

**WELCOME**  
To a Regular Meeting of the  
**Coeur d'Alene City Council**  
Held in the Library Community Room

**AGENDA**

**VISION STATEMENT**

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

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

**May 21, 2019**

**A. CALL TO ORDER/ROLL CALL**

**B. INVOCATION:** Pastor Mike Slothower with River of Life Friends

**C. PLEDGE OF ALLEGIANCE**

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

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

**F. PRESENTATIONS:**

1. Proclamation for National Safe Boating Week May 18-24, 2019

**Accepted by: Kathleen Goodwin, District 12 Commodore**

2. CDA 2030 Progress Update

**Presented by: Nicole Kahler, Executive Director  
and Marcee Hartzell, Board Chair**

## G. ANNOUNCEMENTS

1. City Council
2. Mayor

\*\*\*ITEMS BELOW ARE CONSIDERED TO BE ACTION ITEMS

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

1. Approval of Council Minutes for the May 7, 2019 Council Meetings.
2. Approval of Public Works Committee Meeting Minutes from May 13, 2019.
3. Approval of Bills as Submitted.
4. Approval of Financial Report.
5. Setting of General Services and Public Works Committees meetings for Tuesday, May 28, 2019 at 12:00 noon and 4:00 p.m. respectively.
6. Setting of a public hearing on June 18, 2019 for A-2-19 -Location: 6215 N. Atlas Road; A proposed 11.73-acre annexation from County Industrial to C-17 zoning district; Applicant: John Hern
7. Approval of a Cemetery lot repurchase from Dennis O'Brien for Lot 11, Block V, Section Riv of Riverview Cemetery

**As Recommended by the City Clerk**

8. **Resolution No. 19-015** –

- a. Approval of a Cooperative Funding Agreement between the City of Hayden, City of Dalton Gardens, and the City of Coeur d'Alene for the 2019 Chip Seal Project.

**As Recommended by the Public Works Committee**

- b. Approval of an Agreement with Interstate Concrete and Asphalt for the Atlas Road/Industrial Loop Signal and Trail Gap Project.

**As Recommended by the City Engineer**

## I. OTHER BUSINESS:

1. **Resolution No. 19-016** - Agreement with La Riviere Construction, Inc., for \$2,660,000 to build the new Water Department Administration and Maintenance Building.

**Staff Report by: Terry Pickel, Water Department Director**

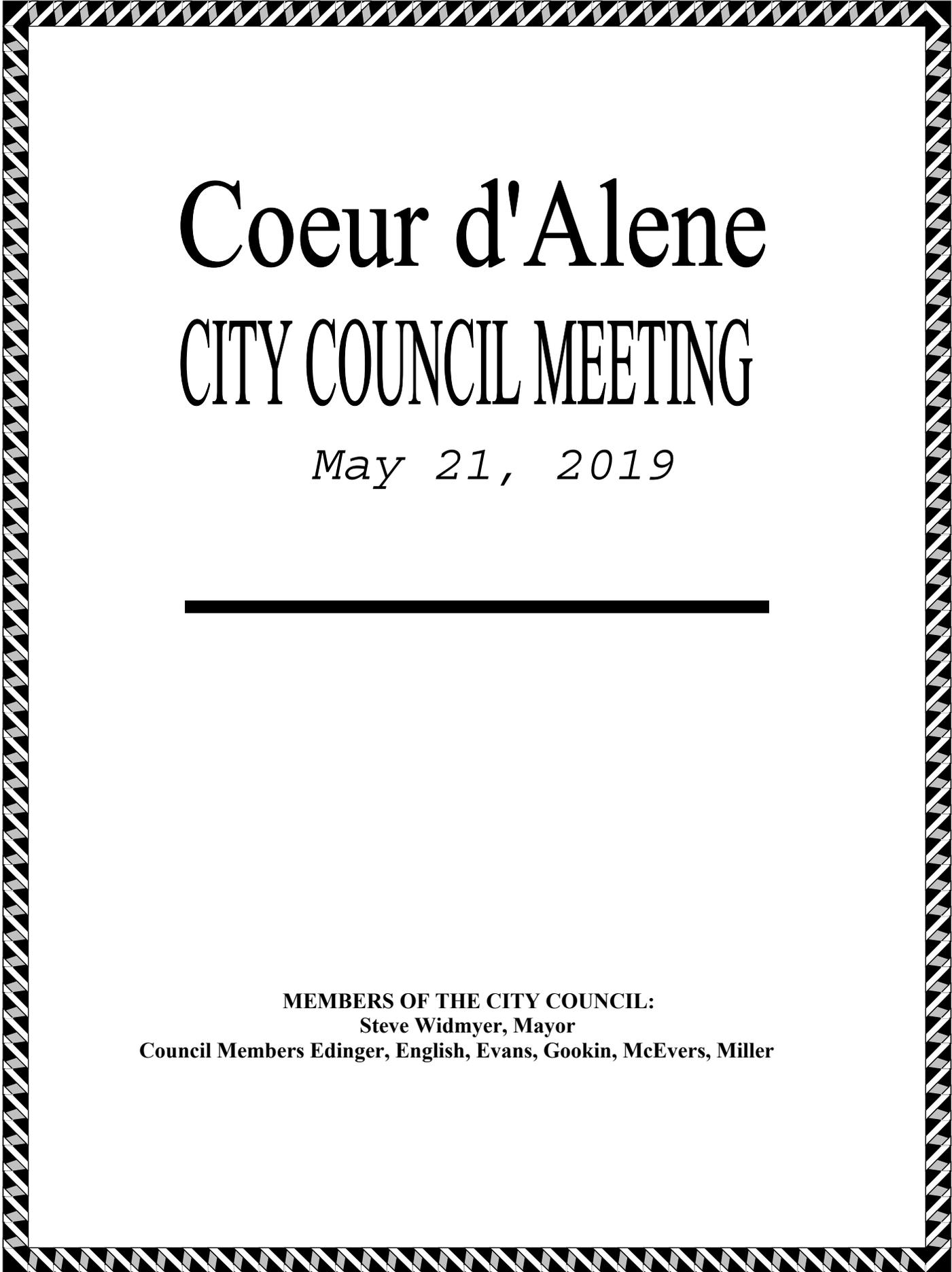
2. **Resolution No. 19-017** - Agreement with Walker Construction as Contract Manager/General Contractor (CMGC) for Memorial Grandstand Remodel.

**Staff Report by: Bill Greenwood, Parks & Recreation Director**

3. **Council Bill No. 19-1005** – Amendments to various Municipal Code Sections regarding Parking Regulations specifically Sections 2.66.020, 4.05.030, 4.15.010, 4.15.020, 4.15.030, 4.15.040, 4.15.120, 4.15.130, and 8.48.030; and repealing Sections 4.15.060, 4.15.070, 4.15.080, 4.15.090, 4.15.100, 4.15.110, and 4.15.115.

**Staff Report by: Troy Tymesen, City Administrator**

**J. ADJOURN:**



# Coeur d'Alene

## CITY COUNCIL MEETING

*May 21, 2019*

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**MEMBERS OF THE CITY COUNCIL:**

**Steve Widmyer, Mayor**

**Council Members Edinger, English, Evans, Gookin, McEvers, Miller**

# PRESENTATIONS

PROCLAMATION

WHEREAS, on average, 700 people die each year in boating-related accidents in the United States, and nearly 70% of these are fatalities caused by drowning; and

WHEREAS, the vast majority of these accidents are caused by human error or poor judgment and not by the boat, equipment, or environmental factors; and

WHEREAS, a significant number of boaters who lose their lives by drowning each year would be alive today had they worn life jackets; and

WHEREAS, modern life jackets are more comfortable, more attractive, and more wearable than styles of years past and deserve a fresh look by today's boating public.

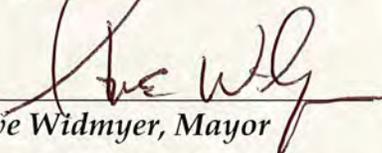
NOW, THEREFORE, I Steve Widmyer, Mayor of the City of Coeur d'Alene, Idaho, do hereby proclaim the week of May 18th through May 24th, 2019 as

**"NATIONAL SAFE BOATING WEEK"**

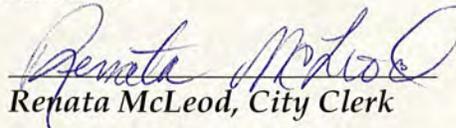
In support of the goals of the North American Safe Boating Campaign and the start of the year-round effort to promote safe boating

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Great Seal of Coeur d'Alene to be affixed this 21st day of May, 2019.



  
Steve Widmyer, Mayor

ATTEST:

  
Renata McLeod, City Clerk



## OUR MISSION

“CDA 2030 seeks to guide the greater Coeur d’Alene community in realizing its vision for a bright future - together. As a nonprofit group, we help local businesses, government, and community organizations carry out the CDA 2030 Vision and Implementation Plan.”

## Leadership

### Board

Hilary Anderson  
 Dr. Steven Cook  
 Amy Evans  
 Marcee Hartzell  
 Mike Kennedy  
 Shawny Le  
 Erin McClatchey  
 Scott Maben  
 Dr. Rick MacLennan  
 Jimmy McAndrew  
 Alivia Metts  
 Derek Miller  
 Bobby Myers

Michael Nail  
 Michael Pereira  
 Marie Schmidt  
 Ali Shute  
 Keri Stark  
 Laura Stensgar  
 Nick Swope  
 Mike Ward  
 Sherry Wallis  
 Steve Wilson

### Staff

Nicole Kahler  
 Marie Nail

### Committee Members

Ashley Anderson  
 Matt Higgins  
 Pete Howard  
 Maren Maier  
 Katie Marshall  
 J.R. Norvell  
 Gemma Puddy  
 Nick Shriner  
 Mary Vehr  
 Ben Weymouth



## 2019 Budget

Contract Services: \$91,600

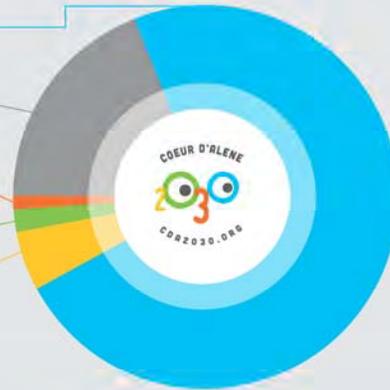
Vision Validation: \$23,000

Travel and Meetings: \$370

Celebration Event: \$2,600

Operations: \$5,941

Total Budget: \$123,511



## Sponsors

ArchitectsWest	North Idaho College
Avista Foundation	Northwest Specialty Hospital
Board Member Contributions	Numerica Credit Union
Bouten Construction	Panhandle Health District
City of Coeur d'Alene	Parkwood Business Properties
Coeur d'Alene Association of Realtors	PayneWest Insurance
Coeur d'Alene Tribe Lake Management Department	Pilgrim's Market
Commonwealth Associates	Pioneer Title Co
D.A. Davidson	STCU
Hart Capital	STRATA
HDR	The Coeur Group
ignite cda	TitleOne
Intermax Networks	T-O Engineers
Kootenai Title	Umpqua Bank
Magnuson McHugh Co	University of Idaho
Miller Stauffer Architects	Westchester Community Foundation Handelman
Mountain West Bank	Memorial Education Fund

## 46 Lead Partners



## Past Initiatives

- Keep the Beat – CPR Training
- Soft Skills Curriculum
- Health Corridor ULI TAP and Feasibility Study
- Performing Arts Market Analysis and Feasibility Study
- Public Bike Repair Station



## Additional Partnerships

**Project for Public Spaces  
Placemaking Workshop**

**America's Best Communities  
– Coeur d'Alene**

**PARK(ing) It On Sherman!**

**East Sherman RRFP**

**Community Builders Leadership Institute**

**Power of Produce – POP Club  
(On-The-Spot grant)**

**Our Gem (Lake Coeur d'Alene) Symposium  
Coeur d'Alene Carousel**

**Gizmo's 32 Saturdays of Coding  
(On-The-Spot grant)**

**Gizmo2Xtremes**

**The Theodores  
(On-The-Spot grant)**

**High Five! Children's Health Collaborative**

**Ability App  
(On-The-Spot grant)**

**JingleBooks**

**Let's Move! CDA**



## Strategic Priorities

### Implementation

- Collaborate with City of Coeur d'Alene to establish the Envision Coeur d'Alene project as a vision validation and plan update.
- Assist City in completing East Sherman master plan and implementation efforts
- Support Opening Books, Opening Doors partnership.
- Create an evaluation process for proposed priority actions.
- Support lake management and Our Gem Symposium.
- Support efforts related to affordable, quality early care and education (child care).



## Strategic Priorities cont'd

### Sustainability

- Raise \$40,000 in private donations
- Renew funding from City of Coeur d'Alene
- Renew funding from ignite cda
- Save a years' worth of standard operating budget (\$100,000)

### Marketing

- Improve communication of the organizational mission and accomplishments to the community
- Determine if the organization should be rebranded with a new logo and name change.



## Early Care and Education

PROJECT SPOTLIGHT



# Early Care and Education

## Goals

- Develop a replicable business-supported model
- Strengthen the early care and education workforce
- Implement a public awareness campaign

## Lead Partners



## East Sherman

### Completed Activities

- 4 annual PARK(ing) It On Sherman events
- Demonstration Block Online Questionnaire
- Demonstration Block Installation
- East Sherman Design Studio
- Installation of East Sherman light pole banners
- Envision East Sherman Strategy Workshop
- Community Builders Leadership Institute
- Community Builder Technical Assistance grant
- Crowdfunding for RRPB
- Stakeholder interviews
- Town Hall Meetings
- Online Survey

### Next Steps

- Finalize the Master Plan



# Opening Books, Opening Doors

## Key Strategies

1. Kindergarten Readiness
2. Quality Teachers in a Literacy-Rich Learning Environment
3. Parent Engagement
4. Out-of-School Learning

## Programs

- Adopt a Classroom Library
- Summer Backpack Program
- Teacher Leader Academy
- Book Buddies
- Book creates and book giveaways
- Ready! For Kindergarten
- Program research



Envision  
Coeur d'Alene

PROJECT SPOTLIGHT





CDA 2030, Inc  
info@cda2030.org  
105 N 1st Street, #100  
Cd'A, ID 83814  
[www.cda2030.org](http://www.cda2030.org)

# ANNOUNCEMENTS

# CONSENT CALENDAR

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

MAY 7, 2019

The Mayor and Council of the City of Coeur d'Alene met in a regular session of said Council at the Coeur d'Alene City Library Community Room, May 7, 2019 at 6:00 p.m., there being present upon roll call the following members:

Steve Widmyer, Mayor

Woody McEvers ) Members of Council Present  
Amy Evans )  
Kiki Miller )  
Loren Ron Edinger )  
Dan English )  
Dan Gookin )

**CALL TO ORDER:** Mayor Widmyer called the meeting to order.

**PLEDGE OF ALLEGIANCE:** Councilmember McEvers led the Pledge of Allegiance.

**Proclamation of Wildfire Community Preparedness Day – May 4, 2019** – Mayor Widmyer proclaimed May 4, 2019 as Wildfire Community Preparedness Day. Fire Inspector Bobby Gonder accepted the Proclamation and noted that they have had a community event last weekend with the Fernan Hill community and will have another event next weekend with the Armstrong Park Hill group. Last year both areas of the community were nationally recognized as a “Fire Wise Communities” due to their efforts in reducing fuels in their local areas. Mr. Gondor noted that this year, he and NIC Carpentry students built a small model of a community with landscaping, houses, and roadways to demonstrate how fires run through hillsides. The model was lit on fire and filmed to demonstrate how fire moves through wildland. This film will be aired on CDATV and the city webpage.

**Presentation regarding the 2nd Annual Compost Giveaway -** Wastewater Superintendent Mike Anderson noted that the City was able to give away approximately 200 yards of compost to area residents during the weekend of April 20, 2019. The intent behind the giveaway event is to get residents to test out the compost product. Mr. Anderson noted that 75% of the people were first time users of the product. Councilmember Miller thanked him for this program and questioned how the product would affect the watershed areas rather than the use of chemical filled products. Mr. Anderson noted that the compost was a slow release product and is specifically a soil amendment. Councilmember Edinger noted that the compost was used in McEuen Park many years ago and it did make the grass grow and was very clean. Councilmember English asked where people can buy the product. Mr. Anderson noted that there are three suppliers currently carrying the product; Northland, Rockhound and Tumblestone Nurseries.

**Presentation regarding the Museum of North Idaho Relocation Concept** - Jon Mueller, Landscape Architect with Architects West and Julie Gibbs, Board President of the Museum of North Idaho explained that Museum has outgrown its current location. Ms. Gibbs noted that last year was the Museum's 50<sup>th</sup> anniversary and they have appreciated the partnership with the City over those years. They have discussed the vision of becoming a premier regional Museum, and it would be difficult to do that at its current location. When the opportunity arose to consider the use of the historic J.C. White House building and relocate south of the City Hall parking lot, the Museum Board felt it was worth exploring. Ms. Gibbs thanked the Tubbs Hill Foundation and the Launder Family, the current owners of the White House. Mr. Mueller presented the area map and a draft concept drawing for how the building would fit on the site. There is interest in saving the White House and that started the discussions about how the structure could work as a piece to the Museum expansion with the future addition of two wings, including basements for storage or additional exhibit space. He explained that they would want to take advantage of some of the outdoor natural space for gathering and/or exhibits. They have begun discussions regarding the actual ability to move the house, the route, and what it would take for permitting such a move.

Mayor Widmyer noted that as the Museum began discussions, they understood there would be many steps along the way. The first step was to get the endorsement of the Museum Board and the Tubbs Hill Foundation, which they did. The next stop was the Ignite Board where they received a thumbs up to continue discussions. The Mayor noted that now is the time for the City Council to say if it is worth continuing forward with discussions. Councilmember McEvers asked about the location of the public entrances. Mr. Mueller noted that there would be two front doors, one on the North and one on the South, as they purposefully planned to be able to accommodate groups on the south and access to/from the park to the North. Mayor Widmyer noted that the reason for discussing moving the building was that the property owners verbalized that they have different plans for the property and want to move forward without the building on the land. Mr. Mueller reiterated that this building is a piece of history, as there is significance to what J.C. White provided to our community and architecturally there are only a couple houses in the area from that same time period. Mayor Widmyer noted that the next step will be for the Museum to present a final request to the Council for decision purposes. Mr. Mueller noted that he looks forward to having an answer by the end of May. Councilmember Miller thanked everyone for their efforts in this great collaborative effort. Mayor Widmyer noted that Julie Gibb, Jon Mueller, and Dorothy Dahlgren have been great leaders and this will continue to be a team effort.

#### **PUBLIC COMMENTS:**

Elizabeth Hinkel, Coeur d'Alene, expressed concern about the rescuing of the White House, as she felt that funds were better used to build a new structure for the Museum and photographs of the building should be good enough record of its history. She noted that years ago there was a plan for a new Museum facility to be built on Northwest Boulevard and wondered about the cost to renovate the White House building after it is moved. She questioned who would be paying for the move and expressed that she does not want her tax dollars used for the move. Mayor Widmyer explained that this deal would be structured the same as the Carousel Foundation project, wherein the Foundation paid for the structure and the City provided the land. He noted that the Museum has acknowledged that they have fund raising to do and that a new Museum

was going to cost \$6-\$8 Million dollars. Councilmember Gookin noted that many people have commented regarding the lack of historical structures in the downtown area and buildings are rapidly disappearing.

Maryjo Kringess, Coeur d'Alene, expressed concern that there is a conflict of interest of the Museum Board members, as she is concerned that the property at 8<sup>th</sup> and Sherman will be changed to R-34 zoning. She noted that the land where the house will be moved is funded by taxpayers through ignite cda. This deal would clear a corner on Sherman and moves the building into a residential space that is not as accessible as the Museum is now. There are three real-estate developers on the ignite board and believes that is a significant conflict of interest. Additionally, the City has not updated the comprehensive plan since 2007, it should be updated before any more land trades or R-34 zoning is allowed. Councilmember Gookin asked the Community Planning Director Ms. Anderson to address the downtown overlay district densities, as both parcels being discussed are within that overlay district. Ms. Anderson noted within the downtown overlay district one can build higher density and a higher height, civic use could be 45' high and as residential use it would be 38' in height. Councilmember Gookin explained that the property south of City Hall would become public space with the Museum use and it could have high density on it otherwise.

Richard Price, Coeur d'Alene, stated that he is neutral on the issue; however, it seemed that the parking would be an issue as it is using the City Hall parking lot. As a resident he wants to be able to park without a fee, and not fight for space to park with other uses. He thinks non-residents should pay double the price for parking and residents should park for free.

Councilmember English noted that he saw this presentation at the ignite meeting and he is excited about the project. He clarified that this move will provide an exterior piece of history; however, it has an updated interior for the Museum to use. He noted that there may have to be negotiations on the parking and they may need to provide more; however, he feels it will balance out throughout the process.

#### **COUNCIL ANNOUNCEMENTS:**

Councilmember Miller noted that she recently was the Master of Ceremonies at the Safe Passage's breakfast and thanked Police Chief Lee White and Chief Prosecuting Attorney Wes Somerton in their pledge to stop domestic violence to the best of their abilities. Additionally, the Library Director gave a presentation to the School Board and got affirmation for the planning of an exterior access public library branch at the new Prairie Elementary School. Additionally, other cities, and some cities in other states, are now looking at putting public library branches within the public schools, using the City of Coeur d'Alene as an example. She stated that she is proud of our Library.

