another employee or another person. CMGC may not retaliate against an employee who discusses the employee's rate of wage, salary, benefits, or other compensation with another employee or another person.
7. Proposer and Proposer's employees, agents, and subcontractors are not included on:
 - A. the "Specially Designated Nationals and Blocked Persons" list maintained by the Office of Foreign Assets Control of the United States Department of the Treasury found at: <https://www.treasury.gov/ofac/downloads/sdnlist.pdf>, or
 - B. the government wide exclusions lists in the System for Award Management found at: <https://www.sam.gov/portal/>
8. Proposer certifies that, to the best of its knowledge, there exists no actual or potential conflict between the business or economic interests of Proposer, its employees, or its agents, on the one hand, and the business or economic interests of the Port, on the other hand, arising out of, or relating in any way to, the subject matter of the RFP. If any changes occur with respect to Proposer's status regarding conflict of interest, Proposer shall promptly notify the Port in writing.
9. Proposer understands that any statement or representation it makes, in response to this RFP, if determined to be false or fraudulent, a misrepresentation, or inaccurate because of the omission of material information could result in a "claim" {as defined by the Oregon False Claims Act, ORS 180.750(1)}, subject to the Oregon False Claims Act, ORS 180.750 to 180.785, and to any liabilities or penalties associated with the making of a false claim under that Act.

10. Proposer certifies that neither it, nor any of its principals, (a) have been debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by a Federal Agency or State Agency; (b) have within a three year period preceding this Proposal been convicted of, or had a civil judgment rendered against them for commission of fraud, a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract under a public transaction, violation of antitrust statutes; commission of embezzlement, theft, forgery, falsification or destruction of records, making false statements, or receiving stolen property; (c) are presently indicted for or criminally or civilly charged by a government entity (federal, state, or local) with the commission of any of the offenses enumerated in this certification; and (d) have not within a three year period preceding this Proposal had one or more public transactions (federal, state, or local) terminated for cause. This certification is a material representation of fact upon which the Port will rely in entering into any contract with the Proposer (“Agreement”). If it is later determined that Proposer knowingly rendered an erroneous certification, in addition to other remedies available, the Port may pursue available remedies including suspension, debarment, or termination of the Agreement.
11. Proposer acknowledges these certifications are in addition to any certifications required under the Contract.

Authorized Signature

Date

(Printed Name and Title)

