

CONSTRUCTION MANAGER
AND
GENERAL CONTRACTOR
AGREEMENT

between

Oregon State University (OSU)

(Owner)

and

(Construction Manager)

Dated _____, 20__

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SAMPLE

CONSTRUCTION MANAGER AT-RISK
AND
GENERAL CONTRACTOR
AGREEMENT

THIS CONSTRUCTION MANAGER AND GENERAL CONTRACTOR AGREEMENT (this "Agreement") is made by and between Oregon State University ("OSU"), a public university (the "Owner"), and CONTRACTOR (the "Construction Manager"), shall become effective on the date this Contract has been signed by all Parties. Owner and Construction Manager agree as follows:

ARTICLE 1

DEFINITIONS AND GENERAL PROVISIONS

1.1 Definitions. The following terms have the meanings set forth below:

"Affiliate" shall mean an entity in which: (i) Construction Manager has a financial interest, (ii) such entity has a financial interest in Construction Manager, (iii) Construction Manager has a direct or indirect controlling interest, or (iv) such entity has a direct or indirect controlling interest in Construction Manager.

"Alternate" shall mean a scope of work that Construction Manager shall include in appropriate bid packages, such that Owner may, at its option and in its sole discretion, approve or disapprove the same as an additional component of the Work.

"Alternate Schedule" shall mean Construction Manager's separate and identifiable pricing and scheduling information for all Alternates, including in the GMP Qualifications and Assumptions, for possible addition to the Work.

"BIM" shall mean building information modeling, a design and construction modeling process, that shall be implemented during design and construction of the Project.

"BIM Model" shall mean the digital model or models produced during the design and construction of the Project.

"Business Inclusion and Diversity Program" shall have the meaning given in the General Conditions.

"Claim" shall have the meaning given in the General Conditions.

"Construction Contingency" shall mean separately identifiable contingency funds included in a GMP as set forth in *Section 7.8* of this Agreement.

"Construction Manager's Fee" shall have the meaning given in *Section 7.9.1* of this Agreement.

"Construction Manager's Field Work" shall mean customary Work of a minor nature not feasible to Subcontract, arising from: exclusions by a Subcontractor not resolved during Subcontract buy-out, deviations in Work of Subcontractors that are not Defective Work, unaccounted-for complexity of Work coordination, and other similar reasons typical in the industry; provided, however, Construction Manager reasonably determines self-performing such Work is in Owner's best interests, obtains Owner Parties' written consent prior to executing such Work, and the cost of such Work is separately identified in Construction Manager's Applications for Payment.

“Construction Drawings and Specifications” shall mean the Owner-approved Drawings and Specifications that Contractor will use to execute Work.

“Contract Documents” shall have the meaning given in the General Conditions.

“Contract Sum” shall have the meaning given in the General Conditions.

“Cost of the Work” shall have the meaning given in *Section 7.5* of this Agreement.

“Day” shall have the meaning given in the General Conditions.

“Deliverable Portion of Work” shall have the meaning given in the General Conditions.

“Design-Assist” shall mean a Subcontractor’s services assisting Construction Manager in its performance of preconstruction services.

“Design-Build” shall mean a Subcontractor’s professional design services for a portion of the Project, including its contribution to the Project Manual and BIM Model, as well as its performance of the Work that is the subject of its professional design services.

“Design Development Documents” shall mean the Owner-approved Drawings and Specifications prepared from and further refining Schematic Design Documents or GMP Drawings and Specifications, as the case may be.

“Design Professional” shall mean **[CAMERON MCCARTHY]** or other professional organization that Owner engages from time to time to perform Project services, acting in accordance with ORS Chapter 671 (Architects) or ORS Chapter 672 (Engineers) and administrative rules adopted pursuant to the same.

“Design Professional’s Statement of Incomplete Documents” shall mean Design Professional’s detailed written description of intended, but incomplete, design and documentation that is material to the GMP Drawings and Specifications for which the statement is issued.

“Early Work” shall mean Work, including preparatory activities and long lead time materials, that Construction Manager shall perform under an Early Work Amendment (defined below) prior to Owner and Construction Manager signing a GMP Amendment that includes such Work.

“Early Work Amendment” shall mean Owner’s written order describing and authorizing Construction Manager to proceed with certain Early Work in a form substantially similar to attached *Exhibit B*.

“Estimated Contract Sum” shall mean Construction Manager’s preliminary estimate of the Contract Sum generated during the Project’s preconstruction phase for Owner’s use during Project planning.

“Final Completion” shall have the meaning given in the General Conditions.

“General Conditions” shall mean the General Conditions of the Contract for Construction attached as *Exhibit A*.

“General Conditions Work” shall mean that portion of a Deliverable Portion of Work required to support construction operations that is not included within Construction Manager’s Fee and that is set forth on attached *Exhibit C*.

“General Conditions Work Cost Limit” shall mean the maximum amount Owner will pay for the General Conditions Work, as set forth in the applicable GMP Amendment.

“GMP” shall mean guaranteed maximum price.

“GMP Amendment” shall mean an amendment to this Agreement, signed by Owner and Construction Manager, determined in accordance with *Article 5*, issued in the form of *Exhibit D*, establishing Construction Manager’s GMP and GMP Qualifications and Assumptions, for each Deliverable Portion of Work.

“GMP Amendments Total” shall mean the sum of all GMPs set forth in all GMP Amendments.

“GMP Drawings and Specifications” shall mean the Owner-approved Drawings and Specifications meeting or exceeding the criteria established in *Section 5.11*, upon which a GMP Amendment will be based.

“GMP Qualifications and Assumptions” shall mean, following Owner Parties’ approval, Construction Manager’s written statement of qualifications to, exceptions to, and assumptions in, a GMP, all based upon the applicable GMP Drawings and Specifications and the applicable Design Professional’s Statement of Incomplete Documents.

“Guaranteed Substantial Completion Date” shall mean the date, as set forth in the applicable GMP Amendment, by which Construction Manager shall achieve Substantial Completion of the applicable Deliverable Portion of Work.

“Key Personnel” shall have the meaning given in *Section 4.8* of this Agreement.

“Liquidated Damages” shall have the meaning given in *Section 8.3* of this Agreement.

“Net Savings” shall have the meaning given in *Section 7.8* of this Agreement.

“Notice to Proceed” shall have the meaning given in the General Conditions.

“Owner Parties” shall mean, individually or collectively, as the case may be, Owner, Design Professional and Contract Administrator provided, however, Owner shall have the exclusive right to change at any time such parties so designated as Owner Parties.

“Owner-Supplied Equipment and Materials” shall mean equipment and materials Owner procures and supplies for Construction Manager’s incorporation in the Project as part of the Work.

“Owner’s Representative” shall mean N/A, or its successor as designated by Owner, to whom Owner has delegated some or all of Owner’s Project duties and responsibilities.

“Preconstruction Services Cost Limit” shall mean the maximum amount Owner will pay for the *Article 5* preconstruction services, as set forth in *Exhibit E*.

“Project Development Team” shall mean, collectively, Owner Parties, Construction Manager, and other parties Owner may designate from time to time.

“Project GMP” shall mean the sum of the GMP Amendments Total, the Preconstruction Services Cost Limit, and all other lump-sum and not-to-exceed prices pertaining to the Project to which Construction Manager and Owner agree in writing.

“Schematic Design Documents” shall mean the Owner-approved Drawings and Specifications that illustrate the volume, scale, and relationship of massing, components, and materials, of the Deliverable Portion of Work.

“Self-Performed Work” shall mean Work substantially performed by Construction Manager’s own forces or the forces of any Affiliate.

“Standard of Care” shall mean the professional standard that prevails in comparable areas throughout the United States among construction and construction management firms experienced

with, and performing the construction and construction management of, projects similar to the scope, quality, and complexity of the Project.

“Subcontract Savings” shall mean Construction Manager’s savings during Subcontract buyout following a GMP Amendment.

“Subcontract Losses” shall mean Construction Manager’s losses during Subcontract buyout following a GMP Amendment.

“Supporting Documents” shall have the meaning given in the General Conditions.

“Target GMP” shall mean the Project cost limitations established for a Deliverable Portion of Work during preconstruction.

“Value Engineering” means analysis of systems, equipment, and Materials, in order to identify and propose to Owner Parties quality alternatives that have equivalent characteristics to those specified, but that can be furnished at a lower installed price or that are more desirable to Owner. Value Engineering proposals shall include a life-cycle cost assessment describing the capital and operational cost of a particular item during the Project’s estimated useful life. Owner shall have the sole authority to approve and disapprove any Value Engineering proposal.

1.2 Other Terms. In addition to the terms defined in this *Article 1*, other terms are defined throughout this Agreement in sections relevant to their use, and in the General Conditions. If terms are not defined in this Agreement or the General Conditions, they shall have their well-known technical or construction industry meanings.

1.3 Context. As the context of each provision of this Agreement changes, so too shall its verbs and nouns. Specifically, terms in the singular and the plural shall include one another, and terms in the feminine, masculine, or neuter, shall include one another. Use of the word “including” throughout this Agreement shall mean “including without limitation” and shall not be deemed a limitation but instead an illustration.

1.4 Incorporation by Reference. All exhibits, schedules, and other attachments to this Agreement, including the General Conditions, shall be incorporated in and integral to this Agreement by their reference.

1.5 General Conditions. Construction Manager is referred to in the General Conditions as “Contractor.”

ARTICLE 2

RELATIONSHIP OF THE PARTIES

2.1 Relationship of the Parties. Construction Manager acknowledges and accepts that by the terms of the Contract Documents, Owner places its trust and confidence in Construction Manager. As such, Construction Manager covenants to: (i) cooperate with Owner Parties; (ii) exercise its best skill and judgment in furthering Owner’s interests for the benefit of the Project, including delivering efficient construction, administration, management, and supervision, services; (iii) furnish at all times an adequate supply of labor and Materials; and (iv) perform the Work in conformance with the Contract Documents and in an expeditious and economical manner.

