

**CONSTRUCTION MANAGER AT-RISK**  
**AND**  
**GENERAL CONTRACTOR**  
**AGREEMENT**

between

Oregon State University (OSU)  
(Owner)

and

\_\_\_\_\_  
(Construction Manager)

Dated \_\_\_\_\_, 20\_\_

**TABLE OF CONTENTS**

ARTICLE 1 DEFINITIONS AND GENERAL PROVISIONS ..... 1

    1.1 Definitions..... 1

    1.2 Other Terms ..... 4

    1.3 Context..... 4

    1.4 Incorporation by Reference..... 4

    1.5 General Conditions ..... 4

ARTICLE 2 RELATIONSHIP OF THE PARTIES ..... 4

    2.1 Relationship of the Parties ..... 4

    2.2 Project Development Team and Partnering ..... 4

    2.3 Existing Agreement ..... 5

    2.4 Project Financing ..... 5

ARTICLE 3 OWNER’S RIGHTS AND RESPONSIBILITIES ..... 5

    3.1 Timely Response..... 5

    3.2 Owner’s Personnel ..... 5

ARTICLE 4 CONSTRUCTION MANAGER’S RIGHTS AND RESPONSIBILITIES ..... 6

    4.1 Standard of Care ..... 6

    4.2 Construction Manager’s Role Generally..... 6

    4.3 Cooperation..... 6

    4.4 Progress Reports ..... 6

    4.5 Construction Manager’s Personnel and Consultants..... 6

    4.6 Governmental Approvals ..... 7

    4.7 Service Plan ..... 7

    4.8 Owner-Supplied Goods..... 7

    4.9 General Conditions Work ..... 7

    4.10 Building Information Modeling ..... 8

    4.11 LEED Standards..... 8

    4.12 Other Obligations..... 8

    4.13 Limitation of Authority..... 8

ARTICLE 5 PRECONSTRUCTION SERVICES..... 8

    5.1 Preconstruction Services ..... 8

    5.2 Project Planning ..... 8

    5.3 Project Scheduling ..... 9

    5.4 Project Phasing..... 9

    5.5 Cost and Constructability..... 9

5.6	Value Engineering .....	10
5.7	Energy Analysis .....	10
5.8	1% Art Program .....	10
5.9	Schematic Design Documents Phase .....	10
5.10	Design Development Documents Phase .....	11
5.11	GMP Development .....	11
5.12	Construction Documents Phase .....	12
ARTICLE 6 SUBCONTRACTS AND OTHER SERVICES .....		14
6.1	General Subcontracting Requirements.....	14
6.2	Subcontractor Interest .....	14
6.3	Bidder Qualifications .....	15
6.4	Subcontractor Selection .....	15
6.5	Subcontractor Protests.....	16
6.6	Self-Performed Work.....	16
6.7	Construction Manager’s Field Work.....	17
6.8	Early Work.....	17
6.9	Specialty Subcontractor Packages .....	18
ARTICLE 7 PAYMENT .....		19
7.1	Contract Sum .....	19
7.2	Preconstruction Services.....	19
7.3	Alternates .....	19
7.4	Allowances.....	19
7.5	Cost of the Work.....	20
7.6	Not Cost of the Work.....	22
7.7	Other Limitations on Cost of the Work .....	22
7.8	Construction Contingency; Subcontract Buy-Out .....	23
7.9	Construction Manager’s Fee and Bonus .....	24
7.10	Progress Payments .....	25
7.11	Final Payment .....	27
7.12	Interest.....	28
ARTICLE 8 TIME.....		28
8.1	Time is of the Essence .....	28
8.2	Calculation of Time .....	28
8.3	Liquidated Damages .....	28
ARTICLE 9 TERMINATION.....		28
9.1	Termination Generally .....	28

9.2 Termination Prior to GMP Amendment ..... 29

ARTICLE 10 MISCELLANEOUS ..... 29

10.1 Representations and Warranties ..... 29

10.2 Authority ..... 29

10.3 Ownership of Documents ..... 29

10.4 Notice ..... 29

10.5 Third Parties ..... 29

10.6 Remedies ..... 29

10.7 Headings ..... 29

10.8 Exhibits ..... 30

10.9 Entire Agreement ..... 30

10.10 Counterparts ..... 30

SAMPLE

**CONSTRUCTION MANAGER AT-RISK**  
**AND**  
**GENERAL CONTRACTOR**  
**AGREEMENT**

THIS CONSTRUCTION MANAGER AT-RISK AND GENERAL CONTRACTOR AGREEMENT (this “Agreement”) is made this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ (the “Effective Date”), by and between Oregon State University (“OSU”), a public university (the “Owner”), and \_\_\_\_\_, a[n] \_\_\_\_\_ (the “Construction Manager”). 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. [Optional – project specific]

“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. [Optional – project specific]

“BIM” shall mean building information modeling, a design and construction modeling process, that shall be implemented during design and construction of the Project. [Optional – project specific]

“BIM Model” shall mean the digital model or models produced during the design and construction of the Project. [Optional – project specific]

“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. [Optional – project specific]

“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. [Optional – project specific]

“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 [\_\_\_\_\_] 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. [Optional – project specific]

“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. [Discussion point - set up as General Conditions Work Lump Sum or General Conditions Work GMP]

“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. [Optional – discussion point]

“Net Savings” shall have the meaning given in *Section 7.8* of this Agreement. [Optional – discussion point]

“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, Owner’s Representative, and Design Professional]’ provided, however, Owner shall have the exclusive right to change at any time such parties so designated as Owner Parties. **[NOTE: The concept behind this term is that Owner may set the definition of “Owner Parties” in any way it wishes. Critical to this working is making the references to Owner Parties, Owner, Owner’s Representative, and Design Professional specific and in the preferred manner throughout the documents.]**

“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 \_\_\_\_\_, 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*. [Discussion point - Lump sum or GMP amount, consider if more than one Deliverable Portion of Work requiring more than one precon phase, splitting into multiple lump sums]

“Project Development Team” shall mean, collectively, Owner Parties, Construction Manager, and other parties Owner may designate from time to time. [Optional – discussion point and project specific]

“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 the [Project Development Team] establishes 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. [Optional – discussion point and project specific]



**2.3 Existing Agreement.** Owner and Construction Manager entered into that certain agreement dated \_\_\_\_\_, 20\_\_ pursuant to which Construction Manager provided certain Project [\_\_\_\_\_] (the “Existing Agreement”). Upon the Effective Date, the Existing Agreement shall terminate, except for any term or provision that expressly survives such termination. By signing this Agreement, Construction Manager represents it has been paid all sums due and owing under the Existing Agreement and shall have no Claim arising from the Existing Agreement. [Optional – project specific]

**2.4 Project Financing.** 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. [Optional – discussion point]

## 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. [Optional – discussion and negotiation point]

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. [Note: Consider allowing CM to build in rate escalation for projects longer than 1 year].