Mayor Widmyer requested the appointment of Mary Lee Ryba and Margaret Behrmann to the Arts Commission, and Joshua Gore to the Design Review Commission.

**MOTION:** Motion by Evans, seconded by McEvers to appoint Mary Lee Ryba and Margaret Behrmann to the Arts Commission, and Joshua Gore to the Design Review Commission.  
**Motion carried.**

**CONSENT CALENDAR:** Motion by McEvers, seconded by Edinger, to approve the Consent Calendar.

1. Approval of Council Minutes for the April 16, 2019 Council Meeting.
2. Approval of Bills as Submitted.
3. Setting of General Services and Public Works Committees meetings for Monday, May 13, 2019 at 12:00 noon and 4:00 p.m. respectively.
4. Setting of a Public Hearing on **June 4, 2019** for the Appeal of the approval of SP-1-19: Located at 215 W. Mill, 1715,1705, 1719 N. Govt Way, 208 W. Davidson; a requested Special Use Permit in the R-17 & C-17L zoning district for an R-34 Density Increase
5. Approval of a Cemetery Lot transfer from Leland Baisch to Eveline Baisch for Lots 01, 02, 03; Block 17, Section D of Forest Cemetery
6. **Resolution No. 19-013** - A RESOLUTION OF THE CITY OF COEUR D'ALENE, KOOTENAI COUNTY, IDAHO, AUTHORIZING THE BELOW MENTIONED AGREEMENTS AND OTHER ACTIONS OF THE CITY OF COEUR D'ALENE INCLUDING: AN AGREEMENT WITH COEUR D'ALENE BMX ASSOCIATION FOR THE USE OF THE CHERRY HILL COMMUNITY PARK; AN AGREEMENT WITH ROBERT GREEN, SANTEE VALLEY DEVELOPMENT, LLC, FOR SUBDIVISION IMPROVEMENTS AND FINAL PLAT, AND APPROVAL OF SECURITY FOR SUBDIVISION IMPROVEMENTS; A QUIT CLAIM DEED FOR A FIVE FOOT STRIP OF PUBLIC RIGHT-OF-WAY TO RONALD AYERS; AND ACCEPTANCE OF A QUIT CLAIM FOR PUBLIC RIGHT-OF-WAY AND A UTILITY EASEMENT FROM ASPEN HOMES AND DEVELOPMENT, LLC.

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

#### **RESOLUTION NO. 19-014**

**A RESOLUTION OF THE CITY OF COEUR D'ALENE, KOOTENAI COUNTY, IDAHO, DECLARING ITS INTENT TO EXCHANGE REAL PROPERTY OWNED BY THE CITY OF COEUR D'ALENE, LOCATED AT 102 AND 106 E. HOMESTEAD AVENUE, COEUR D'ALENE, IDAHO, FOR REAL PROPERTY OWNED BY THE SOCIETY OF ST. VINCENT DE PAUL IN THE CITY OF CDA, INC., AND THE ST. VINCENT DE PAUL SALVAGE BUREAU, INC., LOCATED AT 1516 AND 1620 E. SHERMAN AVENUE, COEUR D'ALENE, IDAHO, AND TO SET A PUBLIC HEARING FOR FURTHER CONSIDERATION OF THE EXCHANGE.**

**STAFF REPORT:** City Attorney Mike Gridley explained that the City owns a land located at 102 and 106 East Homestead in Coeur d'Alene (valued at \$500,000). The Society of St. Vincent De Paul In the City of Cda, Inc. and the St. Vincent De Paul Salvage Bureau, Inc. own properties located at 1620 East Sherman Avenue, known as the Sandman property, (valued at \$425,000) and 1516 East Sherman Avenue, known as the Star Haven property (valued at \$375,000) in

Coeur d'Alene, with a total value of both properties of \$800,000. The City and the Society of St. Vincent De Paul In the City of Cda, Inc. and the St. Vincent De Paul Salvage Bureau, Inc. are proposing to exchange these properties for the mutual benefit of each party. The City will also pay Three Hundred Thousand Dollars (\$300,000) to the Society of St. Vincent De Paul In the City of Cda, Inc. and the St. Vincent De Paul Salvage Bureau, Inc. The exchange as proposed is for equal value. Mr. Gridley provided a photograph of each of the properties and requested the Council set a public hearing for June 4, 2019 and express their intent to conduct a property exchange under Idaho Code.

**DISCUSSION:** Mayor Widmyer noted that the Homestead property is currently under a long-term (75 year) lease between St. Vincent and the City. Councilmember Miller asked if during the public hearing will there be formal appraised values presented. Mr. Gridley noted that these are market values and felt it would serve just as well as an appraisal. Ms. Anderson noted possible uses for the East Sherman properties and presented a map provided by Community Builders that broke the East Sherman area up into different nodes. The properties being discussed for trade fall within the "core" area of the district, demarking the area of high potential and current activity. She noted possible uses at the Star Haven property could include food vendor courts with leases to bring in revenue, including a restroom and option for a beer and wine vendor, other ideas could be pop up shops, or a year-round farmers market or a Co-op Market. The City could also leverage the property and release an RFP to developers to submit ideas/concepts. One example of that would be for an affordable housing project on the property through a public-private partnership to guide the type of development that is desired on East Sherman. Councilmember Gookin noted that there doesn't appear to be an adopted plan at this time, and there has been no past discussion about the City owning property on Sherman. She noted that for the Sandman site there could be opportunities for public parking lots, pocket park including fitness zones, artistic elements such as a mural wall or movie wall, or interactive art or play features possibly in partnership with Gizmo and the Arts Commission, and games, or farmer's market areas with an opportunity for a festival street on 17 Street. Ms. Anderson noted that the draft master plan for East Sherman includes some related action item such as encouraging a variety of housing choices, flexible public places and creation of a parking lot. Additionally, there are seven vision statements from the draft Master Plan that are supportive of the ideas presented tonight.

Councilmember McEvers asked for clarification regarding what the City would be accomplishing by buying dirt. Ms. Anderson noted that this is a unique opportunity because the City owns the property on Homestead, and that by acquiring the Sherman Avenue properties it gives the City an opportunity toward redevelopment and control the property to do something other than transitional housing. Mayor Widmyer clarified that the Council has all acknowledged that East Sherman is an area that needs revitalization. This is an opportunity for the City to get more involved, as the result of inactivity over the years are working. Additionally, there has been a huge push to create an urban renewal district in the area, which the Mayor would like to see the area developed outside of a new district. The Mayor stated that this might be the push to get more outside investment into the area after the City's investment is noted. Councilmember Gookin expressed his desire to see a more detailed master plan for East Sherman. He expressed concern that during the last few strategic planning sessions this idea was not brought up and it seems hasty. Councilmember Gookin felt this was not a noted priority for this fiscal year and

does not believe it has been a transparent process. He stated that this was not allocated within the budget and felt that there was no extra money available at the budget creation time and expressed concern that now there is money available, so he will be opposed to the approval to move this forward. The Mayor clarified that the City has been talking about East Sherman for a long time, and that this wasn't in the budget discussions as this opportunity wasn't available at that time. He noted that this would be an investment that shows the City is concerned with East Sherman and that one can't always plan for things in the budget as unknown opportunities come up, as is the case for this proposal. Councilmember Gookin stated that he felt the City is trying to resolve a problem of St. Vincent de Paul. The Mayor clarified that the two properties on Sherman came up for sale and talks came forward regarding this opportunity at that time. Councilmember Evans noted that the City has been working toward revitalizing East Sherman for years and noted that Councilmember Gookin had sat in on some of those sub-committee discussions. Councilmember Miller stated that she would like to hear what the public has to say about all this and that setting a public hearing would provide that opportunity. She felt that an appraisal would ensure more of a fair trade, and that this is a wise move to take advantage of space on East Sherman so that there are opportunities for parking to encourage private business.

**MOTION:** Motion by Miller, seconded by Evans, to approve **Resolution No. 19-014** Declaring the Intent to exchange property with Society of St. Vincent de Paul in Coeur d'Alene, Idaho, Inc., and setting a June 4, 2019 public hearing for the consideration of the exchange of certain parcels of real property known as 102 and 106 East Homestead Ave., and 1516 and 1620 E. Sherman Avenue, in Coeur d'Alene, Idaho.

**DISCUSSION CONTINUED:** Councilmember English noted that he has been involved in nonprofits and government most of his life and a budget is a tool and a guide and should not be locked in to cut off creativity. Sometimes an opportunity comes up so you need to have the leadership to take a potential risk and East Sherman has been an issue for a while. He noted that this is a unique opportunity and he felt that the City should take advantage of it and hopes it can be a catalyst for economic development of the area.

**ROLL CALL:** Evans Aye; Miller Aye; McEvers Aye; Gookin No; English Aye; Edinger Aye.  
**Motion Carried.**

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

The meeting adjourned at 7:20 p.m.

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Steve Widmyer, Mayor

ATTEST:

Draft

**PUBLIC WORKS COMMITTEE  
MINUTES  
May 13, 2019  
4:00 p.m., Library Community Room**

**COMMITTEE MEMBERS PRESENT**

Councilmember Woody McEvers  
Councilmember Dan English  
Councilmember Kiki Miller

**STAFF PRESENT**

Bill Greenwood, Parks & Rec. Dir.  
Amy Ferguson, Executive Asst.  
Tim Martin, Streets & Eng. Director  
Randy Adams, Deputy City Attorney  
Terry Pickel, Water Dept. Director  
Kyle Marine, Asst. Water Supt.  
Troy Tymesen, City Administrator

**Item 1           Award of Construction Contract for Water Administration/Maintenance Facility**

**Agenda**

Terry Pickel, Water Department Director, presented a request for council acceptance of the bid of and authorization of a contract with La Riviere Construction, Inc., for construction of a new Water Department administration and maintenance building.

Mr. Pickel stated in his staff report that since the City acquired the public water system from Idaho Water, the Water Department has been moved several times, due either to expansion, transition of facilities, or contributing safety factors. Currently, the Water Maintenance Shop is housed at 3800 Ramsey Road, adjoining the Street Department in the same building. The Water Administrative Offices are housed in a separate building at 3820 Ramsey Road, in the same complex. Fire Station II, the Training Tower, and the Police Department also occupy the same complex. As the City continues to grow, so do the needs of each of these public entities. As equipment and manpower are added to meet the ever-increasing need for basis City services, adequate space in the Ramsey Complex has become an increasing premium. As two new buildings have been added for Police and Fire, precious ground storage space for equipment and bulk materials such as sand and crushed rock have disappeared. A major contributing factor to a desired relocation is that egress at the Ramsey Complex is onto Ramsey Road only. With the dramatic increase in traffic over the past decade, it is exceedingly difficult to exit the yard safely, especially with the large slow-moving equipment used by the Water and Street Departments.

The staff report further noted that the Water Department's consultant solicited bids for the Water Administration and Maintenance Building. Five final bids were received, with La Riviere Construction being the lowest bidder at \$2,660,000. While the lowest responsive bid is \$210,000 over the budgeted line item, staff does not expect the overall FY budget to be exceeded as they will not be able to accomplish another large budgeted project this fiscal year due to time constraints, design issues, right of way/easement access, etc. It is also anticipated that the construction will transcend this fiscal year budget so the additional cost can be included in the next budget. It is estimated that approximately \$2.2 million would likely be spent by the end of

the fiscal year as it is anticipated that construction would take approximately 300 calendar days, depending on weather.

The staff report further explained that the proposed Water Administration and Maintenance Building will be a 25,000 square foot clear span steel structure which will house the administrative offices, a heated maintenance shop, and a cold storage area for materials in one structure rather than the current four. The building would be constructed on 4.5 acres of available area on the Howard Street Compost site, on the east side of the property. This would provide a suitable location for the proposed facility as well as provide a buffer from the public for the Compost Facility operations. Public access and operational egress from this location would be considerably easier than the Ramsey complex.

Mr. Pickel said that they have already prepared the property for the foundation and completed frontage improvements. They will have open public access to the front of the building, but the rest of the area will be gated. It will be easier for customers to find them and the new facility will also increase public safety because customers won't have to be moving around equipment that is on the lot at all times.

Mr. Pickel reviewed the floor plan and noted that the clear span structure offers a lot of flexibility with no posts in the middle of the building. He noted that they have sufficient cash to pay for the project, and have about \$3.2 million in cash on hand. They did not include the building cost in the rate study increases. Mr. Pickel said that they will realize savings from a couple of projects that will be pared back a bit, with some additional savings on other projects. As a result, they will not need to do a budget amendment. Mr. Pickel explained that the contract will be over 300 calendar days so it will transcend this year's fiscal budget. They would expect to spend about \$2 - \$2.2 million in this year's budget.

Mr. Pickel reviewed some of the benefits for customers and employees, at no additional cost to the rate payer, which include better, improved ADA access, freeing up space needed by other entities, improved safety for customers, more customer parking, and a more centralized location to be able to egress.

Councilmember Miller asked Mr. Pickel if they were hoping to have additional funds as they go along to do the "add alternates." She also asked if they would be needing to do an increase in their budget request for operation expenses over the current facility. Mr. Pickel responded that they will probably see a little higher energy costs, but they are also looking at more efficiency and should see some savings there. They are trying to get the most energy efficient package.

Councilmember English commended Mr. Pickel and said that he obviously did his homework. He said that it looks good to him and noted that time is of the essence to get the project going. Councilmember English asked how the existing building would be utilized. Mr. Pickel said that that the Police Department has expressed interest in the office building, but he would like to see the office space go to the Streets and Engineering Department as they are badly in need of office space.

Councilmember English said that he thinks the new facility will be in a great location, and anything they can do to relieve the traffic burden on Ramsey is good.

Councilmember McEvers asked if the construction of the new building was going to take away from the funds in reserve. Mr. Pickel said that the emergency reserve is factored into the rate study. He also noted they are looking at extending the lives of their vehicles because they will be able to keep them nicer for a longer period of time since they will be in a covered facility.

Councilmember McEvers asked if the prep work had already been paid for. Mr. Pickel responded that it had.

Councilmember Miller asked how long into the future would the new facility meet the needs of the Water Department, and whether there is enough land at the location to expand. Mr. Pickel explained that the site is 4.5 fenced acres. They expect to eventually expand an additional 60 feet in the building, and the site should meet their needs for 30 to 40 years into the future.

**MOTION: Motion by Miller, seconded by English, that Council accept the bid and authorize the Mayor to enter into a construction contract with La Riviere Construction, inc. for \$2,660,000 to build the new Water Department Administration and Maintenance Building. Motion carried.**

## **Item 2 Approval of Cooperative Funding Agreement for 2019 Chip Seal Project Consent Calendar**

Tim Martin, Streets & Engineering Director, presented a request for council approval of a Cooperative Funding Agreement with the City of Hayden, City of Dalton Gardens, and the City of Coeur d'Alene for the 2019 Chip Seal Project.

Mr. Martin stated in his staff report that this is the third year of the city's Chip Seal program. Their consultant, Welch Comer Engineering, is tasked with the design and bid for all the participating municipalities. The Chip Seal program is a part of the City of Coeur d'Alene's Overlay program and is a budgeted item. The City of Coeur d'Alene is partnering with the other cities as a cost saving measure. The City of Coeur d'Alene will be the lead and will coordinate with the other city participants. Approving the Cooperative Funding Agreement will provide clarity for all parties and provide the terms of the funding, work performed, and the management of the project. The project will begin in late July or August.

Mr. Martin explained that the Chip Seal project includes 8.57 miles of road and incorporates a couple of in-house overlays, and that the city's duties will be to review the documents, advertise for the bid, open the bids and then review them with the two partners. He noted that the advantage to the partnership is being able to receive competitive pricing for the products because of the quantity. The project will include Seltice, Hanley & 15<sup>th</sup> Street., and a couple of small sections in some residential areas. As the bids come in, Mr. Martin said that he would return to the Public Works Committee with the bid results.

Mr. Martin said that their previous challenge was Ironwood traffic control. This year they will manage traffic control internally and will have a project manager on site.

Councilmember Miller asked if Welch Comer was going to be doing inspections, approvals, etc. for all three municipalities at the same time. Mr. Martin said that Welch Comer is not going to do the approvals for the City of Coeur d'Alene, but will be doing them for the cities of Dalton and Hayden. The City of Coeur d'Alene will have its own project manager on site. If they feel they are not getting the product that they asked for, then Welch Comer will be on site to manage that for them.

Mr. Martin noted that their challenge is traffic counts. They just pulled some traffic counts on Ramsey Road and it is getting 15-17,000 cars a day, and Government Way is getting around 12,000.

Councilmember McEvers asked about preparation work for the chip seal. Mr. Martin said that it is not only the chip seal, but it is also the same with an overlay. The challenge they have is getting ahead of themselves. That has been the challenge internally to get far enough ahead so they are not playing catch up. Mr. Martin also noted that this year they are going to do a 3/8" chip seal in the residential areas instead of a 1/4" chip as he believes they get better life out of it. He also commented that the 1/4" chip costs more to produce than the 3/8" chip.

Councilmember McEvers asked about cuts for manholes and water. Mr. Martin said that they will probably have some emergency cuts, but they will work with Water and Wastewater on a plan and try to let them get their work done ahead of the chip seal.

Councilmember McEvers asked about traffic control. Mr. Martin said that it is probably the largest expense. They are not going to save money but will expect to get what they pay for, which is why they want to have an inhouse project manager.

**MOTION: Motion by English, seconded by Miller, that Council approve Cooperative Funding Agreement between the City of Hayden, City of Dalton Gardens, and the City of Coeur d'Alene for the 2019 Chip Seal Project. Motion carried.**

**Item 3            Approval of Memorial Grandstand Remodel Contract with Walker Construction as Contract Manager/General Contractor (CMGC)  
Agenda**

Bill Greenwood, Parks & Recreation Director, presented a request for council approval of an agreement with Walker Construction as the Construction Manager/General Contractor (CM/GC) for the remodel of the Memorial Grandstands.

Mr. Greenwood explained in his staff report that on October 16, 2018 Council rejected Bids for the Memorial Grandstands and authorized staff to seek a Request for Qualifications (RFQ) for

the remodel. They advertised for the RFQ as required and received 3 RFQs. All three companies met the necessary criteria to submit. On November 14, 2018, they scored the Statement of Qualifications as outlined in the RFQ and the scoring was very close so they decided to conduct face-to-face interviews on December 6<sup>th</sup> with Walker Construction being selected.

Mr. Greenwood further stated in his staff report that Ignite CDA has committed \$1,011,570 to the project, and NIC has given \$150,000, with \$136,881.50 from Parks Capital, less \$68,083 paid to Architects West, for a total of \$1,230,368.50 remaining for the project. The current construction bid amount is \$1,684,087, which is \$453,718.50 over budget. The funding from ignite will not be available as of July 1, 2019.

Mr. Greenwood commented in his staff report that for the last several months Walker Construction has been working with sub-contractors in an effort to bring the project within budget. Unfortunately, the current bidding environment is high and Walker Construction was unable to bring the project within budget.

Mr. Greenwood said that the question before the committee was whether council is interested in moving forward with the project and using the Parks Capital fund to make up the difference.

Councilmember Miller commented that she understands that construction costs are going up and that as of July 1<sup>st</sup> they will not be able to use the ignite funding. Her feeling is that it is too far over budget and that if they cannot build what they want because of increased costs, then they need to come back to the council with a proposal that is in the budget, or with some different or creative funding sources, or even a different time line. She would like to see some alternatives.

Councilmember English said that they have to do something with the grandstand and he feels that this is too big for the committee on a Monday afternoon to make a quick decision about and that it needs to go to the full council. He would be wary of doing something too quick, or too cheap, which would end up with them being disappointed down the road. He suggested that maybe they need to go to the public and give them a couple of options. He feels like there are too many unknowns and maybe some terrific alternatives. He commented that he has seen way too many times on a project like this where they end up cutting stuff so much that they are disappointed down the road and then get beat up for not looking ahead. He is all for having a broader discussion and taking a little bit more time and trying to get what they really want.

Councilmember Miller said that at one point there was conversation about what would be the bare bones minimum cost to paint the grandstands and make them safe for the public. Mr. Greenwood said that it would cost about \$90,000 to paint, and total bare bones costs would be about \$150,000-\$170,000. Councilmember Miller said that she would like to see a minimum and maximum, and would like to have all of the options that the public could be informed of. Mr. Greenwood said that they have really beat themselves up trying to find some solutions and haven't had good luck because of the bidding environment.

Councilmember McEvers asked Christie Wood and Chris Martin, representing North Idaho College, to come forward for public comment. Councilmember English noted for the record that he is an employee of North Idaho College.

Ms. Wood said that she felt it was important for NIC to share their perspective. She commented that the City signed an agreement in February of last year in regard to the grandstand and the BLM property and that NIC has contributed \$228,000 towards the BLM landscaping and trail, \$8,000 towards the destruction of the “blue building,” and \$150,000 towards the renovation of the Memorial Grandstand. The reason for that was to address the Title IX issues in there, including a restroom (for girls’ softball) and a locker room that is Title IX complaint. Those things are important to them. They also have a verbal agreement that NIC would like to have the NIC Cardinal logo somewhere on the building. She requested that these things be included in future discussions with council.