2.2 Project Development Team and Partnering. Construction Manager shall regularly communicate with and shall cooperate with the Project Development Team for the duration of the Project. Early in the Project, the Project Development Team, including Construction Manager, shall

jointly develop a comprehensive project facilitation process. Construction Manager shall actively participate in such project facilitation process and each participant shall bear its own costs of participation.

2.3 RESERVED.

2.4 Project Financing. If applicable, Construction Manager shall reasonably assist during Owner's Project financing process. Construction Manager shall cooperate with lenders financing any portion of the Project and shall sign any amendments to the Agreement, and provide information and documentation that such lenders may reasonably require. Construction Manager covenants it will make available upon reasonable request, Site access and Project information including construction progress and expenditures, such that Owner's lenders, bond trustees, and rating agencies, may inspect or cause its agents to inspect, the Work, and review pay applications. Construction Manager covenants to disclose to any financial institution financing the Project information concerning Construction Manager's financial status, credit rating, and similar information. However, nothing in the Contract Documents shall be construed to require Owner to obtain a loan for the Work.

If Owner's Project construction loan is secured by a mortgage on real or personal property at the Site, this Agreement may be assigned to Owner's construction lender as collateral. Construction Manager agrees to subordinate, and shall cause all Subcontractors and Suppliers to subordinate, their construction liens and bond claims to the Project construction loan. Construction Manager agrees to sign, and shall require Subcontractors and Suppliers to sign, subordinations and other agreements as the Project's lenders may reasonably require.

ARTICLE 3

OWNER'S RIGHTS AND RESPONSIBILITIES

3.1 Timely Response. Owner Parties shall render decisions in a timely manner to avoid unreasonable delay in the orderly progress of the Work; provided, however, Construction Manager shall timely advise Owner Parties of the time requirements pertaining to such decisions.

3.2 Owner's Personnel.

3.2.1 Project Consultants. Owner has separate agreements with Design Professional, Owner's Representative, and Owner's other Project consultants, and although referred to in, are not parties to, this Agreement. Owner reserves the right to change either Owner's Representative, Design Professional, or both, and will give Construction Manager prompt written notice of any such change. None of Owner's Representative's or Design Professional's services supplant or modify any of Construction Manager's obligations, whether express, implied, or customary.

3.2.2 Communications. Owner's Representative shall give both Construction Manager and Design Professional written direction on behalf of Owner. Unless specifically authorized, Construction Manager shall communicate with Owner, through Owner's Representative. Communications to and from Owner's Separate Contractors shall be through Owner's Representative. Construction Manager shall communicate with Design Professional's consultants through Design Professional. All communications to and from Subcontractors and Suppliers shall be through Construction Manager.

3.2.3 Control. Owner Parties shall not be deemed to have control or charge of, and will not be responsible for acts or omissions of, Construction Manager, Subcontractors, or their respective agents or employees, or any other Persons performing Work.

ARTICLE 4

CONSTRUCTION MANAGER'S RIGHTS AND RESPONSIBILITIES

4.1 Standard of Care. Construction Manager covenants it and its Subcontractors will perform services and the Work in accordance with the recognized standards of construction and construction management industry practices. Construction Manager further covenants to ensure all of its professional services and those performed on its behalf are in accordance with the Standard of Care.

4.2 Construction Manager's Role Generally. Construction Manager shall fully, properly, and timely, perform all services and Work, as required by the Contract Documents, to furnish Owner with a first-class, complete, fully-functional Project, capable of being used for its intended purpose. Throughout the Project, Construction Manager shall coordinate and manage the building process as an independent contractor, continuously monitor the schedules and budgets pertaining to the Work, and recommend adjustments to the Project as necessary to ensure completion of the Project in the most expeditious and efficient manner possible. During the Project's construction phase, Construction Manager shall be the Project's general contractor.

4.3 Cooperation. Construction Manager covenants to support a collaborative and cooperative relationship among it, Owner, Owner's Representative, Design Professional, Owner's Separate Contractors, and other Project participants. Construction Manager shall obtain and transfer, or assist others to obtain and transfer, warranties, and to perform warranty and inspection Work for the Project through the expiration date of the applicable warranty period.

4.4 Progress Reports. Construction Manager shall keep Owner Parties informed of the progress of the Work. Construction Manager shall submit to Owner Parties monthly Progress Reports, which shall include: (i) estimated percentages of completion; (ii) Work completed for the reporting period; (iii) an updated Project Schedule; (iv) an updated Construction Schedule; (v) an updated Submittal log including a summary of outstanding Submittals; (vi) pending and approved changes under *Article 10* of the General Conditions; and (vii) test and inspection reports.

4.5 Construction Manager's Personnel and Consultants. Construction Manager's personnel shall include those described in Construction Manager's staff chart in attached *Exhibit F* (the "Key Personnel"). Construction Manager shall submit to Owner Parties for approval within fifteen (15) Days of the Effective Date a list of the Key Personnel, which shall include the background, experience, and qualifications, of each of the Key Personnel. Following Owner Parties' approval, Construction Manager shall use best efforts to keep the Key Personnel assigned to the Project and performing in accordance with Owner's expectations and shall not assign to the Project any other senior personnel without Owner Parties' prior written approval.

4.5.1 Construction Manager shall promptly replace any personnel assigned to the Work upon Owner Parties' reasonable objection to such personnel.

4.5.2 In addition to the staff chart referenced above, Construction Manager shall include in *Exhibit F* its individual scheduled payment rates for all Key Personnel and Project personnel. Such rates shall include the pro rata portion of the cost of (a) mandatory and customary contributions and benefits pursuant to Construction Manager's company-wide policy and (b) applicable collective bargaining agreements.

4.5.3 In the event Construction Manager no longer employs any of the Key Personnel, Construction Manager shall promptly notify Owner Parties and shall use best efforts to provide a permanent replacement suitable to Owner Parties within ten (10) Days after such event.

4.5.4 Construction Manager represents that all persons under its direction delivering services or performing Work who are required by Applicable Laws to be licensed are so licensed and will remain licensed for the duration of the Agreement.

4.6 Governmental Approvals. Construction Manager shall secure and assist Owner to secure all Governmental Approvals.

4.7 Service Plan. Construction Manager shall submit to Owner Parties for review, within fifteen (15) Days of the Effective Date, its Project service plan. The service plan shall clearly communicate to Owner Parties Construction Manager's Project management plan including Project staffing and a Work Plan, all as set forth below.

4.7.1 Forms and Procedures. Owner Parties may develop forms and procedures for the administration and tracking of the Work and the Contract Documents. Construction Manager agrees it shall incorporate into its service plan all such forms and procedures as Owner Parties may require.

4.7.2 Project Staffing. Construction Manager shall include in its service plan a detailed staffing plan describing Construction Manager's and its consultants' services, including those of the Key Personnel. The staffing plan shall include, at a minimum, (i) the names of all individuals assigned to each Project phase; (ii) a brief description of such individuals' Project roles and responsibilities; and (iii) anticipated percentage of working time such individuals will expend performing services or Work for each Project phase.

4.7.3 Work Plan. Construction Manager shall include in its service plan and shall implement throughout the Project an updated and comprehensive work plan defining and describing Construction Manager's (and its Subcontractor's and consultants') deliverables and tasks throughout the design and construction process for each Deliverable Portion of Work, as well as procedures, schedules, documentation, and quality control plans (collectively, the "Work Plan"). The Work Plan shall also include Construction Manager's points of contact, file type and data transfer methods, and other protocols for everyday communications and document processing during preconstruction, construction, and post-construction.

4.7.4 Quality Control. As part of its service plan, Construction Manager shall actively participate in the Project's preconstruction coordination and quality review meetings upon completion of: (i) Schematic Design Documents; (ii) Design Development Documents; (iii) GMP Drawings and Specifications; (iv) Construction Drawings and Specifications, and immediately prior to the issuance of each bid package.

4.8 Owner-Supplied Goods. Construction Manager acknowledges Owner may supply the Project certain Owner-Supplied Equipment and Materials. Construction Manager shall cooperate with Owner Parties and shall provide information and assistance as Owner Parties may reasonably request to investigate such Owner-Supplied Equipment and Materials. Construction Manager's assistance may include obtaining alternate bids such that Owner Parties may understand the cost of potential Owner-Supplied Equipment and Materials versus the cost of those same goods supplied by Subcontractors.

4.8.1 If Owner elects to procure Owner-Supplied Equipment and Materials for the Project, Owner Parties, together with Construction Manager, will develop an agreed upon responsibility matrix for the same. However, unless Owner and Construction Manager otherwise agree in writing, the Work shall include coordination, handling, inspecting, preparing, installing, commissioning, and testing such Owner-Supplied Equipment and Materials.

4.8.2 Owner and Construction Manager agree they will sign amendments and other documentation necessary to memorialize their agreement to matters related to the Owner-Supplied Equipment and Materials.

4.9 General Conditions Work. Construction Manager shall furnish and supervise the General Conditions Work. Construction Manager shall be responsible for, and shall pay without Owner's reimbursement, all costs and expenses, including Costs of the Work, arising from the General Conditions Work that are in excess of the General Conditions Work Cost Limit.

4.10 Building Information Modeling.

4.10.1 Protocols. Owner Parties and Construction Manager may employ BIM to design, engineer, and construct, the Project.

If applicable, Owner Parties and Construction Manager shall meet to establish written protocols governing the BIM Model (the "BIM Protocols") including file formats, levels of development, authorized uses, and development and safekeeping responsibilities, governing all parties developing the Project's BIM Models. When completed, the BIM Protocols shall govern all parties' development of the Project's BIM Models.

Construction Manager shall be responsible for management, development, and hosting of its BIM Model, its Subcontractors' BIM Models, and the Project's integrated BIM Model. Construction Manager shall have ultimate responsibility to perform clash detection among all BIM Models during the preparation of the Construction Drawings and Specifications and through Final Completion of the Project.

Among Construction Manager's As-Built Documents due prior to Final Completion of each Deliverable Portion of Work, Construction Manager shall deliver to Owner an as-built BIM Model, built from its construction BIM Model, suitable for Owner's continued use during the lifecycle of that completed Work.

4.10.2 Ownership of BIM Models. Owner shall own at all times all of the Project's BIM Models. All parties modeling or otherwise submitting Project-specific data for modeling hereby transfer and convey to Owner all right, title, and interest, in and to, all such data and modeling and to the BIM Models.