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. [Optional – discussion point and project specific]

**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. [Optional – discussion point]

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.** [Optional Section – discussion point]

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

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. [Optional Section – project specific]

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 LEED Standards.** Construction Manager agrees to use best efforts, including providing all reasonable documentation, to aid Owner Parties in causing the Project to incorporate, within the applicable GMP, elements and criteria necessary to qualify for U.S. Green Building Council Leadership in Energy and Environmental Design (LEED) certification points required to achieve Owner’s selected LEED certification standard identified on *Exhibit \_\_* (the “LEED Certification Standard”). Construction Manager acknowledges the LEED Certification Standard might include waste and air quality management practices that will directly affect Construction Manager’s Site operations. [Optional Section – project specific]

**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. [Optional Section – project specific]

### **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.** 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. [Optional – discussion point and project specific]

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.] [Optional - depending on budget and complexity of project]**

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.

[Note that this phase may come before or after the GMP Development, depending on the circumstances]

## **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. [Optional – discussion point]

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.] [Optional - depending on budget and complexity of project]**

**[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.] [Optional - depending on budget and complexity of project]**

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”). [Optional – project specific]

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 and OSU Procurement and Contract Services Manual Section 316.

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.

Construction Manager's Bonus, as set forth in *Section 7.9.3*, shall not apply to any Early Work. [Optional – discussion and negotiation point]

## **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*. [precon pricing exhibit – either on a basis of cost-reimbursement subject to GMP or as a percentage of completion of a fixed lump-sum.] 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.

In the event Construction Manager performs preconstruction services prior to the Effective Date (of this Agreement), Construction Manager acknowledges and agrees the terms of [the applicable preconstruction agreement] and of this Agreement shall be read together to govern Construction Manager's preconstruction services. In the event of a conflict between [the applicable preconstruction agreement] and this Agreement, the more stringent or expansive provisions shall apply. [Optional Section – project specific]

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 Insurance. Construction Manager’s insurance premiums incurred pursuant to the Contract Documents’ insurance requirements, subject to the following: (a) the reimbursable cost of

liability insurance shall not exceed [\$10 per \$1,000] of the GMP Amendments Total and (b) the reimbursable cost of subcontractor default insurance, if required or permitted, shall not exceed [\$12 per \$1,000] of the applicable Subcontracts; provided, however, in all instances, Construction Manager shall pay, without Owner's reimbursement, all deductibles, self-insured retentions, and co-payments.

7.5.15 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.

7.5.16 **[Casualties. Costs and losses reasonably incurred in connection with any casualty or peril arising from or relating to the Project 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.] [Optional section.]**

7.5.17 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. **[Note: three to five percent (3-5%) of the Cost of the Work is common.]** 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.

7.8.2 Reduction Milestones. **[Optional Section – discussion and negotiation point]** Each GMP Amendment’s Construction Contingency funds shall not exceed the amounts set forth below upon the milestones set forth below, and the amount of reduction in such funds, if any, shall be credited to Owner by Change Order included with Construction Manager’s Application for Payment immediately following each such milestone; unless, however, Owner initiates an additive Change Order allocating any such reductions in Construction Contingency to that Change Order.

<b>Reduction Milestone</b>	<b>Reduction Amount</b>
Completion of <b>[Foundations Subcontract Package]</b>	Construction Contingency funds, not including pending Claims and not including Net Savings remaining at the

	time of the milestone, shall not exceed <b>[2.75%]</b> of the applicable total Cost of the Work
Completion of <b>[Superstructure Subcontract Package]</b>	Construction Contingency funds, not including pending Claims and not including Net Savings remaining at the time of the milestone, shall not exceed <b>[2.5%]</b> of the applicable total Cost of the Work
Completion of <b>[Dry-in Subcontract Packages]</b>	Construction Contingency funds, not including pending Claims and not including Net Savings remaining at the time of the milestone, shall not exceed <b>[2.25%]</b> of the applicable total Cost of the Work
Completion of <b>[Mechanical, Electrical, and Plumbing Rough-in Subcontract Packages]</b>	Construction Contingency funds, not including pending Claims and not including Net Savings remaining at the time of the milestone, shall not exceed <b>[2%]</b> of the applicable total Cost of the Work
<b>[Five (5)]</b> days after <b>[Substantial Completion of the applicable Deliverable Portion of Work]</b>	Construction Contingency funds, not including pending Claims and not including Net Savings remaining at the time of the milestone, shall not exceed <b>[1%]</b> of the applicable total Cost of the Work
<b>[Five (5)]</b> days after <b>[Final Completion of the applicable Deliverable Portion of Work]</b>	Construction Contingency funds, not including pending Claims and not including Net Savings remaining at the time of the milestone, shall not exceed <b>[0%]</b> of the applicable total Cost of the Work

## 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 **[three and one-half percent (3.5%)]** of the Cost of the Work, not including any Construction Contingency funds and not including insurance deductibles.

Construction Manager’s Fee shall not be increased due to Change Orders until those Change Orders total least **[Fifty Thousand Dollars (\$50,000)]**. **[Optional Section – confirm with No Fee on Change Orders Section below]**

7.9.2 No Fee on Change Orders. Notwithstanding anything to the contrary contained in the Contract Documents and specifically excluding any terms allowing overhead and profit in *Exhibit S*, Construction Manager shall not be entitled to Construction Manager’s Fee for any additive Change Order. **[Optional Section – discussion and negotiation point]**

7.9.3 Shared Savings Bonus. **[Optional Section – discussion and negotiation point]**  
Following Final Completion of the Project, if Construction Manager has complied with the terms and conditions of the Contract Documents, Owner Parties and Construction Manager shall cooperate to determine if any remaining funds are subject to sharing, as set forth in this *Section 7.9.3*, using the following formula:

Take the GMP Amendments Total as of the date of Owner’s final payment for the Project	(netting the “Final GMP Amendments Total”)
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Subtract from the Final GMP Amendments Total the amount of any Claims, pending and settled, as well as Construction Manager's Fee	(netting the "Adjusted Final GMP Amendments Total")
Subtract from the Adjusted Final GMP Amendments Total the sum of the Cost of the Work paid for the Project	(netting the "Savings")
[ <b>Thirty-five Percent (35%)</b> ] of any available Savings, not to exceed [ <b>One-third of One Percent (.033%)</b> ] of the Cost of the Work, shall be payable to Construction Manager as a bonus, and Owner shall retain the remainder of such Savings	(the "Shared Savings")

## 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 [25th] 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. [Optional Section – discussion point]

.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 [thirty (30)] 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 Liquidated Damages.** [Optional Section – discussion and negotiation point] If a Deliverable Portion of Work or other milestone fails to be Substantially Complete until after the Guaranteed Substantial Completion Date applicable to such Work or such milestone for any number of days, Construction Manager shall pay to Owner by offset from the unpaid amount of the Contract Sum or by direct payment, if there remains insufficient unpaid Contract Sum funds to offset, the per diem liquidated damages amounts set forth in *Exhibit H* for all such days (the “Liquidated Damages”). Liquidated Damages shall be payable upon demand at the time they accrue.