Ms. Wood noted that they thought last summer that the BLM property would be done, but there hasn’t been any movement. They wrote a check to the city for it last June. Ms. Wood said that they don’t mind that the city is holding onto the funds, but they want to see some movement on the project.

Mr. Martin said that NIC’s interest is strictly making sure that their softball players have adequate space and equipment storage. When the project gets delayed, it impacts the softball program.

Ms. Wood suggested that the city could go back to its partners and suggest that some of the project be phased in, as long as there is an effort over the next two to three years and a budgeting process. She commented that she would hate to miss the window of ignite money, and that they would prioritize the restrooms, and then the locker rooms. She noted that the concessions area is a wonderful idea and generates revenue, but even a food truck is fine for now. She said that she thinks the partners would be open to that kind of creative stretching out over a couple of years but getting what you can get done with ignite funds right now.

Councilmember McEvers asked if there was wiggle room for going back to NIC for additional funds. Ms. Wood said that that the BLM piece does not look nice and it is the gateway to the city. They would like to get that mapped out and done. She commented that the city is certainly welcome to approach the board for additional funds, but noted that they are experiencing flat enrollment right now and for the first time in quite awhile they are actually looking at discussions of a tax increase to fund their own operations. Their capital improvement fund is earmarked out into the next decade at least.

Mr. Greenwood commented that the landscaping between River and Huetter has been delayed. Park of the mix-up in that delay was who was going to run the show, NIC or the city. Mr. Greenwood said he was running on the assumption that NIC was working with the group that was doing the skatepark area. He met with some of their maintenance folks last week and got a pretty good plan in place. One of the things he was charged to do is to make sure that the architects don’t make it too “architectural” as it is pretty much a greenbelt. He further

commented that he thinks they are moving forward really well and he is hopeful that the bidding environment is okay this summer for some landscaping.

Mr. Greenwood said that one of the larger elements in the grandstands project is the locker rooms, restroom and concession area, and he commented that it is really a “box” in a building. They have taken out all of the venting and heavy electric, etc. for the concession. He suggested not putting in those elements and just revamping the grandstands, i.e., new siding, painting, recladding the benches, etc., and then coming back at a later date with all of the other things. He noted that water, sewer, venting, electrical is already there and it is something they could do at a later date. Mr. Greenwood said that he reached out to the architects today and asked if it would be doable, but he has not heard back from them yet. He commented that hopefully in the next day or two they can get some better numbers in time for the next council meeting. Mr. Greenwood said that they are up against the July 1 deadline so they don’t have a lot of time. When they come back with some better numbers, council will have to make a decision about what they want to do.

Councilmember Miller said that they should clarify the July 1 deadline and what can be done before coming back to the council.

Councilmember English said that, to him, the bare minimum includes the bathroom, locker room, sprucing it up, and not the concession area. He said that he would be very cautious about giving the appearance to anybody that they are trying to rush something through, or take shortcuts to avoid the intent of the new law. He also commented that they have created a certain amount of public expectation.

Councilmember McEvers asked what would be the result if they took the \$453,000 overage out of the Parks Capital fund. Mr. Greenwood said that it would clean them out. He noted that they do receive yearly revenues from the Parking fund, leases on docs, vendors fees, etc. so it would start to build up again, but it would take some time. He commented that he thinks it was identified in the Parks master plan that the grandstands needed work.

Councilmember Miller commented that sometimes you don’t always get what you want and have to pare down. Mr. Greenwood said that he would try to get some ideas regarding phasing, and input from the partners. Councilmember Miller said that coming back to the council with options that have been vetted would be good.

Councilmember English suggested that the legal staff get together with ignite and look at what the new law means and what the potential impact is. Councilmember Miller suggested that maybe it is time to bring it to the public.

Mr. Adams said that the amended statute talks about the expenditure of money, and that the money has to be spent before July 1. He noted that the original bill was supposed to go into effect in January, but they pushed it out to July 1, he thinks specifically to allow some projects underway to get funded before the changes in the law occurred.

**MOTION: NO MOTION. This item will be placed on the Council Meeting agenda for further discussion by the full council.**

The meeting adjourned at 4:58 p.m.

Respectfully submitted,

Amy C. Ferguson  
Public Works Committee Liaison

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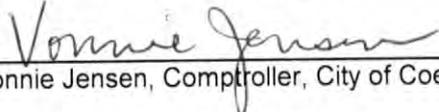
MAY 9 2019

CITY OF COEUR D'ALENE  
Treasurer's Report of Cash and Investment Transactions

CITY CLERK

FUND	BALANCE 3/31/2019	RECEIPTS	DISBURSE- MENTS	BALANCE 4/30/2019
<u>General-Designated</u>	\$1,846,393	\$13,621	\$21,877	\$1,838,137
<u>General-Undesignated</u>	11,879,730	3,785,289	3,796,962	11,868,057
<u>Special Revenue:</u>				
Library	378,403	27,868	146,382	259,889
CDBG	6,768	77,965	60,678	24,055
Cemetery	55,027	29,085	32,243	51,869
Parks Capital Improvements	1,049,180	34,194	1,250	1,082,124
Impact Fees	3,358,208	251,540	16,631	3,593,117
Annexation Fees	19,404	38		19,442
Cemetery P/C	1,474,419	3,600	28,889	1,449,130
Jewett House	35,686	2,946	833	37,799
Reforestation	26,737	51		26,788
Street Trees	204,316	7,597	1,825	210,088
Community Canopy	3,165	156	298	3,023
Public Art Fund	52,394	101	1,537	50,958
Public Art Fund - ignite	590,622	1,148	1,200	590,570
Public Art Fund - Maintenance	97,669	190	21	97,838
<u>Debt Service:</u>				
2015 G.O. Bonds	522,944	12,876		535,820
<u>Capital Projects:</u>				
Street Projects	389,058	923,470	132,189	1,180,339
Atlas Waterfront Project	(140,471)			(140,471)
<u>Enterprise:</u>				
Street Lights	(4,497)	43,522	55,290	(16,265)
Water	3,296,371	317,889	318,660	3,295,600
Water Capitalization Fees	7,001,311	180,979	2,819	7,179,471
Wastewater	9,830,644	330,422	668,119	9,492,947
Wastewater - Equip Reserve	1,178,852	27,500		1,206,352
Wastewater - Capital Reserve		500,000		500,000
WWTP Capitalization Fees	1,761,329	336,979		2,098,308
WW Property Mgmt	60,668			60,668
Sanitation	1,498,026	343,314	272,632	1,568,708
Public Parking	290,259	27,840	22,536	295,563
Drainage	1,142,463	85,285	156,534	1,071,214
Wastewater Debt Service	1,052,209	2,045		1,054,254
<u>Fiduciary Funds:</u>				
Kootenai County Solid Waste Billing	228,479	195,959	228,801	195,637
LID Advance Payments	-			-
Police Retirement	1,015,203	14,613	32,887	996,929
Sales Tax	2,712	3,314	2,712	3,314
BID	242,233	6,730		248,963
Homeless Trust Fund	427	438	427	438
<b>GRAND TOTAL</b>	<b>\$50,446,341</b>	<b>\$7,588,564</b>	<b>\$6,004,232</b>	<b>\$52,030,673</b>

I HEREBY SWEAR UNDER OATH THAT THE AMOUNTS REPORTED ABOVE, ON THE CASH BASIS ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE.

  
\_\_\_\_\_  
Vonnice Jensen, Comptroller, City of Coeur d'Alene, Idaho

CITY OF COEUR D'ALENE  
 BUDGET STATUS REPORT  
 SEVEN MONTHS ENDED  
 April 30, 2019

RECEIVED

MAY 9 2019

CITY CLERK

FUND OR DEPARTMENT	TYPE OF EXPENDITURE	TOTAL BUDGETED	SPENT THRU 4/30/2019	PERCENT EXPENDED
Mayor/Council	Personnel Services	\$253,438	\$139,129	55%
	Services/Supplies	11,400	4,106	36%
Administration	Personnel Services	299,969	115,633	39%
	Services/Supplies	20,200	1,029	5%
Finance	Personnel Services	683,971	380,466	56%
	Services/Supplies	498,800	467,418	94%
Municipal Services	Personnel Services	1,236,651	725,396	59%
	Services/Supplies	628,479	395,013	63%
	Capital Outlay	16,000	16,650	104%
Human Resources	Personnel Services	312,985	162,843	52%
	Services/Supplies	74,125	30,002	40%
Legal	Personnel Services	1,178,684	682,529	58%
	Services/Supplies	53,253	18,395	35%
Planning	Personnel Services	594,382	339,980	57%
	Services/Supplies	133,600	53,185	40%
	Capital Outlay			
Building Maintenance	Personnel Services	378,357	194,123	51%
	Services/Supplies	157,475	64,138	41%
	Capital Outlay	17,000	10,410	
Police	Personnel Services	13,247,773	7,499,015	57%
	Services/Supplies	1,309,691	734,158	56%
	Capital Outlay			
Fire	Personnel Services	9,439,387	5,421,895	57%
	Services/Supplies	607,909	295,364	49%
	Capital Outlay		38,352	
General Government	Services/Supplies	86,850	141,549	163%
	Capital Outlay		29,521	
Police Grants	Personnel Services	115,292	33,352	29%
CdA Drug Task Force	Services/Supplies	40,000		
	Capital Outlay	60,000		
Streets	Personnel Services	2,990,394	1,782,399	60%
	Services/Supplies	1,694,650	715,015	42%
	Capital Outlay	241,500	659,501	273%
Parks	Personnel Services	1,553,223	747,981	48%
	Services/Supplies	583,350	218,161	37%
	Capital Outlay	165,000	81,728	50%

CITY OF COEUR D'ALENE  
 BUDGET STATUS REPORT  
 SEVEN MONTHS ENDED  
 April 30, 2019

FUND OR DEPARTMENT	TYPE OF EXPENDITURE	TOTAL BUDGETED	SPENT THRU 4/30/2019	PERCENT EXPENDED
Recreation	Personnel Services	550,643	303,043	55%
	Services/Supplies	191,780	81,066	42%
	Capital Outlay	20,000	17,950	90%
Building Inspection	Personnel Services	886,775	477,068	54%
	Services/Supplies	39,410	14,233	36%
	Capital Outlay	33,935	32,797	97%
Total General Fund		<u>40,406,331</u>	<u>23,124,593</u>	<u>57%</u>
Library	Personnel Services	1,322,388	767,066	58%
	Services/Supplies	222,000	127,531	57%
	Capital Outlay	180,000	84,835	47%
CDBG	Services/Supplies	408,854	132,475	32%
Cemetery	Personnel Services	202,455	89,553	44%
	Services/Supplies	102,500	35,481	35%
	Capital Outlay	85,000	54,085	
Impact Fees	Services/Supplies	521,500	124,026	24%
Annexation Fees	Services/Supplies	286,000	286,000	100%
Parks Capital Improvements	Capital Outlay	131,500	151,482	115%
Cemetery Perpetual Care	Services/Supplies	207,000	109,689	53%
Jewett House	Services/Supplies	30,955	4,719	15%
Reforestation	Services/Supplies	8,000	4,099	51%
Street Trees	Services/Supplies	100,000	28,683	29%
Community Canopy	Services/Supplies	2,000	959	48%
Public Art Fund	Services/Supplies	348,500	87,143	25%
		<u>4,158,652</u>	<u>2,087,826</u>	<u>50%</u>
Debt Service Fund		<u>876,931</u>	<u>58,114</u>	<u>7%</u>

CITY OF COEUR D'ALENE  
BUDGET STATUS REPORT  
SEVEN MONTHS ENDED  
April 30, 2019

FUND OR DEPARTMENT	TYPE OF EXPENDITURE	TOTAL BUDGETED	SPENT THRU 4/30/2019	PERCENT EXPENDED
Seltice Way	Capital Outlay		36,689	
Seltice Way Sidewalks	Capital Outlay	72,000	3,500	5%
Traffic Calming	Capital Outlay	40,000	135	0%
Govt Way - Hanley to Prairie	Capital Outlay		195,536	
US 95 Upgrade	Capital Outlay			
Kathleen Avenue Widening	Capital Outlay	195,000		
Margaret Avenue	Capital Outlay			
4th and Dalton	Capital Outlay	50,000		
US 95 Upgrade	Capital Outlay	195,000		
15th Street	Capital Outlay	25,000	1,540	6%
Ironwood	Capital Outlay			
Downtown Signal Imprvmnts	Capital Outlay	154,000	2,000	
Atlas Waterfront Project	Capital Outlay		85,159	
		731,000	324,559	44%
Street Lights	Services/Supplies	650,050	352,517	54%
Water	Personnel Services	2,073,534	1,149,359	55%
	Services/Supplies	4,580,300	791,967	17%
	Capital Outlay	5,543,500	668,908	12%
Water Capitalization Fees	Services/Supplies	1,700,000		
Wastewater	Personnel Services	2,793,403	1,544,649	55%
	Services/Supplies	6,562,993	1,408,947	21%
	Capital Outlay	8,224,700	2,837,954	35%
	Debt Service	2,178,563	747,274	34%
WW Capitalization	Services/Supplies	1,000,000		
Sanitation	Services/Supplies	4,154,083	2,188,512	53%
Public Parking	Services/Supplies	289,880	231,570	80%
	Capital Outlay		110,023	
Drainage	Personnel Services	115,166	66,419	58%
	Services/Supplies	764,458	155,318	20%
	Capital Outlay	920,000	490,923	53%
Total Enterprise Funds		41,550,630	12,744,340	31%
Kootenai County Solid Waste		2,600,000	1,362,653	52%
Police Retirement		180,760	104,616	58%
Business Improvement District		176,000		
Homeless Trust Fund		5,200	2,795	54%
Total Fiduciary Funds		2,961,960	1,470,064	50%
TOTALS:		\$90,685,504	\$39,809,496	44%

I HEREBY SWEAR UNDER OATH THAT THE AMOUNTS REPORTED ABOVE, ON THE CASH BASIS, ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE.

  
 Vonnie Jensen, Comptroller, City of Coeur d'Alene, Idaho

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MAY 9 2019

CITY CLERK

City of Coeur d Alene  
Cash and Investments  
4/30/2019

Description	City's Balance
<b>U.S. Bank</b>	
Checking Account	2,031,409
Checking Account	29,573
Investment Account - Police Retirement	981,443
Investment Account - Cemetery Perpetual Care Fund	1,449,130
<b>Wells Fargo Bank</b>	
Federal Home Loan Bank Bond	1,002,535
<b>Community 1st Bank</b>	
Certificate of Deposit	1,018,286
Certificate of Deposit	208,683
<b>Idaho Central Credit Union</b>	
Certificate of Deposit	259,394
<b>Idaho State Investment Pool</b>	
State Investment Pool Account	44,789,520
<b>Spokane Teacher's Credit Union</b>	
Certificate of Deposit	258,575
<b>Cash on Hand</b>	
Finance Department Petty Cash	500
Treasurer's Change Fund	1,350
Police Change Fund	75
Library Change fund	180
Cemetery Change Fund	20
<b>Total</b>	<u>52,030,673</u>

I HEREBY SWEAR UNDER OATH THAT THE AMOUNTS REPORTED ABOVE  
ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE.

\_\_\_\_\_  
Vonnie Jensen, Comptroller, City of Coeur d'Alene, Idaho

DATE: MAY 15, 2019  
TO: MAYOR AND CITY COUNCIL  
FROM: PLANNING DEPARTMENT  
RE: SETTING OF PUBLIC HEARING DATE: JUNE 18, 2019

Mayor Widmyer,

The Planning Department has forwarded the following item to the City Council for scheduling of a public hearing. In keeping with state law and Council policy, the Council will set the date of the public hearing upon receipt of recommendation.

<u>ITEM NO.</u>	<u>REQUEST</u>	<u>COMMISSION ACTION</u>	<u>COMMENT</u>
A-2-19	Applicant: John Hern Location: 6215 N. Atlas Road Request: A proposed 11.73 acre annexation from County Industrial to C-17 zoning district	Recommended approval	LEGISLATIVE

In order to satisfy the mandatory 15-day notice requirement, the next recommended hearing date will be **June 18, 2019**

CEMETERY LOT TRANSFER/SALE/REPURCHASE PROCEDURE AND ROUTING SLIP

Request received by: Municipal Services / Kelley Sellers / 5-3-19  
Department Name / Employee Name / Date

Request made by: Dennis O'Brien / 208-304-4368  
Name / Phone

(24405 CLUB VIEW DRIVE, DAMASCUS, MD 20872)  
\* 9098 Address N CASTLEWAY, HAYDEN, ID 83835  
(UNTIL AUGUST 1<sup>st</sup>)

The request is for:  Repurchase of Lot(s)  
 /  Transfer of Lot(s) from Dana to \_\_\_\_\_

Niche(s): \_\_\_\_\_  
Lot(s): 11, \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_. Block:  Section: R1V

Lot(s) are located in / / Forest Cemetery / / Forest Cemetery Annex (Riverview).

Copy of  Deed or / / Certificate of Sale must be attached.

Person making request is  Owner / / Executor\* / / Other\* \_\_\_\_\_

\*If "executor" or "other", affidaviats of authorization must be attached.

Title transfer fee (\$ \_\_\_\_\_) attached\*\*.

\*\*Request will not be processed without receipt of fee. Cashier Receipt No.: \_\_\_\_\_

**ACCOUNTING DEPARTMENT** Shall complete the following:

Attach copy of original contract.

Vonne Jensen  
Accountant Signature

**CEMETERY SUPERVISOR** shall complete the following:

1. The above-referenced Lot(s) is/are certified to be vacant:  Yes / / No

2. The owner of record of the Lot(s) in the Cemtery Book of Deeds is listed as:

Dennis + Carolyn O'Brien

3. The purchase price of the Lot(s) when sold to the owner of record was \$ 800<sup>00</sup> per lot.

MB / 05/03/2019  
Supervisor's Init. / Date

**LEGAL/RECORDS** shall complete the following:

1. Quit Claim Deed(s) received: / / Yes / / No.

Person making request is authorized to execute the claim: \_\_\_\_\_  
Attorney, Init. / Date

I certify that all requirements for the transfer/sale/repurchase of cemetery lot(s) have been met and recommend that that transaction be completed.

\_\_\_\_\_  
City Clerk's Signature / Date

**COUNCIL ACTION**

Council approved transfer/sale/repurchase of above-referenced Lot(s) in regular session on: \_\_\_\_\_  
Mo./ Day /Yr.

**CEMETERY SUPERVISOR** shall complete the following:

Change of ownership noted/recorded in the Book of Deeds: / / Yes / / No

Cemetery copy filed / /; original and support documents returned to City Clerk / /

\_\_\_\_\_  
Cemetery Supervisor's Signature / Date

Distribution: Original to City Clerk  
Yellow copy Finance Dept.  
Pink copy to Cemetery Dept.

RESOLUTION NO. 19-015

A RESOLUTION OF THE CITY OF COEUR D'ALENE, KOOTENAI COUNTY, IDAHO, AUTHORIZING THE BELOW MENTIONED AGREEMENTS OF THE CITY OF COEUR D'ALENE, SPECIFICALLY: APPROVAL OF AN AGREEMENT WITH INTERSTATE CONCRETE AND ASPHALT FOR THE ATLAS ROAD/INDUSTRIAL LOOP SIGNAL AND TRAIL GAP PROJECT; AND APPROVAL OF A COOPERATIVE FUNDING AGREEMENT BETWEEN THE CITY OF HAYDEN, CITY OF DALTON GARDENS, AND THE CITY OF COEUR D'ALENE FOR THE 2019 CHIP SEAL PROJECT.

WHEREAS, it has been recommended that the City of Coeur d'Alene enter into the agreements listed below, pursuant to the terms and conditions set forth in the agreements attached hereto as Exhibits "A" through "B" and by reference made a part hereof, and summarized as follows:

- A) Approval of an agreement with Interstate Concrete and Asphalt for the Atlas Road/Industrial Loop signal and trail gap project; and
- B) Approval of a Cooperative Funding agreement between the City of Hayden, City of Dalton Gardens, and the City of Coeur d'Alene for the 2019 Chip Seal project;

AND

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

NOW, THEREFORE,

BE IT RESOLVED by the Mayor and City Council of the City of Coeur d'Alene that the City enter into the agreements as set forth in substantially the form attached hereto as Exhibits "A" through "B" and incorporated herein by reference, with the provision that the Mayor, City Administrator, and City Attorney are hereby authorized to modify said agreements so long as the substantive provisions of the agreements remain intact.

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

DATED this 21<sup>st</sup> day of May, 2019.

\_\_\_\_\_  
Steve Widmyer, Mayor

ATTEST

\_\_\_\_\_  
Renata McLeod, City Clerk

Motion by \_\_\_\_\_, Seconded by \_\_\_\_\_, to adopt the foregoing resolution.

ROLL CALL:

COUNCIL MEMBER ENGLISH Voted \_\_\_\_\_

COUNCIL MEMBER EVANS Voted \_\_\_\_\_

COUNCIL MEMBER MILLER Voted \_\_\_\_\_

COUNCIL MEMBER MCEVERS Voted \_\_\_\_\_

COUNCIL MEMBER GOOKIN Voted \_\_\_\_\_

COUNCIL MEMBER EDINGER Voted \_\_\_\_\_

\_\_\_\_\_ was absent. Motion \_\_\_\_\_.