4.11 OSU Sustainability Standards. Construction Manager agrees to use best efforts, including providing all reasonable documentation, to meet OSU's Sustainability Standards ([OSU's Design Standards](#)).

4.12 Other Obligations. Construction Manager shall perform all other obligations and provide all other services (a) set forth in the Contract Documents and (b) necessary to fully and properly complete the Work.

4.13 Limitation of Authority. Construction Manager shall have no authority to bind Owner without Owner's prior written approval. Construction Manager shall have authority to act on Owner's behalf only to the extent provided in the Contract Documents.

ARTICLE 5

PRECONSTRUCTION SERVICES

5.1 Preconstruction Services. Prior to commencing construction, Construction Manager shall provide preconstruction services set forth in this Agreement and as Owner Parties may reasonably request during each preconstruction phase.

5.2 Project Planning. Construction Manager shall jointly with Owner Parties schedule and attend regular meetings to consult, advise, and assist, Owner Parties on all aspects of the planning and design of the Project. Construction Manager shall review and comment on Owner's program statement, schedule requirements, and proposed budgets, each in terms of the other. Construction Manager shall assist Owner to refine its proposed budgets, including by generating and delivering to Owner Parties its Estimated Contract Sum, utilizing area, volume, or similar conceptual estimating techniques, and shall refine the Estimated Contract Sum based on Owner Parties' changes during Project planning until Owner approves a Project budget and Owner Parties set each Target GMP.

5.3 Project Scheduling.

5.3.1 Proposed Scheduling. During preconstruction activities, Construction Manager shall propose to Owner Parties and evaluate as requested, alternative schedules for delivery of the Project. Construction Manager shall also estimate and inform Owner Parties of affects such alternative schedules might have on the Estimated Contract Sum and Target GMPs.

5.3.2 Special Procurement Issues. Construction Manager shall investigate and recommend to Owner a schedule for the purchase of Materials and equipment requiring advance procurement (i.e., due to long lead times) and for Owner-Supplied Equipment and Materials. Construction Manager shall also work with Owner Parties to identify critical elements of the Work that may require special procurement, such as prequalification or alternative contracting methods.

5.3.3 Project Schedule. Construction Manager shall prepare in conjunction with Owner Parties, and periodically update, a preliminary Project Schedule. In addition to its other substantive requirements, the Project Schedule shall integrate the Work and Construction Manager's and Owner Parties' services. Construction Manager shall include the necessary activities and timelines to support the Work of which Construction Manager is aware or believes to be necessary, including off-site transportation, site work outside of the scope of the Work, and off-site utility extensions. Construction Manager and Owner Parties shall each furnish the other with proposed revisions to the preliminary Project Schedule and Construction Manager shall edit and revise the same until Owner approves. Construction Manager shall be responsible for updating the Project Schedule throughout the duration of the Project.

5.3.4 Construction Schedules. Construction Manager shall incorporate the relevant portions of the Project Schedule, into its Construction Schedules. Construction Manager shall include with its Estimated Contract Sum preliminary Construction Schedules for Owner Parties' review.

After Owner approves the Project budget, Construction Manager shall update and distribute with the Progress Report its approved Construction Schedules throughout the duration of the Work. Each such updated Construction Schedule shall conform to the Contract Documents' requirements and shall accurately reflect progress and remaining estimated durations of applicable Work.

5.4 Project Phasing. At appropriate times during preconstruction, including the Schematic Design Document phase and the Design Development Documents phase, Construction Manager shall discuss with Owner Parties its expected construction activities, division of Work, and efficient bidding

and awarding of Subcontracts. Construction Manager shall recommend to Owner Parties Project phasing and Work prioritization based on the labor and material markets, project logistics, and such other important factors including time of performance, overlapping trade jurisdictions, weather conditions, and provisions for temporary facilities for the Work.

In the event Owner chooses to proceed with the Project or the Work in phases, Construction Manager shall cooperate to economically and efficiently divide the Work into separate Deliverable Portions of Work to accommodate such phases and assist Design Professional to phase its issuance of Construction Drawings and Specifications to facilitate the same.

5.5 Cost and Constructability. Construction Manager shall work with Owner Parties to regularly estimate costs and analyze constructability of all major components and systems of the Work such that the Project's design and budget can timely develop together.

5.5.1 Cost Estimates. Construction Manager shall deliver and meet with Owner Parties to discuss detailed estimates of the Contract Sum, and updates to those detailed estimates, in accordance with this Agreement and on the dates set forth in the Project Schedule. Construction Manager's cost estimates shall use recognized and accepted industry techniques. In the event Construction Manager's cost estimate exceeds its applicable Target GMP, Construction Manager shall meet with Owner Parties to discuss changes and review alternatives necessary to establish a mutually acceptable GMP.

Upon request, Construction Manager shall estimate the costs of alternative designs or Materials to determine preliminary budgets and their possible economies, including those necessitated by special procurement issues, as set forth in *Section 5.3.2* above.

5.5.2 Constructability Analysis. Construction Manager shall, throughout the Project, analyze the: (i) feasibility of construction methods; (ii) availability and selection of Materials, building systems, and equipment (iii) availability of labor; and (iv) time requirements for procurement and construction. Based on its analysis, Construction Manager shall deliver, and meet with Owner Parties to discuss, its formal opinion of the constructability of the major systems and components of the Work, promptly after Design Professional issues the Schematic Design Documents and the Construction Drawings and Specifications and in accordance with the Project Schedule. Construction Manager's formal opinion shall include a review of the types and quantities of labor required for the Work and its availability and shall include recommendations to minimize adverse effects of labor shortages.

5.6 Value Engineering. Construction Manager shall furnish Owner Parties with cost reduction and Value Engineering analysis on all significant cost components of the Project by conducting a series of Value Engineering workshops during the Schematic Design Documents phase and the GMP Development process. Construction Manager shall prepare and distribute to the Project Development Team a formal Value Engineering report following each such workshop. In addition, throughout the Project, Construction Manager shall deliver to Owner Parties detailed, supported, Value Engineering proposals whenever Construction Manager or Owner Parties deem it prudent.

5.7 Energy Analysis. Construction Manager shall cooperate with Owner Parties and maximize energy efficiency in the Project by proposing, supporting, and estimating costs associated with energy related incentive programs with every construction cost estimate and as Owner Parties may request.

5.8 1% Art Program. If applicable, Construction Manager shall work with Owner Parties to incorporate into the Project's design and construction works of art from the Project's 1% for Art program. Construction Manager's costs to handle and install such art are properly included in Cost of

the Work. However, cost of the included art objects themselves, is not a Cost of the Work, and is not otherwise part of the GMP.

5.9 Schematic Design Documents Phase. Design Professional shall deliver to Construction Manager Schematic Design Documents on or before the applicable dates set forth in the Project Schedule.

Within fourteen (14) Days after Construction Manager receives Schematic Design Documents, Construction Manager shall deliver, with supporting data, and meet with Owner Parties to discuss, its revised cost estimate developed from those Schematic Design Documents and meet with Owner Parties to discuss the same. Construction Manager and Owner Parties shall diligently work to reconcile questions, gaps, and disagreements in the cost estimate.

If Construction Manager's reconciled Schematic Design Documents cost estimate exceeds the applicable Target GMP, Construction Manager shall promptly furnish Owner Parties with Value Engineering proposals that will cause the estimate to meet or be less than that Target GMP. Construction Manager and Owner Parties shall then meet to discuss such Value Engineering proposals and Construction Manager shall promptly recalculate its cost estimate incorporating any proposed changes Owner Parties select. Notwithstanding Construction Manager's estimate exceeding the Target GMP, Owner may, in its sole discretion, accept or reject any proposed changes.

Within twenty-one (21) Days after Construction Manager receives the Schematic Design Documents, and based on the outcome of the cost estimating process in *Section 5.5* above, Construction Manager shall meet with Owner Parties to deliver its Project scheduling, Project phasing, and constructability advice, analysis, and deliverables, all in accordance with *Sections 5.3, 5.4, and 5.5*, above. Construction Manager shall also suggest modifications to the Drawings and Specifications to improve their completeness and clarity.

5.10 Design Development Documents Phase. During design development, the Project Development Team shall meet weekly to review the Drawings and Specifications and discuss any material modifications from those previously issued.

Design Professional shall deliver to Construction Manager Design Development Documents on or before the dates set forth in the Project Schedule.

Within fourteen (14) Days after Construction Manager receives Design Development Documents, Construction Manager shall deliver, with supporting data, and meet with Owner Parties to discuss, its revised cost estimate incorporating the applicable Design Development Document information, and updating and refining, the applicable reconciled Schematic Design Document cost estimate (from *Section 5.9* above). Construction Manager and Owner Parties shall diligently work to reconcile questions, gaps, and disagreements in such estimate.

If Construction Manager's Design Development cost estimate exceeds the applicable Target GMP, Construction Manager shall promptly furnish Owner Parties with Value Engineering proposals that will cause the estimate to meet or be less than that Target GMP. Construction Manager and Owner Parties shall then meet to discuss such Value Engineering proposals and Construction Manager shall promptly recalculate its cost estimate incorporating any proposed changes Owner Parties select. Notwithstanding Construction Manager's estimate exceeding the Target GMP, Owner may, in its sole discretion, accept or reject any proposed changes.

Within twenty-one (21) Days after Construction Manager receives Design Development Documents, and based on the outcome of the cost estimating process in *Section 5.5* above, Construction Manager shall meet with Owner Parties to deliver its revised scheduling, phasing, and constructability advice, analysis,

and deliverables, updated from its applicable Schematic Design Document phase deliverables set forth in *Section 5.9* above. Construction Manager shall also suggest modifications to the Drawings and Specifications to improve their completeness and clarity.