8.3.1 It is understood and agreed by the Parties: (a) Owner will be damaged if Construction Manager fails to meet its obligations under the Contract Documents, including those pertaining to the Project Schedule and Construction Schedule; (b) it will be impracticable or extremely difficult to determine Owner’s actual damages resulting from Construction Manager’s breach of the Contract Documents, including the Project Schedule and Construction Schedule; and (c) Liquidated Damages payable under this *Article 8* are not a penalty and are instead a fair and reasonable estimate of compensation for the losses that Owner reasonably anticipates under the circumstances of the Project.

8.3.2 Liquidated Damages paid in accordance with this *Article 8* shall be the sole and exclusive measure of damages in the event Construction Manager fails to achieve Substantial Completion of a Deliverable Portion of Work or milestone on or before the Guaranteed Substantial Completion Date for such Work or milestone. However, Liquidated Damages are intended only to cover damages Owner suffers due to delay and do not cover the cost of completion of the Work or other damages, including due to Defective Work.

8.3.3 Construction Contingency shall not be used to pay Liquidated Damages.

8.3.4 This *Section 8.3* shall survive Final Completion and termination of this Agreement.

## 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.

**[OR]**

In addition to the terms and conditions of *Section 13.2* of the General Conditions, in the event Owner terminates this Agreement 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 [\_\_\_\_\_] as total compensation for its services provided prior to termination. [Optional section - only include if precon services are included in Construction Manager's Fee and not a separate payable amount.]

## 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"); [provided, however, Construction Manager and its Subcontractors shall retain all proprietary and intellectual property rights in the Construction Manager's Work Product consistent with the confidentiality provisions of *Section 14.4* of the General Conditions.] [Optional concession]

**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.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

This Agreement is entered into as of the Effective Date.

**OWNER:**

**CONSTRUCTION MANAGER:**

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

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

SAMPLE

**Exhibit A**

**GENERAL CONDITIONS**  
**OF THE**  
**CONTRACT FOR CONSTRUCTION**

**TABLE OF CONTENTS**

ARTICLE 1 DEFINITIONS AND GENERAL PROVISIONS ..... 1

    1.1 Definitions..... 1

    1.2 Other Terms ..... 5

    1.3 Context..... 5

    1.4 Incorporation by Reference..... 5

    1.5 Public Works..... 5

ARTICLE 2 CONTRACT ADMINISTRATION..... 7

    2.1 Correlation and Intent of Contract Documents ..... 7

    2.2 Design Professional and Owner’s Representative ..... 8

    2.3 Contract Administration..... 9

ARTICLE 3 OWNER’S RIGHTS AND RESPONSIBILITIES ..... 10

    3.1 Owner’s Rights ..... 10

    3.2 Owner’s Responsibilities ..... 11

ARTICLE 4 CONTRACTOR’S RIGHTS AND RESPONSIBILITIES ..... 11

    4.1 Contract Documents..... 11

    4.2 Use of Site..... 11

    4.3 Construction Procedures and Supervision ..... 12

    4.4 Labor and Materials ..... 13

    4.5 Quality Management and Control..... 13

    4.6 Communication..... 13

    4.7 Documents and Submittals..... 15

    4.8 Intellectual Property Costs..... 16

    4.9 Permits; Fees..... 16

    4.10 Testing..... 17

    4.11 Cutting and Patching..... 17

    4.12 Cleaning Up ..... 17

    4.13 Project Close-Out..... 18

    4.14 Right to Stop Work..... 19

ARTICLE 5 SUBCONTRACTS ..... 19

    5.1 Award of Subcontracts..... 19

    5.2 Form and Content ..... 19

    5.3 Conditional Assignment..... 20

    5.4 Right to Review ..... 20

    5.5 Conditions to Payment..... 20

ARTICLE 6 PAYMENT .....	20
6.1 Contract Sum .....	20
6.2 Schedule of Values .....	21
6.3 Applications for Payment.....	22
6.4 Certificate for Payment .....	23
6.5 Progress Payments .....	23
6.6 Right to Withhold Payment.....	25
6.7 Completion Milestones .....	25
6.8 No Liens; No Bond Claims.....	28
ARTICLE 7 TIME.....	28
7.1 Progress and Completion.....	28
7.2 Delays and Extension of Time.....	28
7.3 Owner-Caused Schedule Changes .....	29
7.4 Phased Construction.....	29
ARTICLE 8 INDEMNITY; INSURANCE; BONDS .....	30
8.1 Contractor Responsibility .....	30
8.2 Indemnification .....	30
8.3 Insurance .....	31
8.4 Bonds .....	32
ARTICLE 9 PROTECTION OF LIFE AND PROPERTY .....	32
9.1 Safety Precautions and Protective Measures.....	32
9.2 Emergencies.....	33
9.3 Reporting Requirements .....	33
9.4 Hazardous Materials .....	34
9.5 Contractor’s Responsibility.....	34
9.6 No Limitation.....	35
ARTICLE 10 ALLOWANCES; SUBSTITUTIONS; CHANGES .....	35
10.1 Allowances.....	35
10.2 Substitutions.....	35
10.3 Changes.....	36
ARTICLE 11 WORK ASSURANCES AND GUARANTEES .....	38
11.1 Uncovering of Work .....	38
11.2 Correction of Work.....	38
11.3 Warranties.....	39
ARTICLE 12 CLAIMS .....	39
12.1 Notice.....	39

12.2	Formal Claim Review .....	40
12.3	No Claims for Consequential Damages .....	42
ARTICLE 13 TERMINATION .....		42
13.1	Suspension .....	42
13.2	Termination.....	42
ARTICLE 14 MISCELLANEOUS .....		44
14.1	Use of Drawings and Specifications; Ownership.....	44
14.2	Interest.....	44
14.3	Independent Contractor Status .....	44
14.4	Confidentiality .....	44
14.5	Successors and Assigns.....	44
14.6	Written Notice.....	44
14.7	Governing Law; Venue.....	44
14.8	Rights and Remedies.....	44
14.9	Severability .....	45
14.10	Survival.....	45

## ARTICLE 1

### DEFINITIONS AND GENERAL PROVISIONS

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

“ADA” shall mean the Americans with Disabilities Act of 1990, together with any amendments and rules, regulations, requirements, and best practices promulgated under the authority of the same.

“Addenda” shall mean written, drawn, and graphic instruments and representations issued by Owner Parties prior to Contractor signing the Agreement that change, clarify, or interpret the Contract Documents.

“ADR Procedures” shall mean the procedures set forth in *Exhibit* \_\_. [Optional Exhibit – discussion point]

“Agreement” shall mean the [ \_\_\_\_\_ ] between Owner and Contractor as the same may be amended from time to time.

