



KLAMATH COUNTY FIRE DISTRICT NO. 1

REQUEST FOR PROPOSAL

Solicitation: RFP No. 12-01

For the Provision of Construction Manager/General Contractor
Services for Construction Services for Fire Stations 3

DUE DATE AND TIME

May 31, 2012 at 2:00 PM

Issued by

Klamath County Fire District No. 1

143 N Broad Street

Klamath Falls, OR 97601

May 11, 2012

Klamath County Fire District No. 1
143 N Broad Street Klamath Falls, OR 97601
Phone: 541-885-2056, Fax: 541-884-6920

REQUEST FOR PROPOSAL
Construction Services -Public Improvement
RFP No. 12-01

Klamath County Fire District No. 1 (KCFD NO. 1) is seeking proposals from interested contractors with fire station construction experience and contractors with construction manager/general contractor services (CM/GC) for the KCFD NO. 1 Fire Station 3. The purpose of this request for proposal solicitation document (RFP) is to establish a CM/GC contract between the most qualified contractor (Proposer) and KCFD NO. 1.

A MANDATORY pre-proposal conference will be held on May 18, 2012 1:00 PM located at 143 N Broad Street Klamath Falls, OR 97601.

Each Proposer must submit a formal written response pursuant to the provisions of this RFP to the KCFD NO. 1 Project Manager, or designee, at 143 N Broad Street, Klamath Falls, OR 97601, prior to:

RESPONSE DUE DATE & TIME:
May 31, 2012 at 2:00 PM
(Late proposals will not be accepted)

Proposers are solely responsible for ensuring that KCFD NO. 1 receives its proposal.

No public opening will occur. Proposals will be recorded and prepared for evaluation. The number of proposals received, the identity of Proposers, or the contents of any proposal will not be disclosed to the public until all proposals have been evaluated, negotiations completed if required, and a recommendation for Award has been published.

This RFP will result in a public works contract subject to the State of Oregon Prevailing Wage rates (ORS 279C.800to 279C.870) or the Federal Prevailing Wage rate, whichever is greater.

This RFP is issued by KCFD NO. 1, 143 N Broad Street, Klamath Falls, OR 97601, 541-885-2056, Fax 541-884-6920. The RFP may be examined and downloaded electronically at the Klamath County Fire District No. 1 website www.kcfd1.com.

Proposers must familiarize themselves with the entire RFP. All questions and comments about this RFP must be directed **ONLY** in writing to Jim Kenworthy, Project Manager, by Fax 541-884-6920 or Email jkenworthy@kcfd1.com.

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PROJECT OVERVIEW

KCFD NO. 1 is utilizing a Construction Manager/General Contractor delivery method to build a new approximately 13,405 square foot fire station on the existing site of Station 3 at 1661 Mitchell Avenue Klamath Falls, OR 97601 (cross street Shasta Way). The project is being funded by a Federal Grant under the American Recovery and Reinvestment Act (ARRA). The proposed structure will have 4 drive-through apparatus bays, is single story, steel frame, slab on grade with related mechanical, electrical and site work.

The site has two existing structures on it that will be demolished and materials will be recycled to the extent that it is feasible and cost effective.

KCFD NO. 1's design team for this project will work closely together with the selected CM/GC to make the final design decisions.

OWNER'S DESIGN TEAM

The design team has been selected to develop the design documents for this project. Members of the design team are:

Architects:

Peck Smiley Ettlin
Hans Ettlin, AIA, CSI
4412 SW Corbett, Portland, OR 97239
hans@psearchs.com
Phone: 503-248-9170
Fax: 503-248-0223

Construction Administration:
Kistler + Small + White Architects
Matt White
545 A Street
Ashland, OR 97520
matt@kistlersmallwhite.com
541-488-8200

Civil and Structural Engineers:

ZCS Consulting Engineers
Scott Souders and Russ Carter
900 Klamath Avenue
Klamath Falls, OR 97601
541-884-7421
scotts@zcsengineering.com
russcarter@zcsengineering.com

Mechanical Engineer:

MFIA, Inc. Consulting Engineers
Scott Miller
2007 SE Ash Street
Portland, OR 97214
503-234-0548
ron.mart@mfia-eng.com

Electrical Engineer:

MLC. Engineering
Lun Chau, Principal-In-Charge
1515 SW Fifth Ave #1028
Portland, OR 97201
503-220-0168
Lun.chau@mlc-engineering.com

Owner's Representative:

Klamath County Fire District No. 1
Jim Kenworthy
143 N Broad Street
Klamath Falls, OR 97601
541-885-2056
JKenworthy@kcf1.com

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SCHEDULE

The milestones for the selection process are set forth below. The dates are approximate but will be followed to the extent reasonably possible. The purpose of this schedule is for Proposer information only.

<u>Project Milestone</u>	<u>Completion Date</u>
Advertise RFP	May 11, 2012
RFP document available	May 11, 2012
MANDATORY Pre-proposal conference	May 18, 2012 at 1:00 PM located at: 143 N Broad Street Klamath Falls, OR 97601.
Deadline for Questions/Protest	May 25, 2012 12:00 PM noon
Issue Addenda (if needed)	May 30, 2012
Proposal Submittal Deadline	June 1, 2012 2:00 PM Pacific
Interviews	Week of June 4, 2012
Notice of Intent to Award	Week of June 11, 2012
Award of Contract	June 20, 2012 KCFD NO. 1 Board Meeting
Other Dates:	
Begin Design Development	June 21, 2012 (or as soon as contract is executed)
Complete Design Development	July 6, 2012
CM/GC submits GMP	July 20, 2012
KCFD NO. 1 Board Approval of GMP	July 24, 2012
Notice to Proceed for Construction	July 27, 2012 (or as soon as an AIA 201-2007 Contract is executed)

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1. **GENERAL.** This Solicitation is issued pursuant to the KCFD NO. 1 Local Contract Review Board Rules. The term "KCFD NO. 1" in this Solicitation means Klamath County Fire District No. 1. "Proposer or CM/GC" means the Contractor that submits a proposal in response to this RFP. "Closing" is the Solicitation due date and time.
2. **ELIGIBILITY TO PROPOSE.** Pursuant to OAR 137-049-0230:
 - a. Construction Contracts. KCFD NO. 1 shall not consider a Proposer's proposal to do Work as a Contractor, as defined in ORS 701.005(2), unless the Proposer has a current, valid certificate of registration issued by the Construction Contractors Board at the time the proposal is submitted.
 - b. Non complying Entities. KCFD NO. 1 shall deem a proposal received from a Proposer that fails to comply with this rule nonresponsive and shall reject the proposal as stated in ORS 279C.365(1)(k), unless contrary to federal law or subject to different timing requirements set by federal funding agencies.
3. **PRE-PROPOSAL MEETING.** Pursuant to OAR 137-049-0240:
 - a. Purpose. KCFD NO. 1 may hold a pre-proposal meeting with prospective Proposers prior to Closing, to explain the procurement requirements, obtain information, and/or to conduct site inspections.
 - b. Required Attendance. KCFD NO. 1 may require attendance at the pre-proposal meeting as a condition for submission of a proposal. A mandatory attendance requirement is considered to have been met if, at any time during the mandatory meeting, a person identifying themselves as a representative of the Proposer's Firm is present and completes the sign-in sheet.
 - c. Notice. The introduction page of this RFP indicates the pre-proposal meeting scheduled date and time, and whether the pre-proposal is mandatory or non-mandatory.
 - d. Statements Not Binding. Statements made by KCFD NO. 1's representative at the pre-proposal meeting do not change the RFP unless KCFD NO. 1 confirms such statements by Written Addenda.
4. **ADDENDA.** Pursuant to OAR 137-049-0250:
 - a. KCFD NO. 1 may change this solicitation document only by written addenda. Any addenda issued shall become an integral part of this solicitation.
 - b. A Proposer shall provide written acknowledgment of receipt of all issued addenda with its proposal on the provided Proposer Certification form.
 - c. KCFD NO. 1 shall notify all known interested Proposer's of addenda by fax or E-Mail. Addenda shall also be posted and made available for download from KCFD NO. 1's or the Architect's website.
 - d. IT IS THE PROPOSER'S RESPONSIBILITY TO MAKE INQUIRY OF ISSUED ADDENDA.
 - e. Unless a different deadline is set forth in the Addendum, a Proposer may submit a Written request for change or protest to the Addendum, as provided in OAR 137-049-0260, by the close of KCFD NO. 1's next business day after issuance of the Addendum, or up to the last day allowed to submit a request for change or protest under OAR 137-049-0260, whichever date is later. KCFD NO. 1 shall consider only a Proposer's request for change or protest to the Addendum; KCFD NO. 1 shall not consider a request for change or protest to matters not added or modified by the Addendum, unless the Proposer submits the request for change or protest before the deadline for KCFD NO. 1's receipt of request for change or protests set forth in paragraph 5.
5. **REQUEST FOR CLARIFICATION OR CHANGE, PROTEST.** Pursuant to OAR 137-049-0260:
 - a. Clarification. Prior to the deadline for submitting a written request for change or protest, a Proposer may request that KCFD NO. 1 clarify any provision of the RFP document. KCFD NO. 1's clarification to a Proposer, whether orally or in Writing, does not change the RFP and is not binding on KCFD NO. 1 unless KCFD NO. 1 amends the RFP by Addendum.
 - b. Request for Change.

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- i. Delivery. A Proposer may request in writing a change to the Specifications or contract terms and conditions. A Proposer shall deliver the Written request for change to KCFD NO. 1 by noon on May 25, 2012 to 143 N Broad Street, Klamath Falls, OR 976013 Attn: Jim Kenworthy Project Manager, or by Email at jkenworthy@kcfid1.com . (Proposer is responsible for ensuring receipt by KCFD NO. 1;
 - ii. Content of Request for Written Change:
 - A. Proposer’s written request for change shall include a statement of the requested change(s) to the contract terms and conditions, including any Specifications, together with the reason for the requested change.
 - B. A Proposer shall mark its request for change as follows:
 - (i) “Contract Provision Request for Change”; and
 - (ii) RFP No. 12-01.
 - c. Protest.
 - i. Delivery. A Proposer may protest specifications or contract terms and conditions. A Proposer shall deliver a written protest on those matters to KCFD NO. 1 by noon on May 25, 2012;
 - ii. Content of Protest.
 - A. A Proposer’s Written protest shall include:
 - (i) A detailed statement of the legal and factual grounds for the protest;
 - (ii) A description of the resulting prejudice to the Proposer; and
 - (iii) A statement of the desired changes to the contract terms and conditions, including any Specifications.
 - B. A Proposer shall mark its protest as follows:
 - (i) “Contract Provision Protest”; and
 - (ii) RFP No. RFP 12-01.
 - ii. The Response. KCFD NO. 1 is not required to consider a Proposers request for change or protest after the deadline established for submitting such request or protest. KCFD NO. 1 shall provide notice to the applicable Proposer if it entirely rejects a protest. If KCFD NO. 1 agrees with the Proposer's request or protest, in whole or in part, KCFD NO. 1 shall either issue an Addendum reflecting its determination under OAR 137-49-0260 or cancel the RFP under OAR 137-49-0270.
 - b. Extension of Closing. If KCFD NO. 1 receives a written request for change or protest from a Proposer in accordance with this Rule, KCFD NO. 1 may extend Closing if KCFD NO. 1 determines an extension is necessary to consider the request or protest and issue an Addendum, if any, to the RFP.
6. **CANCELLATION OF RFP.** Pursuant to OAR 137-049-0270: Cancellation in the Public Interest. KCFD NO. 1 may cancel a RFP for good cause if KCFD NO. 1 finds that cancellation is in the public interest.
7. **PROPOSER SUBMISSIONS.** Pursuant to OAR 137-049-0280:
 - a. Offer and Acceptance. The submitted proposal is the Proposer's firm offer to enter into a Contract. Notwithstanding the fact that a competitive proposal is a firm offer for the period specified in OAR 137-049-0410, KCFD NO. 1 may elect to discuss or negotiate certain contractual provisions, as identified in this RFP document, with the Proposer. Where negotiation is permitted by this RFP document, Proposers are bound to an obligation to negotiate in good faith and only on those terms that the RFP document has reserved for negotiation.
 - b. Responsive proposal. KCFD NO. 1 may award a Contract only to a Responsible Proposer with a Responsive proposal.
 - c. Contingent proposals. A Proposer shall not make a proposal contingent upon KCFD NO. 1's acceptance of any terms or conditions (including Specifications) other than those contained in this RFP.
 - d. Proposal Acknowledgement. By submitting a proposal, the Proposer acknowledges they have read and understand the terms and conditions contained in the RFP and that they accept and agree to be bound by

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the terms and conditions of the RFP. Unless defects, ambiguities, omissions, or errors are brought to KCFD NO. 1's attention within FIVE (5) work days prior to Closing, protests or appeals based on such defects, ambiguities, omissions, or errors received after issuance of the Notice of Intent to Award (NIA) will not be favorably considered.

- e. Instructions. A Proposer shall submit their proposal in accordance with Section IV.
 - f. Forms. Proposers shall submit the form(s) required under Section IV.
 - g. Documents. Proposers shall provide KCFD NO. 1 with all documents and descriptive literature requested.
 - h. Facsimile or Electronic Submissions. KCFD NO. 1 will not accept facsimile or electronic proposals.
 - i. Identification of proposals.
 - i. To ensure proper identification and handling, proposal shall be submitted in a sealed envelope/box/container appropriately marked with the Proposers name and address and the RFP number in large block numbers.
 - ii. KCFD NO. 1 is not responsible for proposals submitted in any manner, format or to any delivery point other than as required in the RFP.
 - j. Receipt of proposals.
 - i. The Proposer is responsible for ensuring that KCFD NO. 1 receives their proposal at the required delivery point prior to the closing due date and time, regardless of the method used to submit the proposal, proposal shall be mailed or hand delivered and received prior to the closing due date and time to Klamath County Fire District No. 1, 143 North Broad Street, Klamath Falls, OR 97601 attn: Jim Kenworthy, Project Manager.
 - ii. KCFD NO. 1 shall electronically or mechanically time-stamp or hand-mark each received proposal. KCFD NO. 1s' official time clock is an "atomic clock" maintained by Purchasing Manager.
 - iii. There will be no public opening of the received proposals. Timely received proposals will be recorded and prepared for evaluation pursuant to Section V.
 - k. Certification. Proposers shall (on the Proposer Certification form enclosed):
 - i. Identify that the Proposer is/or is not a "resident Proposer," as defined in ORS 279A.120(1);
 - ii. Indicate that the Proposer will comply with Oregon's Prevailing Wage Laws ORS 279C.840 or, Federal Prevailing Wage Rates, whichever are higher;
 - iii. Provide certification of nondiscrimination in obtaining any required subcontractors in accordance with ORS 279A.110(4); and
 - l. Provide acknowledgment of receipt of all Addenda by submitting the signatory page of each Addendum, if any, with the response.
 - m. Failure to submit proposal in accordance with the provisions of this ~~shall~~ solicitation shall be grounds to declare the proposal nonresponsive.
8. **MODIFICATION OR WITHDRAWAL.** Pursuant to OAR 137-049-0320:
- a. Modifications. A Proposer may modify their proposal in writing prior to the Closing. A Proposer shall prepare and submit any modification to its proposal to KCFD NO. 1 in accordance with OAR 137-49-0280. Any modification shall include the Proposer's statement that the modification amends and supersedes the prior proposal. The Proposer shall hand deliver or mail its modification and mark envelope as follows:
 - i. "Proposal Modification"; and
 - ii. RFP No.: RFP 12-01.
 - b. Withdrawals.
 - i. A Proposer may withdraw its proposal by Written notice submitted on the Proposer's letterhead, signed by an authorized representative of the Proposer, hand delivered or mailed, and received by KCFD NO. 1 prior to Closing. The Proposer or authorized representative of the Proposer may also withdraw its proposal prior to Closing, upon presentation of appropriate identification and satisfactory evidence of authority;

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- ii. KCFD NO. 1 may release an unopened withdrawn proposal to the Proposer or its authorized representative, after voiding any date and time stamp mark;
 - iii. The Proposer shall mark the Written request to withdraw a proposal as follows:
 - A. Proposal Withdrawal; and
 - B. RFP No.: RFP 12-01.
 - c. Documentation. KCFD NO. 1 shall include all documents relating to the modification or withdrawal of a proposal in the RFP file.
- 9. **LATE PROPOSALS, WITHDRAWALS AND MODIFICATIONS.** KCFD NO. 1 shall not consider late proposals, late withdrawals or late modifications except as permitted in MISTAKES below. Any proposal, withdrawal, or modification received after Closing is late. KCFD NO. 1 reserves the right to consider late proposals, late withdrawals or late modifications if KCFD NO. 1 finds that such proposal, withdrawal or modification has been mishandled by KCFD NO. 1.
- 10. **MISTAKES.** KCFD NO. 1 shall handle mistakes made by a Proposer pursuant to OAR 137-047-0350.
- 11. **NOTICE OF INTENT TO AWARD.** Pursuant to OAR 137-049-0395:
 - a. Notice. At least seven days before the Award of a Contract, KCFD NO. 1 shall issue a notice of KCFD NO. 1's intent to Award the Contract.
 - b. Form and Manner of Posting. All known participants will be notified, by fax or email, of KCFD NO. 1's notice of intent to award after the evaluation and interview processes are completed. The notice will also be published on KCFD NO. 1's website.
 - c. Finalizing Award. KCFD NO. 1's Award shall not be final until the later of the following:
 - i. KCFD NO. 1 provides a written response to all timely-filed protests, if any are received, that denies the protest and affirms the Award, and
 - ii. After the KCFD NO. 1 Board of Directors approves the recommendation for Award.
- 12. **NEGOTIATIONS.** Pursuant to OAR 137-049-0420, KCFD NO. 1 may conduct discussions or negotiations with Proposers only in accordance with the requirements of OAR 137-049-0650.
- 13. **REJECTION OF PROPOSALS.** KCFD NO. 1 may reject any and all proposals pursuant to OAR 137-049-0440.
- 14. **PROTEST OF CONTRACTOR SELECTION, CONTRACT AWARD.** Pursuant to OAR 137-049-0450:
 - a. Purpose. An adversely affected or aggrieved Proposer shall exhaust all avenues of administrative review and relief before seeking judicial review of KCFD NO. 1's Contractor selection or Contract Award decision.
 - b. Notice of Competitive Range: KCFD NO. 1 will provide written notice to all Proposers of KCFD NO. 1's determination of the Proposers that will be invited for an interview. No other proposals will be considered for award. Proposers not selected for an interview may protest by filing a protest letter, pursuant to subsection d. below.
 - c. KCFD NO. 1 shall provide written notice to all Proposers of KCFD NO. 1's intent to Award the Contract, as provided by paragraph 11.
 - d. Right to Protest Award.
 - i. An adversely affected or aggrieved Proposer may submit to KCFD NO. 1 a Written protest of KCFD NO. 1's intent to award within seven (7) days after issuance of the notice of intent to award the Contract, unless a different protest period is provided under the RFP.
 - ii. The Proposer's protest shall be in Writing and shall specify the grounds upon which the protest is based.