5.11 GMP Development.

5.11.1 GMP Drawings and Specifications Detail Requirements. Construction Manager and Owner Parties shall meet on or before the applicable date set forth in the Project Schedule to develop a mutual understanding of the necessary GMP Drawings and Specifications content to enable Construction Manager to deliver to Owner an accurate GMP proposal for the applicable Deliverable Portion of Work. Such GMP Drawings and Specifications detail requirements shall be agreed-to in writing, signed by Construction Manager, Design Professional, and Owner, and shall be attached to the applicable GMP Amendment. The GMP Drawings and Specifications shall meet or exceed those GMP Drawings and Specifications detail requirements.

5.11.2 GMP Development Process. Design Professional shall deliver to Construction Manager on or before the date set forth in the Project Schedule, the GMP Drawings and Specifications and the Design Professional's Statement of Incomplete Documents, for the applicable Deliverable Portion of Work (collectively, the "GMP Documents").

Owner Parties and Construction Manager shall include in the GMP Documents, Work that shall be priced, scheduled, and included in the Contract Documents, as an Alternate, and Work that shall be priced, scheduled, and included in the Contract Documents, as an Allowance. The Alternate Schedule shall include the required start dates for each Alternate, and the sequencing priority of implementing each Alternate.

Within fourteen (14) Days after receipt of the GMP Documents and in accordance with the Project Schedule, Construction Manager shall submit to Owner Parties its proposed GMP and its proposed GMP Qualifications and Assumptions (collectively, the "GMP Proposal"), all based upon the applicable GMP Documents, on the form GMP Amendment attached as *Exhibit D*.

Construction Manager acknowledges and agrees the GMP Drawings and Specifications may require further substantial development at the time Construction Manager prepares its GMP Proposal, and that its GMP Proposal takes into account such further development.

Construction Manager shall include in each such GMP Proposal, Alternate pricing and Allowance pricing, applicable to the Deliverable Portion of Work for which the GMP Proposal is issued. By including an Allowance in a GMP Proposal, Construction Manager represents and warrants it is a reasonable estimate of the Cost of the Work of such Allowance, based on Construction Manager's best skill and judgment, based on Drawings and Specifications that are sufficiently detailed to make such an estimate. Each Alternate's and Allowance's pricing shall remain valid from the date Construction Manager issues its final GMP Proposal through the date of Final Completion of the applicable Deliverable Portion of Work containing each such Alternate or Allowance unless, in the case of an Allowance, Construction Manager develops a final price for that portion of the Work included in such Allowance, in which case that final price shall remain valid through the date of Final Completion of the applicable Deliverable Portion of Work.

Within ten (10) Days after Construction Manager delivers a GMP Proposal, Construction Manager shall submit to Owner Parties its Work plan for the applicable Deliverable Portion of Work.

Within fourteen (14) Days after Owner receives a GMP Proposal, the Project Development Team shall meet to reconcile its questions, gaps, and disagreements pertaining to any part of the GMP Documents and the GMP Proposal, and shall agree in writing to the GMP Proposal's final form. Following the Project

Development Team's meeting and on or before the date set forth in the Project Schedule, Construction Manager shall submit to Owner Parties its final, reconciled, and signed, GMP Proposal. Upon Owner's approval and signature, that final GMP proposal shall become a GMP Amendment and shall be revised only by Change Order.

Each GMP Amendment shall include a Guaranteed Substantial Completion Date for the applicable Deliverable Portion of Work as updated and set forth in the Project Schedule.

Notwithstanding anything to the contrary contained in the Contract Documents, unless and until the Parties enter into a GMP Amendment, Construction Manager's rights, including to payment, under the Contract Documents shall be limited to only its preconstruction phase services and Early Work set forth in an Early Work Amendment.

5.12 Construction Documents Phase.

5.12.1 Construction Drawings and Specifications Development. Construction Manager and Owner agree Design Professional will deliver Construction Drawings and Specifications for each Deliverable Portion of Work after the GMP Amendment for that Deliverable Portion of Work is issued, on or before the date set forth in the Project Schedule.

Within fourteen (14) Days after Construction Manager receives Design Professional's applicable Construction Drawings and Specifications, Construction Manager shall deliver, with supporting data, and meet with Owner Parties to discuss, its revised cost estimate incorporating the Construction Drawings and Specifications information, and updating and refining the reconciled Design Development Document cost estimate (from Section 5.10 above). Construction Manager and Owner Parties shall diligently work to reconcile questions, gaps, and disagreements in that estimate.]

If Construction Manager's Construction Drawings and Specifications cost estimate exceeds the applicable Target GMP, Construction Manager shall promptly furnish Owner Parties with Value Engineering proposals that will cause the estimate to meet or be less than that Target GMP. Construction Manager and Owner Parties shall then meet to discuss such Value Engineering proposals and Construction Manager shall promptly recalculate its cost estimate incorporating any proposed changes Owner Parties select. Notwithstanding Construction Manager's estimate exceeding the Target GMP, Owner may, in its sole discretion, accept or reject any proposed changes.

Within twenty-one (21) Days after Construction Manager receives Design Professional's Construction Drawings and Specifications for a Deliverable Portion of Work, and based on the outcome of the cost estimating process in Section 5.5 above, Construction Manager shall meet with Owner Parties to deliver its revised scheduling, phasing, and constructability advice, analysis, and deliverables, updated from its Design Development Documents phase deliverables set forth in Section 5.10 above. Construction Manager's advice shall specifically include during this phase Material selections. Construction Manager shall review specified Materials and shall promptly propose alternative materials of which Construction Manager is aware that may be the same or superior quality and more cost-effective. Construction Manager's proposals shall include written cost analysis of such alternative materials. Construction Manager shall review the Construction Drawings and Specifications, anticipating each bid package, to minimize gaps and overlap in the performance of the Work. Construction Manager shall also suggest modifications to the Construction Drawings and Specifications to improve their completeness and clarity. During its review of the proposed Construction Drawings and Specifications, if Construction Manager recognizes portions that fail to conform to Applicable Laws, Construction Manager shall promptly notify Owner Parties in writing.

5.12.2 Bidding and Commencement Preparation. Construction Manager shall recommend to Owner Parties phasing and prioritization of the Project and the Work based on its

preconstruction services and the Contract Documents and plan in written detail its expected construction activities, division of Work, and bidding and awarding of Subcontracts.

Construction Manager shall plan, in writing and through drawings as appropriate, the Project's Site coordination, including staging and storage areas, and rules applicable to Site operations.

Construction Manager shall recommend a schedule for and, if Owner requests, aid in delivery of, Owner-Supplied Equipment and Materials, including those items requiring special procurement, as set forth in *Section 5.3.2* above.

Construction Manager shall confirm all Construction Drawings and Specifications: (a) coordinate separate Subcontractors' Work, (b) are assigned to the appropriate trade, (c) minimize the likelihood of jurisdictional disputes, and (d) allow for phased construction if and when applicable.

Construction Manager shall prepare and submit to Owner Parties Subcontractor and Supplier bidding information, instructions to bidders, bidding forms, special conditions, forms of Subcontract, and other bidding documents, incorporating those portions of Construction Drawings and Specifications applicable to a Subcontract into each bid package. Construction Manager shall also include in the appropriate bid packages all Alternates and Allowances of the GMP Documents properly divided among applicable Subcontracts.

Until Design Professional issues Construction Drawings and Specifications (which are predicated on Owner's approval) for each Deliverable Portion of Work, Construction Manager shall continually review the Drawings and Specifications for that Work as they are being prepared, and recommend alternative solutions when it finds improvements to construction feasibility, cost, or schedule.

Construction Manager acknowledges and agrees its involvement in the planning and preparation of the Project, in accordance with the Contract Documents, will be sufficient to understand its nature, scope, and details. Therefore, Construction Manager shall make no Claim for an increase in a GMP based upon Construction Drawings and Specifications; provided, however, there is no cardinal change to the scope of the Work that is not otherwise captured by the GMP Qualifications and Assumptions.

Unless Owner Parties otherwise direct or the Contract Documents otherwise require, Construction Manager shall obtain all permits, licenses, and approvals for the Work, including building, Site development, shoring and excavation, and utilities, as required by Governmental Authorities and customarily obtained by construction contractors.

ARTICLE 6

SUBCONTRACTS AND OTHER SERVICES

6.1 General Subcontracting Requirements. For purposes of this *Article 6* the term "Subcontractor" shall include the term "Supplier." Construction Manager shall Subcontract all Work unless otherwise provided in *Section 6.6*.

Construction Manager shall confirm Design Professional has issued the Construction Drawings and Specifications for each Subcontract bid package and that (a) the Work of separate Subcontracts is coordinated and assigned to the appropriate trade and (b) phased construction (if any) is properly coordinated. Construction Manager shall divide the Work in accordance with Applicable Laws to facilitate phasing, bidding, and award of contracts, considering such factors as bidding climate, schedule, minimizing trade jurisdictional disputes, and related issues.

Construction Manager shall assure that the Work under all Subcontracts, when taken together, will be complete and sufficient for the entire construction of the Project as required by the Contract Documents.

Unless otherwise set forth in this *Article 6*, Subcontractors shall be selected by competitive bidding in a manner that will not encourage favoritism or substantially diminish competition. While not subject to the competitive procurement requirements of ORS Chapter 279C, Construction Manager's process shall conform to the procedures of this *Article 6*, in general compliance with the open and competitive nature of public procurement, taking into account standard industry subcontracting practices.

Construction Manager shall submit to Owner Parties its proposed procurement documents for review and comment prior to solicitation, including its proposed bidding plan, which shall clearly divide the Work and include a schedule for bidding Subcontracts. In no event shall Construction Manager divide the Work such that a bid package will fail to attract reasonable Subcontractors' bids. Construction Manager shall consider and respond to all Owner Parties' comments regarding any proposed bid packages.

As part of its procurement plan, Construction Manager may develop, with Owner's prior approval, a prequalification process for particular solicitations (a "Prequalification Plan").

Construction Manager's Subcontracting records are not intended to be considered public records; provided, however, that Owner and other agencies of the State shall retain the right to audit and monitor the Subcontracting process to protect Owner's interests.

Construction Manager's use of Subcontractors shall not relieve Construction Manager of any of its obligations or liabilities under the Contract Documents. Construction Manager shall have sole responsibility for managing, coordinating, and settling disputes involving any Subcontractor.