“Allowance” shall mean items of Work that Contractor offers to perform at a price that is reasonably estimated but not definitive.

“Applicable Laws” shall mean federal, state and local laws, codes, rules, regulations, zoning and ordinances and university standards and policies applicable to the Project, including: ADA; ORS Chapter 659, as amended; ORS Chapter 659A, as amended; subcontracting laws in ORS 701.005 and ORS Sections 701.021 to 701.068; landscape contractor laws in ORS Sections 671.520(2) and ORS 671.560; excavation notification laws in OAR Sections 952-001-0010 through OAR 952-001-00100; and all regulations and administrative rules established pursuant to the same.

“Application for Payment” shall mean Contractor’s certified request for Owner’s payment in the form required by the Contract Documents.

“As-Built Documents” shall mean the Drawings and Specifications revised by Contractor to show the as-built condition of the Work and other changes made to the Project during the construction process.

“Avoidable Delay” shall have the meaning given in *Section 7.2.3* of these General Conditions.

“Back-Up Documents” shall have the meaning given in *Section 6.1.2* of these General Conditions.

“Business Inclusion and Diversity Program” shall mean that program established in OSU Standard 03-010, Procurement Thresholds and Methods, and operated pursuant to the university’s Procurement and Contracts unit rules, policies and procedures.

“Certificate for Payment” shall mean each certificate, in the form prescribed in *Section 6.4* of these General Conditions, issued by Design Professional subsequent to an Application for Payment and in accordance with the Contract Documents evidencing the amount of the Contract Sum then due to Contractor.

“Certified Diverse Business Report” shall mean an accurate report by Contractor delivered to Owner identifying all certified diverse business enterprises certified with the State of Oregon, in accordance with ORS 200.005, performing work associated with the Project. That report is a condition to Final Completion and shall include the total number of contracts and subcontracts awarded to certified diverse business enterprises and the dollar value of each, including all changes during the course of the Project.

“Change Order” shall mean Owner’s written order, signed by Owner and Contractor, authorizing and directing a modification to the Contract Documents due to a change to: (i) the scope of the Work, (ii)



the Contract Time or a material change to the schedule of performance of the Work or the Project, or (iii) the Contract Sum or Contractor's compensation.

"Claim" shall mean a party to the Contract Document's request, demand, or assertion pertaining to: (i) a material change to the Contract Time or the schedule of performance of the Work or the Project, (ii) a change to the Contract Sum or Contractor's compensation, (iii) a reasonable dispute concerning conformance with the Contract Documents, (iv) damages suffered directly or indirectly by the act or omission of the other party; or (v) other relief from the terms of the Contract Documents.

"Close-Out" shall mean the process and plan prepared by Contractor that properly prepares the Project for turnover from Contractor to Owner, as set forth in *Section 4.13* of these General Conditions.

"Construction Change Directive" shall mean a written order prepared by Owner Parties and signed by Owner directing Contractor to perform a change in the Work prior to agreeing to a change, if any, to the Contract Time, schedule of performance of the Work, Contract Sum, or Contractor's compensation.

"Construction Contingency" shall have the meaning given in the Agreement.

"Construction Plan" shall mean Contractor's written and graphic plan for performance of the Work for each Deliverable Portion of Work including: (i) Project logistics; (ii) staging, storage, and office areas; (iii) pathways, ingress, and egress on the Site; and (iv) safety plans and managing personnel.

[Optional]

"Construction Schedule" shall mean Contractor's comprehensive, detailed, updated, critical path method (CPM) schedule (the "critical path") for each Deliverable Portion of Work, in conformance with accepted industry standards, that is consistent with the Project Schedule, and in a form and format approved in writing by Owner, all as set forth in *Section 4.6.3* of these General Conditions.

"Contract Documents" shall mean, collectively, the Agreement, as amended, including GMP Amendments to the Agreement; these General Conditions, as amended; the Supplemental General Conditions, if any; the Construction Schedule; the Drawings and Specifications and their Addenda; all approved changes to the Work formalized as minor changes in the Work, Change Orders, and Construction Change Directives; and all other documents in the Project Manual.

"Contract Sum" shall mean the total dollar amount payable by Owner to Contractor for a Deliverable Portion of Work.

"Contract Time" shall mean the allotted time to complete the Work of a Deliverable Portion of Work as set forth in the applicable Construction Schedule [and the allotted time to complete each Project phase or milestone as set forth in the Project Schedule.] [Optional – project specific]

"Contractor" shall mean the Construction Manager designated in the Agreement, who will manage the Work and construct the Project, and its permitted successors and assigns, or such other construction firm as Owner may designate from time to time.

"Cost of the Work" shall have the same meaning as in the Agreement.

"Day" shall mean a calendar day, including weekdays, weekends and holidays, unless otherwise defined.

"Default" shall mean: Contractor's failure to perform the Work in conformance with the Contract Documents; Contractor's failure to supply an adequate number of properly skilled workers or Materials; Contractor's failure to make payments when due and payable for Work or Materials; Contractor's insolvency; commencement of bankruptcy protection by or pertaining to Contractor; Contractor's voluntary bankruptcy action or an involuntary bankruptcy action commenced against Contractor; or Contractor's failure to comply with Applicable Laws.

“Defective Work” shall mean Work that fails to conform to the Contract Documents’ requirements.

“Delay” shall mean delays in performance of the Work, the Project, or other execution of the Contract Documents.

“Deliverable Portion of Work” shall mean each portion of the Work, or all Work, as the case may be, that Owner agrees in writing to accept when such Work is Substantially Complete, all as set forth in the Contract Documents, including the Project and Construction Schedule.

“Design Professional” shall have the meaning given in the Agreement.

“Drawings” shall mean those Contract Documents showing the design, location and dimensions of the Work, known generally as but not limited to, plans, elevations, sections, details, and schedules.

“Fee” shall have the same meaning as Contractor’s Fee or Construction Manager’s Fee in the Agreement.

“Final Completion” shall mean the complete execution of all Contract Documents’ requirements for a Deliverable Portion of Work, as the Contract Documents require, including Close-Out as described in *Section 4.13* but excluding warranty Work as described *Section 11.2*, all as described in these General Conditions. The issuance of a final certificate of occupancy for a Deliverable Portion of Work, along with all final approvals from Governmental Authorities, shall be evidence of but not determinative of, Final Completion of that Work.

“Force Majeure” shall have the meaning given in *Section 7.2.2* of these General Conditions.

“General Conditions” shall mean these General Conditions of the Contract for Construction.

“GMP” shall have the same meaning as in the Agreement.

“GMP Amendment” shall have the same meaning as in the Agreement.

“Governmental Approvals” shall mean all permits, licenses, approvals, and consents, of Governmental Authorities required to perform the Work or complete the Project.

“Governmental Authority” shall mean any federal, state, county, municipal, local or other governmental body having jurisdiction over the Work, the Project, or the Site.