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- iii. A Proposer is adversely affected or aggrieved only if the Proposer is eligible for Award of the Contract as the Responsible Proposer submitting the highest scored Responsive proposal, i.e., the protesting Proposer shall claim and state specific reasons why ~~that~~ all higher scored Proposers are ineligible for Award:
 - A. Because their proposals were non-responsive; or
 - B. KCFD NO. 1 committed a substantial violation of a provision in the RFP or of an applicable procurement statute or administrative rule, and the protester was unfairly evaluated and would have, but for such substantial violation, been the Responsible Proposer with the highest scoring proposal and the most Responsive proposal.
 - iv. KCFD NO. 1 shall not consider a protest submitted after the time period established in this Rule or such different period as may be provided in the RFP. A Proposer may not protest KCFD NO. 1's decision not to increase the size of the Competitive Range above the size of the Competitive Range set forth in subsection b. of this Section.
 - e. KCFD NO. 1 shall not consider a protest submitted after the time period established in this Rule or such different period as may be provided in the RFP.
 - f. Authority to Resolve Protests. The Project Manager, or designee, may settle or resolve a written protest submitted in accordance with the requirements of this Rule.
 - g. Decision. If a protest is not settled, the Fire Chief, or designee, shall promptly issue a written decision on the protest. Judicial review of this decision will be available if provided by statute.
 - h. Award. The successful Proposer shall promptly execute the Contract after the Award is final. KCFD NO. 1 shall execute the Contract only after it has obtained all applicable required documents and approvals.
15. **PROPOSAL COSTS.** KCFD NO. 1 is not liable for any costs incurred by the Proposer in its proposal preparation.
- 1. **PUBLIC WORKS REQUIREMENTS.** This RFP will result in a Contract for a Public Work subject to ORS 279C.800 to 279C.870. No proposal will be received or considered by KCFD NO. 1 unless the proposal contains a statement by the Proposer, as a part of its proposal, that (prevailing wage rates paid to employees) are to be complied with as described herein (see Proposer Certification Form).
 - 2. **REGISTRATION REQUIREMENTS.** Proposers shall be currently registered with the Construction Contractors Board (CCB) as required by ORS 701.055, or licensed by the Sate Landscape Contractors Board, as required by ORS 671.530, holding the proper registration for the work contemplated herein, at the time of proposal submittal. All Subcontractors participating in the project shall be similarly registered with the CCB at the time they propose to engage in subcontract work. The CCB registration requirements apply to all public works contracts unless superseded by federal law.
 - 3. **BOLI/PWR REQUIREMENTS.** All contractors and subcontractors will abide by the July 1, 2012 determination of the minimum wage rates as scheduled and published for the Klamath Falls region by the U.S. Department of Labor and the Oregon Department of Labor and will abide by all amendments, decisions, and related regulations of these agencies. Specifically:
 - a. The Contractor is required to pay workers prevailing wage rates for the Klamath Falls Region through the contract period.
 - b. The Contractor is required to pay BOLI fees. OAR 839-025-0020.
 - c. If the Contractor fails to pay for labor and services KCFD NO. 1 can pay and shall withhold these amounts from payments to the Contractor. OAR 839-025-0020.
 - d. The Contractor is required to pay weekly, holiday (including weekends) and daily overtime as required. OAR 839-025-0020.
 - e. The July 1, 2012 BOLI PWR publication is hereby incorporated by reference: http://www.oregon.gov/BOLI/WHDPWR/pwr_state.shtml

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16. **BONDS: PUBLIC WORKS, PERFORMANCE AND PAYMENT.** Pursuant to OAR 137-049-0460 and OAR 137-049-0815:
- a. Public Works Bond.
 - i. Contractors who work on public works projects, subject to the PWR law, are required to file a \$30,000 Public Works Bond to be used exclusively for unpaid wages determined to be due by BOLI. Proof of this bond in effect must be provided to KCFD NO. 1 prior to Contract signing, after the award of this RFP.
 - ii. General Contractors are required to verify that subcontractors have filed a public works bond before permitting a subcontractor to start work on a project.
 - iii. ORS 279C.836 (7) provides exemptions from the bond requirements for certified disadvantaged, minority, women or emerging small business enterprises. It is the Contractor's responsibility to notify KCFD NO. 1 if an exemption applies to the Contractor.
 - iv. The Public Works Bond must be furnished by a surety company authorized to do business in Oregon.
 - b. Performance and Payment Bonds.
 - i. Before construction starts and promptly upon execution of the Contract, or any subsequent amendment to the Contract which authorizes construction services following preconstruction services the successful Contractor must execute and deliver to KCFD NO. 1 a Performance Bond and a Payment Bond as provided at ORS 279C.386, each in a sum equal to the Contract Price for the preconstruction and construction services authorized by such Contract or Contract amendment. Bonds shall be effective from the Contract or amendment dates through expiration of the Contractor's warranty period under the Contract.
 - ii. The Performance Bond and Payment Bond must be furnished by a surety company authorized to do business in Oregon and in an amount equal to the full Contract Price and otherwise comply with the requirements of ORS 279C.386.
 - c. Bid Bond. No bid bond is required for this RFP.
 - d. Time for Submission. The apparent successful Proposer must promptly furnish the required performance security upon KCFD NO. 1's request. If the Proposer fails to furnish the security as requested, KCFD NO. 1 may reject the proposal and award the Contract to the next best Responsible Proposer with the highest Responsive proposal.
17. **SUBSTITUTE CONTRACTOR.** Pursuant to OAR 137-049-0470, if the Contractor provided a performance bond, KCFD NO. 1 may afford the Contractor's surety the opportunity to provide a substitute Contractor to complete performance of the Contract. A substitute Contractor must perform all remaining contract Work and comply with all terms and conditions of the Contract, including the provisions of the performance bond and the payment bond. Such substitute performance does not involve the Award of a new Contract and must not be subject to the competitive procurement provisions of ORS Chapter 279C.
18. **FOREIGN CONTRACTOR.** Pursuant to OAR 137-049-0490, if the Contract Price exceeds \$10,000 and the Contractor is a Foreign Contractor, the Contractor must promptly report to the Oregon Department of Revenue on forms provided by the Department of Revenue, the Contract Price, terms of payment, contract duration and such other information as the Department of Revenue may require before final payment can be made on the Contract. A copy of the report must be forwarded to KCFD NO. 1. KCFD NO. 1 Awarding the Contract must satisfy itself that the above requirements have been complied with before it issues final payment on the Contract.

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19. CERTIFIED PAYROLL WITHHOLDING.

- a. ORS 279C.845 requires that if a prime contractor does not file certified payroll as required (at least once per month), KCFD NO. 1 must withhold 25% of amounts due to the prime contractor, in addition to any other required Retainage.
- b. If a first-tier subcontract does not file certified payroll reports as required, the prime contractor must withhold 25% of amounts due the first-tier subcontractor.
- c. Once certified payroll reports are submitted, KCFD NO. 1 or prime contractor are to pay amounts withheld within 14 days.
- d. Neither KCFD NO. 1 nor the prime contractor is required to verify the accuracy of the contents of the certified payroll reports.

20. DRUG TESTING REQUIREMENTS. ORS 279C.505 (2) requires that all public improvement contracts contain a provision requiring contractors to demonstrate that an employee drug-testing program is in place. Proposer is therefore required to certify that it has an employee drug-testing program in place that applies to all employees, and will maintain a drug-testing program at all times during the performance of the Contract awarded. Failure to maintain a program shall constitute a material breach of contract.

21. OTHER TERMS AND CONDITIONS. The Contractor must:

- a. Make prompt payment to all Proposers supplying labor or material; contributions to Industrial Accident Fund; liens and withholding taxes (ORS 279C.505(1));
- b. Demonstrate that an employee drug testing program is in place and maintained (ORS 279C.505(2));
- c. If the Contract calls for demolition Work described in ORS 279C.510(1), the Contractor must salvage or recycle construction and demolition debris, if feasible and cost-effective;
- d. If the Contract calls for lawn or landscape maintenance, the Contractor is required to compost or mulch yard waste material at an approved site, if feasible and cost effective (ORS 279C.510(2));
- e. Make payment of claims by public officers (ORS 279C.515(1) and ORS 279C.515(2));
- f. Understand any Proposer's right to file a complaint with the Construction Contractors Board for all Contracts related to a Public Improvement Contract (ORS 279C.515(3));
- g. Abide by hours of labor in compliance with ORS 279C.520;
- h. Abide by environmental and natural resources regulations (279C.525);
- i. Make payment for medical care and attention to employees (ORS 279C.530(1));
- j. All employers, including Contractor, that employ subject workers who Work under this Contract in the State of Oregon must comply with ORS 656.017 and provide the required Workers' Compensation coverage, unless such employers are exempt under ORS 656.126. Contractor must ensure that each of its subcontractors complies with these requirements. (ORS 279C.530(2));
- k. Abide by maximum hours, holidays and overtime (ORS 279C.540);
- l. Abide by time limitation on claims for overtime (ORS 279C.545);
- m. Pay prevailing wage rates, including subcontractors (ORS 279C.800 to 279C.870);
- n. Follow Retainage rules (ORS 279C.550 to 279C.570);
- o. Abide by prompt payment policy, progress payments, rate of interest (ORS 279C.570);
- p. Maintain relations with subcontractors (ORS 279C.580);
- q. Make notice of claim (ORS 279C.600 and 279C.605);
- r. Certify compliance with the Oregon tax laws in accordance with ORS 305.385; and
- s. Certify that all subcontractors performing Work described in ORS 701.005(2) (i.e., construction Work) will be registered with the Construction Contractors Board or licensed by the State Landscape Contractors Board in accordance with ORS 701.035 to 701.055, or licensed under ORS 468A.720 (Air Quality), if required, before the subcontractors commence Work under the Contract.
- t. Make payment contributions to Industrial Accident Fund, liens and withholding taxes.

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- u. Make, and ensure all first-tier subcontractors make, payment to a person furnishing labor or materials in connection with the public improvement contract within 30 days after receipt of payment from KCFD NO. 1 or the contractor (ORS 279C.515(2)). If the contractor or first-tier subcontractor fails to do so the contractor or sub- contractor shall owe the person the amount due plus interest charges commencing at the end of the 10-day period that payment is due under ORS 279C.580(4) and ending upon final payment, unless payment is subject to a good faith dispute as defined in ORS 279C.580.

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1. DESCRIPTION OF SERVICES.

- a. The Klamath County Fire District No. 1 Board of Directors has authorized use of the CM/GC method of contracting for the selection of a General Contractor for Construction Services for Fire Station 3 in early 2012. The CM/GC process adds specified construction manager personal services to traditional general contractor work, requiring full contract performance within a negotiated guaranteed maximum price (GMP). The basis for payment is reimbursable direct costs as defined under the contract, plus a fee constituting full payment for work and personal services rendered, which together shall not exceed the GMP.
- b. **Project Team Member.** The CM/GC will coordinate and manage the design and construction process as a member of a team with KCFD NO. 1, the Architect, and other project consultants, all of these parties together shall be referred to as the Project Team.
 - i. The selected CM/GC will be issued a Construction Manager/General Contractor Services Contract as the agreement to serve in this capacity.
 - ii. The CM/GC must be skilled in collaboration with the Project Team, identification and mitigation of risk through analysis and assessment, developing schedules, preparing construction estimates, performing value engineering, analyzing alternative designs, studying labor conditions, understanding construction methods and techniques, and coordinating and communicating the activities of the CM/GC throughout the design and construction phases to all members of the Project Team.
 - iii. In addition, the CM/GC must be familiar with the local labor and subcontracting market and be capable of working with subcontractors to generate viable pricing alternatives.
 - iv. Additional services are identified in the CM/GC General Conditions Article 1.
- c. **Design Development/Preconstruction Phase.** The CM/GC shall serve as general-contractor-at-risk and a special consultant to the design team and will analyze the design and proposed modifications with the goal of providing KCFD NO. 1, in the time frame proposed, the highest quality work within budget.
 - i. Design related CM/GC consultant services will include scheduling, cost estimating, value engineering, constructability review, coordination review, recommending optimal construction phasing, scheduling, and sequences, and analysis of alternative materials and systems for the Project. Construction related activities of the CM/GC during this phase will include schedule refinement.
 - ii. Before the end of 50%, or greater, of the Design Development Phase, the CM/GC will provide KCFD NO. 1 with a GMP for the public improvement construction work for the Construction Phase.
 - iii. Additional GMP stipulations are identified in the CM/GC General Conditions Article 2.
 - iv. The GMP includes the total “cost of the work” (defined in Article 6 of the CM/GC General Conditions) including estimating allowance, general conditions, liability insurance, performance and payment bond, all taxes, including without limitation gross receipts, excise and income taxes, escalation, contingency and the Construction Manager's Fee (defined in Article 5 of the CM/GC General Conditions).
 - (A) By executing a GMP amendment to the contract, the CM/GC guarantees that the cost of work shall not exceed the GMP. Should the Cost of the Work be less than the GMP, any such positive difference shall be realized as “savings” to KCFD NO. 1 at the end of the project. Although it is the intention of KCFD NO. 1 to save money on the project if at all possible, KCFD NO. 1 reserves the right to work with the CM/GC to use the anticipated savings to build additional necessary components of the project which may have been omitted from the original GMP scope and carried as alternates.
 - (B) If the CM/GC is unable to set a GMP within the budget and in the appropriate time, KCFD NO. 1 reserves the right, at the sole discretion of KCFD NO. 1, to cancel the contract with the CM/GC and proceed immediately to negotiate a contract with the firm that was next ranked in this selection process or KCFD NO. 1 may issue a public improvement contract based upon a competitive bid process. If the contract with the initial CM/GC is so terminated, the firm will be compensated for its actual time and reasonable expenses.