6.2 Subcontractor Interest. Construction Manager shall develop Subcontractor interest in the Project and shall furnish Owner Parties with a list of possible Subcontractors for each principal portion of the Work (the "Potential Subcontractor List"). Construction Manager's submission of the Potential Subcontractor List is for information and discussion only and is not for Owner Parties' prequalification. Owner's receipt of the Potential Subcontractor List shall not require Owner Parties to investigate, and shall not waive Owner Parties' right to reject, the qualifications of any Subcontractors.

Construction Manager shall furnish Owner Parties with information and advice concerning current construction market bidding conditions and shall advise Owner Parties of subcontracting opportunities with certified diverse businesses.

Construction Manager shall advertise Subcontractor solicitations at least ten (10) Days prior to opening bids in the Daily Journal of Commerce and at least one other newspaper specifically targeted to reach the certified diverse business community. Construction Manager shall also advertise in a local community newspaper in the Project's area, in order to allow for local Subcontractor participation.

Construction Manager shall comply with OSU Business Inclusion and Diversity Program as set forth in OSU Standard 03-010.

Construction Manager shall document all discussions with, questions received from, and answers and responses given to, any firm from which Construction Manager expects to receive a bid or proposal for the Project, prior to its receipt of the same. Construction Manager shall ensure that any information it provides that might affect other potential Subcontractors is shared with all interested parties prior to the required submittal date. Owner Parties shall be entitled to inspect all such documentation on request.

6.3 Bidder Qualifications. For each bid package, Construction Manager shall submit to Owner Parties for approval, a proposed list of qualified bidders. All proposed Subcontractors shall be reputable and qualified firms, each with a sufficient record of successful performance of work similar to that Work for which they are proposed. All potential Subcontractors who by Applicable Law must be qualified and registered, shall be, and shall meet the State of Oregon Construction Contractors Board's requirements to perform work.

Owner shall have the right to approve or disapprove, in its reasonable discretion, any proposed bidder on the Potential Subcontractor List and shall inform Construction Manager of the same within ten (10) days after Owner Parties' receipt of the Potential Subcontractor List. However, Owner's right to approve proposed bidders shall not be construed to relieve Construction Manager of its responsibility to propose and select qualified Subcontractors, and ensure their adequate performance of the Work, all in accordance with the Contract Documents' requirements.

6.4 Subcontractor Selection. After Construction Manager and Owner have agreed to potential bidders from the Potential Subcontractor List (the "Qualified Bidders"), Construction Manager shall solicit from such Qualified Bidders at least three (3) competitive bids or proposals for each Subcontract. If Construction Manager is unable to solicit three (3) or more competitive bids or proposals for a division of Work, Owner's prior written approval shall be required to accept any bid or proposal for that Work.

If Owner approves a Prequalification Plan, Construction Manager may award Subcontracts to firms meeting the Prequalification Plan's standards, with Owner's prior written approval.

6.4.1 Unless Owner otherwise approves in writing, all Subcontract bids and proposals shall be in writing, submitted to a specific location at a specific time. Construction Manager shall time-stamp all bids and proposals when received.

6.4.2 Construction Manager shall coordinate and conduct the bid or proposal opening process. Owner Parties shall have the right, but not the obligation, to be present for all bid and proposal openings, scope review meetings, and negotiations, and shall have access to all submission materials in Construction Manager's possession.

6.4.3 Prior to award, Construction Manager shall: (i) prepare and deliver to Owner Parties a bid tabulation in a mutually agreeable form clearly comparing such bids and proposals, together with any specific back-up documentation Owner requests; (ii) review the apparent low bids and proposals and (iii) work with the firms offering the same to clarify, reduce exclusions, verify scope and quantities, and seek to minimize potential Change Orders and Claims.

6.4.4 Construction Manager shall determine the lowest bid for each solicitation that meets the requirements of this *Article 6* and Construction Manager's reasonable performance standards; provided, however, if Construction Manager is unable to enter into a suitable Subcontract with a low bidder, Construction Manager may, with Owner's prior written approval, Subcontract with the second-lowest bidder pursuant to *Section 6.4.5* below.

6.4.5 Under special circumstances and only with Owner's prior written authorization, Construction Manager may be permitted to Subcontract on a basis other than low price, including by competitive negotiation. Examples of such special circumstances include when there are single fabricators of specified Materials, special packaging requirements for Work, design-build Work, and where an alternative contracting method can be demonstrated to clearly benefit Owner and the Project. As a condition to such authorization, Owner may require that Construction Manager agree to establish and implement qualification and performance criteria for Subcontractors in these circumstances, including a scoring system within requests for proposals.

6.4.6 Owner Parties shall have the right, but not the obligation, to monitor Construction Manager's competitive Subcontract award process. Construction Manager shall cooperate in all respects with Owner Parties' monitoring. Owner Parties' monitoring shall not excuse Construction Manager from complying with the Contract Documents' requirements.

6.4.7 Notwithstanding anything to the contrary contained in this *Article 6*, Owner may, at its sole discretion, require Construction Manager re-solicit Subcontract bids and proposals.

6.4.8 Construction Manager shall, and require Subcontractors to, comply with all prevailing wage requirements including State of Oregon Bureau of Labor & Industries prevailing wage rates and Davis-Bacon federal wage rates as and when applicable to the Work. In the event both state and federal rates apply to the same Work, the higher rate requirements shall control.

6.4.9 Construction Manager shall indemnify, defend, and hold harmless, Owner Parties, from and against any Subcontractor claim that arises due to Construction Manager's failure to incorporate the relevant terms of this *Article 6* and other necessary provisions of the Contract Documents in each Subcontract.

6.4.10 Construction Manager shall not alter any material term or condition of a Subcontract without Owner's prior written consent.

6.5 Subcontractor Protests. Construction Manager shall include in its competitive Subcontracting process subject to Owner Parties' approval a protest procedure. Construction Manager shall be solely responsible for resolving Subcontract procurement protests and shall act as an independent contractor, not Owner's agent, in connection with all such procurement protests.

Construction Manager shall indemnify, defend, and hold harmless, Owner Parties, from and against all such procurement protests and resulting claims and Claims.

The provisions of this *Section 6.5* solely benefit Owner and do not grant rights or remedies to any Subcontractor or other protester.

6.6 Self-Performed Work.

6.6.1 Limitation on Self-Performed Work. Neither Construction Manager nor any Affiliate shall bid on or propose any Subcontract bid package except to the extent Owner approves the same in writing, in advance. If Owner so approves, Construction Manager or its Affiliate, as the case may be, shall be subject to this *Section 6.6*. To qualify to Self-Perform Work, Construction Manager and its Affiliates: (i) must be performing at least fifty percent (50%) of the labor of such Work through its own respective employees; (ii) shall maintain strict separation of personnel involved with bidding and proposing the Self-Performed Work from all of Construction Manager's other personnel involved in the Project, including prohibiting communication prior to award, except for ordinary communication permitted of all bidders and proposers; (iii) shall not allocate any of the Self-Performed Work so that it is paid out of the General Conditions Work Cost Limit; and (iv) shall not use any of the Construction Contingency to pay for the Self-Performed Work.

Notwithstanding anything to the contrary in the Agreement, if a portion of Work that is proposed as Self-Performed Work receives fewer than two bids or proposals from responsible bidders or responsible proposers other than Construction Manager or its Affiliate, Owner may disqualify that portion of Work from Self-Performed Work eligibility and Owner may cause such Work to be solicited again.

Any rejection of a bid or proposal or required re-solicitation under this *Section 6.6.1* shall not be the basis for an increase to the GMP in any GMP Amendment or adjustment to the Project Schedule or Construction Schedule.

6.6.2 Bidding Procedure. Construction Manager or its Affiliate, as the case may be, shall submit a sealed bid for Self-Performed Work pursuant to the procedures applicable to all Subcontractors in this *Article 6*; provided, however (a) Construction Manager shall nevertheless solicit Subcontractor bids for its proposed Self-Performed Work and (b) Construction Manager must publicly announce its, or its Affiliate's, intent to submit a bid for such Work when it publishes those solicitation materials. Construction Manager or its Affiliate must also submit its bid for Self-Performed Work directly to Owner Parties in a sealed envelope in advance of the deadline for Subcontractors to submit their bids for that Work.

Owner Parties shall manage the bidding process for Work that Construction Manager or its Affiliate proposes to Self-Perform, including the opening, review, and advice concerning award of, bids from potential Subcontractors. Construction Manager shall not participate in the analysis of such bids or recommend awarding the Subcontract for any Self-Performed Work. Construction Manager shall forward copies of all inquiries it receives for such Work from potential Subcontractors.

6.6.3 Self-Performed Work Fee. Construction Manager shall be entitled to Construction Manager's Fee on the Cost of the Work of approved Self-Performed Work, subject to the applicable provisions of the Contract Documents.

6.6.4 Waived Bidding. Owner may waive in writing the Self-Performed Work bidding and proposal requirements set forth in *Section 6.6*. In that event, Construction Manager or its Affiliate shall have: (i) procured all necessary Government Approvals to commence the Self-Performed Work; (ii) an Owner-approved GMP for the Self-Performed Work, including its applicable General Conditions Work costs; and (iii) an Owner-approved Construction Schedule for the Self-Performed Work. Owner shall pay for all Self-Performed Work labor at Construction Manager's or its Affiliate's cost as verified by actual labor rates, including from certified payrolls, and all Self-Performed Work equipment at pre-approved rates, all subject to the Self-Performed Work GMP.

6.7 Construction Manager's Field Work. Construction Manager or its Affiliate may self-perform Construction Manager's Field Work. Any other Work that Construction Manager or its Affiliate wishes to self-perform shall be subject to the requirements for Self-Performed Work in accordance with *Section 6.6* above.

6.8 Early Work. Construction Manager and Owner may enter into one or more Early Work Amendments identifying specific Work that shall be performed prior to the Project's first GMP Amendment and subject to a not-to-exceed budget and price for the relevant Cost of the Work stated in such Early Work Amendment. Construction Manager shall be paid the Cost of the Work for all executed Early Work plus Construction Manager's Fee for such Work. All Early Work shall be performed and Owner shall pay for the same in accordance with the terms of the Contract Documents and the terms of the applicable Early Work Amendment.