“Labor Agreement” shall mean the Labor Agreement, when approved by Owner Parties, and attached as *Exhibit* \_\_, and as amended from time to time. [Optional]

“Liquidated Damages” shall have the meaning given in the Agreement.

“Materials” shall mean all materials, supplies, appliances, equipment, fixtures, and other items that are part of the Work, necessary to complete the Work, or consumed during performance of the Work.

“Notice to Proceed” shall mean official written notice from Owner Parties to Contractor directing Contractor to commence activities described in such notice, including a notice of commencement for all or a portion of the Work.

“Owner Parties” shall have the meaning given in the Agreement. **[NOTE: The concept behind this term is that Owner may set the definition of “Owner Parties” in any way it wishes. Critical to this working is making the references to Owner Parties, Owner, Owner’s Representative, and Design Professional specific and in the preferred manner throughout the documents.]**

“Owner’s Representative” shall have the meaning given in the Agreement.

“Owner’s Separate Contractors” shall mean forces hired by Owner other than Contractor’s forces, as set forth in *Section 3.1.6* of these General Conditions.

“Owner’s Standard Requirements” shall mean OSU’s standard contractor requirements set forth in *Exhibit K*. [Optional]

“Owner-Supplied Equipment and Materials” shall have the meaning given in the Agreement.

[Optional – discussion point]

“Person” shall mean any natural person or entity doing business of any kind, including a partnership, a joint venture, a corporation, a limited liability company, and any other entity possessing the legal capacity to contract.

“Product Data” shall mean illustrations, schedules, performance charts, instructions, brochures, diagrams, and other information that Contractor furnishes to illustrate Materials to be incorporated into the Work.

“Progress Report” shall mean Contractor’s monthly report to Owner containing an executive summary of completed Work and the contents of the report; the up-to-date Construction Schedule; the current actual costs as compared to their budgeted costs for completed activities and estimated costs compared to their budgeted costs for incomplete activities; Construction Contingency status; all known and potential Claims; all material issues relating to the Project that may affect Contract Sum, Contract Time, or Project quality, and proposed solutions for each such issue; status of all outstanding requests for information; current safety and accident report; Project progress photos; and other relevant information reasonably required by Owner.

“Project” shall mean the project described on *Exhibit L* which includes the Work of the Contract Documents.

“Project Manual” shall mean, collectively, the bidding requirements and associated documents, sample forms, these General Conditions, Supplemental General Conditions, if any, and Drawings and Specifications.

“Project Schedule” shall mean the overall schedule of the Project, as approved by Owner, including proposed activity sequences and durations, phases and milestone dates, preparation and processing of shop drawings and samples, Owner’s occupancy requirements, and pertinent information from each of Contractor’s Construction Schedules, all as updated from time to time.

“Punch List” shall mean the list generated by Contractor and approved by Owner Parties of incomplete or Defective Work that must be corrected before the Project achieves Final Completion.

“Quality Management and Control Plan” shall mean the comprehensive quality management and control plan described in *Section 4.5* of these General Conditions and attached as *Exhibit M*.

“Record Document” shall mean Contractor’s As-Built Documents, testing and inspection records, product data, samples, manufacturer and distributor/supplier warranties evidencing transfer of ownership to Owner, operational and maintenance manuals, approved shop drawings, Certified Diverse Business Report, correspondence that is material to the Contract Documents, certificate(s) of occupancy, Close-Out documents, and other documents recording performance of the Work.

“Samples” shall mean physical examples illustrating Materials or workmanship, and shall establish standards upon which the Work will be reviewed and approved.

“Schedule of Values” shall mean Contractor’s statement reflecting the portions of the Contract Sum allocated to the various portions of the Work and, when approved by Owner, used as the basis for reviewing and processing Applications for Payment, in accordance with *Section 6.2* of these General Conditions.

“Shop Drawings” shall mean drawings, diagrams, schedules, and other data specially prepared for the Work by or on behalf of Contractor to illustrate a portion of the Work.

“Site” shall mean the real property upon which the Work will assembled, located at [ ] and further described in *Exhibit N*.

“Specifications” shall mean those Contract Documents containing the written requirements for Materials, systems, and standards of the Work, including inspection, testing, and warranty requirements.

“Standard of Care” shall have the same meaning as in the Agreement.

“Subcontract” shall mean any agreement between Contractor and a Subcontractor for performance of Work or a Supplier for supplying Materials to the Project.

“Subcontractor” shall mean a Person having an agreement with Contractor to perform Work. Owner’s Separate Contractors are not Subcontractors unless Owner expressly assigns them in writing to Contractor.

“Submittals” shall mean Shop Drawings, Product Data, Samples and other customary documents submitted to Design Professional following Contractor’s review and approval.

“Substantial Completion” and “Substantially Complete” shall mean a Deliverable Portion of Work is sufficiently complete in accordance with the Contract Documents so the Owner can occupy or utilize the same for its intended purpose. In no event shall Work be deemed Substantially Complete unless a certificate of occupancy has been issued for the Project or Deliverable Portion of Work, as the case may be, by the appropriate Governmental Authorities and such Work can be delivered to Owner with only Punch List items unfinished in the common areas that will not interfere with Owner’s practical use.

“Substitution” shall mean any product or process Contractor proposes to substitute for one specified in the Contract Documents that completely fulfills the requirements of the Contract Documents and is approved by Owner Parties.

“Sub-subcontractor” shall mean a Person having an agreement with a Subcontractor to perform Work. **[Optional – discussion point]**

“Supplemental General Conditions” shall mean those conditions that remove from, add to, or modify these General Conditions by separate attachment to the Contract Documents.

“Supplier” shall mean a Person having an agreement with Contractor, Subcontractors, or Sub-subcontractors, to supply Materials to the Project.

“Supporting Documents” shall have the meaning given in *Section 6.3.1* of these General Conditions.

“Unavoidable Delay” shall have the meaning given in *Section 7.2.4* of these General Conditions.

“Work” shall mean the furnishing of all Materials, services, labor, transportation, facilities, management, and other reasonably necessary work, to perform and complete construction of the Project in accordance with, and reasonably inferable from, the Contract Documents.

**1.2 Other Terms.** In addition to the terms defined in this *Article 1*, other terms are defined throughout these General Conditions in sections relevant to their use. Terms used but not specifically defined in these General Conditions shall have their well-known technical or industry meanings.

**1.3 Context.** As the context of each provision of these General Conditions 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 these General Conditions 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 these General Conditions shall be incorporated in and integral to these General Conditions by their reference.

**1.5 Public Works.**

**1.5.1 Government Employment Status.** If payment under the Agreement will be charged against federal funds, Contractor represents and warrants that it is not currently employed by the

Federal Government. This does not preclude Contractor from holding another contract with the Federal Government. Contractor further represents and warrants that Contractor is not an employee of the State of Oregon for purposes of performing Work.