**CITY COUNCIL  
STAFF REPORT**

**DATE:** May 21, 2019  
**FROM:** Tim Martin, Streets & Engineering Director  
**SUBJECT:** Cooperative Funding Agreement for the 2019 Chip Seal Project

---

**DECISION POINT**

Staff is requesting the City Council to approve a Cooperative Funding Agreement (attached) with the City of Hayden, City of Dalton Gardens, and the City of Coeur d'Alene for the 2019 Chip Seal Project.

**HISTORY**

This is the third year of the City of Coeur d'Alene's Chip Seal program. Our consultant, Welch Comer Engineering, is tasked with the design, and bid for all the participating municipalities.

**FINANCIAL ANALYSIS**

The Chip Seal program is a part of the City of Coeur d'Alene's Overlay program and is a budgeted item. The City of Coeur d'Alene is partnering with the other cities as a cost saving measure. The City of Coeur d'Alene will be the lead and will coordinate with the other city participants.

**PERFORMANCE ANALYSIS**

Approving this Cooperative Funding Agreement for the Chip Seal Program will provide clarity for all parties and provide the terms of the funding, work performed, and the management of the project. The Project will begin in late July or August.

**RECOMMENDATION**

Staff recommends that the City Council and Mayor approve the Cooperative Funding Agreement with the City of Hayden, City of Dalton Gardens, and the City of Coeur d'Alene for the 2019 Chip Seal Project.

## COOPERATIVE FUNDING AGREEMENT

This Agreement made and entered into this 21<sup>st</sup> day of May, 2019, is by and between the City of Coeur d’Alene, a municipal corporation of the State of Idaho, (hereinafter “Coeur d’Alene”), whose address is 710 East Mullan Avenue, Coeur d’Alene, Idaho 83814, the City of Dalton Gardens, a municipal corporation of the State of Idaho, (hereinafter “Dalton Gardens”), whose address is 6360 North Fourth Street, Dalton Gardens, Idaho 83815, and the City of Hayden, a municipal corporation of the State of Idaho, (hereinafter “Hayden”) whose address is 8930 N Government Way, Hayden, Idaho 83854.

WHEREAS, each City plans and implements annual preventative maintenance activities on its transportation system by installing surface treatments as part of the “2019 Chip Seal Project” (hereinafter “Project”) and more specifically described as follows:

### Coeur d’Alene

<b><i>Road Name and Limits</i></b>	<b><i>Proposed Work Description</i></b>
Hanley, Ramsey to Courcelles	3/8” over 1/2” chip seal
Seltice, new pavement to Northwest	3/8” over 1/2” chip seal
15th, Best to Dalton	3/8” over 1/2” chip seal
12th	3/8” chip seal
Elderberry	3/8” chip seal
Dalton, Stafford to St. Michelle	3/8” chip seal
Courcelles, St. Michelle to Hanley	3/8” chip seal

### Dalton Gardens

<b><i>Road Name and Limits</i></b>	<b><i>Proposed Work Description</i></b>
15 <sup>th</sup> , Dalton to Deerhaven	1/4” chip seal
Wilbur, Government to 15 <sup>th</sup>	1/4” chip seal

### Hayden

<b><i>Road Name and Limits</i></b>	<b><i>Proposed Work Description</i></b>
Atlas, Hayden to Citation	3/8” chip seal
Valley, Hayden to Dakota	3/8” chip seal
Meadow, Hayden to Dakota	3/8” chip seal
Dakota, Atlas to Ramsey	3/8” chip seal
Dakota, Reed to US 95	3/8” chip seal
Hayden, Government to Pine Valley	3/8” chip seal
Reed, Honeysuckle to Hayden	3/8” chip seal
Placer	3/8” chip seal
Dee	3/8” chip seal

; and

WHEREAS, Coeur d’Alene, Dalton Gardens, and Hayden let commercial bids and contract with private commercial entities to install surface treatments; and

WHEREAS, Coeur d'Alene, Dalton Gardens, and Hayden wish to work cooperatively, combining surface treatment contract bids to realize economy of scale with regard to commercial contract quantities in accordance with Idaho Code section 67-2807; and

WHEREAS, Coeur d'Alene, Dalton Gardens, and Hayden agree that this Process will benefit all parties; and

WHEREAS, Coeur d'Alene, Dalton Gardens, and Hayden agree to pay their respective share of costs for the work items associated with the surface treatments identified for each route in the commercial contract documents.

WHEREAS, Coeur d'Alene, Dalton Gardens, and Hayden will agree to the acceptance criteria in the Contract Documents so that consistency in determining acceptable or unacceptable work is clear to contractor during construction.

NOW THEREFORE, this cooperative agreement is entered into between Coeur d'Alene, Dalton Gardens, and Hayden to address the terms of the funding, work, and the management of the Project.

1. Duties of Coeur d'Alene:
  - a. Coeur d'Alene will coordinate with Dalton Gardens and Hayden to review and reasonably alter the contract documents to mutual satisfaction.
  - b. Coeur d'Alene will not advertise the bid until Dalton Gardens and Hayden concur with the acceptability of the contract documents in writing.
  - c. Coeur d'Alene will pay to advertise the project for bids in the paper.
  - d. Coeur d'Alene will competitively bid the commercial contract for surface treatments by each party for their respective routes, in accordance with Idaho Code section 67-2805. Once the bids have been opened, but prior to the award of the bid, Coeur d'Alene will review the bids to determine if the bids are within reasonable financial expectations.
  - e. Coeur d'Alene will provide the bids to Dalton Gardens and Hayden and will not award the bid until Dalton Gardens and Hayden concur, in writing, to the recommendation of award.
  - f. Coeur d'Alene will award the surface treatment contract, execute the agreement with the contractor, administer the contract and manage the project.
2. Duties of Dalton Gardens and Hayden:
  - a. Dalton Gardens and Hayden will pay contract costs associated with the surface treatments on their routes.
  - b. Dalton Gardens and Hayden will pay for development of their respective share of the contract documents separately through separate contracts.
  - c. Dalton Gardens and Hayden will pay for their respective share of construction inspection of surface treatment installation through separate contracts.
  - d. Dalton Gardens and Hayden will pay Coeur d'Alene a lump sum amount equal to the bid price for the respective Dalton Gardens and Hayden portions of the Project after the bid opening and prior to the Award of the Contract. Within 60 days of the

substantial completion of the Project, Coeur d'Alene will coordinate with Dalton Gardens and Hayden individually to determine if financial adjustment is necessary and settle each respective account accordingly.

- e. If either Dalton Gardens or Hayden fail to provide payment to Coeur d'Alene for their portions of the contract costs, the respective quantities will be removed from the contract and any raise in unit prices due to the Contractor because of the reduction in overall quantity will be borne by the party at fault.
3. Upon completion of the work and acceptance by each party of the work within its own jurisdiction, each party shall be responsible for the future maintenance of those routes receiving surface treatments that are within that party's jurisdiction.
  4. This agreement shall be in effect upon its execution by all parties and shall remain in effect until the Project is completed.

**City of Coeur d'Alene**

\_\_\_\_\_  
Steve Widmyer, Mayor

ATTEST:

\_\_\_\_\_  
Renata McLeod, City Clerk

**City of Dalton Gardens**

\_\_\_\_\_  
Jeffery Fletcher, Mayor

ATTEST:

\_\_\_\_\_  
Valerie Anderson, City Clerk

**City of City of Hayden**

\_\_\_\_\_  
Steve Griffiths, Mayor

ATTEST:

\_\_\_\_\_  
Abbi Sanchez, City Clerk

**CITY COUNCIL  
STAFF REPORT**

**DATE:** May 21, 2019  
**FROM:** Chris Bosley – City Engineer  
**SUBJECT:** Agreement with Interstate Concrete and Asphalt for the Atlas Road/Industrial Loop Signal and Trail Gap Project.

=====

**DECISION POINT:**

Staff is requesting acceptance of the low bid and approval of an Agreement with Interstate Concrete and Asphalt for the Atlas Road/Industrial Loop Signal and Trail Gap Project.

**HISTORY:**

The City of Coeur d’Alene was recently awarded a Local Strategic Initiatives grant through the Local Highway Technical Assistance Council (LHTAC). The grant stipulates that the project must be completed this year. Plans were already completed in order to receive the grant and was approved in this year’s budget. The City advertised for bids beginning April 4<sup>th</sup> and opened bids on May 9<sup>th</sup> of this year. Only one bid was received, by Interstate Concrete and Asphalt for \$549,724.70, which was well under the engineer’s estimate of \$650,000. An upfront payment by LHTAC has already been received for \$804,500, which is expected to be more than enough to cover the construction costs, including construction engineering and inspection services.

**FINANCIAL ANALYSIS:**

There would be no cost to the City for this project. The construction is fully funded by the grant.

**PERFORMANCE ANALYSIS:**

Acceptance of this bid allows construction to begin this spring with a final completion anticipated in the fall of this year.

**DECISION POINT/RECOMMENDATION:**

Staff recommends that Council accept the bid and approve an Agreement with Interstate Concrete and Asphalt for the Atlas Road/Industrial Loop Signal and Trail Gap Project.

**CONTRACT**  
For  
**ATLAS/INDUSTRIAL SIGNAL AND TRAIL GAP PROJECT**

THIS CONTRACT, made and entered into this 21st day of May, 2019, between the **CITY OF COEUR D'ALENE**, Kootenai County, Idaho, a municipal corporation duly organized and existing under and by virtue of the laws of the state of Idaho, hereinafter referred to as the "**CITY**", and **INTERSTATE CONCRETE & ASPHALT**, a corporation duly organized and existing under and by virtue of the laws of the state of Idaho, with its principal place of business at 8849 W. Wyoming Avenue, Rathdrum, ID 83858, hereinafter referred to as "**CONTRACTOR**,"

WITNESSETH:

THAT, WHEREAS, the said **CONTRACTOR** has been awarded the contract for the ATLAS/INDUSTRIAL SIGNAL AND TRAIL GAP PROJECT according to contract documents on file in the office of the City Clerk of said **CITY**, which contract documents are incorporated herein by reference.

IT IS AGREED that for and in consideration of the covenants and agreements to be made and performed by the CITY OF COEUR D'ALENE, as hereinafter set forth, the **CONTRACTOR** shall complete improvements as set forth in the said contract documents described above, in said **CITY**, furnishing all labor and materials therefor according to said contract documents and under the penalties expressed in the performance bond bearing even date herewith, and which bond with said contract documents are hereby declared and accepted as parts of this contract. All material shall be of the high standard required by the said contract documents and approved by the City Engineer, and all labor performed shall be of first-class workmanship.

The **CONTRACTOR** shall furnish and install barriers and warning lights to prevent accidents. The **CONTRACTOR** shall indemnify, defend and hold the **CITY** harmless from all claims arising from the **CONTRACTOR**'s actions or omissions in performance of this contract, and to that end shall maintain liability insurance naming the **CITY** as one of the insured's in the amount of One Million Dollars (\$1,000,000) for property damage or bodily or personal injury, death or loss as a result of any one occurrence or accident regardless of the number of persons injured or the number of claimants, it being the intention that at least the minimum limits shall be those provided for under Idaho Code 6-924. A certificate of insurance providing at least thirty (30) days written notice to the **CITY** prior to cancellation of the policy shall be filed in the office of the City Clerk.

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

The **CONTRACTOR** shall furnish the **CITY** certificates of the insurance coverages required herein, which certificates must be approved by the City Attorney.

The **CONTRACTOR** agrees to receive and accept as full compensation for furnishing all materials and doing all the work contemplated and embraced in the contract, an amount equal to the sum of the total for the items of work. The total for each item of work shall be calculated by determining the actual quantity of each item of work and multiplying that actual quantity by the unit price bid by the **CONTRACTOR** for that item of work. The total amount of the contract shall not exceed Five Hundred Forty-Nine Thousand, Seven Hundred Twenty-Four Dollars and 70/100 Dollars (\$549,724.70).

Monthly progress payments must be submitted by the 10<sup>th</sup> of the month for work done in the previous calendar month. Partial payment shall be made by the end of each calendar month on a duly certified estimate of the work completed in the previous calendar month less five percent (5%). Final payment shall be made thirty (30) days after completion of all work and acceptance by the City Council, provided that the **CONTRACTOR** has obtained from the Idaho State Tax Commission and submitted to the **CITY** a release of liability for taxes (Form 10-248-79). Payment shall be made by the City Finance Director.

The number of working days allowed for completion of the Contract work shall be 20 working days. Days where the only work is traffic control, sweeping, or covering utilities do not count toward working days. The contract time shall commence no later than 10 days after the date of the Notice to Proceed issued by the **CITY**.

The **CITY** and the **CONTRACTOR** recognize that time is of the essence and failure of the **CONTRACTOR** to complete the work within the time allowed shall result in damages being sustained by the **CITY**. Such damages are and will continue to be impractical and extremely difficult to determine. Therefore, in the event the **CONTRACTOR** shall fail to complete the work within the following time limits, the **CONTRACTOR** shall pay to the **CITY** or have withheld from monies due, liquidated damages at the rate of One Thousand Five Hundred Dollars (\$500) per calendar day, which sums shall not be construed as a penalty.

**IT IS AGREED** that the **CONTRACTOR** must employ ninety five percent (95%) bona fide Idaho residents as employees on any job under this contract except where under this contract fifty (50) or less persons are employed by the **CONTRACTOR**, in which case the **CONTRACTOR** may employ ten percent (10%) nonresidents; provided, however, in all cases the **CONTRACTOR**, must give preference to the employment of bona fide residents in the performance of said work.

The **CONTRACTOR** furthers agrees: In consideration of securing the business of construction the works to be constructed under this contract, recognizing the business in which he is engaged is of a transitory character and that in the pursuit thereof, his property used therein may be without the state of Idaho when taxes, excises or license fees to which he is liable become payable, agrees:

1. To pay promptly when due all taxes (other than on real property), excises and license fees due to the State of Idaho, its subdivisions, and municipal and quasi-municipal corporations therein, accrued or accruing during the term of this contract, whether or not the same shall be payable at the end of such term.

2. That if the said taxes, excises and license fees are not payable at the end of said term but liability for said payment thereof exists, even though the same constitutes liens upon his property, to secure the same to the satisfaction of the respective officers charged with the collection thereof.
3. That in the event of his default in the payment or securing of such taxes, excises and license fees, to consent that the Department, Officer, Board or Taxing Unit entering into this contract may withhold from any payment due him hereunder the estimated amount of such accrued and accruing taxes, excises and license fees for the benefit of all taxing units to which said **CONTRACTOR** is liable.

IT IS FURTHER AGREED that for additions or deductions to the contract documents, the unit prices as set forth in the written proposal of the **CONTRACTOR** are hereby made part of this contract.

For the faithful performance of this contract in accordance with the contract documents and payment for all labor and materials, the **CONTRACTOR** shall execute good and sufficient performance bond and payment bond in a form acceptable to the City Attorney each in the amount of one hundred percent (100%) of the total amount of the bid as hereinbefore stated, said bonds to be executed by a surety company authorized to do business in the state of Idaho.

The term "CONTRACT DOCUMENTS" means and includes the following:

- A) Advertisement For Bids
- B) Bidding Information
- C) Bid Proposal
- D) Bid Bond
- E) Bidding Forms as Required
- F) Contract
- G) Labor and Materials Payment Bond
- H) Performance Bond
- I) Notice of Award
- J) Notice to Proceed
- K) Change Order
- L) General Conditions
- M) Technical Specifications
- N) Special Provisions
- O) Plans
- P) Addenda No. 1, dated April 18, 2019  
Addenda No. 2, dated April 29, 2019  
Addenda No. 3, dated May 6, 2019  
Addenda No. 4, dated May 7, 2019

THIS CONTRACT, with all of its forms, specifications and stipulations, shall be binding upon the parties hereto, their successors and assigns.

IN WITNESS WHEREOF, the Mayor and City Clerk of the CITY OF COEUR D'ALENE have executed this contract on behalf of said **CITY**, the City Clerk has affixed the seal of said City hereto, and the **CONTRACTOR** has caused the same to be signed by its President, and its seal to be affixed hereto, the day and year first above written.

**CITY OF COEUR D'ALENE**  
KOOTENAI COUNTY, IDAHO

**INTERSTATE CONCRETE & ASPHALT**  
KOOTENAI COUNTY, IDAHO

\_\_\_\_\_  
Steve Widmyer, Mayor

By: \_\_\_\_\_  
Its: \_\_\_\_\_

ATTEST:

ATTEST:

\_\_\_\_\_  
Renata McLeod, City Clerk

\_\_\_\_\_

OTHER BUSINESS

**CITY COUNCIL  
STAFF REPORT**

**DATE:** May 21, 2019  
**FROM:** Terry W. Pickel, Water Department Director  
**SUBJECT:** Award of Construction Contract for Water Administration/Maintenance Facility

=====

**DECISION POINT:** Should Council accept the bid of and authorize a contract with La Riviere Construction, Inc., for construction of a new Water Department administration and maintenance building?

**HISTORY:** Since the City acquired the public water system from Idaho Water, the Water Department has been moved several times, due either to expansion, transition of facilities, or contributing safety factors. Currently, the Water Maintenance Shop is housed at 3800 Ramsey Rd. adjoining the Street Department in the same building. The Water Administrative Offices are housed in a separate building at 3820 Ramsey Rd. in the same complex. Fire Station II, the Training Tower, and the Police Dept. also occupy the same complex. As the City continues to grow, so do the needs of each of these public entities. As equipment and manpower are added to meet the ever increasing need for basic City services, adequate space in the Ramsey Complex has become an increasing premium. As two new buildings have been added for Police and Fire, precious ground storage space for equipment and bulk materials such as sand and crushed rock have disappeared. A major contributing factor to a desired relocation is that egress at the Ramsey Complex is onto Ramsey Road only. With the dramatic increase in traffic over the past decade, it is exceedingly difficult to exit the yard safely, especially with the large slow moving equipment used by the Water and Street Departments.

**FINANCIAL ANALYSIS:** The Water Department's consultant solicited bids for the Water Administration and Maintenance Building. The bid process was open for 4 weeks which included a pre-bid meeting half way through the process to answer any prospective questions. The bid was laid out as a base bid and three add alternates. Five final bids were received on April 12<sup>th</sup>. The base bids received in descending order are; NNAC at \$2,900,089, TML Const. at \$2,815,000, Meridian Const. at \$2,739,000, Ginno Const. at \$2,670,000 and La Riviere Const. at \$2,660,000. The engineers estimate was \$2,500,000 and the Water Department FY 2018-19 line item budget is \$2,450,000. While the lowest responsive bid is \$210,000 over the line item, Staff does not expect the overall FY budget to be exceeded as we will not be able to accomplish another large budgeted project this fiscal year due to time constraints, design issues, working with HARSB, and right of way/easement access to be resolved. It is also anticipated that the construction will transcend this fiscal year budget so the additional cost can be included in the next budget. As of March 31<sup>st</sup>, the department has \$3.2 million in cash to fully fund the project. It is estimated that approximately \$2.2 million would likely be spent by end of fiscal year as it is anticipated that construction would take approximately 300 calendar days, pending weather.

**PERFORMANCE ANALYSIS:** Water Department staff selected H2A Architects to design and bid the proposed Water Administration and Maintenance Building, a 25,000 square foot clear span steel structure which will house the administration offices, a heated maintenance shop, and a cold storage area for materials in one structure rather than the current four. After careful consideration of the different potential building types, it was determined that a clear span steel structure was the most suitable and cost efficient structure for the Water Department's needs. The building would be constructed on 4.5 acres of available area on the Howard Street Compost site, on the east side of the property. This would provide a suitable location for the proposed facility as well as provide a buffer from the public for the Compost Facility operations. Public access and operational egress from this location would be considerably easier than the Ramsey complex.

**DECISION POINT/RECOMMENDATION:** Council should accept the bid of and authorize the Mayor to enter into a construction contract with La Riviere Construction for \$2,660,000 to build the new Water Department Administration and Maintenance Building.