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- v. A detailed description of the items that make up the GMP is required from the CM/GC pursuant to the CM/GC General Conditions Article 2.2.
- d. **Construction Phase.** If an amendment to the CM/GC contract is issued the CM/GC shall perform all acts of work and supply all items necessary to complete the Project in accordance with the terms and conditions of the RFP and Contract documents including, but not limited to, pay and coordinate all materials, tools, equipment, labor, professional and non-professional services, in the time allocated.
 - i. The amendment to the CM/GC contract will include execution of an AIA 201-2007 General Conditions.
 - ii. It is anticipated that the work of the project may involve multiple bid packages. In addition, it is expected that whenever possible, the bid packages will contain separate trade contracts with the CM/GC acting as general contractor to these separate subcontractors.
 - iii. The process used to award contracts by the CM/GC is to be monitored by KCFD NO. 1's Project Manager and reported on a regular basis. The following minimum requirements apply:
 - (A) The CM/GC shall solicit competitive quotes from subcontractors, with the final selection approved by KCFD NO. 1 in writing. The CM/GC shall prepare a quote reconciliation form and updates as required during and after subcontractor contract approval and submit to KCFD NO. 1's Project Manager.
 - (B) When there are single fabricators of materials, special packaging requirements for subcontractor work, or work performed by the CM/GC, advance approval by KCFD NO. 1's Project Manager is required. KCFD NO. 1 may allow the CM/GC to perform some of the trade work if the CM/GC competes competitively with trade subcontractors for that work. In such cases, bids will need to be submitted directly to KCFD NO. 1 or an independent third party.
 - (C) The CM/GC must obtain at least three competitive bids for each particular work sub-component to be completed, including work components which the CM/GC may be interested in self-performing, except as allowed in (D) below. The CM/GC shall prepare a bid reconciliation form as required during subcontractor contract approval and shall submit to KCFD NO. 1's Project Manager for final selection approval.
 - (D) Bids for subcontractors will be made pursuant to the following procedures:
 - (i) When the contract amount is less than or equal to \$5,000, no bids are required.
 - (ii) When the contract amount is over \$5,000 and less than \$150,000 three written bids are required. If less than three (3) bids are submitted for any work component, approval by KCFD NO. 1 Project Manager is required to accept the bid.
 - (iii) When the contract amount is \$150,000 or greater for any subcontract work a formal bid announcement must be advertised at least seven (7) days in advance of the bid due date and time in the Daily Journal of Commerce and the bid announcement shall be listed, at minimum, with the following Plan Centers:
 - (1) Medford Builders Exchange, 701 East Jackson Street, Medford, OR 97504, 541-770-3271
 - (2) McGraw Hill Const. Dodge, 3461 NW Yeon Ave, Portland, OR 97239, 503-223-3012, F503-223-3094
 - (3) Daily Journal of Commerce Plan Center, 2840 NW 35th Ave., Portland, OR 97210, 503-274-0624, F503-274-2616
 - (4) Oregon Contractor Plan Center, 14625 SE 82nd Dr., Clackamas, OR 97015, 503-650-0148, F503-650-8273
 - (5) Oregon Assoc. Minority Entrepreneurs, 4134 N Vancouver Av, Portland, OR 97217, 503-249-7744, F503-249-2027
 - iv. The Owner desires to remove such personal property and equipment prior to demolition of the site structures. The selected Contractor shall coordinate with KCFD NO. 1 in the removal of the personal property and equipment.

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- e. **Special Testing and Inspections** - All special testing and inspections work will be done by others contracted separately by KCFD NO. 1.
2. **SPECIFIC SERVICES DESCRIPTION.** It is anticipated that the following functions will continue throughout all phases of the project as applicable:
- a. Participate in weekly meetings with KCFD NO. 1 and/or the design team.
 - b. Consult, evaluate and understand design criteria with the design team.
 - c. Consult with KCFD NO. 1 in refining the Construction Project budget, and establishing and maintaining a detailed cost model for the work as the design evolves.
 - d. Assist in life cycle value analysis from drawings, specifications, other design criteria, and alternative designs as may be requested by KCFD NO. 1.
 - e. Provide detailed estimates of probable construction costs based on 80% Construction Documents.
 - f. With the design team, develop a strategy for obtaining building permits in a timely fashion. Meet with building and other regulatory officials as appropriate. Attend all meetings pertaining to permitting, as required. It is anticipated that these functions will continue throughout all phases of the project.
 - g. Prepare a detailed milestone schedule identifying the work to be performed by the design team, KCFD NO. 1, and the CM/GC during this phase. The CM/GC shall report progress bi-weekly against this schedule.
 - h. Review the plans and specifications on a continuous basis and advise the design team and KCFD NO. 1 whenever the estimated construction costs are tending the exceed line items from the model budget. In a timely fashion, provide the design team with alternatives that will bring the project cost within budget, without compromising the scope agreed to in the outline specification. Continually update project costs.
 - i. Review all plans as they are developed and make value engineering and constructability recommendations. Review all design and specification documents for completeness, proper details, compliance with program and master plan requirements and adherence to codes or applicable agency requirements, reporting deficiencies, conflicts, and/or clarification questions identified to the design team.
 - j. Prepare site and building logistics and safety plans to encompass all proposed activities and impacts to the existing site, neighbors, authorized visitors and employees.
 - k. Implement an accounting system for effective fiscal control, including a weekly detailed cost estimate and a weekly status report with budget recommendations. The weekly status report will include full schedule reporting as well as a summary of all major outstanding items with proposed solutions.
 - l. Prepare all bid packages, according to the contractual requirements and District procedures. Recommend to KCFD NO. 1 modification to existing procedures or implementation of new procedures where appropriate. Ensure that all bid packages, including those for early procurement, are within budget. It is the responsibility of the CM/GC to provide the design team with sufficient viable options, in a timely fashion, such that the bid packages will be within budget.
 - m. Fully coordinate work of all subcontractors and vendors. Provide regular, on-going quality inspection and assistance to the design team in ensuring that the work meets all specifications and applicable codes.
 - n. Review and expedite all change orders.
 - o. Monitor compliance with payment of prevailing wages on all contracts and subcontracts, per Oregon Law.
 - p. Maintain in a current condition all Project Records, including permits, construction documents, as-built records, meeting records, submittals, inspection reports, invoices, delivery receipts, daily activity logs, RFI's, ASI's, CO's, etc.
 - q. Transmit copies of all project correspondence to KCFD NO. 1 Project Manager including, but not limited to, Meeting minutes, RFI's, RFI logs, Submittals, Submittal Logs, Inspection reports, Change Order Requests (COR's), Change Order Request Logs, proposal Requests, ASI's, Permits, Project Allowance(s) Reconciliation, Project Contingency status reports, Project Schedule updates, etc.
 - r. Provide an unconditional lien release at the end of the project.

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- s. Provide any other process or work required to make the project successful.
3. **GENERAL.** This section prescribes the mandatory submission format for the presentation of a proposal in response to this RFP. The purpose of the submission format is to ensure uniformity of the information from each Proposer and to aid in clear understanding and evaluation of each proposal.
4. **PROPOSAL FORMAT.**
- a. Proposers must submit an ORIGINAL and SEVEN (7) copies of its proposal.
 - i. To facilitate handling by KCFD NO. 1 the ORIGINAL document should be submitted in simple flat-bound-form: stapled in the upper left-hand corner.
 - ii. The copies may be submitted in simple three ring binders (one copy per binder).
 - b. Proposal responses should be typed, single-spaced and double-sided on regular 8-1/2 x 11 size paper.
 - c. Forms included in this RFP must be used and must be typed or legibly hand-written. Blank forms are available at kcfid1.com.
 - d. Marketing brochures or other promotional presentations beyond that sufficient to present a complete and effective proposal are not desired. Elaborate binders, expensive paper, or unwarranted visuals are not necessary.
5. **MINIMUM QUALIFICATIONS AND PAST PERFORMANCE HISTORY.**
- a. **Minimum qualifications.** Proposer shall have been in business for a minimum of five (5) years as a general contractor; and shall have specific experience in the construction of at least one fire station.
 - b. **Past performance.** Past performance is a good predictor of future performance. KCFD NO. 1 will gather data on the Proposer's past performance directly from the Proposer's clients.
 - i. The Proposer will send a copy of the Contractor Performance Survey, located in the Enclosures section of this RFP, to each of its clients listed on the Proposer Responsibility Form (8 total).
 - ii. The Proposer shall have at least one (1) fire station construction experience reference.
 - iii. **THE PROPOSER IS RESPONSIBLE FOR ENSURING THAT THE CLIENT RESPONDS TO THE SURVEY PRIOR TO THE RFP CLOSING.**
 - iv. A minimum of FIVE responses must be received to be Responsive. If more are received only five will be chosen, at random, to be used in the evaluation of the Proposers Responsibility pursuant to Section V.1.b.
6. **PROPOSAL CONTENT.** Proposers shall present the following information, along with the required forms, as their response, and shall submit all information as required in the order listed. Complete, concise and direct answers are encouraged to the following:
- a. **Background.**
 - i. Provide a brief description of the Proposer's history.
 - ii. Describe how the Proposer stands out from its peers and why the Proposer should be chosen as the most qualified CM/GC for this project.
 - b. **Approach.**
 - i. Construction Management. Describe how the Proposer will approach the construction management aspect of this project. Describe the Proposer's management information controls, forms, and/or procedures proposed for this project.
 - ii. Team Communication/Relationships. Recommend practices and procedures for this project to promote interaction between the Proposer's personnel and the personnel of KCFD NO. 1, the architect, engineering, the Proposer's sub-consultants and the Proposer's subcontractors on a "team" or "partnering" basis. Give one example of successful experience.
 - iii. Risks. Discuss perceived risks on a project of this type. Describe how these risks can be minimized by using team performance analysis and information.

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- iv. KCFD NO. 1's expectations. Create a comprehensive list of perceived KCFD NO. 1 expectations. Describe how the Proposer will strive to meet these expectations.
 - v. Schedule. Describe the Proposer's overall plan to complete the project and provide a tentative schedule. At a minimum, discuss the Proposer's planning, scheduling, phasing, and project monitoring skills and processes.
 - vi. Cost control. Describe the Proposer's job costing procedure and how you will keep KCFD NO. 1 apprised of project costs. Describe the Proposer's process for managing change orders and claims, including efforts to minimize both.
 - vii. Value engineering. Where specifically stated within the construction documents no exceptions will be allowed for KCFD NO. 1 fire stations. However there may be other opportunities for value engineering within the scope of the project in particular in site development and deconstruction services. Describe the Proposer's methodology and experience with value engineering including particularly successful experience and/or unique services in this area.
 - viii. Deconstruction/Recycle. Describe the Proposer's methodology and experience with 1) recycling of materials used during the construction process, and 2) the deconstruction of the existing structures on project sites.
 - ix. Demolition and Site Work. Describe the Proposer's experience and understanding of regulations surrounding demolition and site work on a public project.
 - x. Safety and drug program. Provide a general description of the Proposer's safety and drug and alcohol programs.
 - c. **Local Conditions.** Describe the Proposer's knowledge and experience with the labor market and building conditions in the Klamath Falls area of Southern Oregon.
 - d. **Experience.**
 - i. Details of the Proposer's experience shall be presented on the Proposer Responsibility Form, provided in the Enclosures section of this RFP.
 - ii. In addition to information provided in subsection 4.d.i above; provide a comprehensive narrative that specifically addresses the Proposer's prior experience with and the unique challenges associated with the construction of fire station(s).
 - e. **Staffing.**
 - i. Details of the Proposer's proposed key staff for this project shall be presented on the Proposer Responsibility Form, provided in the Enclosures section of this RFP.
 - ii. By listing individuals in this proposal, the Proposer guarantees that these individuals will be available to work on the project at the approximate percentages shown. KCFD NO. 1 reserves the right to approve or reject any changes to the proposed personnel. KCFD NO. 1 further reserves the right to request a substitution of personnel if deemed to be in the best interest of KCFD NO. 1.
 - f. **Forms to be submitted.** Proposer shall submit the following forms (see Enclosure section):
 - i. Proposal Certification (and signatory pages from any Addenda).
 - ii. Design Development/Preconstruction and Construction Phases Pricing Proposal
 - iii. Proposer Responsibility Form
 - iv. Contractor Performance Survey – to be submitted by the proposer's own clients, and will be added by KCFD NO. 1 to the proposer's response (Note: a minimum of 5 must be submitted by Proposer's clients, and it is the Proposer's responsibility to ensure KCFD NO. 1 receives the surveys prior to Closing).
7. **Fees and Compensation.**
- a. Complete the Design Development/Preconstruction and Construction Phases Pricing Proposal Form provided in the Enclosures section of this RFP.

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 SECTION IV - EVALUATION AND SELECTION PROCESS
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1. **SELECTION OVERVIEW.** The selection process will be conducted in a fair and impartial manner. An evaluation committee, made up of several qualified members representing KCFD NO. 1, the Architect, and/or other team members, will evaluate submitted proposals and measure the merit of each in accordance with the evaluation criteria defined below. The selection process has five parts:
 - a. Minimum proposal requirements – An analysis of each submittal to determine if it meets the responsiveness requirements, including KCFD NO. 1’s receipt of at least five contractor performance surveys.
 - b. Contractor performance survey – To continue to determine responsiveness and to additionally aid in determination of proposer Responsibility - the Proposer’s client-submitted surveys will be tabulated and totaled to determine which Proposers are highly ranked in past performance; KCFD NO. 1 will make the sole determination of the number of Proposers to move on to the next part, based on the results of this survey.
 - c. Proposal evaluation and ranking – Responsive and only highly ranked proposals will be evaluated and ranked pursuant to paragraph 2.
 - d. Presentation/interview evaluation – Further evaluation will yield a list of one or more Proposers determined to be within the competitive range; Proposers on the list will be invited to perform a presentation and KCFD NO. 1 will interview key personnel.
 - e. Selection and contract negotiation. The presentation and interview process will be evaluated and the Proposer determined to be the highest ranked and best overall value for this project will be announced as the winner in the ‘notice of intent to award’; the recommendation will be presented to the KCFD NO. 1 Board of Directors for final approval on June 20, 2012. The evaluation committee, at its sole discretion, will recommend the Proposer, which in its judgment; best meets the interests of KCFD NO. 1. The recommendations of this committee will be a consensus and will be final.

2. **EVALUATION OF PROPOSALS.** Proposals from responsive and responsible proposers will be measured according to the following:

Evaluation Criteria	Weight
Overall Impression/Effect of the Proposer	10%
Approach, all categories	15%
Specific CM/GC experience and similar project experience	10%
Qualifications and experience of proposed key personnel	15%
Fees Fee items are summed; percentages are multiplied by the total estimated budget and totaled. The Proposer with the lowest pricing shall receive all points in this category; all other Proposers are weighted accordingly by the ratio of their total price versus the lowest price (therefore receiving a lower score, determined mathematically).	50%

3. **INTERVIEW INFORMATION.** Interview/presentation(s) will be performed at KCFD NO. 1, 143 N Broad Street, Klamath Falls, OR 97601. The proposer(s) in the competitive range will be notified of the time for interview. Any costs for presentation and interviews shall be borne by the Proposer.

4. **SELECTION/AWARD.** The Proposer that successfully proceeds through the entire evaluation process, and is determined to be the highest ranked, most responsive and responsible Proposer and apparent best overall value for KCFD NO. 1 will be recommended for award of this RFP.

ENCLOSURES SECTION

List of enclosures:

Proposer Certification Form

Design Development/Preconstruction and Construction Phases Pricing Proposal

Proposer Responsibility Form

Contractor Performance Survey Form

Sample Contracts

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PROPOSER CERTIFICATION
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The Proposer, by and through the undersigned, its authorized representative, acknowledges, represents, attests, warrants and certifies:

Has read and understands, and agrees to be bound by and comply with all RFP instructions, terms and conditions, together with all Addenda, if any, issued.

Has read and understands, and agrees to be bound by and comply with the terms of all Contract Documents identified, included, or incorporated by reference into the RFP.

Has, or will have, the equipment, personnel, materials, facilities and technical and financial ability necessary to complete the Work in accordance with the Contract documents within the time specified.

The Proposal was prepared independently from all other Proposers, and without collusion, fraud, or other dishonesty.

Neither the Proposer, nor anyone representing the Proposer, offered or gave any advantage, gratuity, bonus, discount, bribe or loan of any sort to KCFD NO. 1 or its agents, employees, or anyone representing KCFD NO. 1, or engaged in any other type of anti-competitive conduct at any time in conjunction with this RFP.

Has not and will not, discriminate against minority, women, or emerging small business (MWESB) enterprises in obtaining any required subcontracts.

If awarded the Contract, Proposer shall utilize in performance of the Contract all resources indicated in its Proposal, including Key Personnel, to the extent within Proposer's control and Proposer's best efforts.

Has the power and authority to enter into and perform the Contract to be awarded, and the Contract, when executed and delivered, shall be a valid and binding obligation enforceable according to its terms.

Proposer acknowledges that KCFD NO. 1 has the right to modify the Contract prior to execution to (a) correct typographical errors, (b) reconcile inconsistencies within and among the Contract Documents, (c) conform terminology used throughout the Contract Documents, (d) include omitted terms clearly contemplated by the language in the Contract Documents, (e) add terms required under State or federal Law, and (f) incorporate those portions of the Project Proposal and Price, modified, if so, by such negotiations as may be authorized under applicable statutes and rules.

Proposer intends its Price Proposal to constitute its final CM/GC Fee to be applied to all Construction Phase Services Work, expressed as a percentage (%) and incorporated into the CM/GC Contract.

To execute the formal Contract within a reasonable time; and in the case the undersigned fails or neglects to appear within a reasonable time to execute the Contract the undersigned is considered having abandoned the Contract by KCFD NO. 1.

That Proposer has complied or will comply with all requirements of local, state, and national laws, and that no legal requirement has been or will be violated in making or accepting this proposal.

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Has not discriminated and will not discriminate, in violation of ORS 279A.110 (4), against any minority, women or emerging small business enterprise in obtaining any required subcontract.

The Proposer agrees to be bound by and will comply with the provisions of Federal and State of Oregon Prevailing Wage Laws ORS 279C.840.

The Proposer to comply with Oregon tax laws in accordance with ORS 305.385.