Astoria-Megler Bridge

Pier 1



Diagram 1: Aerial View of Pier 2 West

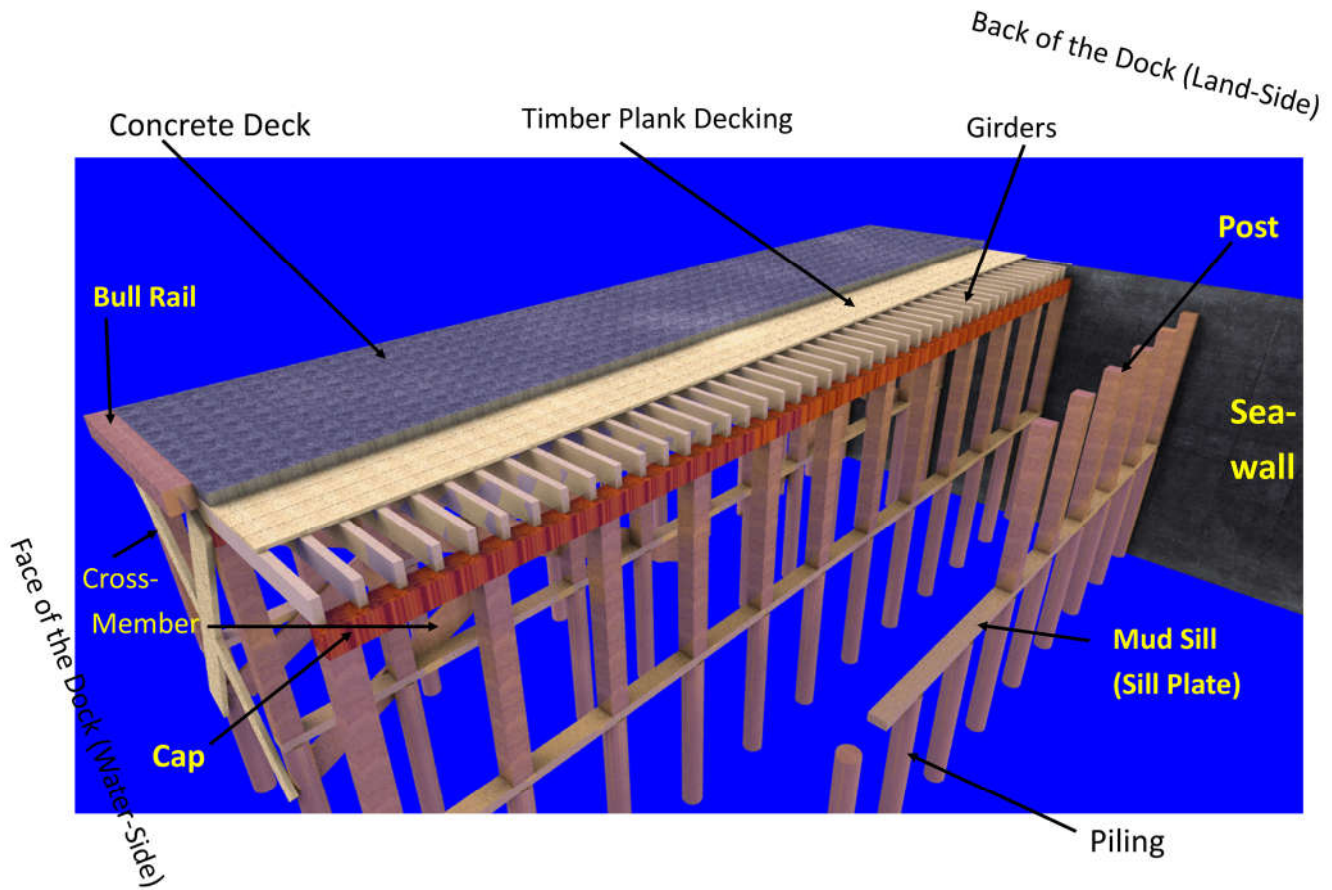


Diagram 2: Cut-Away View of Pier 2

This diagram is intended only to impart a general understanding of the Pier 2 West structure.
 It is not to scale and is not based on engineering drawings.

BID BOND

KNOW ALL MEN BY THESE PRESENTS, that _____

a surety company duly organized under the laws of the State of _____,

having its principal place of business at _____,

in the State of _____, and authorized to do business in the State of Oregon is held and firmly bound unto the State of Oregon, in the full sum of ten (10) percent of the total amount of the bid for the work hereinafter described, for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors, administrators and assigns, and successors and assigns, firmly by these presents.

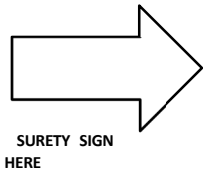
The condition of this bond is such that, whereas _____
(Bidder)

is herewith submitting its bid for the following work, to wit:

said bid, by this reference being made a part hereof;

NOW THEREFORE, if the said bid submitted by the said bidder is accepted and the contract for said work is successfully negotiated and awarded to said bidder, and if the said bidder complies with all requirements of Oregon Revised Statutes 279C.385, and if the said bidder enters into and executes the said contract within the time required, then this obligation shall be void; otherwise to remain in full force and effect.

Signed and sealed this _____ day of _____, 20



(Surety Company)

(Signature)

RESPONSIBILITY DETERMINATION FORM

Project Name: _____

Bid Number: _____

Business Entity Name: _____

CCB License Number: _____

Form Submitted By (Contracting Agency): _____

Form Submitted By (Contracting Agency Representative's Name): _____

Title: _____

Date: _____

The contracting agency has (check all of the following):

Checked the list created by the Construction Contractors Board under ORS 701.227 for bidders who are not qualified to hold a public improvement contract.