WATER OPERATING FUND

Description	2019 Budget	2019 Projected
Water Admin / Maint Facility	\$2,450,000	2,660,000
Handheld Reader / Trimble	25,000	24,500
Cold Storage Addn	50,000	50,000
Water Meter Test Bench	50,000	7,500
Backup Power for Wells / Partial Carryover	115,000	105,000
Pick Up Trucks	60,000	59,000
Fill Stations	15,500	15,000
Water Comprehensive Plan Update	25,000	31,500
New / Replace Meters	365,000	365,000
New / Replace Mains	550,000	550,000
NW Well Transmission Main	1,000,000	750,000
Bi-annual Well Rehab Project	90,000	102,100
Motor Replacement - Energy Efficiency	28,000	24,000
Onsite Chlorine Generation	70,000	55,000
NW Well Construction	500,000	395,000
Northwest Storage Facility	150,000	92,000
<b>TOTAL CAPITAL OUTLAY</b>	<b>\$5,543,500</b>	<b>5,285,600</b>

## CDA WATERWORKS BENEFITS

### Customer benefits:

- Ease of Access – Customers would no longer have to find the Water Dept. behind other facilities. We would have street front access, especially on a less busy street, reducing the potential for accidents.
- Improved ADA Access – Proposed entry way is at ground level, no more stairs. Would include ADA van accessible stalls.
- Additional customer parking – Will be served by a larger parking lot with plenty of customer parking.
- Improved site safety for customers and employees – There will be significantly less potential for injury as operations will be behind closed gates away from the customers and there will not be through traffic from other departments.
- Enhanced contractor services – With new technology that is not fettered by IT limitations, we can provide mapping services at the front counter. Multiple meeting areas will enhance staff availability to customers, contractors and engineers.
- Reduced Response time – With immediate access to multiple exit routes and a more centralized location, a better response time interval can be accomplished.
- Reduced traffic impact – with fewer vehicle trips occurring on Ramsey from the Water Dept., a significant reduction in traffic impact from small and large city vehicles entering and leaving the roadway will result. (minimum 20 to 40 ingress/egress trips on Ramsey daily estimated).
- Improved Fill station accessibility – Relocation of the Ramsey fill station will make the new location accessible 24/7 instead of just during business hours.
- Reduced maintenance and energy costs – Through energy efficient electrical designs, energy consumption will be dramatically reduced. With modest office designs and reduction of labor intensive textiles (i.e. carpet), there will be labor and time savings for building maintenance.
- Covered vehicle storage – An increased opportunity for covered vehicle storage means the potential to extend vehicle service life.
- No additional cost to rate payers – The cost of this structure was not factored into the rate study and will not be financed. It is being paid for by cash from revenues generated by a combination of the last few excessively hot, dry summers and frugal budgeting/spending practices.

### City Benefits:

- Frees up valuable open space on the Ramsey Campus – This is badly needed for Streets and Engineering Dept. expansion of operations.
- Increased O&M space – Provides increased office, shop, covered storage space on the Ramsey Campus. Can provide badly needed ADA access for Streets & Engineering if they elect to take over the existing Water Dept. Office.
- Reduced Ramsey Campus traffic impact – Less hustle and bustle around the yard means improved safety for Streets, Police and Fire (as well as Water at other site).

- Less vehicle Storage – On the Ramsey Campus which means reduced fuels loading as well.
- Improved delivery access – The Water Dept. routinely receives shipments from distributors. It is difficult to get a truck and trailer into and out of the Ramsey campus. We will have a flow through access route at the Howard Campus.
- Less customer, contractor, engineer traffic – There will be significantly less customer, contractor and engineer traffic at the Ramsey Campus.
- An additional training facility – One of the rooms is designed to accommodate training opportunities badly needed in the area.
- Additional IT Space – The new building will have a dedicated IT/SCADA room that can house servers if needed.

**UNORDERED  
BID TABULATION**

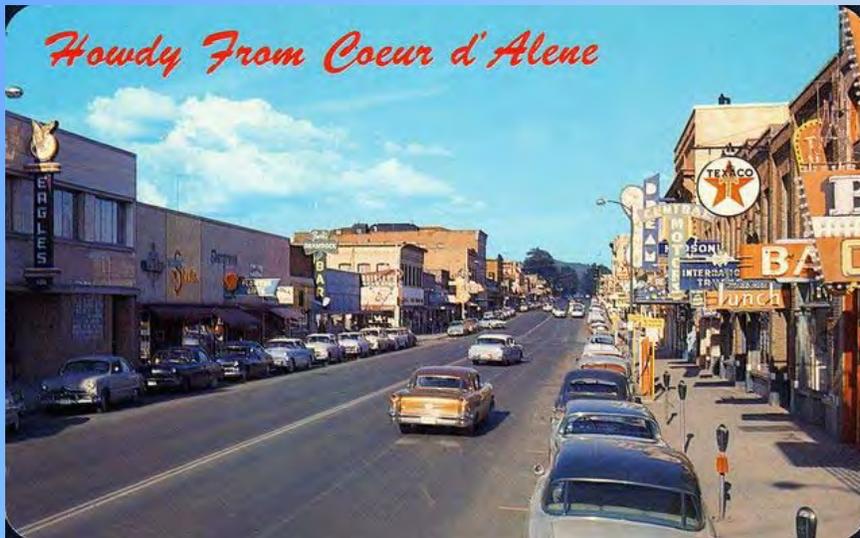
PROJECT: CDA H2O ADMINISTRATION AND MAINTENANCE FACILITY

DATE: 4/12/19

TIME: 3:00 PM

CONTRACTOR	MEDADIAN	NWAC	GIUNO	TML	T. LA BUIERE
Bid Security					
Power of Attorney					
Addenda					
Base Bid	2,789,000	2,989,000	2,670,000	2,815,000	2,660,000
Alternates:					
#1 Unit Heaters	21,700	21,000	26,000	27,000	20,730
#2 - Plywood	12,100	12,300	7,000	9,000	6,960
#3 Asphalt	49,000	49,700	49,000	53,000	49,200
TOTAL	\$0	\$0	\$0	\$0	\$0
<b>SUBCONTRACTORS</b>					
Plumbing	CAPITAL	CAPITAL	CAPITAL	CAPITAL	CAPITAL
HVAC	METALCRAFT	TYFO	METALCRAFT	ACI	METAL
Electrical	FUSE	FUSE	FUSE	FUSE	FUSE
Fire Sprinkler	ADVANCED	FIRE CONTROL	ADVANCED	ADVANCED	ADV
Boiler/Steam					

Richard Colburn  
Recorder



# Original Idaho Water Site



# We've always been innovative



## Old City Hall – Water Dept



## Harbor Center – Water Offices



# Previous Shop



# Ramsey Complex - 2019



# Water / Streets Shop



# Water Dept Office



## Ramsey East – PD & FD Bldgs



## Ramsey North – Fire Training



# Ramsey South - Cold Storage



# Proposed Site Layout



# The current Howard Site

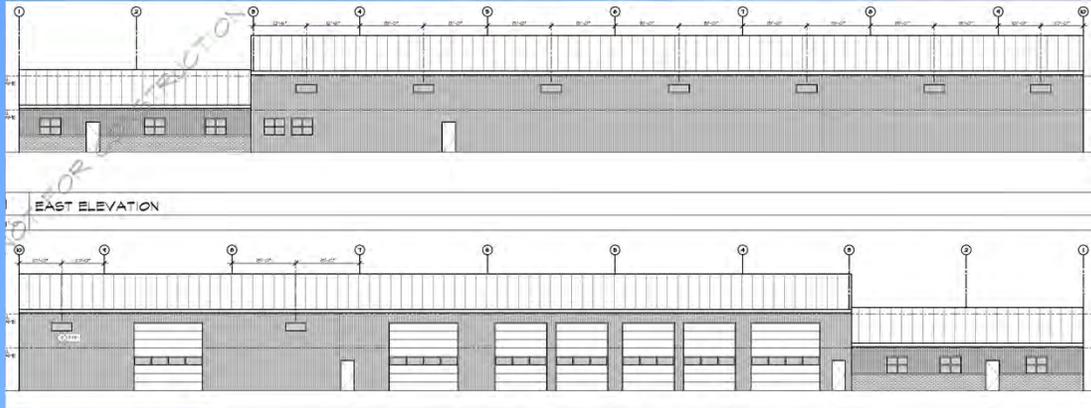


# North Frontage Improvements





# Profile View



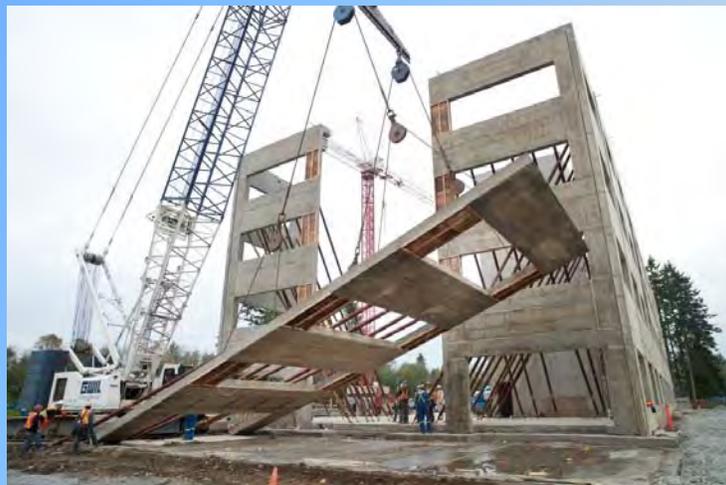
# Clear Span Steel Construction



# Pole Building



# Tilt up concrete panel



# Bid Tabulation

*UNOFFICIAL*  
BID TABULATION

PROJECT: CDA H2O ADMINISTRATION AND MAINTENANCE FACILITY  
DATE: 4/12/19 TIME: 3:00 PM

CONTRACTOR	MEDIAVEN	NWAC	SUNNO	TML	J. LAQUIERE
Bid Security					
Power of Attorney					
Addenda					
Base Bid	2,789,000	2,987,000	2,670,000	2,815,000	2,660,000
Alternates:					
#1 Unit Heaters	21,700	21,000	21,000	27,000	20,730
#2 - Plywood	12,120	12,300	700	9,000	6,960
#3 Asphalt	49,000	49,700	49,000	53,000	49,200
TOTAL	\$0	\$0	\$0	\$0	\$0
<b>SUBCONTRACTORS</b>					
Plumbing	CAPITAL	CAPITAL	CAPITAL	CAPITAL	CAPITAL
HVAC	METALORSET	TYFO	METALORSET	ACI	METAL
Electrical	FUSE	FUSE	FUSE	FUSE	FUSE
Fire Sprinkler	ADVANCED	FIRE CONTROL	ADVANCED	ADVANCED	ATO
Boiler/Steam					

Richard Colburn  
Recorder



# Water Admin/Maint Building

Thank you!



RESOLUTION NO. 19-016

A RESOLUTION OF THE CITY OF COEUR D'ALENE, KOOTENAI COUNTY, IDAHO, APPROVING AN AGREEMENT WITH LARIVIERE CONSTRUCTION, INC., FOR THE CONSTRUCTION OF THE WATER DEPARTMENT ADMINISTRATION AND MAINTENANCE BUILDING.

WHEREAS, the Public Works Committee of the City of Coeur d'Alene has recommended that the City of Coeur d'Alene enter into a contract with LaRiviere Construction, Inc., for the construction of the Water Department and Maintenance Building, pursuant to terms and conditions set forth in an agreement, a copy of which is attached hereto as Exhibit "1" and by reference made a part hereof; and

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

NOW, THEREFORE,

BE IT RESOLVED by the Mayor and City Council of the City of Coeur d'Alene that the City enter into contract with LaRiviere Construction, Inc., for the construction of the Water Department and Maintenance Building, in substantially the form attached hereto as Exhibit "1" and incorporated herein by reference with the provision that the Mayor, City Administrator, and City Attorney are hereby authorized to modify said agreement to the extent the substantive provisions of the agreement remain intact.

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

DATED this 21<sup>st</sup> day of May, 2019.

---

Steve Widmyer, Mayor

ATTEST:

---

Renata McLeod, City Clerk

Motion by \_\_\_\_\_, Seconded by \_\_\_\_\_, to adopt the foregoing resolution.

ROLL CALL:

COUNCIL MEMBER MILLER Voted \_\_\_\_\_

COUNCIL MEMBER MCEVERS Voted \_\_\_\_\_

COUNCIL MEMBER EVANS Voted \_\_\_\_\_

COUNCIL MEMBER EDINGER Voted \_\_\_\_\_

COUNCIL MEMBER GOOKIN Voted \_\_\_\_\_

COUNCIL MEMBER ENGLISH Voted \_\_\_\_\_

\_\_\_\_\_ was absent. Motion \_\_\_\_\_.

**CONTRACT**  
**for**  
**WATER DEPARTMENT ADMINISTRATION**  
**& MAINTENANCE BUILDING**

THIS CONTRACT, made and entered into this 7<sup>th</sup> day of May, 2019, between the **CITY OF COEUR D'ALENE**, Kootenai County, Idaho, a municipal corporation duly organized and existing under and by virtue of the laws of the state of Idaho, hereinafter referred to as the "**CITY**", and **LARIVIERE, INC.**, a corporation duly organized and existing under and by virtue of the laws of the state of Idaho, with its mailing address as P.O. Box 100, Athol, ID 83801, hereinafter referred to as "**CONTRACTOR.**"

**W I T N E S S E T H:**

WHEREAS, the said **CONTRACTOR** has been awarded the contract for construction of the new Water Department administration and maintenance building according to contract documents on file in the office of the City Clerk of said **CITY**, which contract documents are incorporated herein by reference.

IT IS AGREED that for and in consideration of the covenants and agreements to be made and performed by the City of Coeur d'Alene, as hereinafter set forth, the **CONTRACTOR** shall complete improvements as set forth in the said contract documents described above, in said **CITY**, furnishing all labor and materials therefore according to said contract documents and under the penalties expressed in the performance bond bearing even date herewith, and which bond with said contract documents are hereby declared and accepted as parts of this contract. All material shall be of the high standard required by the said contract documents and approved by the City Engineer, and all labor performed shall be of first-class workmanship.

The **CONTRACTOR** shall furnish and install barriers and warning lights to prevent accidents. The **CONTRACTOR** shall indemnify, defend and hold the **CITY** harmless from all claims arising from the **CONTRACTOR**'s actions or omissions in performance of this contract, and to that end shall maintain liability insurance naming the **CITY** as one of the insureds in the amount of at least Five Hundred Thousand Dollars (\$500,000) for property damage or bodily or personal injury, death or loss as a result of any one occurrence or accident regardless of the number of persons injured or the number of claimants, it being the intention that the minimum limits shall be those provided for under Idaho Code 6-924. A certificate of insurance providing at least thirty (30) days written notice to the **CITY** prior to cancellation of the policy shall be filed in the office of the City Clerk.

The **CONTRACTOR** agrees to maintain Worker's Compensation coverage on all employees, including employees of subcontractors, during the term of this contract as required by Idaho Code Sections 72-101 through 72-806. Should the **CONTRACTOR** fail to maintain such insurance during the entire term hereof, the **CONTRACTOR** shall indemnify the **CITY** against any loss resulting to the **CITY** from such failure, either by way of compensation or additional premium liability. The **CONTRACTOR** shall furnish to the **CITY**, prior to commencement of the work,

such evidence as the **CITY** may require guaranteeing contributions which will come due under the Employment Security Law including, at the option of the **CITY**, a surety bond in an amount sufficient to make such payments.

The **CONTRACTOR** shall furnish the **CITY** certificates of the insurance coverage's required herein, which certificates must be approved by the City Attorney.

The **CONTRACTOR** agrees to receive and accept as full compensation for furnishing all materials, and doing all the work contemplated and embraced in the contract, an amount equal to the sum of the total for the items of work. The total for each item of work shall be calculated by determining the actual quantity of each item of work and multiplying that actual quantity by the unit price bid by the **CONTRACTOR** for that item of work. The total amount of the contract shall not exceed Two Million Six Hundred Sixty and no/100 Dollars (\$2,660,000.00).

Monthly progress payments must be submitted by the 10<sup>th</sup> of the month for work done in the previous calendar month. Partial payment shall be made by the end of each calendar month on a duly certified estimate of the work completed in the previous calendar month less five percent (5%). Final payment shall be made thirty (30) days after completion of all work and acceptance by the City Council, provided that the **CONTRACTOR** has obtained from the Idaho State Tax Commission and submitted to the **CITY** a release of liability for taxes (Form 10-248-79). Payment shall be made by the City Finance Department.

The number of calendar days allowed for completion of the contract work shall be        calendar days. The contract time shall commence no later than 10 days after the date of the Notice to Proceed issued by the **CITY**.

The **CITY** and the **CONTRACTOR** recognize that time is of the essence and failure of the **CONTRACTOR** to complete the work within the time allowed shall result in damages being sustained by the **CITY**. Such damages are and will continue to be impractical and extremely difficult to determine. Therefore, in the event the **CONTRACTOR** shall fail to complete the work within the above time limits, the **CONTRACTOR** shall pay to the **CITY** or have withheld from monies due, liquidated damages at the rate of Five Hundred and No/100 Dollars (\$500) per calendar day, which sums shall not be construed as a penalty.

IT IS AGREED that the **CONTRACTOR** must employ ninety-five percent (95%) bona fide Idaho residents as employees on any job under this contract except where under this contract fifty (50) or less persons are employed by the **CONTRACTOR**, in which case the **CONTRACTOR** may employ ten percent (10%) nonresidents; provided, however, in all cases the **CONTRACTOR**, must give preference to the employment of bona fide residents in the performance of said work.

The **CONTRACTOR** further agrees: In consideration of securing the business of construction the works to be constructed under this contract, recognizing the business in which he is

engaged is of a transitory character and that in the pursuit thereof, his property used therein may be without the state of Idaho when taxes, excises or license fees to which he is liable become payable, agrees:

1. To pay promptly when due all taxes (other than on real property), excises and license fees due to the State of Idaho, its subdivisions, and municipal and quasi-municipal corporations therein, accrued or accruing during the term of this contract, whether or not the same shall be payable at the end of such term.
2. That if the said taxes, excises and license fees are not payable at the end of said term but liability for said payment thereof exists, even though the same constitutes liens upon his property, to secure the same to the satisfaction of the respective officers charged with the collection thereof.
3. That in the event of his default in the payment or securing of such taxes, excises and license fees, to consent that the department, officer, board or taxing unit entering into this contract may withhold from any payment due him hereunder the estimated amount of such accrued and accruing taxes, excises and license fees for the benefit of all taxing units to which said **CONTRACTOR** is liable.

The **CONTRACTOR** further agrees, in consideration of securing this contract, to comply will all the requirements of **Attachment 1**, which by this reference is incorporated herein.

IT IS FURTHER AGREED that, for additions or deductions to the contract documents, the unit prices as set forth in the written bid of the **CONTRACTOR** are hereby made part of this contract.

For the faithful performance of this contract in accordance with the contract documents and payment for all labor and materials, the **CONTRACTOR** shall execute good and sufficient performance bond and payment bond in a form acceptable to the City Attorney each in the amount of one hundred percent (100%) of the total amount of the bid as hereinbefore stated, said bonds to be executed by a surety company authorized to do business in the state of Idaho.

The term "CONTRACT DOCUMENTS" means and includes the following:

- A) Advertisement For Bids
- B) Information For Bidders
- C) Bid Proposal
- D) Bid Bond
- E) Bidding Forms as Required
- F) Contract
- G) Labor and Materials Payment Bond
- H) Performance Bond

- I) Notice of Award
- J) Notice to Proceed
- K) Change Order
- L) General Conditions
- M) Technical Specifications
- N) Special Provisions
- O) Plans
- P) Addenda

No. \_\_\_\_\_, dated \_\_\_\_\_, \_\_\_\_\_

THIS contract, with all of its forms, specifications and stipulations, shall be binding upon the parties hereto, their successors and assigns. However, CONTRACTOR shall not assign this contract, or any part thereof, without the prior written consent of the CITY.

IN WITNESS WHEREOF, the Mayor and City Clerk of the City of Coeur d'Alene have executed this contract on behalf of said CITY, and the CONTRACTOR has caused the same to be signed by its President, the day and year first above written.

**CITY OF COEUR D'ALENE,  
KOOTENAI COUNTY, IDAHO**

**CONTRACTOR:  
LARIVIERE, INC.**

\_\_\_\_\_  
Steve Widmyer, Mayor

By: \_\_\_\_\_

Its: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Renata McLeod, City Clerk

## Attachment 1

This Attachment is to be inserted in every contract subject to Title VI of the Civil Rights Act of 1964 and associated Regulations.

During the performance of this contract, the contractor/consultant, for itself, its assignees and successors in interest (hereinafter referred to as the “contractor”) agrees as follows:

**1. Compliance with Regulations**

The contractor shall comply with the Regulations relative to non-discrimination in federally assisted programs of United States Department of Transportation (USDOT), Title 49, Code of Federal Regulations, part 21, as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.

**2. Non-discrimination**

The contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, sex, or national origin in the selection and retention of sub-contractors, including procurement of materials and leases of equipment. The contractor shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.

**3. Solicitations for Sub-contracts, Including Procurement of Materials and Equipment**

In all solicitations either by competitive bidding or negotiations made by the contractor for work to be performed under a sub-contract, including procurement of materials or leases of equipment, each potential sub-contractor or supplier shall be notified by the contractor of the contractor’s obligations under this contract and the Regulations relative to non-discrimination on the grounds of race, color, sex, or national origin.

**4. Information and Reports**

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

**5. Sanctions for Non-compliance**

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

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

**Incorporation of Provisions**

The contractor shall include the provisions of paragraphs (1) through (5) in every sub-contract, including procurement of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The contractor shall take such action with respect to any sub-contractor or procurement as the contracting agency or USDOT may direct as a means of enforcing such provisions including sanctions for non-compliance.

Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a sub-contractor or supplier as a result of such direction, the contractor may request ITD enter into such litigation to protect the interests of the state and, in addition, the contractor may request the USDOT enter into such litigation to protect the interests of the United States.

## GENERAL SERVICES STAFF REPORT

**Date:** May 13, 2019  
**From:** Bill Greenwood Parks & Recreation Director  
**SUBJECT:** Memorial Grandstands CM/GC (*Council Action Required*)

---

**DECISION POINT:** Should Council authorize the agreement with Walker Construction as the Construction Manager/ General Contractor (CM/GC) for the remodel of the Memorial Grandstands.