Proposer is registered with the Construction Contractors Board, or is licensed by the State Landscape Contractors Board. License Number:_____. (KCFD NO. 1 will not consider a proposal for a Public Improvement unless the Proposer is registered with the Construction Contractors Board, or is licensed by the State Landscape Contractors Board, as required).

The Proposer, pursuant to ORS 279A.120 (1), (check one) is_____/is not_____ a resident Proposer. If not, indicate State of residency _____.

The Proposer acknowledges receipt of the addenda issued by KCFD NO. 1 by attaching the signed signatory page of each addendum to this Proposer Certification Form.

Respectfully submitted _____:
(Date)

By:

(Contractor)

(Physical address)

(City, State, Zip)

(Signature)

(Name)

(Title)

This RFP will result in a Contract for a Public Work subject to ORS 279C.800to 279C.870. Any proposal of a contractor or subcontractor listed on BOLI's List of Ineligibles will be rejected.

Enclosures: Signatory page of any issued Addenda, if any.

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 CM/GC Public Improvement
Design Development/Preconstruction and Construction Phases Pricing Proposal
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(Contractor)

Design Development/Preconstruction Services Fee: Identify/propose key personnel and resource staff, the estimated hours, the hourly rate and the total cost for each as required for completing the Design Development/Preconstruction Phase Services work as specified and identified in the RFP and CM/GC General Conditions. Add or delete personnel as needed from the list below. Refer to the sample contract, Article 2.1 for guidelines on items permitted within the Design Development/Preconstruction fee. The total shall be a not-to-exceed price.

KEY PERSONNEL OR RESOURCE STAFF	TASK(S)	EST. HOURS	HOURLY RATE (\$)	COST (Hours x Rate)
CM/GC Project Manager			\$	\$
Scheduler			\$	\$
Estimator			\$	\$
Constructability Services			\$	\$
Administrative Staff			\$	\$
Other			\$	\$
Other			\$	\$
Other			\$	\$
TOTAL NTE FEE:			\$	\$

Also supply a list of reimbursable expenses that would be charged: _____

Should KCFD NO. 1 enter into a contract for the Construction Phase with the Proposer, will the cost for Design Development become a part of your CM/GC fee quoted in the Construction Phase? _____

Construction Manager Fee: Identify the proposed Construction Manager fee, expressed as a percentage of the CM/GC's overhead (profit percentage, general & administrative costs percentage, and home office costs percentage as normally applied to projects completed by the CM/GC).

Construction Management Fee percentage shall include all elements below at a minimum:

- | | | |
|--|---|--|
| <ul style="list-style-type: none"> Operations Manager Estimating Cost Engineering Constructability Review Scheduling Project Manager Purchasing and Contracts Drafting and Detailing Accounting and Bookkeeping | <ul style="list-style-type: none"> Project Engineer Administrative Support Profit Computer/Data Processing Secretarial Vacation Time/Office Staff Bonuses/Job Site Staff Bonuses/Main Office Staff Automobile/Fuel/Maintenance | <ul style="list-style-type: none"> Main Office Expenses Legal (General Services) Corporate Executives Legal (re: similar Project) Principal in Charge Fringe Benefits & Burden for Main Office Staff |
|--|---|--|

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(Contractor)

Construction Manager Fee Breakdown	Percentage
Profit	%
General & Administrative Overhead	%
Other	%
Other	%
	Total Fee %

GMP General Conditions Staffing Estimate. Based on a construction cost of approximately \$2.8 million for the fire station, and for an 8 month construction period, provide a detailed estimate of the cost of the Proposer's staffing, not included in the Construction Manager Fee that will be included within the GMP for managing and performing the construction. Include all elements below at a minimum:

Item	Unit of Measure	Unit Price	Estimated Total
Labor Foreman		\$	\$
General Foreman		\$	\$
Other Foreman		\$	\$
Field Engineering		\$	\$
Field Supervision		\$	\$
Field Coordination		\$	\$
Project Coordination		\$	\$
Quality Control		\$	\$
Progressive Clean-up		\$	\$
Trade Coordination		\$	\$
First Aid & Safety		\$	\$
Temporary Office		\$	\$
Clerical/Secretarial Staffing		\$	\$
Office Supplies Equipment		\$	\$
Postage/Delivery		\$	\$
Temporary Toilets		\$	\$
Phones/Radios/Pagers		\$	\$
Printing/Reproduction		\$	\$
Vehicles, Fuel/Maintenance		\$	\$
Substance Abuse Testing		\$	\$
Material Handling		\$	\$
Barricades/Partitions, Fence, & Signage		\$	\$
Other		\$	\$
Other		\$	\$
Other		\$	\$
Other		\$	\$
Other		\$	\$
Other		\$	\$
Other		\$	\$
Other		\$	\$
	TOTAL:	\$	\$

 (Contractor)

Instructions

The information provided in this form is part of KCFD NO. 1's inquiry concerning Proposer responsibility. Please print clearly or type. The form is available online at the following address
 www.psearchs.com

Answer all questions. Submission of a form with unanswered questions, incomplete or illegible answers may result in a finding that the Proposer is not a responsible Proposer. If you need more space, use plain paper.

Submit the completed form with the proposal response.

SECTION I – EXPERIENCE IN GENERAL (provide 6) *
***must have experience with the construction of at least one fire station**

ITEM	CONTRACT 1				CONTRACT 2			
Work Location								
Brief Scope of Work								
Check a box:	<input type="checkbox"/>	New Construction	<input type="checkbox"/>	Re-Construction	<input type="checkbox"/>	New Construction	<input type="checkbox"/>	Re-Construction
Total Contract Amount	\$				\$			
Change Order Total to Date	\$				\$			
Approx % Completed								
Est. Completion Date								
Owner Name								
Owner Contact								
Contact Phone	()				()			
Complexity Rating (1 = low, 10 = High)								
ITEM	CONTRACT 3				CONTRACT 4			
Work Location								
Brief Scope of Work								
Check a box:	<input type="checkbox"/>	New Construction	<input type="checkbox"/>	Re-Construction	<input type="checkbox"/>	New Construction	<input type="checkbox"/>	Re-Construction
Total Contract Amount	\$				\$			
Change Order Total to Date	\$				\$			
Approx % Completed								
Est. Completion Date								
Owner Name								
Owner Contact								
Contact Phone	()				()			
Complexity Rating (1 = low, 10 = High)								

 (Contractor)

ITEM	CONTRACT 5				CONTRACT 6			
Work Location								
Brief Scope of Work								
Check a box:	<input type="checkbox"/>	New Construction	<input type="checkbox"/>	Re-Construction	<input type="checkbox"/>	New Construction	<input type="checkbox"/>	Re-Construction
Total Contract Amount	\$				\$			
Change Order Total to Date	\$				\$			
Approx % Completed								
Est. Completion Date								
Owner Name								
Owner Contact								
Contact Phone	()				()			
Complexity Rating (1 = low, 10 = High)								

**SECTION II –SIMILAR CM/GC PROJECTS COMPLETED IN THE LAST TEN YEARS (provide 2)
 (or similar project type)**

ITEM	CM/GC CONTRACT 1				CM/GC CONTRACT 2			
Work Location								
Brief Scope of Work								
Check a box:	<input type="checkbox"/>	New Construction	<input type="checkbox"/>	Re-Construction	<input type="checkbox"/>	New Construction	<input type="checkbox"/>	Re-Construction
Total Contract Amount	\$				\$			
Change Order Total to Date	\$				\$			
Approx % Completed								
Est. Completion Date								
Owner Name								
Owner Contact								
Contact Phone	()				()			
Complexity Rating (1 = low, 10 = High)								

SECTION III – SURETY COMPANIES WHERE SURETY BONDS ARE OBTAINED

ITEM	SURETY COMPANY 1	SURETY COMPANY 2
A. Company Name		
B. Contact's Name		
C. Telephone	()	()
PRESENT AMOUNT OF BONDING COVERAGE (\$)	HAS YOUR APPLICATION FOR SURETY BOND EVER BEEN DECLINED <i>(If Yes, please provide detailed information in Remarks)</i> <input type="checkbox"/> YES <input type="checkbox"/> NO	DURING THE PAST 2 YEARS, HAVE YOU BEEN CHARGED WITH A FAILURE TO MEET THE CLAIMS OF YOUR SUBCONTRACTORS OR SUPPLIERS <i>(If Yes, please provide detailed information in Remarks)</i> <input type="checkbox"/> YES <input type="checkbox"/> NO

 (Contractor)

SECTION IV –PERSONNEL INFORMATION

Provide the following details of the primary personnel team members that will be assigned to this project. Primary personnel are the Principal-in-Charge/Operations Manager, Estimating and Cost Engineering, Project Manager, Project Designer, or the Proposer's similar staff.

Team Member	Role in Project	Est. % Time During Role	Pertinent Education, Work History, Length of Tenure with Firm	CM/GC Project Experience (Client and project info)

List examples in the following table of each team member's specific experience on CM/GC projects. Another goal of this table is to show which team members have worked together on the same project(s) (list project names under project 1, project 2 or project 3).

Team Member	Role in Project	Project 1	Project 2	Project 3

Note: Copy this sheet if more space is needed.

(Contractor)

SECTION V – RELIABILITY

Has the Proposer ever been declared in breach of any contract for unperformed or defective work? Yes. No.

If “yes,” explain. _____

Has any employee or agent of the Proposer ever been convicted of a criminal offense arising out of obtaining, attempting to obtain, or performing a public or private contract or subcontract? Yes. No.

If “yes,” explain. _____

Has any employee or agent of the Proposer been convicted under state or federal law of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property or any other offense indicating a lack of business integrity or business honesty? Yes. No.

If “yes,” explain. _____

Has any employee or agent of the Proposer been convicted under state or federal antitrust laws? Yes. No.

If “yes,” explain. _____

Has any Officer or Partner of the Proposer ever been an Officer or Partner of another Organization that failed to complete a construction contract? Yes. No.

If “yes,” explain. _____

SECTION VI – FINANCIAL RESOURCES

Has the Proposer ever been at any time in the last ten years the debtor in a bankruptcy case? Yes. No.

If “yes,” explain. _____

Does the Proposer have any outstanding judgments pending against it? Yes. No.

If “yes,” explain. _____

In the past ten years, has the Proposer been a party to litigation, arbitration or mediation on a matter related to payment to subcontractors or work performance on a contract? Yes. No.

If “yes,” explain. (Include court, case number and party names.) _____

CONTRACTOR PERFORMANCE SURVEY

Klamath County Fire District 1 (KCFD NO. 1) is gathering data on contractor past performance for construction services.

Because past performance is a good predictor of future performance survey results will be used to assist KCFD NO. 1 with the selection of a construction contractor that has performed at a high level in the past.

We appreciate your taking the time to complete this survey. Please return this survey form to KCFD NO. 1, Attn: Jim Kenworthy, Fax (541) 884-6920 or attach to an email addressed to jkenworthy@kcf1.com.

Evaluator Info:

(Name of Firm)

(Name of person completing survey)

(Phone)

(E-Mail)

Past Performance Survey Project Info:

(Name of Contractor)

(Name of Project)

(Project Start Date)

(Project End Date)

(Size of Project (Total \$))

(Approx Number of Change Orders (#), and Approx. Total (\$))

Please rate each of the criteria below on a scale of 1 to 10, with 10 representing that you were very satisfied (and would you hire the contractor again) and 1 representing that you were very unsatisfied. Please rate each of the criteria to the best of your knowledge.

NO	CRITERIA	UNIT	SCORE
1	Ability to manage the project cost (minimize change orders)	(1-10)	
2	Ability to maintain project schedule (complete on-time or early)	(1-10)	
3	Quality of workmanship	(1-10)	
4	Professionalism and ability to manage (includes responses and prompt payment to suppliers and subcontractors)	(1-10)	
5	Close out process (no punch list upon turnover, warranties, as-builts, operating manuals, tax clearance, etc. submitted promptly)	(1-10)	
6	Communication, explanation of risk, and documentation	(1-10)	
7	Ability to follow the users rules, regulations, and requirements (housekeeping, safety, etc.)	(1-10)	
8	Overall customer satisfaction and comfort level in hiring vendor/individual again	(1-10)	

Signature (of person completing survey)

Date

**Please return to KCFD NO. 1, Attn: Jim Kenworthy, Fax (541) 884-6920
or attach to an email addressed to jkenworthy@kcf1.com.**

RE: CM/GC Public Improvement RFP No. 12-01

SAMPLE CONTRACT

Note: Not included is the AIA 201-2007 General Condition, which is hereby incorporated by reference.



**CONSTRUCTION MANAGER/
GENERAL CONTRACTOR
SERVICES CONTRACT**
SAMPLE

This Construction Manager/General Contractor Services Contract made and entered into on the date written below, between Klamath County Fire District 1, acting through its Board of Directors, sometimes called herein "District" and _____ herein called "Construction Manager" or "Contractor".

WITNESSED:

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

1. **ACCEPTANCE OF PROPOSAL:** District hereby accepts Construction Manager's proposal dated on or before June 1, 2012 for the Work: Construction Services for Fire Station 3. The Work shall be in accordance with and as described in RFP 12-01 dated May 11, 2012 incorporated herein by reference in connection with such Work.

The Construction Manager shall perform all work and furnish all tools, materials, equipment, and transportation necessary to accomplish the Work described herein, subject to all requirements and conditions contained within the Contract Documents. Further the Construction Manager shall perform any alterations in or additions to the Work in accordance with issued Amendments or Change Orders. All work shall be done in a good workmanlike manner and in compliance with all applicable codes and regulations.

2. **DISTRICT'S BUDGET:** KCFD NO. 1's construction budget for the Project, is approximately \$2.8 million, which includes contingencies for changes in the Work and other costs which are the responsibility of KCFD NO. 1. KCFD NO. 1 shall update KCFD NO. 1's Budget for the Project, based on consultation with the Construction Manager and Architect.

3. **CONTRACT AMOUNT:**

- a. For Design Development Services the Construction Manager's compensation shall be on a time (direct personnel expense), reimbursable expenses (at cost) plus a fee basis for a not to exceed cost of \$[redacted]. Compensation for Design Development shall be equitably adjusted if such services are significantly modified by KCFD NO. 1.
- b. For Construction Services the Construction Manager shall be paid the Contract Sum consisting of the Cost of the Work as defined in Article 6 of the Terms and Conditions attached hereto and made a part hereof and the Construction Manager's Fee. The Construction Manager's Fee for all Work shall be [redacted]% of the Cost of the Work and shall be converted to a lump sum upon establishment of the Guaranteed Maximum Price and execution of the GMP Amendment #1.

When the Drawings and Specifications are sufficiently complete, the Construction Manager shall propose a Guaranteed Maximum Price (GMP), which shall be the sum of the estimated Cost of the Work and the Construction Manager's Fee. Construction Manager shall provide a Guaranteed Maximum Price proposal for KCFD NO. 1's review and approval by no later than July 20, 2012, based on not less than 50% Construction Drawings. KCFD NO. 1 shall issue the GMP Amendment #1 to accept the GMP and authorize Work to commence.

4. **CONTRACT TIME:** The Construction Manager shall commence construction activities on the date fixed in the GMP Amendment #1 issued by KCFD NO. 1. The Construction Manager shall achieve Substantial Completion of the entire Work as outlined in the GMP Amendment #1. The Contractor shall achieve Final Completion of the entire Work not later than 30 calendar days after the date of Substantial Completion. If Final Completion is not achieved in a timely manner, through no fault of KCFD NO. 1, KCFD NO. 1 may make or withhold final payment or may make final payment less 100% of the value of the contract work remaining to be done, in accordance with ORS 279C.570.

ARTICLE 1 GENERAL PROVISION

1.1 RELATIONSHIP OF PARTIES

The Construction Manager accepts the relationship of trust and confidence established with KCFD NO. 1 by this Agreement, and covenants with KCFD NO. 1 to furnish the Construction Manager's reasonable skill and judgment and to cooperate with the Architect in furthering the interests of KCFD NO. 1. The Construction Manager shall furnish construction administration and management services and use the Construction Manager's best efforts to perform the Project in an expeditious and economical manner consistent with the interests of KCFD NO. 1. KCFD NO. 1 shall endeavor to promote harmony and cooperation among KCFD NO. 1, Architect, Construction Manager and other persons or entities employed by KCFD NO. 1 for the Project.

1.2 GENERAL CONDITIONS

For the Construction Phase, KCFD NO.'s modified AIA 201-2007 General Conditions of the Contract for Construction (hereinafter referred to as AIA 201-2007 General Conditions) shall apply and is incorporated herein by reference. For the Preconstruction Phase, or in the event that the Preconstruction and Construction Phases precede concurrently, the AIA 201-2007 General Conditions shall apply to the Preconstruction Phase only as specifically provided in this Agreement. The term "Contractor" as used in the AIA 201-2007 General Conditions shall mean the Construction Manager.

ARTICLE 2 CONSTRUCTION MANAGER'S RESPONSIBILITIES

The Construction Manager shall perform the services described in this Article. The services to be provided under Sections 2.1 and 2.2 constitute the Preconstruction Phase services. If KCFD NO. 1 and Construction Manager agree, the Construction Phase may commence before the Preconstruction Phase is completed, in which case both phases will proceed concurrently.