Determined whether the bidder has met the standards of responsibility. In so doing, the contracting agency has found that the bidder demonstrated that the bidder:

Has available the appropriate financial, material, equipment, facility and personnel resources and expertise, or the ability to obtain the resources and expertise, necessary to meet all contractual responsibilities.

Holds current licenses that businesses or service professionals operating in this state must hold in order to undertake or perform the work specified in the contract.

Is covered by liability insurance and other insurance in amounts required in the solicitation documents.

Qualifies as a carrier-insured employer or a self-insured employer under ORS 656.407 or has elected coverage under ORS 656.128.

Has a satisfactory record of performance.

Has a satisfactory record of integrity.

Is legally qualified to contract with the contracting agency.

Possesses a certificate that the Oregon Department of Administrative Services issued under ORS 279A.167.

Agrees to be bound by the terms and conditions of a community benefit contract if the public contract is a community benefit contract.

Has supplied all necessary information in connection with the inquiry concerning responsibility.

Determined the bidder to be (check one of the following):

Responsible under ORS 279C.375 (3)(a) and (b).

Not responsible under ORS 279C.375 (3)(a) and (b).

Request for Proposals - Port of Astoria Pier 2 West Rehabilitation

Schedule RS.1 - Project Cost Matrix

Cost Category	Estimate
Demolition	
Labor Costs	
Subcontracts	
Materials	
Debris Removal	
Travel	
Equipment Rental	
Builder's Risk Insurance	
Builder's Risk Installation Floater	
Bond Premiums	
Construction Contingency	
Total Cost of Work	
Fee - Preconstruction (dollar amount)	
Fee - Construction (percentage of Cost of Work)	

RE# 0130

REQUEST FOR EXPENDITURE

SECTION A	Date:	09/08/22	Department:	Maintenance
	Staff Contact:	Joe Tadei	Vendor (if determined):	P&L Johnson
	Description of Product or Service being requested:	Remove existing HVAC units and replace new.		
	Purpose of Product or Service being requested:	The current units have failed and will need to be replaced with new. Both systems are beyond repair due to age.		
Cost Estimate:	\$29,171.24			
SECTION B	1. Does this expenditure exist within the current budget? (Original Budget Amount)			
	<input checked="" type="checkbox"/> No (Skip to Section C-2) / <input type="checkbox"/> Yes (Proceed)		\$	
	2. Does this expenditure exceed \$5,000?			
<input type="checkbox"/> No (Skip to Section D) / <input type="checkbox"/> Yes (Proceed to Section C-1)				
3. Will services be performed on Port of Astoria property? <input type="checkbox"/> No <input checked="" type="checkbox"/> Yes				
SECTION C	1.			
	Account # for Budgeted Item (ex: XXX-XX)	TOTAL NET OF GRANTS		
	FY 2022-2023 Budget for this Account	\$	\$	
	Amount Spent Year-to-Date for this Account	\$	\$	
	Amount Available to Spend for this Account	\$	\$	
	Does this Request for Expenditure require Commission Approval (>=\$25,000)? <input type="checkbox"/> Yes / <input type="checkbox"/> No			
	2. If Not included in the current budget or the current budget for this account # has been spent:			
	Does this Request for Expenditure require Commission Approval (>=\$5,000)? <input checked="" type="checkbox"/> Yes / <input type="checkbox"/> No			
	Account # to deduct funds from to reallocate & accommodate this expenditure (ex: XXX-XX)	TOTAL NET OF GRANTS		
	FY 2022-2023 Budget for the Account being reduced	\$ 3,959,368	\$ 2,018,605	
Amount Spent Year-to-Date for this Account	\$ 1,662,626.65	\$ 134,474.39		
Amount Available to Spend for this Account	\$ 3,792,741.35	\$ 1,884,130.61		
What is being given up to accommodate the reallocation of funds for this expenditure?				
SECTION D	3. If Commission approval is required, please specify date Request for Expenditure will be submitted to Commission for approval.			
	(Specify date of Commission meeting when item is scheduled to be heard/approved)			
		09/20/22		
SECTION E	<i>Joe Tadei</i> 9-14-2022		<i>M.A. McLe...</i> 9-14-22	
	Signature of Department Head Date		Signature of Operations Manager Date	
	<i>[Signature]</i> 9-14-22		<i>[Signature]</i> 9/15/22	
	Signature of Finance Manager Date		Signature of Executive Director Date (required if cost is unbudgeted, or > \$5,000 budgeted)	