1.5.2 Retirement System Status and Taxes. Contractor represents and warrants that it is not a contributing member of the Oregon Public Employees' Retirement System and will be responsible for any federal or state taxes applicable to payment received under the Contract Documents. Contractor will not be eligible for any federal Social Security, employment insurance, workers' compensation or the Oregon Public Employees' Retirement System benefits from Project payments, except as a self-employed individual. Unless Contractor is subject to backup withholding, Owner will not withhold from its payments to Contractor federal or state tax obligations.

1.5.3 Minimum Wages Rates on Public Works. Contractor shall comply fully with the provisions of ORS Sections 279C.800 through 279C.870. Documents establishing those conditions, as determined by the Oregon Commissioner of the Bureau of Labor and Industries, are included as attachments to or are incorporated by reference in the Contract Documents. Pursuant to ORS 279C.830(1)(c), Contractor shall pay workers not less than the specified minimum hourly rate of wage, and shall include the same minimum hourly rate of wage requirement in all Subcontracts. If the Work is subject to both the Oregon state prevailing wage rate law and the federal Davis-Bacon Act, Contractor shall pay the higher of the two prevailing rates. Contractor shall also provide written notice to all workers of the number of hours per day and days per week such workers may be required to work.

1.5.4 Payroll Certification and Fee Requirements. In accordance with ORS 279C.845, Contractor and every Subcontractor shall submit written certified statements to Owner Parties, on the form prescribed by the Oregon Commissioner of the Bureau of Labor and Industries, certifying the hourly rate of wage paid to each worker that Contractor or a Subcontractor has employed on the project and further certifying that no worker employed on the Project has been paid less than the prevailing rate of wage or less than the minimum hourly rate of wage specified in the Contract Documents. Contractors and Subcontractors shall verify by oath that they have read the certified statement, that they know the contents of the certified statement, and that, to their best knowledge and belief, the certified statement is true. The certified statements shall set out accurately and completely the payroll records for the prior week, including the name and address of each worker, the worker's correct classification, rate of pay, daily and weekly number of hours worked, deductions made, and actual wages paid. Certified statements for each week during which the Contractor or Subcontractor has employed a worker on the project shall be submitted each month, by the fifth business day of the succeeding month. The Contractor and Subcontractors shall preserve their certified statements for a period of ten (10) years from the date of Final Completion.

1.5.5 Additional Retainage. Pursuant to ORS 279C.845(7), Owner shall retain twenty-five (25) percent of any amount earned by Contractor on this public works Project until Contractor has filed the certified statements required by *Section 1.5.4* above. Owner shall pay to Contractor the amount retained under this *Section* within fourteen (14) Days after Contractor files the required certified statements, regardless whether a Subcontractor has failed to file certified statements. Pursuant to ORS 279C.845(8), Contractor shall retain twenty-five percent (25%) of any amount earned by a Subcontractor on this public works Project until that Subcontractor has filed with Owner Parties the certified statements required by *Section 1.5.4* above. Before paying any amount retained under this *Section*, Contractor shall verify that Subcontractor has filed the certified statement. Within fourteen (14) Days after Subcontractor files the required certified statement, Contractor shall pay Subcontractor any amount retained under this *Section*.

1.5.6 Bureau of Labor and Industries Fee. In accordance with statutory requirements and administrative rules promulgated by the Oregon Commissioner of the Bureau of Labor and Industries, the fee required by ORS 279C.825(1) will be paid by Owner to the Commissioner.

1.5.7 Hours of Labor. As a condition to Owner's performance under the Contract Documents, no Person shall be employed to perform Work for more than ten (10) hours in any one Day or forty (40) hours in any one week, except in cases of necessity, emergency, or where public policy absolutely requires it. In such instances, Contractor shall pay the employee at least time and a half pay: (i) for all overtime in excess of eight (8) hours a day or forty (40) hours in any one week when the work week is five consecutive Days, Monday through Friday; (ii) for all overtime in excess of ten (10) hours a day or forty (40) hours in any one week when the work week is four consecutive Days, Monday through Friday; and (iii) for all Work performed on Saturday and on any legal holiday specified in ORS 279C.540. This *Section 1.5.7* will not apply to Contractor's Work to the extent Contractor is currently a party to a collective bargaining agreement with any labor organization as set forth in the Labor Agreement and shall not excuse Contractor from completion of the Work in accordance with the Construction Schedule and within the Contract Time.

1.5.8 Labor Laws. Contractor shall comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules, and regulations. Contractor shall not, in the awarding of Subcontracts, discriminate against businesses that have been certified by the State of Oregon Certification Office for Business Inclusion and Diversity under ORS 200.055 . Contractor shall maintain, in current and valid form, all licenses and certificates required by Applicable Laws and by the Contract Documents when performing the Work.

1.5.9 Labor Agreement. The Labor Agreement shall govern labor relations for the Project and shall establish rules and procedures for labor efficiency, assignment of work, and prompt settlement of all disputes. Contractor shall follow and enforce the Labor Agreement to ensure uninterrupted Project operations. All Persons performing Work shall become party to the Labor Agreement with exception to those portions of the Work expressly excluded from the Labor Agreement, for which Contractor shall award as "open-shop." [Optional – discussion point]

1.5.10 Contractor Certifications. Unless contrary to federal law, Contractor shall certify that it shall not accept a bid to perform Work from Subcontractors as described in ORS 701.005 unless such Subcontractors are registered with the Oregon Construction Contractors Board in accordance with ORS Sections 701.021 to 701.068 at the time they submit bids. Unless contrary to federal law, Contractor shall certify that each landscape contractor, as defined in ORS 671.520(2), performing Work holds a valid landscape contractor's license issued pursuant to ORS 671.560.

The following notice is applicable to Contractors who perform excavation Work:

"ATTENTION: Oregon law requires you to follow rules adopted by the Oregon Utility Notification Center. Those rules are set forth in OAR 952-001-0010 through OAR 952-001-00100. You may obtain copies of the rules by calling (503)232-1987."

1.5.11 Dual Payment Sources. Contractor shall not be compensated for Work from any payment source other than Owner.

## ARTICLE 2

### CONTRACT ADMINISTRATION

#### **2.1 Correlation and Intent of Contract Documents.**

2.1.1 General Meaning. The Contract Documents are complementary. Whatever is called for in one Contract Document, shall be interpreted to be called for in all Contract Documents. Contractor shall perform all Work required by, reasonably inferable from, and consistent with, the Contract Documents. Some of the Contract Documents, like the Specifications, contain detailed procedures. These detailed procedures and requirements are supplementary to, and do not control, the requirements of the other Contract Documents. Instead, wherever possible, the Contract Documents shall

be read together and inconsistencies shall be, where practicable, considered additional requirements to those of the other Contract Documents.