2.1 PRECONSTRUCTION PHASE

2.1.1 PRELIMINARY EVALUATION

The Construction Manager shall provide a preliminary evaluation of KCFD NO. 1's program and Project budget requirements, each in terms of the other.

2.1.2 CONSULTATION

The Construction Manager with the Architect shall jointly schedule and attend regular meetings with KCFD NO. 1. The Construction Manager shall consult with KCFD NO. 1 and Architect regarding site use and improvements and the selection of materials, building systems and equipment. The Construction Manager shall provide recommendations on construction feasibility; actions designed to minimize adverse effects of labor or material shortages; time requirements for procurement, installation and construction completion; and factors related to construction cost, including estimates of alternative designs or materials, preliminary budgets and possible economies.

2.1.3 PRELIMINARY PROJECT SCHEDULE

When Project requirements described in Section 3.1.1 have been sufficiently identified, and no later than the completion of the Architect's Schematic Design Phase, the Construction Manager shall prepare, and periodically update, a preliminary Project schedule for the Architect's review and KCFD NO. 1's approval. The Construction Manager shall obtain the Architect's approval of the portion of the preliminary Project schedule relating to the performance of the Architect's services. The Construction Manager shall coordinate and integrate the preliminary Project schedule with the services and activities of KCFD NO. 1, Architect and Construction Manager. As design proceeds, the preliminary Project schedule shall be updated to indicate proposed activity sequences and durations, milestone dates for receipt and approval of pertinent information, submittal of a Guaranteed Maximum Price proposal, preparation and processing of shop drawings and samples, delivery of materials or equipment requiring long-lead-time procurement, District's occupancy requirements showing portions of the Project having occupancy priority, and proposed date of Substantial Completion. If preliminary Project schedule updates indicate that previously approved schedules may not be met, the Construction Manager shall make appropriate recommendations to KCFD NO. 1 and Architect.

2.1.4 PHASED CONSTRUCTION

The Construction Manager shall make recommendations to KCFD NO. 1 and Architect regarding the phased issuance of Drawings and Specifications to facilitate phased construction of the Work, if such phased construction is appropriate for the Project, taking into consideration such factors as economies, time of performance, availability of labor and materials, and provisions for temporary facilities.

2.1.5 PRELIMINARY COST ESTIMATES

2.1.5.1 When KCFD NO. 1 has sufficiently identified the Project requirements and the Architect has prepared other basic design criteria, the Construction Manager shall prepare, for the review of the Architect and approval of KCFD NO. 1, a preliminary cost estimate utilizing area, volume or similar conceptual estimating techniques.

2.1.5.2 When Schematic Design Documents have been prepared by the Architect and approved by KCFD NO. 1, the Construction Manager shall prepare, for the review of the Architect and approval of KCFD NO. 1, a more detailed estimate with supporting data itemized by major categories within each specification division to provide reasonable assurance that the Project cost will not exceed KCFD NO. 1's budget set for this Project. During the preparation of the Design Development Documents, the Construction Manager shall update and refine this estimate at appropriate intervals agreed to by KCFD NO. 1, Architect and Construction Manager.

2.1.5.3 When Design Development Documents have been prepared by the Architect and approved by KCFD NO. 1, the Construction Manager shall prepare a detailed estimate with supporting data for review by the Architect and approval by KCFD NO. 1. This cost estimate shall be projected to the expected time of bidding and shall be itemized by detailed categories within each specification division to provide reasonable assurance that the Project cost will not exceed KCFD NO. 1's Budget set for this Project. During the preparation of the Construction Documents, the Construction Manager shall update and refine this estimate at appropriate intervals agreed to by KCFD NO. 1, Architect and Construction Manager.

2.1.5.4 If any estimate submitted to KCFD NO. 1 exceeds previously approved estimates or KCFD NO. 1's budget, the Construction Manager shall make appropriate recommendations to KCFD NO. 1 and Architect to bring the project cost within budget.

2.1.5.5 Construction Manager shall attend weekly benchmark meetings during the design phase for the purpose of maintaining the cost of the Project within District's budget.

2.1.6 SUBCONTRACTORS AND SUPPLIERS

The Construction Manager shall seek to develop subcontractor interest in the Project and shall furnish to KCFD NO. 1 and Architect for their information a list of possible subcontractors, including suppliers who are to furnish materials or equipment fabricated to a special design, from whom proposals will be requested for each principal portion of the Work. The Architect will promptly reply in writing to the Construction Manager if the Architect or District knows of any objection to such subcontractor or supplier. The receipt of such list shall not require KCFD NO. 1 or Architect to investigate the qualifications of proposed subcontractors or suppliers, nor shall it or any non-objection waive the right of KCFD NO. 1 or Architect later to object to or reject any proposed subcontractor or supplier.

2.1.7 LONG-LEAD-TIME ITEMS

The Construction Manager shall recommend to KCFD NO. 1 and Architect a schedule for procurement of long-lead time items which will constitute part of the Work as required to meet the Project schedule. If such long-lead-time items are procured by KCFD NO. 1, they shall be procured on terms and conditions acceptable to the Construction Manager. Upon KCFD NO. 1's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, all contracts for such items shall be assigned by KCFD NO. 1 to the Construction Manager, who shall accept responsibility for such items as if procured by the Construction Manager. The Construction Manager shall expedite the delivery of long-lead-time items.

2.1.8 EXTENT OF RESPONSIBILITY

The Construction Manager does not warrant or guarantee estimates and schedules except as may be included as part of the Guaranteed Maximum Price. The recommendations and advice of the Construction Manager concerning design alternatives shall be subject to the review and approval of KCFD NO. 1 and KCFD NO. 1's professional consultants.

If the Construction Manager recognizes that portions of the Drawings and Specifications are at variance with applicable laws, statutes, ordinances, building codes, rules and regulations, the Construction Manager shall promptly notify the Architect and District in writing.

2.1.9 EQUAL EMPLOYMENT OPPORTUNITY AND AFFIRMATIVE ACTION

The Construction Manager shall comply with applicable laws, regulations and special requirements of the Contract Documents regarding equal employment opportunity and affirmative action programs.

2.2 GUARANTEED MAXIMUM PRICE PROPOSAL

2.2.1 As the Drawings and Specifications may not be finished at the time the Guaranteed Maximum Price proposal is

prepared, the Construction Manager shall provide in the Guaranteed Maximum Price for further development of the Drawings and Specifications by the Architect that is consistent with the Contract Documents and reasonably inferable there from. 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, provided that no such items shall cause an increase in the Guaranteed Maximum Price if consistent with the RFP.

2.2.2 The estimated Cost of the Work shall include a construction contingency not to exceed 5% of the Cost of the Work which shall be used with the District's prior consent to cover costs arising under Section 2.2.1 and other costs which are properly reimbursable as Cost of the Work but not the basis for a Change Order. The actual amount of this contingency will be determined at the time the Guaranteed Maximum Price is established.

2.2.3 BASIS OF GUARANTEED MAXIMUM PRICE

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

2.2.3.1 A list of the Drawings and Specifications, including all addenda thereto and the Conditions of the Contract, which were used in preparation of the Guaranteed Maximum Price proposal.

2.2.3.2 A list of allowances and a statement of their basis.

2.2.3.3 A list of the clarifications and assumptions made by the Construction Manager in the preparation of the Guaranteed Maximum Price proposal to supplement the information contained in the Drawings and Specifications.

2.2.3.4 The proposed Guaranteed Maximum Price, including a statement of the estimated cost organized by trade categories, allowances, contingency, and other items and the Fee that comprise the Guaranteed Maximum Price.

2.2.3.5 The Date of Substantial Completion upon which the proposed Guaranteed Maximum Price is based, and a schedule of the Construction Documents issuance dates upon which the date of Substantial Completion is based.

The Guaranteed Maximum Price proposal shall not include any exclusions, qualifications, assumptions, or other conditions reflecting a quality or quantity of Work that are inconsistent with the requirements of the RFP *other* than those conditions, if any, that are identified in Amendment 1 hereto. The Guaranteed Maximum Price proposal will not exceed KCFD NO. 1's Budget described herein. The Guaranteed Maximum Price proposal shall include the construction contingency, and value engineering alternates, together with corresponding reductions in the Guaranteed Maximum Price and Construction Manager's recommendations as to each such alternate.

2.2.4 The Construction Manager shall meet with KCFD NO. 1 and Architect to review the Guaranteed Maximum Price proposal and the written statement of its basis. In the event that KCFD NO. 1 or Architect discovers 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.

2.2.5 Unless KCFD NO. 1 accepts the Guaranteed Maximum Price proposal in writing on or before the date specified in the proposal for such acceptance and so notifies the Construction Manager, the Guaranteed Maximum Price proposal shall not be effective without written acceptance by the Construction Manager. The date specified in the proposal for such acceptance shall be at least fourteen days after KCFD NO. 1's receipt of the proposal.

2.2.6 Prior to KCFD NO. 1's acceptance of the Construction Manager's Guaranteed Maximum Price proposal and issuance of a Notice to Proceed, the Construction Manager shall not incur any cost to be reimbursed as part of the Cost of the Work, except as KCFD NO. 1 may specifically authorize in writing.

2.2.7 Upon acceptance by KCFD NO. 1 of the Guaranteed Maximum Price proposal, the Guaranteed Maximum Price and its basis shall be set forth in Amendment No. 1. The Guaranteed Maximum Price shall be subject to additions and deductions by a change in the Work as provided in the Contract Documents, and the Date of Substantial Completion shall be subject to adjustment as provided in the Contract Documents.

2.2.8 KCFD NO. 1 shall authorize and cause the Architect to revise the Drawings and Specifications to the extent necessary to reflect the agreed-upon assumptions and clarifications contained in Amendment No. 1. Such revised Drawings and Specifications shall be furnished to KCFD NO. 1 and Construction Manager in accordance with schedules agreed to by KCFD NO. 1, Architect and Construction Manager. The Construction Manager shall promptly (and in any event no later than commencement of the Work) notify the Architect and District if such revised Drawings and Specifications are inconsistent with the agreed-upon assumptions and clarifications.

2.2.9 The Guaranteed Maximum Price shall include in the Cost of the Work only those taxes which are enacted at the time the Guaranteed Maximum Price is established.

2.2.10 The Guaranteed Maximum Price shall include a project contingency. KCFD NO. 1 and only KCFD NO. 1 may authorize the use of the contingency for additional costs arising from (a) any District-directed change to the Work, (b) schedule changes designed to recover from abnormal weather conditions (as defined in the General Conditions), (c) District delay, (d) allowance items after exhaustion of all Allowances, (e) selection by District of more expensive alternates than those used for calculation of the Guaranteed Maximum Price, (f) District selection of substitutions that increase the Cost of the Work, or (g) any other costs which otherwise would entitle Construction Manager to an increase in the Guaranteed Maximum Price. Application of any portion of the contingency shall require prior written approval of KCFD NO. 1. If KCFD NO. 1 elects to apply the contingency toward any cost increase that would otherwise entitle the Construction Manager to an increase of the Guaranteed Maximum Price, then in such case the Guaranteed Maximum Price shall not be increased. Application of the contingency for any of the foregoing purposes shall reduce the contingency by the actual amount of the increase in the Cost of the Work or as otherwise agreed by the parties. The contingency shall be increased by the sum of the savings attributable to changes in the Work. If at the Final Completion of the Project, or at such other date established in writing by KCFD NO. 1 on or before the Final Completion Date, any portion of the contingency or Allowance funds remain unexpended, the Guaranteed Maximum Price shall be reduced by the corresponding amount.

2.3 CONSTRUCTION PHASE

2.3.1 COMMENCEMENT

The Construction Phase shall commence on the earlier of:

- 2.3.1.1 KCFD NO. 1's acceptance of the Construction Manager's Guaranteed Maximum Price proposal and issuance of a Notice to Proceed, or
- 2.3.1.2 KCFD NO. 1's first authorization to the Construction Manager to:
 - (a) award a subcontract, or
 - (b) undertake construction Work with the Construction Manager's own forces, or
 - (c) issue a purchase order for materials or equipment required for the Work.

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 with the Construction Manager. The Construction Manager shall obtain bids from Subcontractors and from suppliers of materials or equipment fabricated to a special design for the Work from the list previously reviewed and, after analyzing such bids, shall deliver such bids to KCFD NO. 1 and Architect. KCFD NO. 1 will then determine, with the advice of the Construction Manager and of the Architect, which bids will be accepted. KCFD NO. 1 may designate specific persons or entities from whom the Construction Manager shall obtain bids; however, if the Guaranteed Maximum Price has been established, KCFD NO. 1 may not prohibit the Construction Manager from obtaining bids from other qualified bidders. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection, but the Guaranteed Maximum Price will not change.

2.3.2.2 If the Guaranteed Maximum Price has been established and a specific bidder among those whose bids are delivered by the Construction Manager to KCFD NO. 1 and Architect

- (a) Is recommended to KCFD NO. 1 by the Construction Manager;
- (b) Is qualified to perform that portion of the Work; and
- (c) Has submitted a bid which conforms to the requirements of the Contract Documents without reservations or exceptions, but KCFD NO. 1 requires that another bid be accepted, then the Construction Manager may require that a change in the work be issued to adjust the Contract Time for good cause

shown and the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to KCFD NO. 1 by the Construction Manager and the amount of the subcontract or other agreement actually signed with the person or entity designated by KCFD NO. 1.

2.3.2.3 Subcontracts and agreements with suppliers furnishing materials or equipment fabricated to a special design shall conform to the payment provisions of Sections 7.1.8 and 7.1.9 and shall not be awarded on the basis of cost plus a fee without the prior consent of KCFD NO. 1. Construction Manager shall ensure that bidding for all the foregoing agreements, and the agreements themselves, are consistent with all applicable requirements of the RFP.

2.3.2.4 The Construction Manager shall schedule and conduct meetings at which KCFD NO. 1, Architect, Construction Manager and appropriate Subcontractors can discuss the status of the Work. The Construction Manager shall prepare and promptly distribute meeting minutes.

2.3.2.5 Within 10 days after KCFD NO. 1's acceptance of the Guaranteed Maximum Price proposal, the Construction Manager shall prepare a construction schedule in accordance with the AIA 201-2007 General Conditions Article 3.10 and other Contract Documents, including KCFD NO. 1's occupancy requirements. The construction period within the schedule shall not exceed the date for Substantial Completion agreed herein or if no such date is slated herein, in the agreed-upon Amendment No. 1.

2.3.2.6 The Construction Manager shall provide monthly written reports to KCFD NO. 1 and Architect on the progress of the entire Work. The Construction Manager shall maintain a daily log containing a record of weather, Subcontractors working on the site, number of workers, Work accomplished, problems encountered and other similar relevant data as KCFD NO. 1 may reasonably require. The log shall be available to KCFD NO. 1 and Architect.

2.3.2.7 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 KCFD NO. 1 and Architect monthly.

2.4 PROFESSIONAL SERVICES

The Construction Manager shall not be required to provide professional services which 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 Construction Manager has specifically agreed in writing to provide such services. In such event, the Construction Manager shall cause such services to be performed by appropriately licensed professionals approved by District. Notwithstanding any provision of this Contract seemingly to the contrary, Construction Manager will be responsible for the design and engineering, as well as construction of the component systems of the Work identified in the Contract Documents as design-build components ("Design/Build Work"), including the attachment of such systems into the remainder of the Work. Construction Manager shall cause the Design/Build Work to be designed, engineered, and constructed in accordance with all specifications and program requirements of Architect or District, in accordance with all applicable laws and codes, and in a manner such that these systems are functioning and properly integrated into the remainder of the Work. Construction Manager shall cause such design professionals to maintain professional liability insurance acceptable to District within minimum limits of coverage of not less than \$1 million, with a coverage period of at least three years after Final Completion and shall provide proof of such insurance to District prior to performance of services. The premium of such errors and omissions coverage's will not be included in the Cost of the Work and will be borne by Construction Manager or the applicable Subcontractor. Construction Manager shall be fully responsible for performance of such services to the same extent as if performed by Construction Manager directly.

2.5 HAZARDOUS MATERIALS

In addition to the provisions of District General Conditions Article 10.3, if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance encountered but not created on the site by the Construction Manager, the Construction Manager shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to KCFD NO. 1 and Architect in writing. KCFD NO. 1, Construction Manager and Architect shall then proceed in the same manner described in the General Conditions. KCFD NO. 1 shall be responsible for obtaining the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Construction Manager and, in the event such material or substance is found to be present, to verify that it has been rendered harmless. Unless otherwise required by the Contract Documents, KCFD NO. 1 shall furnish in writing to the Construction Manager 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 Construction Manager and Architect will promptly reply to KCFD NO. 1 in writing stating whether or not either has reasonable objection to the persons or entities proposed by KCFD NO. 1. If either the Construction Manager or Architect has an objection to a person or entity proposed by KCFD NO. 1, KCFD NO. 1 shall propose another to whom the Construction Manager and Architect have no reasonable objection.

2.6 RFP REQUIREMENTS

Construction Manager shall comply with, and shall cause all subcontractors and suppliers at every tier to comply with, all applicable requirements of the RFP.