(over for Quotation Analysis)

422 Gateway HVAC

Project:

Joe Tadei

Project Manager:

Joe Tadei

Quotes obtained by:

Procurement Method:

- Small procurement
 Sole source

- Intermediate procurement
 Emergency

- Request for Bid
 Request for Proposal

Solicitation Method:

- Verbal quotes (informal)

- Requests for written quotes (informal)

- Public solicitation (formal)

Vendor	Amount	Description	Availability	Specific expertise	Other information
P&L Johnson Mechanical Inc.	\$29,171.24	replace existing heat pumps with new Carrier heat pumps; demolition and removal of existing heat pumps and air handlers.		HVAC; knowledge of Port infrastructure	Only HVAC units with availability within the next two months.
Vendor selection & justification: (REQUIRED)					
Vendor has a proven track record with the port and provides parts and service for all HVAC systems on port owned properties.					



429 GATEWAY
 PO BOX 595
 ASTORIA, OR 97103
 Phone: 503-325-2180
 Fax: 503-325-6991
 OCB 073615 / WA-PLJOHMI09603

Quote Number: 39486
 Quote Date: 9/8/2022

PROPOSAL

To: PORT OF ASTORIA
 422 GATEWAY, SUITE 100
 ASTORIA, OR 97103

Phone: (503) 741-3342 xSUE

Job Address: 422 GATEWAY ASTORIA By: PAUL RADU

This proposal includes the following:

Scope of work: replace existing 4 ton heat pump with new Carrier comfort series 4 t heat pump

- Carrier 25 HCE Comfort series 4 ton heat pump
- Carrier FB4 comfort series Air handler
- Strip heat package
- Sheet metal transitions to existing duct system.
- Demolition and EPA removal of existing heat pumps and air handler
- 15' line set
- Freon
- Permits
- OR cat tax
- commercial labor rates

Exclusions: Electrical, plumbing, all changes or repairs to existing duct work.

Options:

Carrier Performance series 4 ton heat pump with variable speed ECM motor on indoor unit. Add \$ 3373.00 X

Quote valid until 30 days from issue.

Payment to be made as follows: Terms: 1/3 down payment, remaining balance due upon completion. Balances after 30 days will be charged 1.5% interest per month on any and all unpaid balances.

Exclusions: Electrical, sales tax, plumbing, asbestos removal, or structural modifications.

Base Price: \$11,212.67

Estimated Sales Tax: \$0.00

Grand Total: \$11,212.67

Acceptance of Proposal: By signing this proposal I agree to the "Terms and Conditions," Exhibit A, and acknowledge receipt and understanding of the required notices and forms listed below. I authorize P & L Johnson Mechanical Inc. to complete the work as specified.

State of Oregon notices - CCB Addendum OAR 812-012-0110, Notice of Procedure ORS 701.330, Information to Owner about Construction Liens ORS 87.093, and Consumer Protection Notice ORS 701.330(1).

State of Washington notices- "State of Washington Department of Labor and Industries Notice to Customers."

Acceptance

P & L - Johnson Mechanical

 Property Owners or Authorized Agent

 Date

by: _____