**HISTORY:** On October 16, 2018, Council rejected BIDs for the Memorial Grandstands and authorized staff to seek Request for Qualifications (RFQ) for the remodel. We advertised for the RFQ as required and on November 13, 2018, and received 3 RFQs; all three companies did meet the necessary criteria within the RFQ to submit. On November 14, 2018, we scored the Statement of Qualifications as outlined in the RFQ and the scoring was very close so we decided to conduct face to face interviews on December 6<sup>th</sup> with all three companies; Walker construction was selected. On May 15, 2019, the Public Works Committee suggested that we trim the costs of the project, and NIC representative, Christie Wood suggested we consider phasing this project.

**FINANCIAL ANALYSIS:** Ignite CDA has committed \$1,011,570.00, NIC has given \$150,000.00, and \$136,881.50 has come from Parks Capital, less \$68,083 paid to Architects West; a total of \$1,230,368.50 is earmarked for the project. The current construction bid amount is \$1,684,087.00; \$453,718.50 over budget. In an effort to meet our budget we are considering the phasing idea that was discussed on May 15, 2019. If we were to remove the interior work i.e. restroom, locker rooms, and concessions and only remodel the exterior and the structure of the Grandstands, the cost would be \$1,253,003. This is only \$1,700 over budget and Parks Capital is available to make up the shortfall. Our next phase would be to replace the bricks restrooms in City Park with a new restroom facility that would include locker-rooms for North Idaho College to use; they are comfortable with this phasing concept. This phasing would give us more time to budget in 2020/21 for the restroom/locker room construction.

**PERFORMANCE ANALYSIS:** For the last several months Walker Construction has been working with sub-contractors in the effort to bring the project within our budget. The funding from ignite will not be available as of July 1, 2019, due to a new law regarding how those funds can be used.

**DECISION POINT / RECOMMENDATION:** Authorize the agreement with Walker Construction as the Construction Manager/ General Contractor (CM/GC) in the amount of \$1,253,003 for the remodel of the Memorial Grandstands and to allocate an additional \$1,700 funding from Parks Capital Improvement Fund for phase 1. Endorse phase 2 for the replacement of the bricks restroom in City Park.

RESOLUTION NO. 19-017

A RESOLUTION OF THE CITY OF COEUR D'ALENE, KOOTENAI COUNTY, IDAHO, APPROVING AN AGREEMENT WITH WALKER CONSTRUCTION AS CONTRACT MANAGER/GENERAL CONTRACTOR (CMGC) FOR THE MEMORIAL GRANDSTAND REMODEL.

WHEREAS, it is recommended that the City of Coeur d'Alene enter into an agreement with Walker Constructions as Contract Manager/General Contractor (CMGC) for the Memorial Grandstand Remodel, pursuant to terms and conditions set forth in an agreement, a copy of which is attached hereto as Exhibit "1" and by reference made a part hereof; and

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

NOW, THEREFORE,

BE IT RESOLVED by the Mayor and City Council of the City of Coeur d'Alene that the City enter into an agreement with Walker Constructions as Contract Manager/General Contractor (CMGC) for the Memorial Grandstand Remodel, in substantially the form attached hereto as Exhibit "1" and incorporated herein by reference with the provision that the Mayor, City Administrator, and City Attorney are hereby authorized to modify said agreement to the extent the substantive provisions of the agreement remain intact.

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

DATED this 21<sup>st</sup> day of May, 2019.

\_\_\_\_\_  
Steve Widmyer, Mayor

ATTEST:

\_\_\_\_\_  
Renata McLeod, City Clerk

Motion by \_\_\_\_\_, Seconded by \_\_\_\_\_, to adopt the foregoing resolution.

ROLL CALL:

COUNCIL MEMBER EVANS Voted \_\_\_\_\_

COUNCIL MEMBER MCEVERS Voted \_\_\_\_\_

COUNCIL MEMBER MILLER Voted \_\_\_\_\_

COUNCIL MEMBER EDINGER Voted \_\_\_\_\_

COUNCIL MEMBER GOOKIN Voted \_\_\_\_\_

COUNCIL MEMBER ENGLISH Voted \_\_\_\_\_

\_\_\_\_\_ was absent. Motion \_\_\_\_\_.

# DRAFT AIA® Document A133™ – 2009

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

AGREEMENT made as of the «Thirty-first» day of «December» in the year «Twenty Thousand Eighteen»  
(In words, indicate day, month and year.)

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

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

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

«Walker Construction, Inc.  
P.O. Box 3901  
Spokane, WA 99220 »

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

«Memorial Grandstand Renovation»  
«Coeur d'Alene, ID»

The Architect:  
(Name, legal status and address)

«Architects West, Inc.»«»  
«210 E. Lakeside Avenue  
Coeur d'Alene, ID 83814»

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

«Bill Greenwood, Parks Director »  
«City of Coeur d'Alene»«»  
«710 E. Mullan  
Coeur d'Alene, ID 83814»

Ph: (208) 769-2252  
E-mail: [bgreenwood@cdaid.org](mailto:bgreenwood@cdaid.org)

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

Ed Walker  
Walker Construction  
P.O. Box 3901  
Spokane, WA 99220

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

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

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

**ELECTRONIC COPYING** of any portion of this AIA® Document to another electronic file is prohibited and constitutes a violation of copyright laws as set forth in the footer of this document.

Ph: (509) 535-3354  
E-mail: ewalker@walkerconstructioninc.com

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

«Steve Roth, Project Architect»  
«Architects West, Inc.»  
«210 E. Lakeside Avenue»  
«Coeur d'Alene, ID 83814»  
«Ph: (208) 667-9402»  
«E-mail: stever@architectswest.com»

The Owner and Construction Manager agree as follows.



## TABLE OF ARTICLES

- 1 GENERAL PROVISIONS
- 2 CONSTRUCTION MANAGER'S RESPONSIBILITIES
- 3 OWNER'S RESPONSIBILITIES
- 4 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES
- 5 COMPENSATION FOR CONSTRUCTION PHASE SERVICES
- 6 COST OF THE WORK FOR CONSTRUCTION PHASE
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### EXHIBIT A GUARANTEED MAXIMUM PRICE AMENDMENT

#### ARTICLE 1 GENERAL PROVISIONS

##### § 1.1 The Contract Documents

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

##### § 1.2 Relationship of the Parties

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

##### § 1.3 General Conditions

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

## ARTICLE 2 CONSTRUCTION MANAGER'S RESPONSIBILITIES

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

### § 2.1 Preconstruction Phase

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

### § 2.1.2 Consultation

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

§ 2.1.3 When Project requirements in Section 3.1.1 have been sufficiently identified, the Construction Manager shall prepare and periodically update a Project schedule for the Architect's review and the Owner's acceptance. The Construction Manager shall obtain the Architect's approval for the portion of the Project schedule relating to the performance of the Architect's services. The Project schedule shall coordinate and integrate the Construction Manager's services, the Architect's services, other Owner consultants' services, and the Owner's responsibilities and identify items that could affect the Project's timely completion. The updated Project schedule shall include the following: submission of the Guaranteed Maximum Price proposal; components of the Work; times of commencement and completion required of each Subcontractor; ordering and delivery of products, including those that must be ordered well in advance of construction; and the occupancy requirements of the Owner.

### § 2.1.4 Phased Construction

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

### § 2.1.5 Preliminary Cost Estimates

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

§ 2.1.5.2 As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall prepare and update, at appropriate intervals agreed to by the Owner, Construction Manager and Architect, estimates of the Cost of the Work of increasing detail and refinement and allowing for the further development of the design until such time as the Owner and Construction Manager agree on a Guaranteed Maximum Price for the Work. Such estimates shall be provided for the Architect's review and the Owner's approval. The Construction Manager shall inform the Owner and Architect when estimates of the Cost of the Work exceed the latest approved Project budget and make recommendations for corrective action.

### § 2.1.6 Subcontractors and Suppliers

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

§ 2.1.7 The Construction Manager shall prepare, for the Architect's review and the Owner's acceptance, a procurement schedule for items that must be ordered well in advance of construction. The Construction Manager shall expedite and coordinate the ordering and delivery of materials that must be ordered well in advance of construction. If the Owner agrees to procure any items prior to the establishment of the Guaranteed Maximum Price, the Owner shall procure the items on terms and conditions acceptable to the Construction Manager. Upon the establishment of the

Guaranteed Maximum Price, the Owner shall assign all contracts for these items to the Construction Manager and the Construction Manager shall thereafter accept responsibility for them.

### § 2.1.8 Extent of Responsibility

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

### § 2.1.9 Notices and Compliance with Laws

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

### § 2.2 Guaranteed Maximum Price Proposal and Contract Time

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

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

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

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

§ 2.2.4 In preparing the Construction Manager's Guaranteed Maximum Price proposal, the Construction Manager shall include its contingency for the Construction Manager's exclusive use to cover those costs considered reimbursable as the Cost of the Work but not included in a Change Order.

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

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

Guaranteed Maximum Price Amendment shall set forth the agreed upon Guaranteed Maximum Price with the information and assumptions upon which it is based.

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

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

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

### § 2.3 Construction Phase

#### § 2.3.1 General

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

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

#### § 2.3.2 Administration

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

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

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

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

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

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

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

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

#### § 2.4 Professional Services

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

#### § 2.5 Hazardous Materials

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

### ARTICLE 3 OWNER'S RESPONSIBILITIES

#### § 3.1 Information and Services Required of the Owner

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

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

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

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

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

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

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

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

### § 3.2 Owner's Designated Representative

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

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

### § 3.3 Architect

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

## ARTICLE 4 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

### § 4.1 Compensation

§ 4.1.1 For the Construction Manager's Preconstruction Phase services, the Owner shall compensate the Construction Manager as follows:

§ 4.1.2 For the Construction Manager's Preconstruction Phase services described in Sections 2.1 and 2.2:  
*(Insert amount of, or basis for, compensation and include a list of reimbursable cost items, as applicable.)*

«\$0.00 »

§ 4.1.3 If the Preconstruction Phase services covered by this Agreement have not been completed within N/A months of the date of this Agreement, through no fault of the Construction Manager, the Construction Manager's compensation for Preconstruction Phase services shall be equitably adjusted.

§ 4.1.4 Compensation based on Direct Personnel Expense includes the direct salaries of the Construction Manager's personnel providing Preconstruction Phase services on the Project and the Construction Manager's costs for the mandatory and customary contributions and benefits related thereto, such as employment taxes and other statutory employee benefits, insurance, sick leave, holidays, vacations, employee retirement plans and similar contributions.

### § 4.2 Payments

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

§ 4.2.2 Payments are due and payable upon presentation of the Construction Manager's invoice. Amounts unpaid «sixty» ( «60» ) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Construction Manager.  
(Insert rate of monthly or annual interest agreed upon.)

«1» % «one percent»

## ARTICLE 5 COMPENSATION FOR CONSTRUCTION PHASE SERVICES

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

§ 5.1.1 The Construction Manager's Fee:

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

«5% of the Cost of the Work.»

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

«5% fee on the Total Value of the Cost Charge.»

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

«8% Overhead; 10% Profit/»

§ 5.1.4 Rental rates for Construction Manager-owned equipment shall not exceed «N/A» percent of the standard rate paid at the place of the Project.

§ 5.1.5 Unit prices, if any: N/A

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

§ 5.2 Guaranteed Maximum Price

§ 5.2.1 The Construction Manager guarantees that the Contract Sum shall not exceed the Guaranteed Maximum Price set forth in the Guaranteed Maximum Price Amendment, as it is amended from time to time. To the extent the Cost of the Work exceeds the Guaranteed Maximum Price, the Construction Manager shall bear such costs in excess of the Guaranteed Maximum Price without reimbursement or additional compensation from the Owner.

(Insert specific provisions if the Construction Manager is to participate in any savings.)

«\$1,000,000.00 (One Million Dollars and 00/100).»

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

§ 5.3 Changes in the Work

§ 5.3.1 The Owner may, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions. The Owner shall issue such changes in writing. The Architect may make minor changes in the Work as provided in Section 7.4 of AIA Document A201-2007, General Conditions of the Contract for Construction. The Construction Manager shall be entitled to an equitable adjustment in the Contract Time as a result of changes in the Work.

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

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

§ 5.3.4 In calculating adjustments to the Guaranteed Maximum Price, the terms "cost" and "costs" as used in the above-referenced provisions of AIA Document A201-2007 shall mean the Cost of the Work as defined in Sections 6.1 to 6.7 of this Agreement and the term "fee" shall mean the Construction Manager's Fee as defined in Section 5.1 of this Agreement.

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

## ARTICLE 6 COST OF THE WORK FOR CONSTRUCTION PHASE

### § 6.1 Costs to Be Reimbursed

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

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

### § 6.2 Labor Costs

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

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

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

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

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

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

### § 6.3 Subcontract Costs

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

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

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

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

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

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

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

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

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

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

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

#### § 6.6 Miscellaneous Costs

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

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

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

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

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

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

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

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

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

#### § 6.7 Other Costs and Emergencies

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

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

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

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

#### § 6.8 Costs Not To Be Reimbursed

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

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

#### § 6.9 Discounts, Rebates and Refunds

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

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

## § 6.10 Related Party Transactions

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

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

## § 6.11 Accounting Records

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

## ARTICLE 7 PAYMENTS FOR CONSTRUCTION PHASE SERVICES

### § 7.1 Progress Payments

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

§ 7.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

§ 7.1.3 Provided that an Application for Payment is received by the Architect not later than the «25<sup>th</sup>» day of a month, the Owner shall make payment of the certified amount to the Construction Manager not later than the «10<sup>th</sup>» day of the «following» month. If an Application for Payment is received by the Architect after the application date fixed above, payment shall be made by the Owner not later than «fifteen» ( «15» ) days after the Architect receives the Application for Payment.

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

§ 7.1.4 With each Application for Payment, the Construction Manager shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner or Architect to demonstrate that cash disbursements already made by the Construction Manager on account of the Cost of the Work equal or exceed progress payments already received by the Construction Manager, less that portion of those payments attributable to the Construction Manager’s Fee, plus payrolls for the period covered by the present Application for Payment.

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

§ 7.1.6 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed, or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Construction Manager on account of that portion of the Work for which the Construction Manager has made or intends to make actual payment prior to the next Application for Payment by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.

§ 7.1.7 Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

- .1 Take that portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 7.3.9 of AIA Document A201–2007;
- .2 Add that portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work, or if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing;
- .3 Add the Construction Manager's Fee, less retainage of «five» percent («5» %). The Construction Manager's Fee shall be computed upon the Cost of the Work at the rate stated in Section 5.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, shall be an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- .4 Subtract retainage of «zero» percent («0.00» %) from that portion of the Work that the Construction Manager self-performs;
- .5 Subtract the aggregate of previous payments made by the Owner;
- .6 Subtract the shortfall, if any, indicated by the Construction Manager in the documentation required by Section 7.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
- .7 Subtract amounts, if any, for which the Architect has withheld or nullified a Certificate for Payment as provided in Section 9.5 of AIA Document A201–2007.

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

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

§ 7.1.10 In taking action on the Construction Manager's Applications for Payment, the Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Construction Manager and shall not be deemed to represent that the Architect has made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Section 7.1.4 or other supporting data; that the Architect has made exhaustive or continuous on-site inspections; or that the Architect has made examinations to ascertain how or for what purposes the Construction Manager has used amounts previously paid on account of the Contract. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

## § 7.2 Final Payment

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

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

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

<< >>

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

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

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

## ARTICLE 8 INSURANCE AND BONDS

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

*(State bonding requirements, if any, and limits of liability for insurance required in Article 11 of AIA Document A201-2007.)*

Type of Insurance or Bond

Limit of Liability or Bond Amount (\$0.00)

## ARTICLE 9 DISPUTE RESOLUTION

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

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

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

Arbitration pursuant to Section 15.4 of AIA Document A201-2007

Litigation in a court of competent jurisdiction

Other: *(Specify)*

### § 9.3 Initial Decision Maker

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

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

«N/A»

## ARTICLE 10 TERMINATION OR SUSPENSION

### § 10.1 Termination Prior to Establishment of the Guaranteed Maximum Price

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

§ 10.1.2 In the event of termination of this Agreement pursuant to Section 10.1.1, the Construction Manager shall be equitably compensated for Preconstruction Phase services performed prior to receipt of a notice of termination. In no event shall the Construction Manager’s compensation under this Section exceed the compensation set forth in Section 4.1.

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

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

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

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

### § 10.2 Termination Subsequent to Establishing Guaranteed Maximum Price

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

§ 10.2.1 If the Owner terminates the Contract after execution of the Guaranteed Maximum Price Amendment, the amount payable to the Construction Manager pursuant to Sections 14.2 and 14.4 of A201–2007 shall not exceed the

amount the Construction Manager would otherwise have received pursuant to Sections 10.1.2 and 10.1.3 of this Agreement.

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

### § 10.3 Suspension

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

## ARTICLE 11 MISCELLANEOUS PROVISIONS

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

### § 11.2 Ownership and Use of Documents

Section 1.5 of A201–2007 shall apply to both the Preconstruction and Construction Phases.

### § 11.3 Governing Law

Section 13.1 of A201–2007 shall apply to both the Preconstruction and Construction Phases.

### § 11.4 Assignment

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

### § 11.5 Other provisions:

## ARTICLE 12 SCOPE OF THE AGREEMENT

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

§ 12.2 The following documents comprise the Agreement:

- .1 AIA Document A133–2009, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price
- .2 AIA Document A201–2007, General Conditions of the Contract for Construction, attached.
- .3 AIA Document E201™–2007, Digital Data Protocol Exhibit, if completed, or the following:

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

\_\_\_\_\_  
OWNER (Signature)

«Ed Walker, Vice President/Secretary»

(Printed name and title)

\_\_\_\_\_  
CONSTRUCTION MANAGER (Signature)

«Steve Widmeyer, Mayor of Coeur d’Alene»

(Printed name and title)

# DRAFT AIA® Document A133™ – 2009

## Exhibit A

### Guaranteed Maximum Price Amendment

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

«Memorial Grandstand Renovation»  
«Coeur d'Alene, ID»

THE OWNER:  
(Name, legal status and address)

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

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

Walker Construction, Inc.  
P.O. Box 3901  
Spokane, WA 99220

#### ARTICLE A.1

##### § A.1.1 Guaranteed Maximum Price

Pursuant to Section 2.2.6 of the Agreement, the Owner and Construction Manager hereby amend the Agreement to establish a Guaranteed Maximum Price. As agreed by the Owner and Construction Manager, the Guaranteed Maximum Price is an amount that the Contract Sum shall not exceed. The Contract Sum consists of the Construction Manager's Fee plus the Cost of the Work, as that term is defined in Article 6 of this Agreement.

§ A.1.1.1 The Contract Sum is guaranteed by the Construction Manager not to exceed «One Million Two Hundred Fifty Three thousand Three Dollars and 00/100» (\$1,253,003), subject to additions and deductions by Change Order as provided in the Contract Documents.

§ A.1.1.2 Itemized Statement of the Guaranteed Maximum Price. Provided below is an itemized statement of the Guaranteed Maximum Price organized by trade categories, allowances, contingencies, alternates, the Construction Manager's Fee, and other items that comprise the Guaranteed Maximum Price.  
(Provide below or reference an attachment.)

«N/A»

§ A.1.1.3 The Guaranteed Maximum Price is based on the following alternates, if any, which are described in the Contract Documents and are hereby accepted by the Owner:  
(State the numbers or other identification of accepted alternates. If the Contract Documents permit the Owner to accept other alternates subsequent to the execution of this Amendment, attach a schedule of such other alternates showing the amount for each and the date when the amount expires.)

«N/A»

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

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

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

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§ A.1.1.4 Allowances included in the Guaranteed Maximum Price, if any: N/A  
(Identify allowance and state exclusions, if any, from the allowance price.)

§ A.1.1.5 Assumptions, if any, on which the Guaranteed Maximum Price is based: N/A

§ A.1.1.6 The Guaranteed Maximum Price is based upon the following Supplementary and other Conditions of the Contract: N/A

§ A.1.1.7 The Guaranteed Maximum Price is based upon the following Specifications:  
(Either list the Specifications here, or refer to an exhibit attached to this Agreement.)

«See Exhibit B, as per attached.»

§ A.1.1.8 The Guaranteed Maximum Price is based upon the following Drawings:  
(Either list the Drawings here, or refer to an exhibit attached to this Agreement.)

«See Exhibit C, as per attached.»

§ A.1.1.9 The Guaranteed Maximum Price is based upon the following other documents and information:  
(List any other documents or information here, or refer to an exhibit attached to this Agreement.)

Addendum No. 1	Dated September 17, 2018	23 Pages
Addendum No. 2	Dated September 24, 2018	48 Pages
Addendum No. 3	Dated September 28, 2018	11 Pages

## ARTICLE A.2

§ A.2.1 The anticipated date of Substantial Completion established by this Amendment:

«August 5, 2019.»