ARTICLE 3 DISTRICT'S RESPONSIBILITIES

3.1 INFORMATION AND SERVICES

3.1.1 KCFD NO. 1 has provided reasonable information in a timely manner regarding the requirements of the Project, including a program which sets forth KCFD NO. 1's objectives, constraints and criteria, including space requirements and relationships, flexibility and expandability requirements, special equipment and systems, and site requirements. Construction Manager acknowledges that Construction Manager has received sufficient information from District to initiate the Project.

3.1.2 STRUCTURAL AND ENVIRONMENTAL TESTS, SURVEYS AND REPORTS

In the Preconstruction Phase, KCFD NO. 1 shall furnish the following with reasonable promptness and at KCFD NO. 1's expense. Except to the extent that the Construction Manager knows or should have known of any inaccuracy, the Construction Manager shall be entitled to reasonably rely upon the accuracy of any such information, reports, surveys, drawings and tests described in Sections 3.1.4.1 through 3.1.4.4 but shall exercise customary precautions relating to the performance of the Work.

2.1.2.1 Reports, surveys, drawings and tests concerning the conditions of the site which are required by law.

2.1.2.2 Surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data pertaining 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 to the extent typically provided in an ALTA survey. All information on the survey shall be referenced to a project benchmark.

2.1.2.3 The services of a geotechnical engineer when such services are requested by the Construction Manager. Such services may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, ground corrosion and resistivity tests, including necessary operations for anticipating subsoil conditions, with reports and appropriate professional recommendations.

2.1.2.4 Structural, mechanical, chemical, air and water pollution tests, tests for hazardous materials, and other laboratory and environmental tests, inspections and reports which are required by law.

2.1.2.5 The services of other consultants when such services are reasonably required by the scope of the Project and are requested by the Construction Manager and approved by the Architect and District. Construction Manager is not currently aware of services of other consultants (other than Architect and Architect's design sub consultants) anticipated to be required from District for the Project.

3.2 DISTRICT'S DESIGNATED REPRESENTATIVE

KCFD NO. 1's Representative shall have express authority to bind KCFD NO. 1 with respect to matters requiring KCFD NO. 1's approval or authorization. This representative shall have the authority to make decisions on behalf of KCFD NO. 1 concerning estimates and schedules, construction budgets, and changes in the Work, and shall render such decisions promptly and furnish timely-requested information expeditiously. KCFD NO. 1's Representative shall not have the authority to waive any provisions of the Contract Documents or to approve or authorize any change in the Guaranteed Maximum Price or the Contract Time except in writing. The Architect does not have such authority.

3.3 ARCHITECT

KCFD NO. 1 shall retain an Architect to provide services, including but not limited to structural, mechanical and electrical engineering services described in the Agreement between District and Architect. KCFD NO. 1 shall authorize and cause the Architect to provide additional services requested by the Construction Manager which must necessarily be provided by the Architect for the Preconstruction and Construction Phases of the Work. Such services shall be provided in accordance with time schedules agreed to by KCFD NO. 1, Architect and Construction Manager. Upon request of the Construction Manager, KCFD NO. 1 shall furnish to the Construction Manager a copy of KCFD NO. 1's Agreement with the Architect.

3.4 LEGAL REQUIREMENTS

KCFD NO. 1 shall furnish and/or procure legal services for its sole use and purpose as are necessary for the Project. Construction Manager shall be responsible for its own legal services necessary for the project which shall not be part of the Guaranteed Maximum Price. The Construction Manager has reviewed and is familiar with the applicable public contracting statutes and ordinances applicable to this Project (all of which are incorporated herein as contract requirements by this reference) and applicable rules, laws, ordinances, and codes as promulgated by local and federal government bodies.

ARTICLE 4 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

The CM/GC identified in the RFP (preconstruction phase price proposal) their key personnel and resource staff, the estimated hours, the hourly rate and the total cost for all personnel required for completing the preconstruction phase services and include the services in Article 2.1 above. KCFD NO. 1 shall compensate and make payments to the Construction Manager for Preconstruction Phase services as follows:

4.1 COMPENSATION

4.1.1 Direct personnel expense is defined as the direct salaries of the Construction Manager's personnel engaged in the Project with KCFD NO. 1's approval and the portion of the cost of their mandatory and customary contributions and benefits related thereto, such as employment taxes and other statutory employee benefits, insurance, sick leave, holidays, vacations, pensions and similar contributions and benefits.

4.1.2 In the event this agreement is terminated Construction Manager's total compensation shall be based on 100% of direct personnel expense, and reimbursable expenses incurred to the date of termination and a portion of the fee relative to the total value expended but in no case more than the amount stated in 4.1.1.

4.2 PAYMENTS

4.2.1 Payments shall be made monthly following presentation of the Construction Manager's invoice and, where applicable, shall be in proportion to services performed. Invoices shall be presented within the first ten days of a month for services performed during the prior month.

4.2.2 Payments are due and payable thirty (30) days from the date the Construction Manager's invoice is received by the Architect/ District. Interest on payments due and unpaid under the Contract Documents shall bear interest as specified by ORS 279C.570.

ARTICLE 5 COMPENSATION FOR CONSTRUCTION PHASE SERVICES

The Construction Manager fee, expressed as a percentage of the CM/GC's overhead (profit percentage, general & administrative costs percentage, and home office costs percentage as normally applied to projects completed by the CM/GC). KCFD NO. 1 shall compensate the Construction Manager for Construction Phase services as follows:

5.1 GUARANTEED MAXIMUM PRICE

5.1.1 This Guaranteed Maximum Price includes the Cost of the Work including estimating allowance, general conditions, liability insurance, performance and payment bond, all taxes including without limitation gross receipts, excise and income taxes, escalation, contingency and the Construction Manager's Fee. The sum of the Cost of the Work and the Construction Manager's Fee are guaranteed by the Construction Manager not to exceed the amount provided in Amendment No. 1, subject to additions and deductions by changes in the Work as provided in the Contract Documents. Such maximum sum as adjusted by approved changes in the Work is referred to in the Contract Documents as the Guaranteed Maximum Price or "GMP". Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Construction Manager without reimbursement by KCFD NO. 1. If the final Cost of the Work is less than the Guaranteed Maximum Price

(as may be adjusted) any and all savings shall be returned to KCFD NO. 1.

5.2 CHANGES IN THE WORK

5.2.1 Adjustments to the Guaranteed Maximum Price on account of changes in the Work subsequent to the execution of Amendment No. 1 may be determined by any of the methods listed in District General Conditions.

5.2.2 In calculating adjustments to subcontracts (except those awarded with KCFD NO. 1's prior consent on the basis of cost plus a fee), the terms "cost" and "fee" as used in AIA 201-2007 General Conditions shall have the meanings assigned to them in that document and shall not be modified by this Article 5. Adjustments to subcontracts awarded with KCFD NO. 1's prior consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.

5.2.3 In calculating adjustments to the Contract, the terms "cost" and "costs" as used in the above-referenced provisions shall mean the Cost of the Work as defined in Article 6 of this Agreement, and the term "and a reasonable allowance for overhead and profit" shall mean the Construction Manager's Fee as defined in Article 5 of this Agreement, and the provisions of Section 7.5 of AIA 201-2007 General Conditions shall not apply to such costs and Contractor fees.

5.2.4 Wherever in District General Conditions provision is made for adjustment to (or no adjustment to) the Contract Sum, such provision shall instead mean that an adjustment (or no adjustment, as the case may be) shall be made to the Guaranteed Maximum Price, unless specifically provided to the contrary in this Agreement. Wherever in District General Conditions provision is made for a cost to be included in (or excluded from) the Contract Sum, such cost also must be included in (or excluded from, as the case may be) the Guaranteed Maximum Price, unless specifically provided to the contrary in this Agreement. In Section 1.5.2 of AIA 201-2007 General Conditions, the references to "Contract Sum" are replaced with "Guaranteed Maximum Price".

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 those customarily paid at the place of the Project except with prior consent of KCFD NO. 1. The Cost of the Work shall include only the items set forth in this Article 6.

6.1.2 LABOR COSTS

6.1.2.1 Wages of construction workers directly employed by the Construction Manager to perform the construction of the Work at the site or, with KCFD NO. 1's agreement, at off-site workshops or transporting materials, equipment or personnel to and from the Site.

6.1.2.2 Wages or salaries of the Construction Manager's supervisory, home-office estimating and administrative personnel when stationed at the site with KCFD NO. 1's agreement.

6.1.2.3 Wages or salaries of the Construction Manager's supervisory and administrative personnel when stationed off the site will be reimbursable only with KCFD NO. 1's prior written approval.

6.1.2.4 Wages and salaries of the Construction Manager's supervisory or administrative or home-office estimating 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, and only with KCFD NO. 1's approval.

6.1.2.5 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 that such costs are based on wages and salaries included in the Cost of the Work under Sections 6.1.2.1 through 6.1.2.4.

6.1.3 SUBCONTRACT COSTS

Payments made by the Construction Manager to Subcontractors in accordance with the requirements of the subcontracts. The costs in any cost-plus subcontracts must conform to the requirements of this Article 6. All subcontracts shall include a lump sum or Guaranteed Maximum Price, a schedule of which shall be provided by Construction Manager to District prior to commencement of the Work.

6.1.4 COSTS OF MATERIALS AND EQUIPMENT INCORPORATED IN THE COMPLETED CONSTRUCTION

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

6.1.4.2 Costs of materials described in the preceding Section 6.1.4.1 in excess of those actually installed but required to provide reasonable allowance for waste and for spoilage. Unused excess materials, if any, shall be handed over to KCFD NO. 1 at the completion of the Work or, at KCFD NO. 1's option, shall be sold by the Construction Manager; amounts realized, if any, from such sales shall be credited to KCFD NO. 1 as a deduction from the Cost of the Work.

6.1.5 COSTS OF OTHER MATERIALS AND EQUIPMENT, TEMPORARY FACILITIES AND RELATED ITEMS

6.1.5.1 Costs, including transportation, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment, and hand tools not customarily owned by the construction workers, which are provided by the Construction Manager at the site and fully consumed in the performance of the Work; and cost less salvage value on such items if not fully consumed, whether sold to others or retained by the Construction Manager. Cost for items previously used by the Construction Manager shall mean fair market value.

6.1.5.2 Rental charges (not to exceed fair market rental costs in the greater Klamath County, Oregon area) for temporary facilities, machinery, equipment and hand tools not customarily owned by the construction workers, which are provided by the Construction Manager at the site, whether rented from the Construction Manager or others, and costs of transportation, installation, minor repairs and replacements, dismantling and removal thereof. Rates and quantities of equipment rented shall be subject to KCFD NO. 1's prior approval. Total rental charges for equipment or tools shall not exceed the fair market purchase value of the equipment or the tool.

6.1.5.3 Costs of removal of debris from the site.

6.1.5.4 Reproduction costs, costs of internet access, facsimile transmissions and long-distance telephone calls, postage and express delivery charges, telephone at the site and reasonable petty cash expenses of the site office.

6.1.5.5 That portion of the reasonable travel and subsistence expenses of the Construction Manager's personnel incurred in accordance with KCFD NO. 1's normal reimbursement policy while traveling in discharge of duties connected with the Work with KCFD NO. 1's prior approval.

6.1.6 MISCELLANEOUS COSTS

6.1.6.1 Those costs directly attributable to this Contract for premiums for insurance and performance and payment bonds. Construction Manager's fixed charge to KCFD NO. 1 for liability insurance and performance and payment bonds shall be a percentage of the Cost of the Work as outlined in Amendment #1.

6.1.6.2 Sales, use or similar taxes (but not income or revenue taxes) imposed by a governmental authority which are related to the Work and for which the Construction Manager is liable.

6.1.6.3 Actual, direct third-party data processing costs related to the Work.

6.1.7 OTHER COSTS

Other costs incurred in the performance of the Work if and to the extent approved in advance in writing by KCFD NO. 1.

6.1.8 EMERGENCIES AND REPAIRS TO DAMAGED OR NONCONFORMING WORK

The Cost of the Work shall also include costs described in Section 6.1.1 which are incurred by the Construction Manager:

6.1.8.1 In taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property.

6.1.8.2 In repairing or correcting damaged or nonconforming Work executed by the Construction Manager or the Construction Manager's Subcontractors or suppliers, provided that such damaged or nonconforming Work was not caused by the negligence or failure to fulfill a specific responsibility to KCFD NO. 1 set forth in this agreement of the Construction Manager or the Construction Manager's foremen, engineers or superintendents, or other supervisory, administrative or managerial personnel of the Construction Manager, or the failure of the Construction Manager's personnel to supervise adequately the Work of the Subcontractors or suppliers, and only to the extent that the cost of repair or correction is not recoverable by the Construction Manager from insurance, Subcontractors or suppliers.

6.1.9 The costs described in Sections 6.1.1 through 6.1.8 shall be included in the Cost of the Work notwithstanding any provision of 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 6.2.

6.2 COSTS NOT TO BE REIMBURSED

6.2.1 The Cost of the Work shall not include:

- 6.2.1.1 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 Sections 6.1.2.2 and 6.1.2.3.
- 6.2.1.2 Expenses of the Construction Manager's principal office and offices other than the site office, except as specifically provided in Section 6.1.
- 6.2.1.3 Overhead and general expenses, except as may be expressly included in Section 6.1.
- 6.2.1.4 The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work.
- 6.2.1.5 Rental costs of machinery and equipment, except as specifically provided in Section 6.1.5.2.
- 6.2.1.6 Except as provided in Section 6.1.8.2,
 - (a) Costs due to the negligence of the Construction Manager or to the failure of the Construction Manager to fulfill a specific responsibility to KCFD NO. 1 set forth in this Agreement.
 - (b) Costs due to the fault or negligence of Sub-contractors of any tier, or anyone directly or indirectly employed by any of them.
- 6.2.1.7 Costs incurred in the performance of Pre-construction Phase Services.
- 6.2.1.8 Except as provided in Section 6.1.7, any cost not specifically and expressly described in Section 6.1.
- 6.2.1.9 Costs which would cause the Guaranteed Maximum Price as adjusted by approved Change Order to be exceeded.
- 6.2.1.10 KCFD NO. 1 will directly pay for the permits listed in the Contract Documents. These direct District- paid costs are not a part of the Cost of the Work or the Guaranteed Maximum Price.
- 6.2.1.11 Bonuses or awards
- 6.2.1.12 Costs for Construction Manager's General Conditions work in excess of the amount shown on Amendment #1

6.3 DISCOUNTS, REBATES AND REFUNDS

6.3.1 Cash discounts obtained on payments made by the Construction Manager shall accrue to KCFD NO. 1 if (1) before making the payment, the Construction Manager included them in an Application for Payment and received payment therefore from KCFD NO. 1, or (2) KCFD NO. 1 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 KCFD NO. 1, and the Construction Manager shall make provisions so that they can be secured. The Construction Manager shall notify KCFD NO. 1 in a timely manner of the availability of such cash discounts, rebates, or refunds.

6.3.2 Amounts which accrue to KCFD NO. 1 in accordance with the provisions of Section 6.3.1 shall be credited to KCFD NO. 1 as a deduction from the Cost of the Work.

6.4 ACCOUNTING RECORDS

6.4.1 The Construction Manager shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under this Contract; the accounting and control systems shall be satisfactory to KCFD NO. 1. KCFD NO. 1 and KCFD NO. 1's accountants shall be afforded access to and permitted to copy the Construction Manager's records, books, correspondence, instructions, drawings, receipts, subcontracts, purchase orders, vouchers, memoranda and other data except privileged items relating to this Project, or to any Claim and the Construction Manager shall preserve these for a period of three years after final payment, or for such longer period as may be required by law. Construction

Manager shall cooperate in any public audits of the Project.

ARTICLE 7 CONSTRUCTION PHASE

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, KCFD NO. 1 shall make progress payments on account of the Contract Sum to the Construction Manager as provided below and elsewhere in the Contract Documents. **THE SUBMISSION OF THIS APPLICATION CONSTITUTES A CERTIFICATION THAT THE WORK IS CURRENT ON THE CONSTRUCTION MANAGER'S CONSTRUCTION SCHEDULE**, unless otherwise noted on the application. The application shall be in a form acceptable to KCFD NO. 1 and shall include an accounting by natural expense categories.

7.1.2 Draft Application: On or about the twenty-fifth day of each month, the Contractor shall submit to KCFD NO. 1 and the Architect a report on the current progress of the Work as compared to the Progress Schedule, and a draft, itemized application for payment for work performed during the current calendar month on a form supplied or approved by District. This shall not constitute a payment request. The Contractor, KCFD NO. 1 and the Architect shall meet within the next five days and confer regarding the current progress of the Work and the amount of payment to which the Contractor is entitled. KCFD NO. 1 and/or the Architect may request the Contractor to provide data substantiating the Contractor's right to payment as KCFD NO. 1 and/or the Architect may require, such as copies of requisitions from subcontractors and suppliers of any tier, lien releases from prior payments, or other related documentation. The Contractor shall not be entitled to make a payment request, nor is any payment due the Contractor, until such data is furnished.

7.1.3 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, unless otherwise agreed.