Prior to commencing any Early Work: (i) Design Professional shall have issued Construction Drawings and Specifications for that Early Work; (ii) Governmental Approvals necessary to commence such Early Work shall have been issued; (iii) Construction Manager shall have submitted, for Owner Parties' review and approval, a Construction Schedule and cost estimate for the Early Work; (iv) Construction Manager shall have selected Subcontractors to perform the Early Work in accordance with *Section 6.4*; and (v) Owner Parties shall have issued a Notice to Proceed with the Early Work.

The Cost of the Work for all Early Work shall be included in the GMP of the applicable GMP Amendment and Construction Manager's obligation to develop its GMP Amendments shall not be deferred or waived by any Early Work Amendment.

6.9 Specialty Subcontractor Packages.

6.9.1 Specialty Services. Owner Parties may designate certain portions of the Project as Design-Assist or Design-Build. If so designated, such Design-Assist or Design-Build, as the case may be, shall proceed in two phases – the design phase and the construction phase – each authorized by a separate Notice to Proceed.

If Owner Parties require Design-Assist or Design-Build services, Construction Manager shall provide such services through an applicable Subcontractor (the “Specialty Subcontractor”) for the fixed lump-sum price set forth in its accepted bid, procured in accordance with the Subcontracting process set forth in this *Article 6*. In the design phase, Specialty Subcontractor shall provide its preconstruction and design services to the Project Development Team. In the construction phase, Specialty Subcontractor shall perform its applicable Work as set forth in its Subcontract and the Construction Drawings and Specifications.

Ownership of all documents and intellectual property a Specialty Subcontractor prepares for the Project, including reports, schedules, designs, drawings, and specifications, (“Specialty Subcontractor’s Work Product”), shall transfer to Owner if Owner so requests. In any event, each Specialty Subcontractor shall unconditionally and irrevocably transfer and assign to Owner a non-exclusive, royalty-free license and right to use Specialty Subcontractor’s Work Product for anything associated with the Project, including construction, maintenance, and marketing.

6.9.2 Design Phase. During its design phase, Specialty Subcontractor shall meet with Construction Manager and Owner Parties as requested to coordinate preparation of the Construction Drawings and Specifications. During those meetings, Specialty Subcontractor shall furnish the Project Design Team with recommendations for: (i) construction feasibility; (ii) Materials and labor availability, including analysis of the types and quantities of labor required for the applicable trade work; (iii) procurement and lead-time, and (iv) other cost-reduction measures, including Value Engineering.

Specialty Subcontractor shall work with the Project Development Team to design the relevant portions of the Work, through approval of the Construction Drawings and Specifications, to ensure the cost of such Work shall be at most equal to its awarded bid price.

Specialty Subcontractor shall promptly notify the Project Development Team of any material changes to quantities or qualities that affect the cost or schedule included in its bid and shall provide detailed information of such changes for Owner Parties’ and Construction Manager’s review.

6.9.3 Construction Phase. Upon completion of its design phase, if Owner determines in its sole discretion Specialty Subcontractor has satisfactorily met its obligations, including maintaining or reducing its bid price, Owner Parties will issue to Specialty Subcontractor a Notice to Proceed with its construction phase services. At the time of the issuance of the Notice to Proceed for the construction phase, Specialty Subcontractor shall furnish payment and performance bonds in the full amount of its Subcontract price for the Work.

If Owner determines in its sole discretion Specialty Subcontractor has not satisfactorily met its obligations, Owner may require Construction Manager terminate Specialty Subcontractor’s Subcontract without cause. In the event its Subcontract is so terminated, Specialty Subcontractor shall be entitled to payment for the services it has performed up to the date of termination.

6.9.4 Scope of Work. Unless otherwise set forth in the Contract Documents, Construction Manager shall provide and pay for labor, Materials, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services, necessary for proper

execution and completion of the Work, whether temporary or permanent, and whether or not incorporated or to be incorporated in the Work.

6.9.5 Substitutions. When a material or system is specified in the Contract Documents, Construction Manager may make substitutions only in accordance with *Article 10* of the General Conditions.

ARTICLE 7

PAYMENT

7.1 **Contract Sum**. Subject to the terms of the Contract Documents, Owner shall pay Construction Manager the Contract Sum, which shall equal the sum of the Cost of the Work and the Construction Manager's Fee, but which shall not exceed the Project GMP. Construction Manager shall bear, without Owner's reimbursement, all costs in excess of (a) the Project GMP; (b) Cost of the Work for a Deliverable Portion of Work in excess of the GMP for that Work; and (c) General Conditions Work costs for a Deliverable Portion of Work in excess of the General Conditions Work Cost Limit for that Work.

7.2 **Preconstruction Services**. Owner shall pay Construction Manager, subject to the Preconstruction Services Cost Limit, for Construction Manager's preconstruction services in accordance with the terms of *Exhibit E*. Construction Manager shall bear, without Owner's reimbursement, costs exceeding the Preconstruction Services Cost Limit. Owner's payments to Construction Manager for its preconstruction services is not subject to and shall not include Construction Manager's Fee.

Notwithstanding anything to the contrary in the Contract Documents, unless Owner and Construction Manager otherwise agree in writing, Construction Manager shall be entitled to no payment for preconstruction services pertaining to a Deliverable Portion of Work after signing the GMP Amendment for that Deliverable Portion of Work.

7.3 **Alternates**. Owner shall approve each Alternate by Change Order in accordance with *Section 10.3* of the General Conditions. Unless so approved, Construction Manager shall not proceed with an Alternate. If Owner approves one or more Alternates, payment for such approved Alternates shall be included in Construction Manager's applicable Applications for Payment in accordance with *Section 7.10*.

7.4 **Allowances**. Construction Manager shall promptly develop and deliver to Owner Parties a final price for each of its Allowances after the Contract Documents pertinent to each such Allowance are completed. If Construction Manager's final price exceeds an Allowance, Owner will elect to: (a) issue a Change Order increasing the applicable GMP by an amount to which Owner and Construction Manager agree for the Work of that Allowance, or (b) cause Design Professional, with Construction Manager's assistance, to redesign the Work of that Allowance, including Work ancillary to the Work of the Allowance, such that the applicable GMP will not be exceeded.

If Construction Manager's final price is less than an Allowance, Construction Manager and Owner will promptly issue a deductive Change Order to the applicable GMP and Construction Manager's Fee will be reduced accordingly.

In the event some of Construction Manager's final prices exceed, and others are less than, their applicable Allowance prices, Owner may offset such prices to reduce or eliminate the number of Change Orders otherwise necessary due to all of those Allowances.

7.5 Cost of the Work. The “Cost of the Work” shall include only the items specifically identified below, that Construction Manager necessarily incurs in the proper performance of the Work.

7.5.1 General Conditions. Costs of all General Conditions Work, subject to the General Conditions Work Cost Limit; provided, however, the cost of General Conditions Work pertaining to any Subcontract shall not be Cost of the Work if such costs are paid pursuant to that Subcontract.

General Conditions Work costs include:

.1 *Administrative Expenses.* Construction Manager’s incurred costs to employ supervisory and administrative personnel when stationed at the Site, all as set forth on *Exhibit C.* Construction Manager’s reasonable, customary, travel expenses and per diem subsistence costs incurred performing the services and the Work, not including daily travel to and from the Site; office costs incurred at the Site including telephone service, long distance telephone calls, Progress Report photography services, office equipment, office supplies; document reproduction and delivery expenses; and reasonable petty cash expenses incurred solely for the benefit of the Work.

.2 *Compliance and Permitting.* Costs incurred complying with Applicable Laws, including permits, licenses, and inspections required by the Contract Documents, unless those costs arise from penalties, additional expense, or corrective actions due to acts or omissions that first failed to meet Applicable Laws.

.3 *Temporary Facilities.* Costs of heat, power, lighting, and water consumed at the Site during performance of the Work, costs of temporary facilities and protection incurred during performance of the Work, and costs incurred storing Materials and equipment to be incorporated into the Project.

.4 *Transportation.* Costs incurred to handle, ship, erect, and dismantle construction equipment at the Site.

7.5.2 Subcontracts. Costs incurred in connection with Work performed and Materials and equipment provided pursuant to Subcontracts; provided, however, no amount other than the express pricing of each Subcontract shall be included in the Cost of the Work and no amount of bond premiums unless Owner authorizes such costs in advance.

7.5.3 Self-Performed Work. Incurred costs of Construction Manager’s Field Work and incurred costs of Construction Manager’s Self-Performed Work for those bids and proposals accepted by Owner in writing, subject to the provisions of *Section 6.6* above.

7.5.4 Change Order Personnel Expenses. Change order costs incurred due to the personnel who are directly engaged in the Project at the labor rates set forth in *Exhibit F.*

7.5.5 Equipment and Materials. Direct costs incurred, without mark-up, of Materials and equipment Construction Manager purchases directly, including their transportation and storage costs, subject to the terms of the General Conditions.

7.5.6 Rentals and Tools. Direct industry-standard costs incurred, without mark-up, of rental charges of all customary machinery, equipment, and facilities used at the Site, and their ancillary costs incurred including transportation, installation, minor repairs, replacements, dismantling and removal. Rates and quantities of such machinery, equipment, and facilities rented shall conform to industry standards, shall not exceed (a) one hundred percent (100%) of the rental rates published in the Rental Rate Blue Book for Construction Equipment, prepared by Machinery Information Division of Primedia Information Incorporated, in effect at the time of rental and (b) acquisition costs of that equipment. Notwithstanding the foregoing, Owner parties must give Construction Manager prior

approval in writing for individual rental items exceeding ten thousand dollars (\$10,000) (the "Rental Cost Threshold").

.1 In the event Construction Manager requests to rent an item exceeding the Rental Cost Threshold, Construction Manager shall furnish Owner Parties with a reasonable rent/buy analysis, containing customary terms and rates, so that Owner may elect to cause Construction Manager to procure the item in lieu of rental, solely at Owner's option.