\_\_\_\_\_  
OWNER (Signature)

Steve Widmeyer, Mayor of Coeur d'Alene  
(Printed name and title)

\_\_\_\_\_  
CONSTRUCTION MANAGER (Signature)

« Ed Walker, Vice President/Secretary »  
(Printed name and title)

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**SPECIFICATION STAMP PAGE**

DATE: August 14<sup>th</sup>, 2018

CLIENT: Architects West

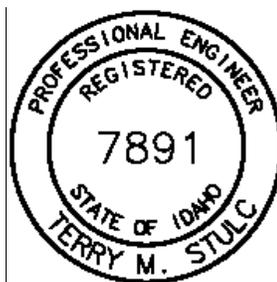
PROJECT: Memorial Grandstand  
Renovation

PROJECT#: AW #1818 / Trindera #18126

ENGINEER: Mark Martin, E.I.T.  
Aaron Whiting, P.E.  
Terry Stulc, P.E.

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The technical specification sections listed above have been prepared under the direction of the Professional Engineer, registered in the State of Idaho, whose seal and signature appear below:



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# DRAFT AIA® Document A201™ – 2007

## General Conditions of the Contract for Construction

for the following PROJECT:

(Name and location or address)

«Memorial Grandstand Renovation»  
«Coeur d'Alene, ID»

THE OWNER:

(Name, legal status and address)

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

THE ARCHITECT:

(Name, legal status and address)

«Architects West, Inc.»«»  
«210 E. Lakeside Avenue  
Coeur d'Alene, ID 83814»

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## ARTICLE 1 GENERAL PROVISIONS

### § 1.1 BASIC DEFINITIONS

#### § 1.1.1 THE CONTRACT DOCUMENTS

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

#### § 1.1.2 THE CONTRACT

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

#### § 1.1.3 THE WORK

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

#### § 1.1.4 THE PROJECT

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

#### § 1.1.5 THE DRAWINGS

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

#### § 1.1.6 THE SPECIFICATIONS

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

#### § 1.1.7 INSTRUMENTS OF SERVICE

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

#### § 1.1.8 INITIAL DECISION MAKER

The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2 and certify termination of the Agreement under Section 14.2.2.

### § 1.2 CORRELATION AND INTENT OF THE CONTRACT DOCUMENTS

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

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

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

### § 1.3 CAPITALIZATION

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

### § 1.4 INTERPRETATION

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

### § 1.5 OWNERSHIP AND USE OF DRAWINGS, SPECIFICATIONS AND OTHER INSTRUMENTS OF SERVICE

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

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

### § 1.6 TRANSMISSION OF DATA IN DIGITAL FORM

If the parties intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions, unless otherwise already provided in the Agreement or the Contract Documents.

## ARTICLE 2 OWNER

### § 2.1 GENERAL

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

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

### § 2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

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

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

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

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

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

### § 2.3 OWNER'S RIGHT TO STOP THE WORK

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

### § 2.4 OWNER'S RIGHT TO CARRY OUT THE WORK

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect or failure. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

## ARTICLE 3 CONTRACTOR

### § 3.1 GENERAL

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

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

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

### § 3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

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

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.2.3, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

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

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

### § 3.3 SUPERVISION AND CONSTRUCTION PROCEDURES

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely written notice to the Owner and Architect and shall not proceed with that portion of the Work without further written instructions from the Architect. If the Contractor is then instructed to proceed with the required means, methods, techniques, sequences or procedures without acceptance of changes proposed by the Contractor, the Owner shall be solely responsible for any loss or damage arising solely from those Owner-required means, methods, techniques, sequences or procedures.

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

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

### § 3.4 LABOR AND MATERIALS

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

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

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

### § 3.5 WARRANTY

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

### § 3.6 TAXES

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

### § 3.7 PERMITS, FEES, NOTICES AND COMPLIANCE WITH LAWS

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

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

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

§ 3.7.4 **Concealed or Unknown Conditions.** If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than 21 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor in writing, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may proceed as provided in Article 15.

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

### § 3.8 ALLOWANCES

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

§ 3.8.2 Unless otherwise provided in the Contract Documents,

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

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

### § 3.9 SUPERINTENDENT

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

§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Architect the name and qualifications of a proposed superintendent. The Architect may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Architect has reasonable objection to the proposed superintendent or (2) that the Architect requires additional time to review. Failure of the Architect to reply within the 14 day period shall constitute notice of no reasonable objection.

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

### § 3.10 CONTRACTOR'S CONSTRUCTION SCHEDULES

§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall prepare and submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work.

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

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

### § 3.11 DOCUMENTS AND SAMPLES AT THE SITE

The Contractor shall maintain at the site for the Owner one copy of the Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and one copy of approved Shop Drawings, Product Data, Samples and similar required submittals. These shall be available to the Architect and shall be delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

### § 3.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

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

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

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

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

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

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

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

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

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

§ 3.12.10 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. The Contractor shall not be required to provide professional services in violation of applicable law. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by a properly licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor all performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review, approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Contractor shall not be responsible for the adequacy of the performance and design criteria specified in the Contract Documents.

### § 3.13 USE OF SITE

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

### § 3.14 CUTTING AND PATCHING

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

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

### § 3.15 CLEANING UP

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

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

### § 3.16 ACCESS TO WORK

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

### § 3.17 ROYALTIES, PATENTS AND COPYRIGHTS

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

### § 3.18 INDEMNIFICATION

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

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

## ARTICLE 4 ARCHITECT

### § 4.1 GENERAL

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

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

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

### § 4.2 ADMINISTRATION OF THE CONTRACT

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

§ 4.2.2 The Architect will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will not have control over, charge of, or responsibility for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents, except as provided in Section 3.3.1.

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

### § 4.2.4 COMMUNICATIONS FACILITATING CONTRACT ADMINISTRATION

Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, the Owner and Contractor shall endeavor to communicate with each other through the Architect about matters arising out of or relating to the Contract. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and material suppliers shall be through the Contractor. Communications by and with separate contractors shall be through the Owner.

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

§ 4.2.6 The Architect has authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the Work in accordance with Sections 13.5.2 and 13.5.3, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 4.2.7 The Architect will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and

completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5 and 3.12. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

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

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

§ 4.2.10 If the Owner and Architect agree, the Architect will provide one or more project representatives to assist in carrying out the Architect's responsibilities at the site. The duties, responsibilities and limitations of authority of such project representatives shall be as set forth in an exhibit to be incorporated in the Contract Documents.

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

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

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

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

## ARTICLE 5 SUBCONTRACTORS

### § 5.1 DEFINITIONS

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

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

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

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

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

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

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

### § 5.3 SUBCONTRACTUAL RELATIONS

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

### § 5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

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

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

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

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

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

## ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

### § 6.1 OWNER'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS

§ 6.1.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site under Conditions of the Contract identical or substantially similar to these including those

portions related to insurance and waiver of subrogation. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such Claim as provided in Article 15.

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

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

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

## § 6.2 MUTUAL RESPONSIBILITY

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

§ 6.2.2 If part of the Contractor’s Work depends for proper execution or results upon construction or operations by the Owner or a separate contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Architect apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor so to report shall constitute an acknowledgment that the Owner’s or separate contractor’s completed or partially completed construction is fit and proper to receive the Contractor’s Work, except as to defects not then reasonably discoverable.

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

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

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

## § 6.3 OWNER’S RIGHT TO CLEAN UP

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

## ARTICLE 7 CHANGES IN THE WORK

### § 7.1 GENERAL

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

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

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

## § 7.2 CHANGE ORDERS

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

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

## § 7.3 CONSTRUCTION CHANGE DIRECTIVES

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

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

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

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 Unit prices stated in the Contract Documents or subsequently agreed upon;
- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 As provided in Section 7.3.7.

§ 7.3.4 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed in a proposed Change Order or Construction Change Directive so that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

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

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

§ 7.3.7 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall determine the method and the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.7 shall be limited to the following:

- .1 Costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;
- .2 Costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;
- .3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;

- 4 Costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; and
- 5 Additional costs of supervision and field office personnel directly attributable to the change.

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

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

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

#### § 7.4 MINOR CHANGES IN THE WORK

The Architect has authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes will be effected by written order signed by the Architect and shall be binding on the Owner and Contractor.

### ARTICLE 8 TIME

#### § 8.1 DEFINITIONS

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

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

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

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

#### § 8.2 PROGRESS AND COMPLETION

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

§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, prematurely commence operations on the site or elsewhere prior to the effective date of insurance required by Article 11 to be furnished by the Contractor and Owner. The date of commencement of the Work shall not be changed by the effective date of such insurance.

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

#### § 8.3 DELAYS AND EXTENSIONS OF TIME

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner or Architect, or of an employee of either, or of a separate contractor employed by the Owner; or by changes ordered in the Work; or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Contractor's control; or by delay authorized by the Owner pending mediation and arbitration; or by other causes that the Architect determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Architect may determine.

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

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

## ARTICLE 9 PAYMENTS AND COMPLETION

### § 9.1 CONTRACT SUM

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

### § 9.2 SCHEDULE OF VALUES

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

### § 9.3 APPLICATIONS FOR PAYMENT

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

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

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

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

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

### § 9.4 CERTIFICATES FOR PAYMENT

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

§ 9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and the data comprising the Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of

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

## § 9.5 DECISIONS TO WITHHOLD CERTIFICATION

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

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

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

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

## § 9.6 PROGRESS PAYMENTS

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

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

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

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

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

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

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

#### § 9.7 FAILURE OF PAYMENT

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

#### § 9.8 SUBSTANTIAL COMPLETION

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

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

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

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

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

#### § 9.9 PARTIAL OCCUPANCY OR USE

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer as required under Section 11.3.1.5 and authorized by public authorities having jurisdiction over the

Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect.

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

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

#### § 9.10 FINAL COMPLETION AND FINAL PAYMENT

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

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner, (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment and (5), if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

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

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

- .1 liens, Claims, security interests or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Contract Documents; or
- .3 terms of special warranties required by the Contract Documents.

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

## ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

### § 10.1 SAFETY PRECAUTIONS AND PROGRAMS

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

### § 10.2 SAFETY OF PERSONS AND PROPERTY

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

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

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

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

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

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

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

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

### § 10.2.8 INJURY OR DAMAGE TO PERSON OR PROPERTY

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

### § 10.3 HAZARDOUS MATERIALS

§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to

persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner and Architect in writing.

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

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

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

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

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

#### § 10.4 EMERGENCIES

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

### ARTICLE 11 INSURANCE AND BONDS

#### § 11.1 CONTRACTOR'S LIABILITY INSURANCE

§ 11.1.1 The Contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located such insurance as will protect the Contractor from claims set forth below which may arise out of or result from the Contractor's operations and completed operations under the Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

- .1 Claims under workers' compensation, disability benefit and other similar employee benefit acts that are applicable to the Work to be performed;
- .2 Claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;

- .3 Claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;
- .4 Claims for damages insured by usual personal injury liability coverage;
- .5 Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
- .6 Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;
- .7 Claims for bodily injury or property damage arising out of completed operations; and
- .8 Claims involving contractual liability insurance applicable to the Contractor's obligations under Section 3.18.

§ 11.1.2 The insurance required by Section 11.1.1 shall be written for not less than limits of liability specified in the Contract Documents or required by law, whichever coverage is greater. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from the date of commencement of the Work until the date of final payment and termination of any coverage required to be maintained after final payment, and, with respect to the Contractor's completed operations coverage, until the expiration of the period for correction of Work or for such other period for maintenance of completed operations coverage as specified in the Contract Documents.

§ 11.1.3 Certificates of insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work and thereafter upon renewal or replacement of each required policy of insurance. These certificates and the insurance policies required by this Section 11.1 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by Section 9.10.2 and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section 11.1.2. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Contractor with reasonable promptness.

§ 11.1.4 The Contractor shall cause the commercial liability coverage required by the Contract Documents to include (1) the Owner, the Architect and the Architect's consultants as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's completed operations.

## § 11.2 OWNER'S LIABILITY INSURANCE

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

## § 11.3 PROPERTY INSURANCE

§ 11.3.1 Unless otherwise provided, the Owner shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of the initial Contract Sum, plus value of subsequent Contract Modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in Section 9.10 or until no person or entity other than the Owner has an insurable interest in the property required by this Section 11.3 to be covered, whichever is later. This insurance shall include interests of the Owner, the Contractor, Subcontractors and Sub-subcontractors in the Project.

§ 11.3.1.1 Property insurance shall be on an "all-risk" or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Architect's and Contractor's services and expenses required as a result of such insured loss.

§ 11.3.1.2 If the Owner does not intend to purchase such property insurance required by the Contract and with all of the coverages in the amount described above, the Owner shall so inform the Contractor in writing prior to commencement

of the Work. The Contractor may then effect insurance that will protect the interests of the Contractor, Subcontractors and Sub-subcontractors in the Work, and by appropriate Change Order the cost thereof shall be charged to the Owner. If the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain insurance as described above, without so notifying the Contractor in writing, then the Owner shall bear all reasonable costs properly attributable thereto.

§ 11.3.1.3 If the property insurance requires deductibles, the Owner shall pay costs not covered because of such deductibles.

§ 11.3.1.4 This property insurance shall cover portions of the Work stored off the site, and also portions of the Work in transit.

§ 11.3.1.5 Partial occupancy or use in accordance with Section 9.9 shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use by endorsement or otherwise. The Owner and the Contractor shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.

#### § 11.3.2 BOILER AND MACHINERY INSURANCE

The Owner shall purchase and maintain boiler and machinery insurance required by the Contract Documents or by law, which shall specifically cover such insured objects during installation and until final acceptance by the Owner; this insurance shall include interests of the Owner, Contractor, Subcontractors and Sub-subcontractors in the Work, and the Owner and Contractor shall be named insureds.

#### § 11.3.3 LOSS OF USE INSURANCE

The Owner, at the Owner's option, may purchase and maintain such insurance as will insure the Owner against loss of use of the Owner's property due to fire or other hazards, however caused. The Owner waives all rights of action against the Contractor for loss of use of the Owner's property, including consequential losses due to fire or other hazards however caused.

§ 11.3.4 If the Contractor requests in writing that insurance for risks other than those described herein or other special causes of loss be included in the property insurance policy, the Owner shall, if possible, include such insurance, and the cost thereof shall be charged to the Contractor by appropriate Change Order.

§ 11.3.5 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, the Owner shall waive all rights in accordance with the terms of Section 11.3.7 for damages caused by fire or other causes of loss covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.

§ 11.3.6 Before an exposure to loss may occur, the Owner shall file with the Contractor a copy of each policy that includes insurance coverages required by this Section 11.3. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. Each policy shall contain a provision that the policy will not be canceled or allowed to expire, and that its limits will not be reduced, until at least 30 days' prior written notice has been given to the Contractor.

#### § 11.3.7 WAIVERS OF SUBROGATION

The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, and (2) the Architect, Architect's consultants, separate contractors described in Article 6, if any, and any of their subcontractors, sub-subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to this Section 11.3 or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary. The Owner or Contractor, as appropriate, shall require of the Architect, Architect's consultants, separate contractors described in Article 6, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise

have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

§ 11.3.8 A loss insured under the Owner's property insurance shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.3.10. The Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub-subcontractors in similar manner.

§ 11.3.9 If required in writing by a party in interest, the Owner as fiduciary shall, upon occurrence of an insured loss, give bond for proper performance of the Owner's duties. The cost of required bonds shall be charged against proceeds received as fiduciary. The Owner shall deposit in a separate account proceeds so received, which the Owner shall distribute in accordance with such agreement as the parties in interest may reach, or as determined in accordance with the method of binding dispute resolution selected in the Agreement between the Owner and Contractor. If after such loss no other special agreement is made and unless the Owner terminates the Contract for convenience, replacement of damaged property shall be performed by the Contractor after notification of a Change in the Work in accordance with Article 7.

§ 11.3.10 The Owner as fiduciary shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five days after occurrence of loss to the Owner's exercise of this power; if such objection is made, the dispute shall be resolved in the manner selected by the Owner and Contractor as the method of binding dispute resolution in the Agreement. If the Owner and Contractor have selected arbitration as the method of binding dispute resolution, the Owner as fiduciary shall make settlement with insurers or, in the case of a dispute over distribution of insurance proceeds, in accordance with the directions of the arbitrators.

#### § 11.4 PERFORMANCE BOND AND PAYMENT BOND

§ 11.4.1 The Owner shall have the right to require the Contractor to furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder as stipulated in bidding requirements or specifically required in the Contract Documents on the date of execution of the Contract.

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

### ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

#### § 12.1 UNCOVERING OF WORK

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

§ 12.1.2 If a portion of the Work has been covered that the Architect has not specifically requested to examine prior to its being covered, the Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be at the Owner's expense. If such Work is not in accordance with the Contract Documents, such costs and the cost of correction shall be at the Contractor's expense unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs.

#### § 12.2 CORRECTION OF WORK

##### § 12.2.1 BEFORE OR AFTER SUBSTANTIAL COMPLETION

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

##### § 12.2.2 AFTER SUBSTANTIAL COMPLETION

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established

under Section 9.9.1, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.4.

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

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

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

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

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

### § 12.3 ACCEPTANCE OF NONCONFORMING WORK

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

## ARTICLE 13 MISCELLANEOUS PROVISIONS

### § 13.1 GOVERNING LAW

The Contract shall be governed by the law of the place where the Project is located except that, if the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 15.4.

### § 13.2 SUCCESSORS AND ASSIGNS

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

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

### § 13.3 WRITTEN NOTICE

Written notice shall be deemed to have been duly served if delivered in person to the individual, to a member of the firm or entity, or to an officer of the corporation for which it was intended; or if delivered at, or sent by registered or certified mail or by courier service providing proof of delivery to, the last business address known to the party giving notice.

## § 13.4 RIGHTS AND REMEDIES

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

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

## § 13.5 TESTS AND INSPECTIONS

§ 13.5.1 Tests, inspections and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of (1) tests, inspections or approvals that do not become requirements until after bids are received or negotiations concluded, and (2) tests, inspections or approvals where building codes or applicable laws or regulations prohibit the Owner from delegating their cost to the Contractor.

§ 13.5.2 If the Architect, Owner or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Section 13.5.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect of when and where tests and inspections are to be made so that the Architect may be present for such procedures. Such costs, except as provided in Section 13.5.3, shall be at the Owner's expense.

§ 13.5.3 If such procedures for testing, inspection or approval under Sections 13.5.1 and 13.5.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure including those of repeated procedures and compensation for the Architect's services and expenses shall be at the Contractor's expense.

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

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

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

## § 13.6 INTEREST

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

## § 13.7 TIME LIMITS ON CLAIMS

The Owner and Contractor shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other arising out of or related to the Contract in accordance with the requirements of the final dispute resolution method selected in the Agreement within the time period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all claims and causes of action not commenced in accordance with this Section 13.7.

## ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

### § 14.1 TERMINATION BY THE CONTRACTOR

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

persons or entities performing portions of the Work under direct or indirect contract with the Contractor, for any of the following reasons:

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .2 An act of government, such as a declaration of national emergency that requires all Work to be stopped;
- .3 Because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or
- .4 The Owner has failed to furnish to the Contractor promptly, upon the Contractor's request, reasonable evidence as required by Section 2.2.1.

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

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' written notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed, including reasonable overhead and profit, costs incurred by reason of such termination, and damages.

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

#### § 14.2 TERMINATION BY THE OWNER FOR CAUSE

§ 14.2.1 The Owner may terminate the Contract if the Contractor

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

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

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

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

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

## § 14.3 SUSPENSION BY THE OWNER FOR CONVENIENCE

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

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

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

## § 14.4 TERMINATION BY THE OWNER FOR CONVENIENCE

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

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

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

§ 14.4.3 In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work not executed.

## ARTICLE 15 CLAIMS AND DISPUTES

### § 15.1 CLAIMS

#### § 15.1.1 DEFINITION

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim.

#### § 15.1.2 NOTICE OF CLAIMS

Claims by either the Owner or Contractor must be initiated by written notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Claims by either party must be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

#### § 15.1.3 CONTINUING CONTRACT PERFORMANCE

Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents. The Architect will prepare Change Orders and issue Certificates for Payment in accordance with the decisions of the Initial Decision Maker.

#### § 15.1.4 CLAIMS FOR ADDITIONAL COST

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

#### § 15.1.5 CLAIMS FOR ADDITIONAL TIME

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

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

#### § 15.1.6 CLAIMS FOR CONSEQUENTIAL DAMAGES

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

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

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.6 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

#### § 15.2 INITIAL DECISION

§ 15.2.1 Claims, excluding those arising under Sections 10.3, 10.4, 11.3.9, and 11.3.10, shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation of any Claim arising prior to the date final payment is due, unless 30 days have passed after the Claim has been referred to the Initial Decision Maker with no decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

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

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

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

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

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

§ 15.2.6.1 Either party may, within 30 days from the date of an initial decision, demand in writing that the other party file for mediation within 60 days of the initial decision. If such a demand is made and the party receiving the demand

fails to file for mediation within the time required, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.

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

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

### § 15.3 MEDIATION

§ 15.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.6 shall be subject to mediation as a condition precedent to binding dispute resolution.

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

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

### § 15.4 ARBITRATION

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

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

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

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

### § 15.4.4 CONSOLIDATION OR JOINDER

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

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

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



**CITY COUNCIL  
STAFF REPORT**

**DATE:** May 21, 2019  
**FROM:** Troy Tymesen, City Administrator  
**SUBJECT:** Parking Code Amendments

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**DECISION POINT:** Should the City Council approve amendments to various sections of the Coeur d’Alene Municipal Code related to parking which amendments clarify and add definitions, consolidate parking regulations in one section of the Code, expand the program for monthly parking permits, and make grammatical and stylistic corrections?