7.1.4 Payment shall be made by KCFD NO. 1 no later than thirty (30) days after the Architect receives the signed, certifiable Application for Payment pursuant to the General Conditions and recommends that KCFD No. 1 process payment..

7.1.5 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 KCFD NO. 1 or Architect to demonstrate that cash disbursements already made by the Construction Manager on account of the Cost of the Work equal or exceed

7.1.5.1 Progress payments already received by the Construction Manager; less

7.1.5.2 That portion of those payments attributable to the Construction Manager's Fee;

7.1.5.3 Plus a certified payroll for the period covered by the present Application for Payment.

Construction Manager also shall submit any additional documentation required under the RFP.

7.1.6 Each Application for Payment shall be based upon 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. The cost for General Conditions work shall be billed in equal installments monthly based on the duration of the Project schedule from commencement of construction through Final Completion; provided, however, that if the Project duration is extended, the remaining General Conditions amount shall be reallocated in proportion to the remaining months of the Project as extended.

7.1.7 Applications for Payment shall show the percentage completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage completion shall be the lesser of:

7.1.7.1 The percentage of that portion of the Work which has actually been completed or,

7.1.7.2 The percentage obtained by dividing:

(a) the expense which 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.

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

Take that portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage 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 KCFD NO. 1 of changes in the Work, amounts not in dispute may be included, even though the Guaranteed Maximum Price has not yet been adjusted by Change Order.

7.1.8.1 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 KCFD NO. 1, suitably stored off the site at a location agreed upon in writing.

7.1.8.2 Add the Construction Manager's Fee. The Construction Manager's Fee shall be an amount which bears the same ratio to that fixed-sum Fee as the Cost of the Work in the two preceding Sections bears to a reasonable estimate of the probable Cost of the Work upon its completion.

7.1.8.3 Subtract retainage of 5% of the amount of the total progress payment.

7.1.8.4 Subtract the aggregate of previous payments made by KCFD NO. 1.

7.1.8.5 Subtract the shortfall, if any, indicated by the Construction Manager in the documentation required by Section 7.1.5 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by KCFD NO. 1's accountants in such documentation.

7.1.8.6 Subtract amounts, if any, for which the Architect has withheld or nullified an application for Payment.

7.1.9 Except with KCFD NO. 1's prior approval, payments to Subcontractors shall be subject to retention of not less than 5%. KCFD NO. 1 and the Construction Manager shall agree upon a mutually acceptable procedure for review and approval of payments and retention for subcontracts.

7.1.10 Except with KCFD NO. 1'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.

7.1.11 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 7.1.5 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 KCFD NO. 1, will be performed by KCFD NO. 1's accountants acting in the sole interest of KCFD NO. 1. Payment by KCFD NO. 1 shall not constitute final approval of the Work done or the amount due.

7.2 FINAL PAYMENT

7.2.1 Final payment less an amount equal to 100% of the value of uncompleted work, shall be made by KCFD NO. 1 to the Construction Manager when

7.2.1.1 The Contract has been fully performed by the Construction Manager including the Construction Manager's responsibility to correct nonconforming Work, but excluding work to satisfy other requirements, if any, which necessarily survive final payment;

7.2.1.2 A final Application for Payment and a final accounting for the Cost of the Work have been submitted by the Construction Manager and reviewed by KCFD NO. 1's accountants; and

7.2.1.3 A final Certificate for Payment has then been issued by Architect and approved by District: such final payment shall be made by KCFD NO. 1 not more than 30 days after KCFD NO. 1's acceptance of the Architect's final Certificate for Payment, and Final Acceptance has occurred.

7.2.2 The amount of the final payment shall be calculated as follows:

7.2.2.1 Take the sum of the Cost of the Work substantiated by the Construction Manager's final accounting and the Construction Manager's Fee, but not more than the Guaranteed Maximum Price.

7.2.2.2 Subtract amounts, if any, for which the Architect withholds, in whole or in part, a final Certificate Application for Payment.

7.2.2.3 Subtract the aggregate of previous payments made by KCFD NO. 1.

If the aggregate of previous payments made by KCFD NO. 1 exceeds the amount due the Construction Manager, the Construction Manager shall reimburse the difference to KCFD NO. 1 within 30 days of completion of final accounting.

7.2.3 KCFD NO. 1's accountants 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 KCFD NO. 1's accountants 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 KCFD NO. 1's accountants, either issue a final Application for Payment or notify the Construction Manager in writing of KCFD NO. 1's reasons for withholding an application.

7.2.4 If KCFD NO. 1's accountants 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 invoke the dispute resolution procedure of Sections 7.6 of the General Conditions. Unless agreed to otherwise, commencement of the dispute resolution procedure for the disputed amount shall be made by the Construction Manager within 60 days after the Construction Manager's receipt of a copy of the final Application for Payment. Failure to commence the dispute resolution procedure within this 60-day period shall result in the substantiated amount reported by KCFD NO. 1's accountants becoming binding on the Construction Manager. Pending a final resolution of the disputed amount, KCFD NO. 1 shall pay the Construction Manager the undisputed amount certified in the Architect's final Application for Payment.

7.2.5 If, subsequent to final payment and at KCFD NO. 1's request, the Construction Manager incurs costs described in Section 6.1 and not excluded by Section 6.2

7.2.5.1 To correct nonconforming Work (other than warranty work), or

7.2.5.2 Arising from the resolution of disputes (other than arising from Construction Manager's default),

KCFD NO. 1 shall reimburse the Construction Manager such costs and the Construction Manager's Fee, if any, related 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, the amount of such savings shall be recalculated and appropriate credit given to KCFD NO. 1 in determining the net amount to be paid by KCFD NO. 1 to the Construction Manager.

ARTICLE 8 INSURANCE AND BONDS

8.1 INSURANCE REQUIRED OF THE CONSTRUCTION MANAGER

During both phases of the Project, the Construction Manager shall purchase and maintain insurance as set forth in District General Conditions.

8.2 PERFORMANCE BOND AND PAYMENT BOND

8.2.1 The Construction Manager shall furnish bonds covering faithful performance of the Contract and payment of obligations arising there under in accordance with District General Conditions. The performance and payment bond shall be in the amount of the Guaranteed Maximum Price, and Contractor shall deliver such bond to District prior to commencement of Work, but in no event later than 10 days after execution of Amendment No. 1. Bonds may be obtained through the Construction Manager's usual source, and the cost thereof shall be included in the Cost of the Work.

ARTICLE 9 MISCELLANEOUS PROVISIONS

9.1 OTHER PROVISIONS

9.1.1 Unless otherwise noted, the terms used in this Agreement shall have the same meaning as those in District General Conditions.

9.1.2 EXTENT OF CONTRACT

This Contract, which includes this Agreement and the other documents incorporated herein by reference, represents the entire and integrated agreement between KCFD NO. 1 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 KCFD NO. 1 and Construction Manager. If anything in any document incorporated into this Agreement is inconsistent with this Agreement, this Agreement shall govern.

9.1.3 ASSIGNMENT

KCFD NO. 1 and Construction Manager respectively bind themselves, their partners, successors, assigns and legal

representatives to the other party hereto and to partners, successors, assigns and legal representatives of such other party in respect to covenants, agreements and obligations contained in the Contract Documents. Except as provided District General Conditions, 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.

ARTICLE 10 TERMINATION OR SUSPENSION

10.1 TERMINATION PRIOR TO ESTABLISHING GUARANTEED MAXIMUM PRICE

10.1.1 Prior to execution by both parties of Amendment No. 1 establishing the Guaranteed Maximum Price, KCFD NO. 1 may terminate this Contract at any time without cause, and the Construction Manager may terminate this Contract for any of the reasons described in District General Conditions.

10.1.2 If KCFD NO. 1 or Construction Manager terminates this Contract pursuant to this Section 10.1 prior to commencement of the Construction Phase, the Construction Manager shall be equitably compensated for Preconstruction Phase Services performed prior to receipt of notice of termination; provided, however, that the compensation for such services shall not exceed the compensation set forth in this Agreement.

10.1.3 If KCFD NO. 1 or Construction Manager terminates this Contract pursuant to this Section 10.1 after commencement of the Construction Phase, but prior to execution by both parties of Amendment No. 1 establishing the Guaranteed Maximum Price, the Construction Manager shall, in addition to the compensation provided in Section 10.1.2, be paid an amount calculated as follows:

10.1.3.1 Take the Cost of the Work incurred by the Construction Manager.

10.1.3.2 Subtract the aggregate of previous payments made by KCFD NO. 1 on account of the Construction Phase.

KCFD NO. 1 shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of KCFD NO. 1, for any equipment owned by the Construction Manager which KCFD NO. 1 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 KCFD NO. 1 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 KCFD NO. 1 may require for the purpose of fully vesting in KCFD NO. 1 the rights and benefits of the Construction Manager under such subcontracts or purchase orders.

Subcontracts, purchase orders and rental agreements entered into by the Construction Manager with KCFD NO. 1's written approval prior to the execution of Amendment No. 1 shall contain provisions permitting assignment to KCFD NO. 1 as described above. If KCFD NO. 1 accepts such assignment, KCFD NO. 1 shall reimburse or indemnify the Construction Manager with respect to all costs arising under the subcontract, purchase order or rental agreement except those which would not have been reimbursable as Cost of the Work if the contract had not been terminated. If KCFD NO. 1 elects not to accept the assignment of any subcontract, purchase order or rental agreement which would have constituted a Cost of the Work had this agreement not been terminated, the Construction Manager shall terminate such subcontract, purchase order or rental agreement and KCFD NO. 1 shall pay the Construction Manager the costs necessarily incurred by the Construction Manager by reason of such termination.

10.2 TERMINATION SUBSEQUENT TO ESTABLISHING GUARANTEED MAXIMUM PRICE

Subsequent to execution by both parties of Amendment No. 1, the Contract may be terminated as provided in AIA 201-2007 General Conditions.

10.3 SUSPENSION

The Work may be suspended by KCFD NO. 1 as provided in KCFD NO. 1 modified AIA 201-2007 General Conditions.

ARTICLE 11 OTHER CONDITIONS AND SERVICES

11.1 MEDIA CONTACTS

All contacts between the Construction Manager or any subcontractor of any tier and the media must be pre-approved by KCFD NO. 1.

11.2 DAMAGES FOR DELAY

In the event the Construction Manager (including any subcontractors of any tier) is held to be entitled to damages from

KCFD NO. 1 for delay caused by KCFD NO. 1 beyond the payment permitted in AIA 201-2007 General Conditions, the total damages to the Construction Manager (including damages to any subcontractor of any tier) for each day of delay shall be limited to liquidated damages as shown in Article 5 of the Contract per day of delay so caused.

11.3 Indemnification

11.3.1 Extent of Indemnification. The Contractor agrees to indemnify and to hold KCFD NO.1 and its successors and assigns harmless from and against any and all claims, liabilities, obligations, costs, and expenses, including reasonable attorney fees (collectively, "Damages") arising out of or related to:

- (a) Any breach or inaccuracy of any representation or warranty of the Contractor made in this Contract or any Related Document; or
- (b) Any failure by the Contractor to perform any obligations required to be performed by Contractor pursuant to this Contract or any Related Document.

11.3.2 Notice of Claim. The Contractor agrees to indemnify and to hold KCFD NO.1 and successors and assigns harmless from and against any and all claims, liabilities, obligations, costs, and expenses, including reasonable attorneys' fees arising out of, or related to, any claim or demand made against the Contractor as the result of or relating to actions or inactions of the Contractor, its employees, or subcontractors, occurring during the time of this Contract.

11.3.3 Third-Party Claims. The Contractor will, with reasonable promptness after obtaining knowledge thereof, provide KCFD NO.1 with written notice of all third-party actions, suits, proceedings, claims, demands, or assessments that may be subject to the indemnification provisions of this Section (collectively, "Third-Party Claims"), including, in reasonable detail, the basis for the claim, the nature of Damages, and a good-faith estimate of the amount of Damages.

11.4 OTHER STATUTORY TERMS AND CONDITIONS. The contractor must:

- (a) Make prompt payment to all Persons supplying labor or material; contributions to Industrial Accident Fund; liens and withholding taxes (ORS 279C.505(1));
- (b) Demonstrate that an employee drug testing program is in place and maintained (ORS 279C.505(2));
- (c) If the contract calls for demolition work described in ORS 279C.510(1), the contractor must salvage or recycle construction and demolition debris, if feasible and cost effective;
- (d) Make payment of fee claims by public officers (ORS 279C.510(1));
- (e) Understand any Person's right to file a claim with the Construction Contractors Board for all contracts related to a Public improvement Contract (ORS 279C.515(3));
- (f) Abide by hours of labor in compliance with ORS 279C.520;
- (g) Abide by environmental and natural resources regulations (279C.525);
- (h) Make payment for medical care and attention to employees (ORS 279C.530(1));
- (i) Understand all employers, including Contractor, that employ workers who Work under this Contract in the State of Oregon must comply with ORS 656.017 and provide the required Workers' Compensation coverage, unless such employers are exempt under ORS 656.126. Contractor must ensure that each of its subcontractors complies with these requirements. (ORS 279C.545);
- (j) Abide by maximum hours, holidays and overtime (ORS 279C.545);
- (k) Abide by time limitation on claims for overtime (ORS 279C.545);
- (l) Abide by prompt payment policy, progress payments, rate of interest (ORS 279C.570);
- (m) Maintain relations with subcontractors (ORS 279C.580);
- (n) Make notice of claim (ORS 279C.605);
- (o) Certify compliance with tax laws in accordance with ORS 305.385; and
- (p) Certify that all subcontractors performing Work described in ORS 701.005(2) (i.e., construction Work) will be registered with the Construction Contractors Board or licensed by the State Landscape Contractors Board in accordance with ORS 701.035 to 701.055, or licensed under ORS 468A.720 (Air Quality), if required, before the subcontractors commence Work under the Contract;
- (q) Make payment contributions to Industrial Accident Fund, liens and withholding taxes (ORS 279.312);
- (r) Make, and ensure all first-tier subcontractors make, payment to a person furnishing labor or materials in connection with the public improvement contract within 30 days after receipt of payment from KCFD No. 1 or the contractor. If the contractor or first tier subcontractor fails to do so the contractor or subcontractor shall owe the amount due plus interest charges commencing at the end of the 10-day period that payment is due under ORS 279C.580(4) and ending upon final payment, unless payment is subject to a good faith dispute as defined in ORS 279C.580.

SECTION 12. MISCELLANEOUS PROVISIONS

12.1 Waiver of Compliance; Consent.

12.1.1 Waiver of Compliance. Any failure of any party to comply with any obligation, covenant, Contract, or condition in this Contract may be waived by the party entitled to the performance of such obligation, covenant, or Contract or by the party who has the benefit of such condition, but such waiver or failure to insist on strict compliance with such obligation, covenant, Contract, or condition will not operate as a waiver of, or estoppel with respect to, any subsequent or other failure.

12.1.2 Consent. Whenever this Contract requires or permits consent by or on behalf of any party to this Contract, such consent will be given in a manner consistent with the requirements for a waiver of compliance as set forth in Section 12.2.1.

12.2 Payment of Fees and Expenses. Except as set forth in Section 12.5, each party to this Contract will be responsible for, and will pay, all of its own fees and expenses, including those of its lawyers and accountants, incurred in the negotiation and preparation of this Contract.

12.3. Binding Effect. This Contract is binding on and inures to the benefit of the parties and their respective heirs, personal representatives, successors, and permitted assigns.

12.4 Assignment. Neither this Contract nor any of the rights, interests, or obligations under this Contract may be assigned by any party without the prior written consent of the other parties, which consent will not be unreasonably withheld.

12.5 No Third-Party Beneficiaries. Nothing in this Contract, express or implied, is intended or may be construed to confer on any person, other than the parties to this Contract, any right, remedy, or claim under or with respect to this Contract.

12.6 Notices. All notices and other communications under this Contract must be in writing and will be deemed to have been given if delivered personally, sent by facsimile (with confirmation), mailed by certified mail, or delivered by an overnight delivery service (with confirmation) to the parties at the following addresses or facsimile numbers (or at such other address or facsimile number as a party may designate by like notice to the other parties):

To: Jim Kenworthy
Project Manager
Klamath County Fire District No. 1
143 North Broad Street
Klamath Falls, OR 97601
Fax: (541) 884-6920
Email: jkenworthy@kcf1.com

To: Peck Smiley Ettlin
Hans Ettlin, AIA, CSI
4412 SW Corbett, Portland, OR 97239
Fax: (503) 248-0223
Email: hans@psearchs.com

Any notice or other communication will be deemed to be given (a) on the date of personal delivery, (b) at the expiration of the 7th day after the date of deposit in the United States mail, or (c) on the date of confirmed delivery by facsimile or overnight delivery service.

12.7 Attorney Fees. If any arbitration, suit, or action is instituted to interpret or enforce the provisions of this Contract, to rescind this Contract, or otherwise with respect to the subject matter of this Contract, the prevailing party will be entitled to recover from the losing party its reasonable attorney fees, paralegal fees, expert fees, and all other fees, costs, and expenses actually incurred and reasonably necessary in connection therewith, as determined by the judge or arbitrator at trial, arbitration, or other proceeding, or on any appeal or review, in addition to all other amounts provided by law.