.2 Machinery, equipment, and facilities that Construction Manager owns but rents for or to the Project, shall be rented at rates consistent with the then-current lowest prevailing market rental cost in the Project's locality.

.3 In addition, rental and tool costs shall include (a) the full cost of tools incurred, without mark-up, based on purchase price for new and fair market value for previously-used, that are fully consumed in the performance of the Work and (b) the full cost of tools incurred, without mark-up, based on purchase price for new and fair market value for previously-used, less the salvage value of those tools not fully consumed; provided, however, Owner may at its option, pay the full cost of such unconsumed tools and require that Construction Manager deliver to Owner the same at the end of the Project.

7.5.7 Equipment Operation, Maintenance and Repair. Ordinary costs incurred operating, maintaining, and making minor repairs to Construction Manager's owned and rented equipment. Costs incurred making major repairs or those that are abnormal shall not be Cost of the Work.

7.5.8 Emergencies. Costs incurred to prevent or combat damage, injury, or loss, due to emergencies affecting the safety of persons or property.

7.5.9 Correcting Defective Work. Subject to the terms of the Contract Documents, actual, direct costs incurred correcting Defective Work, whether damaged or otherwise, not caused by a Subcontractor, Sub-subcontractor, Supplier, or Construction Manager, and not resulting from Construction Manager's failure to meet its Contract Document requirements; provided, however, requisite or otherwise available insurance or bonds would not cover such costs.

7.5.10 Cleaning. Cost incurred removing rubbish from the Site.

7.5.11 Laboratory Fees. Laboratory fees incurred and costs of testing incurred due to the Contract Documents' requirements.

7.5.12 Royalties and License Fees. Costs incurred due to royalties and user-licenses arising from or related to the Work.

7.5.13 Taxes. Taxes, fees, and assessments Construction Manager incurs directly due to its performance of the Work, but not franchise taxes, taxes based on net income or taxes based on commercial activity; provided, however, sales tax on equipment and Materials incorporated into the Project shall not be included so long as Owner, prior to Construction Manager's purchase of such equipment and Materials, furnishes Construction Manager with a sales tax exemption certificate.

7.5.14 Bonds. Construction Manager's bond premiums incurred pursuant to the Contract Documents' requirements. Construction Manager shall require each Subcontractor to separately identify its bond costs and Construction Manager shall document those costs separately for Owner Parties' review.

7.5.15 RESERVED.

7.5.16 Miscellaneous Cost Items. Miscellaneous expenditures not otherwise identified above as Cost of the Work and incurred due to Work performed; provided, however, Owner has approved each such expenditure prior to it being incurred.

7.6 Not Cost of the Work. The following costs are not Cost of the Work:

7.6.1 Preconstruction Services. Costs arising from or related to preconstruction services.

7.6.2 General Conditions. General Conditions Work costs not payable as Cost of the Work including:

.1 *Costs in Excess of General Conditions Work Cost Limit*. Costs arising from or related to the General Conditions Work in excess of the General Conditions Work Cost Limit.

.2 *Administrative Expenses*. Construction Manager's personnel and office costs other than those set forth above.

.3 *Overhead and General Expenses*. Construction Manager's overhead costs and general expenses of doing business, except as expressly set forth above.

.4 *Special Compensation*. Merit, incentive, and bonus payments, except as set forth above.

7.6.3 Costs in Excess of GMP. All costs in excess of the GMP (as the same may be increased or decreased by Change Order from time to time) applicable to such costs.

7.6.4 Construction Manager's Capital: Construction Manager's capital expenses arising from or related to the Project.

7.6.5 Negligence; Infidelity; Dishonesty: Losses, costs, and expenses due to (a) fault or negligence or (b) infidelity or dishonesty of Construction Manager, Subcontractors, Sub-subcontractors, Suppliers, or anyone directly or indirectly employed by any of them.

7.7 Other Limitations on Cost of the Work.

7.7.1 No Duplication. Notwithstanding the definition and categorization of Cost of the Work contained in this *Article 7* or elsewhere in the Contract Documents, there shall be no duplication of payment in the event a particular item can be categorized as more than one of the types of reimbursable Cost of the Work.

7.7.2 Overtime. Unless it is expressly set forth in a GMP Amendment, prior to Construction Manager's or Subcontractors' or Sub-subcontractors' or Suppliers' use of personnel in overtime to perform Work, Construction Manager shall give Owner notice and opportunity to comment and such overtime Work shall be implemented in a cost efficient manner. In no event shall costs of overtime exceed any GMP without approved Change Order to the applicable GMP Amendment.

7.7.3 Recoveries. If Construction Manager recovers from a source other than Owner, whether by payment, labor, materials, or otherwise, for Work that Owner has paid (e.g., a Subcontractor, an insurer, or a surety), Construction Manager shall credit Owner the value of such recovery.

7.7.4 Discounts. Construction Manager agrees to use best efforts to secure all discounts and rebates available to the Work. Cost of the Work shall be reduced by all such discounts and

rebates, which shall accrue exclusively to Owner; provided, however, Owner makes payment when needed to obtain such discounts and rebates.

7.7.5 Spare Materials. As set forth in *Section 4.13.5* of the General Conditions, the fair market value of Spare Materials and excess equipment shall accrue to Owner.

7.8 Construction Contingency; Subcontract Buy-Out. Each GMP shall include a preliminary "Construction Contingency" in an initial amount Owner and Construction Manager agree to and set forth in the applicable GMP Amendment. Each GMP Amendment's Construction Contingency shall be adjusted to reflect net savings ("Subcontract Savings") and net losses ("Subcontract Losses") after Subcontracts pertaining to the Work of that GMP Amendment are awarded and compared to the applicable Schedule of Values. Specifically, (a) Subcontract Savings shall be credited to and increase Construction Contingency by the amount of such savings and (b) Subcontract Losses shall be payable out of and reduce Construction Contingency by the amount of such losses. Net increases to a GMP Amendment's Construction Contingency after all Subcontract Savings and Subcontract Losses applicable to that GMP Amendment are applied ("Net Savings") shall be separately identified in the applicable Construction Contingency fund and subject to *Section 7.8.2* below. If the total of Subcontract Losses applicable to a GMP Amendment exceeds the balance of the Construction Contingency for that GMP Amendment, the excess Subcontract Losses shall be payable from Construction Manager's Fee. All Subcontract Savings and Subcontract Losses shall be updated and shown on each Progress Report.

7.8.1 Use of Funds. Subject to Owner Parties' prior written approval, Construction Manager may apply Construction Contingency funds to unexpected increases in Cost of the Work, including due to: (a) Construction Manager's Field Work; (b) unforeseen differences in the scope of the Work; (c) corrective Work due to Defective Work; (d) errors in estimating; (e) overtime expenses; (f) other errors or omissions not due to breach of the Contract Documents, and not due to negligence or willful misconduct; and (g) Subcontractor default if Construction Manager shows it took reasonable steps to cause each such defaulting Subcontractor or Subcontractor's surety to perform its Work; provided, however, requisite or otherwise available insurance would not cover such default.

In no event shall Construction Contingency funds be used to pay Liquidated Damages.

7.9 Construction Manager's Fee and Bonus.

7.9.1 Construction Manager's Fee. Subject to the GMP Amendments Total, "Construction Manager's Fee" shall be [X.XX%] of the Cost of the Work, not including any Construction Contingency funds and not including insurance deductibles.

7.10 Progress Payments.

7.10.1 Applications for Payment. Construction Manager shall prepare separate Applications for Payment for the Work of each Deliverable Portion of Work executed, in accordance with *Article 6* of the General Conditions, and this *Section*. Owner shall make progress payments as provided below and elsewhere in the Contract Documents.

7.10.2 Required Contents. Construction Manager shall include the following in each Application for Payment and each shall be a condition precedent to Owner's payment:

.1 *Schedule of Values*. An updated Schedule of Values showing all committed contracts and current expenses pertaining to the Work.

.2 *Percent Complete*. The percentage each portion of the Work is completed, as compared to and categorized in the Schedule of Values, as of the end of the period covered by such Application for Payment. The percentage of the Work that is completed in each Application for Payment shall be the lesser of (a) the percentage of Work

that has actually been completed and not rejected for the applicable Deliverable Portion of Work or (b) the percentage obtained dividing (i) Construction Manager's actual, incurred expenses, on account of the Work for which Construction Manager has made payment attributed to the applicable Deliverable Portion of Work, by (ii) the share of the GMP in the applicable GMP Amendment allocated to that Work, as set forth in the Schedule of Values.

.3 *Progress Report.* A current Progress Report, updated Project Schedule, and updated Construction Schedule for the Deliverable Portion of Work applicable to the Application for Payment, all in accordance with *Sections 4.6* and *5.3*.

.4 *Supporting Documents.* Supporting Documents and any other evidence Owner Parties reasonably require to demonstrate cash payments, all on account of Cost of the Work, equal to or exceeding: (a) progress payments Construction Manager has already received less that portion of those payments attributable to Construction Manager's Fee; plus (b) payrolls for the period covered by the present Application for Payment; plus (c) retainage as set forth in *Section 7.10.4*, if any, applicable to prior progress payments, less back-charges and credits pursuant to Construction Manager's Subcontracts.

Construction Manager shall include among its Supporting Documents a log of small tool acquisitions along with organized copies of receipts of all small tools purchased for the Project. Construction Manager shall also include in such log records of disposition of small tools whose selling price exceeds one hundred dollars (\$100). An up-to-date copy of such log shall accompany the final Application for Payment of each quarter of the year.

.5 *Statement of Furnishing.* A sworn statement identifying: (a) the names of all parties furnishing and the goods, labor, or services so furnished to the Project with a value in excess of [twenty-five thousand dollars (\$25,000)] during the time period of the applicable Application for Payment; (b) payments made to each party furnishing goods, labor, or services; and (c) amounts due and remaining amounts that are likely to become due to each party furnishing goods, labor, or services.

.6 *Claims Statement.* A statement expressly made to induce Owner's payment, detailing the Cost of the Work completed less retainage withheld, along with any Claims pertaining to that Work, sworn to by the Construction Manager and the Subcontractors, attesting to the satisfactory completion of the Work with qualifications pertaining to the Claims.