**HISTORY:** Title 4, Chapter 4.15 of the Coeur d’Alene Municipal Code regulates parking in the City. It contains fifteen separate sections, eight of which are entitled “Additional Regulations.” Also, since this Chapter was last amended, the City has completed the parking structure on 4<sup>th</sup> and Coeur d’Alene Avenue and the skatepark near Memorial Field. Staff concluded that this was the appropriate time to amend the sections of the Code related to parking in a comprehensive manner. The amendments include a new definition for the Coeur d’Alene Parking Garage and a revised definition for the Memorial Field Skateboard and MX Freestyle Park. We have also consolidated all of the general parking regulations into one section (4.15.040), eliminating seven separate sections of the Code which overlapped, were redundant, and/or conflicting. The City’s monthly parking permit program is expanded and the Parking Commission is directed to establish, in consultation with the City Administrator, policies and procedures for the program. The City Administrator is given discretion to waive parking fees for community or park events, and exempt special events.

**FINANCIAL ANALYSIS:** The impact on the City’s finances are unknown. Although fees are set by Resolution of Council, not by these amendments, the income from monthly parking passes is uncertain.

**PERFORMANCE ANALYSIS:** The amendments will benefit the City as well as the public by clarifying and simplifying the parking regulations. The amendments will result in an expansion of the monthly parking permit program which will relieve pressure for on-street parking. The amendments will result in a flexible system which can respond to special needs quickly and in a user-friendly manner.

**DECISION POINT/RECOMMENDATION:** The City Council should approve amendments to various sections of the Coeur d’Alene Municipal Code related to parking to clarify and add definitions, consolidate parking regulations in one section of the Code, expand the program for monthly parking permits, and make grammatical and stylistic corrections.

ORDINANCE NO. \_\_\_\_\_  
COUNCIL BILL NO. 19-1005

AN ORDINANCE PROVIDING FOR THE AMENDMENT OF THE FOLLOWING SECTIONS OF THE COEUR D'ALENE MUNICIPAL CODE: 2.66.020, 4.05.030, 4.15.010, 4.15.020, 4.15.030, 4.15.040, 4.15.120, 4.15.130, AND 8.48.030; PROVIDING FOR THE REPEAL OF THE FOLLOWING SECTIONS OF THE COEUR D'ALENE MUNICIPAL CODE: 4.15.060, 4.15.070, 4.15.080, 4.15.090, 4.15.100, 4.15.110, AND 4.15.115; PROVIDING FOR THE REPEAL OF CONFLICTING ORDINANCES; PROVIDING FOR SEVERABILITY; PROVIDING FOR THE PUBLICATION OF A SUMMARY OF THE ORDINANCE; AND PROVIDING FOR AN EFFECTIVE DATE THEREOF.

WHEREAS, it is deemed by the Mayor and City Council to be in the best interests of the City of Coeur d'Alene that said amendment be adopted;

NOW, THEREFORE,

BE IT ORDAINED, by the Mayor and City Council of the City of Coeur d'Alene:

**SECTION 1.** *That section 2.66.020 of the Coeur d'Alene Municipal Code be amended as follows:*

At their first meeting of each fiscal year, the members of the parking commission shall meet and organize by electing one of their members chairperson and such other officers as may be necessary.

The parking commission shall:

Analyze parking needs throughout the city;

Educate the public on the availability, value, and location of parking;

Serve as the public's forum to address parking issues and concerns;

Ensure parking is managed in a manner that is user friendly, visually attractive, and maintains the value of this asset;

Address issues that arise regarding enforcement of parking ordinances and address appeals of parking ordinance tickets;

Keep the council informed regarding parking issues and to make recommendations to the council on maintaining and/or improving parking.

[Prepare policies and procedures, with the advice of the City Administrator, to regulate monthly parking permits.](#)

The parking commission shall comply with all city policies, procedures, and regulations.

**SECTION 2.** *That section 4.05.030 of the Coeur d'Alene Municipal Code be amended by adding the following definition:*

COEUR D'ALENE PARKING GARAGE: The parking structure bounded on the north by E. Coeur d'Alene Avenue, on the west by N. 3rd Street, and on the east by N. 4th Street.

**SECTION 3.** *That section 4.05.030 of the Coeur d'Alene Municipal Code be amended by deleting the following definition:*

FOURTH STREET AND COEUR D'ALENE AVENUE PARKING FACILITY: A parking lot abutting the southwest corner of the intersection of 4th Street and Coeur d'Alene Avenue (Lots 3 and 4, Block H, The Town of Coeur d'Alene and Kings Addition, and the north 85 feet of Lots 5 and 6, Block H, The Town of Coeur d'Alene and King's Addition, Book "C" of Deeds, at page 144, records of Kootenai County, Idaho).

**SECTION 4.** *That the definition of the Memorial Field Skateboard and BMX Freestyle Park in section 4.05.030 of the Coeur d'Alene Municipal Code be amended as follows:*

MEMORIAL FIELD SKATEBOARD AND BMX FREESTYLE PARK: A skate park and BMX freestyle park and playground ~~located within~~ adjacent to the Memorial Field Parking Facility at 480 West Garden Avenue and generally ~~bounded~~ located ~~by Memorial Field softball field on the south, Park Drive on the west, West Garden Avenue on the north and the former BNSF rail line on the east~~ west of Northwest Boulevard.

**SECTION 5.** *That section 4.15.010 of the Coeur d'Alene Municipal Code be amended as follows:*

A. There is hereby established within the city of Coeur d'Alene a "capital improvement fund" which shall be known and cited as "the Coeur d'Alene public parking facility capital improvement fund". The levy or appropriation to such fund shall not exceed in the aggregate in any one year ~~more than~~ four-hundredths of one percent (0.04%) of the market value for assessment purposes of the city of Coeur d'Alene in that year. The total amount of such fund shall never exceed in the aggregate four-tenths of one percent (0.4%) of the market value for assessment purposes of the city of Coeur d'Alene. The fund shall not be subject to transfers pursuant to ~~the provisions of~~ Idaho Code section 50-1014 ~~(which provides that the city council of the city may transfer an unexpended balance in one fund to the credit of another fund).~~

B. The purposes for which the Coeur d'Alene public parking facility capital improvement fund may be used are as follows:

1. The acquisition of land, buildings, structures, equipment and appurtenances necessary for the parking of motor vehicles.
2. The construction of public off street parking facilities, buildings, structures, equipment and appurtenances necessary for the parking of motor vehicles.

3. The improvement of Coeur d'Alene public parking facilities by upgrading equipment and appurtenances, grading, paving, sealing, signing, striping, draining or otherwise ~~capital improving of such city parking facilities.~~

C. None of such funds shall be expended unless specifically appropriated by the city council pursuant to Idaho Code sections 50-1001 through 50-1003, ~~both inclusive.~~

**SECTION 6:** *That section 4.15.020 of the Coeur d'Alene Municipal Code be amended as follows:*

A. The ~~s~~Streets & Engineering Directors~~superintendent~~ shall cause appropriate signs and markings to be posted, erected and painted ~~on the surface of the parking facilities or otherwise establish in the parking facilities directions to carry out the purpose~~ inform the public of the regulations set forth in this ~~e~~Chapter. ~~The § signs and markings containing the regulations provided in this chapter for each parking facility~~ shall be placed in a conspicuous place at the entrances to the parking facilities ~~so as to be visible to any person entering the parking facility.~~

B. The ~~s~~Streets & Engineering Director~~superintendent~~ shall cause appropriate signs and markings to be posted, erected and painted in conspicuous places on the Third Street Boat Ramp to ~~carry out the purpose~~ inform the public of the regulations ~~contained~~ set forth in this ~~e~~Chapter.

**SECTION 7.** *That section 4.15.030 of the Coeur d'Alene Municipal Code be amended as follows:*

~~A.~~—The ~~e~~City ~~e~~Council ~~will~~ shall establish by resolution the parking and watercraft launching fees for the parking facilities and launch ramps regulated by this ~~e~~Chapter.

**SECTION 8.** *That section 4.15.040 of the Coeur d'Alene Municipal Code be amended as follows:*

The following regulations govern the use of all property owned by the City on which private vehicles are allowed to park, including garages, permanent surface lots, semipermanent and temporary surface lots, or other areas that are used for vehicle parking, but excluding on-street parking, hereinafter referred to as public ~~“parking facilities.” as defined by section 4.05.030 of this title:~~

A. General Parking Regulations:

1. Vehicles can only be parked within the stalls designated by ~~markers~~ painted lines and as nearly in the center of the designated stalls as possible.
2. Vehicles cannot be parked or left unattended ~~on~~ in any driveing aisle in ~~the a~~ parking facility.
3. Trailers cannot be left ~~parked~~ in any parking facility unless attached to a parked motor vehicle in a stall marked or otherwise designated for oversize or multi-unit vehicles.

4. Passenger cars, as defined by state law, may not park in stalls marked or otherwise designated for oversize or multi-unit vehicles from May 1 through September 30 each years.

5. A recreational vehicle, trailer, oversize vehicle, or multi-unit vehicle, including a vehicle with attached trailer, may be parked only in a stall marked by a sign or striped for such vehicles and must fit entirely within the marked stall.

6. A parking permit or, as provided in the City Code, a monthly permit is required for the use of all parking facilities except the City Hall Parking Facility and the Library Parking Facility. Fees may be altered or waived by the Parking Commission for special events as set out in this Chapter. No parking fee is required for a City vehicle operating in the course of official business in any parking facility.

7. The permit shall be displayed on the dashboard or on the rearview mirror in plain sight at all times the vehicle is parked in a parking facility requiring a permit.

8. No vehicle may be parked for longer than two (2) hours in any stall served by an electric vehicle charging station.

B. Specific Regulations for Certain Parking Facilities.

1. No vehicle may be parked, or allowed to remain parked, in the City Hall Parking Facility or the Independence Point Parking Facility continuously for more than forty-eight (48) hours.

2. A parking permit is not required for Coeur d'Alene Parking Garage on holidays, weekends, or after six o'clock (6:00) p.m. on weekdays.

3. Parking in the Memorial Field Parking Facility and the Museum Parking Facility is prohibited between the hours of eleven o'clock (11:00) p.m. and six o'clock (6:00) a.m., unless the City Clerk approves longer hours for a special event.

**BC.** Other Regulations for Parking Facilities.÷

1. Vehicles ~~can~~may only be driven in a parking facility on the designated driving aisles and only in the direction indicated by signs or traffic control devices.

2. Vehicles ~~cannot~~may not be driven in a parking facility faster than five (5) miles per hour.

3. Vehicles ~~can~~may only be driven into or out of a parking facility at the designated entrances and exits.

4. No portion of any parking facility ~~can~~may be used in any manner that endangers the person or property of another, or disrupts the normal operations of the parking

facility, including, but not limited to, conduct ~~that involves~~ the use of abusive or threatening language or gestures, ~~or creates~~ unreasonable or excessive noise or emissions, or ~~results in~~ unreasonable or excessively loud or boisterous physical behavior; ~~or~~ No person shall involve placing any objects, such as a bicycles, backpacks, carts, or other items in a manner that interferes with free passage within the facility.

5. No person ~~can~~ may distribute, throw or affix to vehicles any literature, handbills or fliers in any City parking facility.

~~6. — No person can camp or sleep in a parking facility, either in, on or near a vehicle, between the hours of eleven o'clock (11:00) P.M. and six o'clock (6:00) A.M., unless the camping or sleeping is permitted by the City in conjunction with a special event being held on City property.~~

~~7. — No person shall deface, or destroy, signage or other City property located within a parking facility.~~

~~86.~~ Other than City-authorized events, no person shall participate in gatherings within the parking facility;.

~~97.~~ All persons within a City parking facility shall obey all posted regulations and/or the direction of an authorized parking official.

~~10. It is unlawful for any person to intentionally come into contact with buildings, stairs, stairways, railings, curbs, planters, benches, chairs, tables, plants or shrubbery, signs, light poles, pillars or other improvements or fixtures with any skateboard, skates, in-line skates, rollerblades, or similar device(s).~~

8. No person shall operate or ride any skateboard, roller skates, rollerblades, in-line skates, coaster, sled, wagon, scooter, or similar device in any parking facility. This prohibition shall not apply to the use of wheeled equipment necessary for ambulation by a disabled person.

9. No person shall enter or remain within a parking facility for any purpose other than to park or retrieve a vehicle, or to access other public property.

10. Smoking of cigarettes, cigars, pipes, or other lighted or heated devices intended for inhalation is prohibited in any enclosed area of any parking facility.

11. Concessions in parking facilities shall be governed by section 5.75.050(B) of this Code.

ED. Exceptions:

~~1. — The parking provisions contained in this chapter do not apply to City vehicles operated in the normal course of City business.~~

21. The City Clerk, upon recommendation by the City Administrator or Parks Director, or their designees, may permit activities in public parking facilities which, in association with a permitted event, creates, or has the potential to create, noises, or noxious or odorous emissions that may otherwise violate this section, subject to such reasonable conditions as the City Administrator or Parks Director, or their designees, may deem necessary and appropriate. Participants in an event permitted hereunder shall not be in violation of this section so long as they are in compliance with the conditions of the permit.

2. The City Administrator may waive the parking fee, in whole or in part, for community events or park events open to the general public in any of the parking facilities.

3. The City Administrator may exempt persons attending special events from complying with any or all of the regulations of this Chapter pertaining to one or more of the parking facilities.

E. Monthly Parking Permits.

1. It is the intent of the City Council that parking facilities should accommodate monthly parking permits for the purpose of alleviating parking congestion on the public streets. For this reason, the Parking Commission, in consultation with the City Administrator, is hereby directed to create policies and procedures governing monthly parking permits for parking facilities consistent with the following guidelines.

a. The parking facilities for which monthly parking permits will be issued should be specifically identified. The decision of whether to issue monthly parking permits for a particular parking facility shall be based on the number of available stalls in that facility, the proximity to areas which would benefit from such permits, the availability of technology to support such permits, and similar factors.

b. The months for which monthly parking permits will be issued for each parking facility shall be designated by the City Administrator, taking into consideration seasonal parking requirements.

c. The number of monthly parking permits which will be issued for each parking facility, which may vary on a seasonal basis, but shall not exceed forty percent (40%) of the stalls in any parking facility unless authorized by the City Administrator.

d. Monthly parking permits must be paid in advance by the fifteenth day of the month for parking in the succeeding month unless otherwise provided by this Code or City policy.

2. The policies and procedures for monthly parking permits may be changed from time to time with the approval of the Parking Commission.

3. A member of the public may appeal any policy or procedure to the City Council.

**SECTION 9.** *That section 4.15.060 of the Coeur d'Alene Municipal Code be repealed.*

**SECTION 10.** *That section 4.15.070 of the Coeur d'Alene Municipal Code be repealed.*

**SECTION 11.** *That section 4.15.080 of the Coeur d'Alene Municipal Code be repealed.*

**SECTION 12.** *That section 4.15.090 of the Coeur d'Alene Municipal Code be repealed.*

**SECTION 13.** *That section 4.15.100 of the Coeur d'Alene Municipal Code be repealed.*

**SECTION 14.** *That section 4.15.110 of the Coeur d'Alene Municipal Code be repealed.*

**SECTION 15.** *That section 4.15.115 of the Coeur d'Alene Municipal Code be repealed.*

**SECTION 16.** *That section 4.15.120 of the Coeur d'Alene Municipal Code be amended as follows:*

The following regulations govern the use of the Third Street Boat Ramp:

A. Vehicles, other than emergency vehicles, cannot be parked on or travel on the launch ramp except while in the process of launching or loading watercraft.

B. Vehicles, other than emergency vehicles, cannot park or travel on the launch ramp for longer than is reasonably necessary to launch or load watercraft and in no event may ~~they a~~ vehicle remain parked on the launch ramp for more than fifteen (15) minutes.

C. Vehicles, other than emergency vehicles, cannot be parked on or travel on the launch ramp in a manner that blocks the ingress or egress of other vehicles launching or loading watercraft.

**SECTION 17.** *That section 4.15.130 of the Coeur d'Alene Municipal Code be amended as follows:*

Any violation of this eChapter related to vehicle parking is subject to the enforcement processes and penalties contained in ~~title 10, eChapter 10.27~~ of this eCode. All other violations of this eChapter are an infraction punishable as provided in ~~title 1, chapter~~ section 1.28.010 of this eCode.

**SECTION 18.** *That section 8.48.030 of the Coeur d'Alene Municipal Code be amended as follows:*

That for the purposes of this chapter, the following definitions shall be applicable:

**PUBLIC PROPERTY:** As defined in section 4.05.030 of this code, including, but not limited to,

Tubbs Hill, all city docks, Third Street Boat Ramp, Independence Point and [Independence Point](#) ~~p~~Parking ~~f~~Facility, City Beach, City Park, ~~and~~ McEuen Park and the McEuen Parking Facility, ~~and~~ City Hall Parking Facility, [the Memorial Field Parking Facility](#), [the Museum Parking Facility](#), and [the Coeur d'Alene Parking Garage](#).

**PUBLIC WATERS:** Any river, lake, or other body of water within the corporate boundaries of the city of Coeur d'Alene, Idaho, other than those which are entirely privately owned, regardless of navigability.

**RACE:** Any race which is sanctioned or approved by the Unlimited Hydroplane Racing Association and any successor in interest thereto.

**UNLIMITED HYDROPLANES:** Boats weighing in excess of six thousand (6,000) pounds designed for competitive racing, specifically including all boats licensed or approved at the present or at any time hereafter by the Unlimited Hydroplane Racing Association and any successor in interest thereto.

**SECTION 19.** All ordinances and parts of ordinances in conflict with this ordinance are hereby repealed.

**SECTION 20.** The provisions of this ordinance are severable and if any provision, clause, sentence, subsection, word or part thereof is held illegal, invalid, or unconstitutional or inapplicable to any person or circumstance, such illegality, invalidity or unconstitutionality or inapplicability shall not affect or impair any of the remaining provisions, clauses, sentences, subsections, words or parts of this ordinance or their application to other persons or circumstances. It is hereby declared to be the legislative intent that this ordinance would have been adopted if such illegal, invalid or unconstitutional provision, clause sentence, subsection, word, or part had not been included therein.

**SECTION 21.** After its passage and adoption, a summary of this Ordinance, pursuant to the provisions of the Idaho Code, shall be published once in the official newspaper of the City of Coeur d'Alene, and upon such publication this Ordinance shall be in full force and effect.

*Passed under suspension of rules upon which a roll call vote was duly taken and duly enacted an Ordinance of the City of Coeur d'Alene at a regular session of the City Council on May 21, 2019.*

APPROVED, ADOPTED and SIGNED this 21<sup>st</sup> day of May, 2019.

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Steve Widmyer, Mayor

ATTEST:

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Renata McLeod, City Clerk

SUMMARY OF COEUR D'ALENE ORDINANCE NO. \_\_\_\_\_  
Amending Certain Sections of Chapter 12.36 of the City Code,  
Repealing Section 12.36.445 of the City Code, and  
Amending Certain Sections of Chapters 17.02 and 17.07 of the City Code

AN ORDINANCE PROVIDING FOR THE AMENDMENT OF THE FOLLOWING SECTIONS OF THE COEUR D'ALENE MUNICIPAL CODE: 2.66.020, 4.05.030, 4.15.010, 4.15.020, 4.15.030, 4.15.040, 4.15.120, 4.15.130, AND 8.48.030; PROVIDING FOR THE REPEAL OF THE FOLLOWING SECTIONS OF THE COEUR D'ALENE MUNICIPAL CODE: 4.15.060, 4.15.070, 4.15.080, 4.15.090, 4.15.100, 4.15.110, AND 4.15.115; PROVIDING FOR THE REPEAL OF CONFLICTING ORDINANCES; PROVIDING FOR SEVERABILITY; PROVIDING FOR THE PUBLICATION OF A SUMMARY OF THE ORDINANCE; AND PROVIDING FOR AN EFFECTIVE DATE THEREOF. THE FULL TEXT OF THE SUMMARIZED ORDINANCE NO. \_\_\_\_\_ IS AVAILABLE AT COEUR D'ALENE CITY HALL, 710 E. MULLAN AVENUE, COEUR D'ALENE, IDAHO 83814 IN THE OFFICE OF THE CITY CLERK.

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Renata McLeod, City Clerk

## STATEMENT OF LEGAL ADVISOR

I, Randall R. Adams, am a Chief Deputy City Attorney for the City of Coeur d'Alene, Idaho. I have examined the attached summary of Coeur d'Alene Ordinance No. \_\_\_\_\_, Amending sections 2.66.020, 4.05.030, 4.15.010, 4.15.020, 4.15.030, 4.15.040, 4.15.120, 4.15.130, and 8.48.030 of the Coeur d'Alene Municipal Code; and providing for the repeal of the sections 4.15.060, 4.15.070, 4.15.080, 4.15.090, 4.15.100, 4.15.110, and 4.15.115 of the Coeur d'Alene Municipal Code; and find it to be a true and complete summary of said ordinance which provides adequate notice to the public of the context thereof.

DATED this 21<sup>st</sup> day of May, 2019.

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Randall R. Adams, Chief Deputy City Attorney