12.8 Amendments. This Contract may be amended only by an instrument in writing executed by all the parties, which writing must refer to this Contract.

12.9 Construction. The captions used in this Contract are provided for convenience only and will not affect the meaning or interpretation of any provision of this Contract. All references in this Contract to “Section” or “Sections” without additional identification refer to the Section or Sections of this Contract. All words used in this Contract will be construed to be of such gender or number as the circumstances require. Whenever the words “include” or “including” are used in this Contract, they will be deemed to be followed by the words “without limitation.”

12.10 Facsimile Signatures. Facsimile transmission of any signed original document, and retransmission of any signed facsimile transmission, will be the same as delivery of an original. At the request of any party, the parties will confirm facsimile transmitted signatures by signing an original document.

12.11 Further Assurances. Each party agrees to execute and deliver such other documents and to do and perform such other acts and things as any other party may reasonably request to carry out the intent and accomplish the purposes of this Contract.

12.12 Time of Essence. Time is of the essence with respect to all dates and time periods set forth or referred to in this Contract.

12.12 Governing Law. This Contract will be governed by and construed in accordance with the laws of the state of Oregon, without regard to conflict-of-laws principles.

12.13 Injunctive and Other Equitable Relief. The parties agree that the remedy at law for any breach or threatened breach by a party may, by its nature, be inadequate, and that in addition to damages, the other parties will be entitled to a restraining order, temporary and permanent injunctive relief, specific performance, and other appropriate equitable relief, without showing or proving that any monetary damage has been sustained.

12.14 Venue. Any action or proceeding seeking to enforce any provision of this Contract or based on any right arising out of this Contract must be brought against any of the parties in Klamath County Circuit Court of the State of Oregon or, subject to applicable jurisdictional requirements, in the United States District Court for the District of Oregon, and each of the parties consents to the jurisdiction of such courts (and of the appropriate appellate courts) in any such action or proceeding and waives any objection to such venue.

12.15 Exhibits/Attachments. The exhibits or attachments referenced in this Contract are part of this Contract as if fully set forth in this Contract.

12.17 Severability. If any provision of this Contract is deemed to be invalid or unenforceable in any respect for any reason, the validity and enforceability of such provision in any other respect and of the remaining provisions of this Contract will not be impaired in any way.

12.18 Entire Contract. This Contract (including the documents and instruments referred to in this Contract) constitutes the entire agreement and understanding of the parties with respect to the subject matter of this Contract and supersedes all prior understandings and agreements, whether written or oral, among the parties with respect to such subject matter.



SAMPLE GMP AMENDMENT Construction Manager/General Contractor

Project Name:

CM/GC Contractor:

This Contract is changed as follows:

1. Pursuant to Section 2.2 of the CM/GC General Conditions, dated _____ between Klamath County Fire District 1 (KCFD NO. 1) and _____ (the Construction Manager), for _____ the Project, KCFD NO. 1 and Construction Manager establish a Guaranteed Maximum Price and Contract Time for the Work as forth below.
2. The Construction Manager's Guaranteed Maximum Price for the Work, including the estimated Cost of the Work as defined in Article 6 and The Construction Manager's Fee as defined in Article 5 is _____ (\$000,000.00).
3. The Work shall commence on or before _____ and shall be substantially complete within _____ calendar days. The Contractor has made allowances for normal inclement weather indigenous to the Project site.
4. The price and time stated above is for the performance of the Work in accordance with the Contract Documents listed and attached to this Amendment and marked Exhibits A through B, as follows:
 - a. Exhibit A – Drawings, Specifications, addenda, General and Supplementary and Other Conditions of the Contract dated: _____
 - b. Exhibit B – Completion Schedule dated: _____
5. Unless amended, all other terms and conditions of the Contract shall remain in full force and effect.

Owner: Klamath County Fire District 1

Construction Manager:

Project Manager

Date

Project Manager

Date

Board Authority

Date

Principal

Date

Not a valid until all signatories complete



EXHIBIT "A" TO AMENDMENT #1 SAMPLE

This is EXHIBIT "A" dated _____ attached hereto and made a part of the Form of Agreement between Klamath County Fire District 1 and _____ (the Construction Manager)

CONTRACT DOCUMENTS

The "Contract Documents" consist of the following:

RFP 12-01	Dated:
Proposal from CM/GC	Dated:
CM/GC Contract between Owner and Contractor	Dated:
Certificate of Worker's Compensation Insurance	Dated:
Certificate of Liability Insurance	Dated:
Addendum Number	Dated:

Amendment #1

Contract Plans & Specifications	Dated:
Specification:	Dated:
Drawings Sheets	Dated:
Performance Bond:	Dated:
Payment Bond:	Dated:

Unit Prices:

Allowances:

Alternates:

Notes:

Exhibit B – Completion Schedule

DRAFT

INSURANCE COVERAGE REQUIREMENTS

The insurance coverage's indicated below are a summary of the minimum requirements acceptable to District. The specific requirements for a project are as outlined in the Contract Documents. A current Certificate of Insurance from a company authorized to provide insurance in the State of Oregon and is rated A VII or better, evidencing these coverages and naming Klamath County Fire District 1 as an additional insured must be on file in our office prior to the commencement of work or payment on any Klamath County Fire District 1 project.

It is preferred that the certificate of insurance be on the Accord form. Other certificates of insurance will be accepted.

<u>TYPE OF INSURANCE</u>		<u>LIMITS OF LIABILITY</u>	
		Each Occurrence	Aggregate
GENERAL LIABILITY – OCCURRENCE FORM			
Comprehensive Form	Bodily Injury	\$1,000,000	\$2,000,000
Premises - Operations	Property Damage	\$1,000,000	\$2,000,000
Products & Completed Operations		\$1,000,000	\$2,000,000
Contractual Liability		\$1,000,000	\$2,000,000
Contractors Pollution Liability		\$1,000,000	\$2,000,000
AUTOMOBILE LIABILITY			
✓ Comprehensive Form	Bodily Injury (Each Person)	\$1,000,000	
✓ Owned	Bodily Injury (Each Accident)	\$1,000,000	
✓ Hired	Property Damage OR	\$1,000,000	
✓ Non-Owned	Bodily Injury & Property Damage Combined Single Limit	\$1,000,000	
EXCESS LIABILITY (Over and above automobile and general liability)			
✓ Umbrella Form	Bodily Injury/Property Damage Combined	\$5,000,000	
WORKER'S COMPENSATION		Per Oregon Revised Statues	
EMPLOYER LIABILITY		\$500,000	
OTHER			
Builder's All Risk	Amount of Contract Price	\$ _____	
Errors & Omissions (Professional Liability)		\$1,000,000	

The Contractor's insurance company must provide a standard certificate of insurance form showing the required coverage and modified to conform to the following endorsement. The following endorsement must also be attached provided the required coverage is clearly evidenced.

INSURANCE ENDORSEMENT

The Contractor certifies that the policies listed on the attached Certificate of Insurance are hereby endorsed as follows:

1. Klamath County Fire District 1; the Klamath County Fire District 1 Board of Directors; and all other elected or appointed officials; and all agents and employees of Klamath County Fire District 1 while acting in their capacity as such, shall be named as additional insured, but only as respects the contract between the above insured and Klamath County Fire District 1.
2. This policy(ies) shall be considered as primary insurance and exclusive of any insurance carried by Klamath County Fire District 1, and the insurance evidenced by this certificate shall be exhausted first, notwithstanding the fact that Klamath County Fire District 1 may have other valid and collectible insurance covering the same risk.
3. This policy(ies) shall not be canceled or reduced in coverage until after thirty (30) days written notice of such cancellation or reduction in coverage shall have been mailed to certificate holder.

Convenience Forms

PERFORMANCE BOND

KNOW ALL PERSONS BY THESE PRESENTS, that we _____

as PRINCIPAL, and _____

a corporation, duly authorized to do a general surety business in the State of Oregon, as SURETY, and jointly and severally held and bound unto Klamath County Fire District 1, Klamath Falls, Oregon the OBLIGEE herein, in the

sum of _____ (dollars) (\$) _____ for the payment of which we jointly and severally bind ourselves, our heirs, executors, administrators, successors, and assigns, firmly by these presents:

THE CONDITION OF THIS BOND, NUMBER _____, IS SUCH THAT

WHEREAS, _____
(Contractor)

the PRINCIPAL herein, on the _____ day of _____, 20__ entered into a contract with the OBLIGEE which Contract Documents generally consist of the Construction Manager/General Contractor Contract, Request for proposal, General Conditions, Specifications, and Plans all as incorporated herein by reference and made a part hereof, whereby said PRINCIPAL undertakes to do all labor, furnish all plant and equipment, and furnish all material, in accordance with all the terms and conditions set forth in said contract documents; and to promptly make payment for all labor, services, material, and sums due the workmen's compensation board or equivalent, the collector of internal revenue, and the treasurer of the State of Oregon; and to save harmless the OBLIGEE from any claim for damages or injury to property or persons arising by reason of said Work, as set out more fully in said Contract Documents; and to do and perform all things in said Contract Documents required, in the time and manner under the terms and conditions therein set forth; and in conformity with all laws, local, state and national, applicable thereto.

NOW, THEREFORE, if said PRINCIPAL herein shall promptly pay all persons furnishing labor, services and material, and workmen's compensation insurance or equivalent, and social security and unemployment compensation, to them and to the subcontractor(s), or to their assigns, on or about said work; and shall, commencing with the date hereof and continuing for one year after the complete performance of the contract and the final acceptance of the work in the contract, save harmless the OBLIGEE, its officers and agents, from all claims therefore, or form any claim for damages or injury to property or persons arising by reason of said work; and shall, in the time and manner, and under the terms and conditions prescribed, well and faithfully do, perform, and furnish all matters and things as by them in said contract undertaken, and as by law: local, state and national, prescribed, then this obligation shall be void; but otherwise it shall remain in full force and effect.

PROVIDED, HOWEVER, that this bond is subject to the following conditions:

(a) All material persons, and all persons who shall supply such laborers, mechanics, or subcontractors with material, supplies or provisions for carrying on such Work, shall have a direct right of action against the PRINCIPAL and SURETY on this bond, second only to the right of the OBLIGEE under this bond, which right of action shall be asserted in proceedings instituted in the appropriate court of the State of Oregon, and insofar as permitted by the laws of Oregon, such right of action shall be asserted in a proceeding instituted in the name of the OBLIGEE to the use and benefit of the person, firm, or corporation instituting such action and of all other persons, firms, or corporations having claims hereunder, and any other person, firm or corporation having a claim hereunder shall have the right to be made a party to such proceeding (but not later than one year after the complete performance of said contract and final acceptance of the work in the contract) and to have such claim adjudicated in such action and judgment rendered thereon.

(b) In no event shall the SURETY be liable for a greater sum than the penalty of this bond.

(c) The said SURETY for the value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract or to the work to be performed there under or the specifications accompanying the

same shall in any way affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract or to the work or to the specifications.

(d) The PRINCIPAL herein shall faithfully and truly observe and comply with the terms of the contract and shall well and truly perform all matters and things by him undertaken to be performed under said contract upon the terms proposed therein and shall promptly make payments to all persons supplying labor or material for any prosecution of the work provided for in such contract and shall not permit any lien or claim to be filed or prosecution against the OBLIGEE, on account of any labor or material furnished, and shall promptly pay all contributions or amount due the workmen's compensation board or equivalent and all contributions or amounts due the state employment compensation trust fund incurred in the performance of said contract, and make payment to any person, co partnership, association, or corporation furnishing medical, surgical and hospital care or other needed care and attention incidental to sickness or injury to the employees of such PRINCIPAL, pursuant to the laws of this state and any contract entered into pursuant thereto or collected or deducted from the wages of said employees pursuant to any law, contract or agreement for the purpose of providing or paying for such services, and shall do all things required of said PRINCIPAL by the laws of this state.

This bond is given and received under the authority of ORS 279C, the provisions of which hereby are incorporated into this bond and made a part hereof.

IN WITNESS WHEREOF, the parties hereto have caused this bond to be executed on, this _____ day of _____, 20____

PRINCIPAL (SEAL)

WITNESSES: (SEAL)

SURETY (SEAL)

The attorney-in-fact, who executes this bond in behalf of the surety company, must attach a copy of a power-of-attorney as evidence of the authority of the signer.

PAYMENT BOND

KNOW ALL PERSONS BY THESE PRESENTS, that we _____

as PRINCIPAL, and _____

a corporation, duly authorized to do a general surety business in the State of Oregon, as SURETY, and jointly and severally held and bound unto Klamath County Fire District 1, Klamath Falls, Oregon the OBLIGEE herein, in the

sum of _____ (dollars) (\$) _____ for the payment of which we jointly and severally bind ourselves, our heirs, executors, administrators, successors, and assigns, firmly by these presents:

THE CONDITION OF THIS BOND, NUMBER _____, IS SUCH THAT

WHEREAS, _____
(Contractor)

the PRINCIPAL herein, on the _____ day of _____, 20__ entered into a contract with the OBLIGEE which Contract Documents generally consist of the Construction Manager/General Contractor Contract, Request for proposal, Certificates of Insurance, General Conditions, Specifications, and Plans all as incorporated herein by reference and made a part hereof, whereby said PRINCIPAL undertakes to do all labor, furnish all plant and equipment, and furnish all material, in accordance with all the terms and conditions set forth in said contract documents; and to promptly make payment for all labor, services, material, and sums due the workmen's compensation board or equivalent, the collector of internal revenue, and the treasurer of the State of Oregon; and to save harmless the OBLIGEE from any claim for damages or injury to property or persons arising by reason of said Work, as set out more fully in said Contract Documents; and to do and perform all things in said Contract Documents required, in the time and manner under the terms and conditions therein set forth; and in conformity with all laws, local, state and national, applicable thereto.

NOW, THEREFORE, if said PRINCIPAL herein shall promptly pay all persons furnishing labor, services and material, and workmen's compensation insurance or equivalent, and social security and unemployment compensation, to them and to the subcontractor(s), or to their assigns, on or about said work; and shall, commencing with the date hereof and continuing for one year after the complete performance of the contract and the final acceptance of the work in the contract, save harmless the OBLIGEE, its officers and agents, from all claims therefore, or form any claim for damages or injury to property or persons arising by reason of said work; and shall, in the time and manner, and under the terms and conditions prescribed, well and faithfully do, perform, and furnish all matters and things as by them in said contract undertaken, and as by law: local, state and national, prescribed, then this obligation shall be void; but otherwise it shall remain in full force and effect.

PROVIDED, HOWEVER, that this bond is subject to the following conditions:

(a) All material persons, and all persons who shall supply such laborers, mechanics, or subcontractors with material, supplies or provisions for carrying on such Work, shall have a direct right of action against the PRINCIPAL and SURETY on this bond, second only to the right of the OBLIGEE under this bond, which right of action shall be asserted in proceedings instituted in the appropriate court of the State of Oregon, and insofar as permitted by the laws of Oregon, such right of action shall be asserted in a proceeding instituted in the name of the OBLIGEE to the use and benefit of the person, firm, or corporation instituting such action and of all other persons, firms, or corporations having claims hereunder, and any other person, firm or corporation having a claim hereunder shall have the right to be made a party to such proceeding (but not later than one year after the complete performance of said contract and final acceptance of the work in the contract) and to have such claim adjudicated in such action and judgment rendered thereon.

(b) In no event shall the SURETY be liable for a greater sum than the penalty of this bond.

(c) The said SURETY for the value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract or to the work to be performed there under or the specifications accompanying the

same shall in any way affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract or to the work or to the specifications.

(d) The PRINCIPAL herein shall faithfully and truly observe and comply with the terms of the contract and shall well and truly perform all matters and things by him undertaken to be performed under said contract upon the terms proposed therein and shall promptly make payments to all persons supplying labor or material for any prosecution of the work provided for in such contract and shall not permit any lien or claim to be filed or prosecution against the OBLIGEE, on account of any labor or material furnished, and shall promptly pay all contributions or amount due the workmen's compensation board or equivalent and all contributions or amounts due the state employment compensation trust fund incurred in the performance of said contract, and make payment to any person, co partnership, association, or corporation furnishing medical, surgical and hospital care or other needed care and attention incidental to sickness or injury to the employees of such PRINCIPAL, pursuant to the laws of this state and any contract entered into pursuant thereto or collected or deducted from the wages of said employees pursuant to any law, contract or agreement for the purpose of providing or paying for such services, and shall do all things required of said PRINCIPAL by the laws of this state.

This bond is given and received under the authority of ORS 279C, the provisions of which hereby are incorporated into this bond and made a part hereof.

IN WITNESS WHEREOF, the parties hereto have caused this bond to be executed on, this _____ day
of _____, 20__

(SEAL)
PRINCIPAL

(SEAL)
WITNESSES:

(SEAL)
SURETY

The attorney-in-fact, who executes this bond in behalf of the surety company, must attach a copy of a power-of-attorney as evidence of the authority of the signer