2.1.2 Intent of the Contract Documents. The intent of the Contract Documents is to include all items necessary for the execution of the Work. All Work shall be performed in a professional manner and unless the means or methods of performing a task are specified elsewhere in the Contract Documents, Contractor shall employ methods that are generally accepted and used by the industry, in accordance with industry practices and the Standard of Care. The Contract Documents contain the entire integrated agreement between Contractor and Owner and supersede prior negotiations, representations, and agreements, whether written or oral. The Contract Documents do not create a contractual relationship between Design Professional and Contractor or Owner and Subcontractors or Sub-subcontractors.

2.1.3 Order of Precedence. In the event of irreconcilable conflicts or discrepancies among the Contract Documents whose requirements cannot be both practicably performed, interpretations shall be based on the following descending order of precedence: (i) Change Orders, with those of later date having precedence over those of an earlier date; (ii) the Agreement; (iii) the Supplemental General Conditions, if any; (iv) the General Conditions; (v) Division One (General Requirements) of the Specifications; (vi) Detailed Schedules of finishes and Materials; (vii) Drawings and Specifications, other than Division One and the Detailed Schedules to the Specifications; (viii) Large-scale drawings; (ix) Small-scale drawings; (x) Written dimensions over scaled dimensions. [Discussion point – order of precedence]

2.1.4 Greater Quality/Quantity. In the case of an inconsistency between Contract Documents as to quantity or quality and not clarified by Addenda, the better quality or greater quantity of Work shall be furnished.

2.1.5 Notice to Owner of Inconsistency. If Contractor finds discrepancies in, or omissions from, the Contract Documents, or if Contractor is in doubt as to their meaning, Contractor shall immediately notify Owner Parties. Owner Parties shall render final interpretation of Contract Document requirements. Responses to Contractor's requests for interpretation of Contract Documents will be made in writing within any time limits agreed upon or otherwise with reasonable promptness and will be consistent with the intent of the Contract Documents. If an inconsistency or interrelation is unresolved, Contractor shall not proceed with affected Work until it receives written direction from Owner Parties.

2.1.6 References to Standards. All references to standards, express or implied, including to standard specifications, manuals, codes of any technical society, organization or association, or laws or regulations of any governmental authority, shall mean the latest standards in effect in the Site's jurisdiction, occurring on the first published date of any solicitation document, except as may be otherwise specifically stated.

2.1.7 Titles and Sections. Some Contract Documents, including the Specifications are titled and sectioned for convenience only and such sectioning shall not control Contractor's division of Work among its Subcontractors and the trades and shall not relieve Contractor of responsibility for satisfactory execution of the Work. Owner Parties assume no responsibility for Contractor's division and coordination of the Work.

## **2.2 Design Professional and Owner's Representative. [Optional Sections – project specific and discussion point]**

2.2.1 Design Professional will administer the Contract Documents during construction and through the Project's Close-Out. Owner's Representative will represent Owner at the Site and will be Contractor's contact point for consultation and instruction. Owner may also authorize Owner's Representative to take additional actions on Owner's behalf, and to execute instruments on Owner's behalf; provided, however, that Owner's Representative has Owner's express written authorization.

2.2.2 Owner's Representative will inform Owner of the progress of the Work and will be Owner's advisor during the course of the Work. However, Owner's Representative shall neither be responsible for nor have control of construction means, methods, or procedures, Site or Project safety, and shall have no control over the acts or omissions of Contractor, Subcontractors, Sub-subcontractors, or any other Persons performing Work.

**2.3 Contract Administration.** Owner Parties shall administer the Contract Documents during construction through Final Completion and during the one-year warranty period for correction of Work. However, Owner reserves the right to perform directly all or some of the roles, and will have all of the rights, designated for Owner Parties in the Contract Documents, including to inspections and rejection of the Work and processing and approving Applications for Payment. In the event Owner chooses to self-perform administration of the Contract Documents, Owner shall not be responsible for or have control of construction means, methods, or procedures, Site or Project safety, and shall have no control over the acts or omissions of Contractor, Subcontractors, Sub-subcontractors, or any other Persons performing Work.

Contractor shall control and shall be solely responsible for safety precautions and programs in connection with the Work.

2.3.1 Communication. Except as otherwise provided in the Contract Documents or when direct communications have been specifically authorized, Owner and Contractor shall endeavor to communicate with each other about matters arising out of or relating to the Contract Documents through Owner Parties. Communications by and with Subcontractors, Sub-subcontractors, and Suppliers shall be through Contractor. Communications by and with Owner's Separate Contractors shall be through Owner's Representative.

2.3.2 Site Visits. Owner Parties will visit the site at intervals appropriate to the stage of the Contractor's operations to become generally familiar with and to keep the Owner informed of the progress and quality of the Work and to guard against defects and deficiencies in the Work. Owner Parties' review of the Work is to determine, generally, if Work is and will be in accordance with the intent of the Contract Documents. Owner Parties will not make exhaustive or continuous on-site inspections to check the quality or quantity of the Work.

2.3.3 Safe Access to Work. Owner Parties shall have access to the Work and the Site at all times. Contractor shall furnish adequate facilities, as required, for Owner Parties to safely access and inspect the Site and the Work, including without limitation, walkways, railings, ladders, tunnels, and platforms. Producers, Suppliers, and fabricators shall also provide proper facilities and access to accommodate Owner Parties' inspections.

2.3.4 Inspections. Work performed and Materials furnished shall be subject to inspection, observation, and testing by Owner Parties at their discretion. Owner Parties' inspection of the Work is to independently determine if the Contract Documents' requirements are met and shall not relieve Contractor of its responsibility to ensure the Work meets the Contract Documents' requirements.

2.3.5 Affected Third Parties. When the United States Government pays all or a portion of the Contract Sum, when Owner has an agreement with other public or private organizations, or when a portion of the Work is performed for a third party or in close proximity to third party facilities, representatives of these affected organizations (the "Affected Third Parties") shall have the right to inspect the Work impacting their interests or property. Affected Third Parties' rights to inspect shall not give rise to any status as a party to the Contract Documents, however, and shall not interfere with Owner's or Contractor's rights under the Contract Documents. Communications concerning Affected Third Parties shall be conducted exclusively between the Owner Parties and Contractor.



## ARTICLE 3

### OWNER'S RIGHTS AND RESPONSIBILITIES

#### **3.1 Owner's Rights.**

3.1.1 Right to Reject Work. Owner Parties shall have the authority to reject Work that does not conform to the Contract Documents and to require special inspection or testing of any Work. However, neither Owner Parties' authority to act under this *Section*, nor any decision made by them in good faith, shall give rise to any duty to Contractor, Subcontractor, Sub-subcontractor or any other person performing Work. Work that is Defective Work, in Owner Parties' reasonable judgment, shall be removed from the Site, corrected, and repaired, at Contractor's expense. Work completed or Materials installed that are subject to inspection or testing under the Contract Documents but for which Contractor failed to properly inspect, test, or timely notice Owner Parties, may be ordered removed by Owner Parties at Contractor's expense.