.7 *Lien and Bond Claim Waivers.* The partial waiver of liens and bond claims, in the form set forth on *Exhibit G*, of Construction Manager and all Subcontractors and their Sub-subcontractors and Suppliers who are listed in the immediately prior Application for Payment for which Construction Manager has received payment.

.8 *No Change Orders.* Construction Manager's statement certifying there are no Change Order requests or other claims for additional payment outstanding, or, if a Change Order request or claim for additional payment is outstanding, the amount of funds in issue, the name of the potential claimants, and a description of the pertinent Work.

7.10.3 Computation. Subject to other terms of the Contract Documents, progress payments shall be computed as follows:

.1 From the GMP set forth in the applicable GMP Amendment (the "Applicable GMP" in this *Article 7*), take that portion properly allocable to completed Work as determined by multiplying the percentage completion of the applicable Deliverable

Portion of Work by the share of the GMP allocated to that Work in the Schedule of Values. Pending final determination of cost to Owner of changes in the Work, amounts not in dispute may be included.

.2 Add that portion of the Applicable GMP properly allocable to Materials and equipment delivered, suitably stored, and in compliance with *Section 6.3.3* of the General Conditions, for the applicable Deliverable Portion of Work.

.3 In accordance with *Section 7.9.1* above, add that portion of Construction Manager's Fee properly allocable to completed Work as determined by multiplying Construction Manager's Fee percentage by the amounts determined in the two immediately preceding clauses.

.4 Subtract the sum of Owner's previous payments made on account of the applicable Work.

.5 Subtract any shortfall indicated in the documentation required by *Section 7.10.2* above to substantiate prior Applications for Payment, or resulting from errors subsequently discovered in such documentation.

.6 Subtract amounts, if any, Owner is entitled to withhold under the Contract Documents.

.7 Subtract retainage in accordance with *Section 7.10.4* below.

7.10.4 Review; Payment; Retainage.

.1 *Submittal.* Each Application for Payment shall cover one calendar month and shall be due on or before the final Day of each month.

On or before the **20th** Day of each month, Construction Manager shall submit to Owner Parties a draft Application for Payment, together with all applicable Supporting Documents. Owner Parties will review and comment on the draft Application for Payment and return the same to Construction Manager with comments and changes, if any, within three (3) Days. On or before the final Day of that month, Construction Manager shall submit to Owner Parties its Application for Payment, revised to reflect Owner Parties' comments and changes.

.2 *Payment.* Owner shall pay Construction Manager for the amounts in each approved Application for Payment, delivered pursuant to Owner's invoice delivery requirements, within **forty-five** (45) Days of its receipt of the same. Notwithstanding the foregoing, Construction Manager shall not be entitled to payment unless and until its applicable Application for Payment is approved by all of Owner's reviewing parties. In the event Owner fails to make payment within the time required under this Section 7.10.4, Construction Manager shall furnish Owner with ten (10) Days advance written notice as a condition precedent to exercising remedies, including those available under the Contract Documents. After receiving a payment, within the legal requirement for prompt payment or seven (7) Days, whichever is less, Construction Manager shall pay each Subcontractor amounts due and owing.

.3 *Retainage.* Retainage shall be withheld and released in accordance with this *Section* and *Section 6.5* of the General Conditions. Owner shall retain from all payments to Construction Manager five percent (5%) of each such payment as security for the Work, until such time as Owner may release retainage or approves a retainage substitute in accordance with the Contract Documents.

7.11 Final Payment.

7.11.1 Final Application for Payment Accounting. In addition to the requirements set forth in *Sections 6.3 and 6.7* of the General Conditions, Construction Manager shall submit to Owner Parties a detailed final accounting of the Cost of the Work together with its final Application for Payment for each Deliverable Portion of Work, including for all Work of the Project. Owner Parties and Owner's agents may review and report to Owner their findings concerning Construction Manager's final accounting (the "Final Accounting Report") within forty-five (45) Days after Owner receives such final accounting. Based upon substantiated amounts due, as set forth in the Final Accounting Report, and provided the other conditions of the Contract Documents have been met, Owner Parties will, within seven (7) Days after receiving the Final Accounting Report, make final payment to the Construction Manager.

7.11.2 Computation. Final payment shall be calculated as follows: (i) take the sum of Construction Manager's Fee paid on account of the applicable Work plus the actual Cost of the Work substantiated by Construction Manager's final accounting, less any amount in excess of the Applicable GMP or the GMP Amendments Total, as the case may be; (ii) subtract amounts, if any, Owner is entitled to withhold under the Contract Documents; (iii) subtract the amount of any unresolved Claims pertaining to that Work; and (iv) subtract the sum of Owner's previous payments made on account of the applicable Work.

However, notwithstanding the foregoing, if the Final Accounting Report indicates Owner's previous payments made on account of the applicable Deliverable Portion of Work exceed the total amount due Construction Manager for that Work, Construction Manager shall reimburse Owner within thirty (30) Days of such determination with interest at the rate set forth in *Section 14.2* of the General Conditions.

7.11.3 Payment Disputes. In the event the Final Accounting Report indicates Construction Manager is due less than amounts requested in its final Application for Payment or Owner otherwise withholds amounts, including because of purported failure of the Work to conform to the Contract Documents' requirements or due to unresolved Claims, and Construction Manager disagrees with any such nonpayment, Construction Manager shall have a Claim and shall proceed in accordance with *Article 12* of the General Conditions.

7.12 Interest. Owner shall pay Contractor interest for payable amounts overdue, which necessarily do not include retainage properly withheld, at the rate set forth in *Section 14.2* of the General Conditions. For purposes of this *Section*, overdue amounts shall be those due and unpaid for not less than forty-five (45) Days from the latest of (a) the date Owner received the accurate, complete, Application for Payment; or (b) the date Owner receives proper notice of a Claim for nonpayment of amounts due and owing.

ARTICLE 8

TIME

8.1 Time is of the Essence. Time is of the essence of this Agreement and of the Contract Documents. Dates and milestones established or shown in the Project Schedule or Construction Schedule shall not be altered except by Change Order.

8.2 Calculation of Time. If a required time period in this Agreement expires on a Day other than a business day, such time period shall be extended to the next succeeding business day.

8.3 RESERVED.

ARTICLE 9

TERMINATION

9.1 Termination Generally. Any termination of the Contract Documents shall be pursuant to and in accordance with *Article 13* of the General Conditions.

9.2 Termination Prior to GMP Amendment. In addition to the terms and conditions of *Section 13.2* of the General Conditions, in the event Owner terminates this Agreement for convenience prior to the first GMP Amendment to the Agreement, or after Final Completion of a Deliverable Portion of Work and before signing a subsequent GMP Amendment, Construction Manager shall be entitled to only that portion of the Preconstruction Services Cost Limit earned up to and including the date of termination, together with amounts payable for Early Work for which Owner issued an Early Work Amendment.

ARTICLE 10

MISCELLANEOUS

10.1 Representations and Warranties. Construction Manager represents and warrants to Owner (a) its previously submitted qualifications, references, and financial information were and continue to be true and correct in all material respects and are without material change since the date of their submission and (b) the Contract Documents constitute Construction Manager's legal, valid, and binding obligation, enforceable in accordance with their terms.

10.2 Authority. Construction Manager and Owner each have full power and authority to enter into and perform the Contract Documents and the persons signing this Agreement on behalf of their respective parties are duly authorized to do so.

10.3 Ownership of Documents. In addition to the terms of the *Section 14.1* of the General Conditions, Construction Manager unconditionally and irrevocably transfers and assigns to Owner for uses connected to the Project an exclusive, royalty-free, license to the documents, information, and electronic data prepared by or for Construction Manager for the Project (the "Construction Manager's Work Product").

10.4 Notice. Any notice or other written instrument required or permitted pursuant to this Agreement shall be in writing signed by the party giving such notice. Delivery of all such notices and written instruments shall be by hand, overnight courier, or registered letter at the addresses set forth in *Exhibit I*; provided, however, each party shall have the right to change its address by sending notice in the same manner.

10.5 Third Parties. Nothing contained in this Agreement shall be deemed to give any third party a claim, Claim, or right of action against Owner or Construction Manager unless that third party is expressly included as an intended beneficiary under the terms of this Agreement.

10.6 Remedies. Except as set forth in this Agreement, all rights and remedies contained in this Agreement are in addition to all others available at law or in equity.

10.7 Headings. The captions contained in this Agreement are for convenience and reference only and neither extend nor limit the scope or intent of this Agreement or its terms.

10.8 Exhibits. All exhibits, schedules, and other attachments referenced in this Agreement are fully incorporated by reference and are an integral part of this Agreement.

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

10.10 Counterparts. This Agreement may be signed in separate counterparts, each of which when signed and delivered shall be an original, and all of which when taken together shall constitute one instrument.

SAMPLE

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

This Agreement is entered into as of the Effective Date.

CM/GC:

Name of Firm: _____

Address: _____

Federal Tax I.D. #: _____

Construction Contractor's Board Registration No.: _____

Signature of Authorized Representative of Design-Builder

Name: _____

Title: _____

Date _____

OWNER:

Oregon State University

Name: _____

Title: _____

Date _____

EXHIBIT LIST

Exhibit A	General Conditions of the Contract for Construction
Exhibit B	Form of Early Work Amendment
Exhibit C	General Conditions Work - RESERVED
Exhibit D	Form of GMP Amendment
Exhibit E	Preconstruction Services and Cost Limit - RESERVED
Exhibit F	Personnel and Rates - RESERVED
Exhibit G	Payment Claim Waiver - RESERVED
Exhibit H	RESERVED
Exhibit I	Notice - RESERVED
Exhibit J	RESERVED
Exhibit K	Owners Standard Requirements
Exhibit L	Project Description - RESERVED
Exhibit M	Quality Management/Quality Control Plan - RESERVED
Exhibit N	Site Description - RESERVED
Exhibit O	Direct Costs/General Conditions Costs/Fee Matrix and Travel Reimbursement Policy
Exhibit P	Insurance
Exhibit Q	Form of Bonds
Exhibit R	Form of Change Order
Exhibit S	Change Pricing