3.1.2 Right to Carry Out the Work. If within five (5) Days after receiving written demand from Owner Parties to diligently prosecute all or any part of the Work, Contractor fails or neglects to carry out such Work promptly and in accordance with the Contract Documents, Owner may, and without prejudice to any other remedy, make good Contractor's deficiencies.

If Owner carries out Work as set forth above, Owner Parties shall issue an appropriate Change Order deducting from the Contract Sum the cost of correcting such deficiencies, including compensation for Owner Parties' additional services due to such deficiency. If, at the time Owner issues the deductive Change Order, the payments due Contractor are insufficient to cover the deduction in the Contract Sum, Contractor shall immediately pay to Owner the difference.

3.1.3 Right to Clean Up. In the event Contractor and Owner's Separate Contractors dispute responsibility for cleaning up, Owner Parties may direct Contractor to clean up and charge its costs, in Owner Parties' reasonable judgment, to the responsible parties.

3.1.4 Partial Occupancy. Owner shall have the right to occupy and use any completed or partially completed portions of the Work, provided Governmental Authorities having jurisdiction over the Work consent to such occupancy. Substantial Completion shall not be a prerequisite to Owner's occupancy or use; provided, however, that Owner and Contractor have (a) reasonably accepted in writing their respective responsibilities for payments, retainage, security, insurance, maintenance, heat, utilities, and damage to the Work and (b) agreed in writing to the period for correction of Work and commencement of warranties required by the Contract Documents for those portions of the Work occupied or used. Immediately prior to Owner's partial occupancy or use, Contractor and Owner Parties shall jointly inspect the area to be occupied or used to determine and record the condition of the Work. Partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work that fails to conform to the Contract Documents.

3.1.5 Access to Records. Owner shall have access to all Documents and drawings Contractor, Subcontractors, Suppliers, and their respective contractors produce or procure for this Project, accounting records, receipts, invoices, and other documentation relating to the Project and to performance of the Work, all upon request at any time following the effective date of the Agreement and until ten (10) years after Final Completion of the Project.

3.1.6 Right to Perform Other Work. Owner reserves the right to perform other or additional work at or near the Site with Owner's Separate Contractors. If such work takes place within or adjacent to the Site, Contractor shall coordinate such work and cooperate with Owner's Separate Contractors, to carry out the Work with minimal interference and Delay. Contractor and Owner's Separate Contractors shall place and dispose of materials so as not to interfere with the operations of the other, and shall join the Work with the work of others in an acceptable manner and in proper sequence. In

the event of a dispute among Contractor and Owner's Separate Contractors concerning the order or priority of work, Owner Parties' decision shall be final.

### **3.2 Owner's Responsibilities.**

3.2.1 Timely responses and approvals. Owner shall render approvals and decisions with reasonable promptness and shall endeavor to minimize Delay in the orderly progress of Contractor's services and the Work; provided, however, Contractor shall timely advise Owner of the time requirements of such approvals and decisions.

3.2.2 Surveys and Site Data. With prior written request, Owner shall furnish Contractor with all surveys of the Site then in Owner's possession and to the extent necessary to properly perform the Work. Contractor shall review all such materials and promptly notify Owner of inaccuracies or inconsistencies that Contractor discovers. Contractor shall be liable for any inaccuracies or inconsistencies that Contractor discovered or should have discovered in accordance with the Standard of Care, but for which Contractor failed to promptly give to Owner notice.

3.2.3 Other Information or Services. With Contractor's prior written request, Owner shall furnish Contractor with all other information or services then under Owner's control and reasonably required for performance of the Work, with reasonable promptness.

## ARTICLE 4

### **CONTRACTOR'S RIGHTS AND RESPONSIBILITIES**

#### **4.1 Contract Documents.**

4.1.1 Examination of the Contract Documents. Contractor shall carefully study and examine the Contract Documents and shall at once report to Owner Parties discovered errors, inconsistencies, omissions, and departures from Applicable Laws, including design errors and omissions. By studying the Contract Documents, Contractor has fully informed itself as to the quality, quantity, and sources of Materials, the character of the Work, and has made a careful examination of the Site and the location and conditions of the Work. As such, Owner shall not be responsible for and Contractor shall have no Claim for losses or unanticipated costs that Contractor suffers due to conditions that Contractor discovered or, as an experienced contractor, should have discovered, but failed to timely report to Owner Parties.

Notwithstanding the above, Design Professional, not Contractor, shall be solely responsible to confirm the Contract Documents comply with Applicable Laws for those design matters under the direction of Design Professional.

4.1.2 Verification of the Contract Documents. Contractor shall verify all dimensions before laying out the Work, is responsible for the accuracy of all lines, grades, and measurements, and shall protect and preserve all land and survey markers while performing services and executing the Work. Owner Parties' confirmation of dimensions and layout shall not relieve Contractor of its responsibilities to the same.

4.1.3 Inquiry Required. Should the Drawings or Specifications fail to particularly describe the Materials or details of construction of any aspect of the Work, Contractor shall make prompt inquiry to Owner Parties informing them of the issues and seeking additional clarification. Absent specifications to the contrary, the materials or processes normally used to produce first quality finished works, shall be considered a part of the Contract Documents. Commencement of any Work shall constitute Contractor's representation that the Contract Documents are sufficiently detailed and complete to permit Contractor to complete the Work undertaken in accordance with the Contract Documents.

#### **4.2 Use of Site.**

4.2.1 Contractor's Operations. Contractor shall confine all Materials, storage, and operations at the Site to the limits indicated by the Contract Documents, Applicable Laws, permits, and direction of Owner Parties.

4.2.2 Adjacent Buildings and Owner's Ongoing Business. Contractor understands the Work performed at the Site will occur around existing buildings, some of which may be historic and fragile, that house and facilitate Owner's current operations. As such, all Work shall be conducted in a manner causing as little interference with and inconvenience to the surrounding structures and continuous conduct of Owner's operations as possible.

4.2.3 Storage and Safekeeping. Contractor shall be solely responsible for storage, handling, and safekeeping at all times of Contractor's and Subcontractors' tools, all equipment including Owner-Supplied Equipment, and all Materials. Contractor shall provide Site and any necessary storage security to guard against vandalism and theft to the Work, tools, all equipment including Owner-Supplied Equipment, and all Materials under Contractor's control and care. Contractor hereby waives all Claims that pertain to the requirements of this *Section*.

#### **4.3 Construction Procedures and Supervision**

4.3.1 General Responsibilities. Contractor shall supervise, coordinate, and direct the Work, using the Contractor's best skill and attention, in accordance with the Standard of Care **[and shall be responsible for implementing the Construction Plan]**. Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences, and procedures, Site and Project safety, and for coordinating all portions of the Work, unless the Contract Documents give other specific instructions concerning these matters. In any event, Contractor shall also evaluate the coordination and jobsite safety of others contributing to the same.

4.3.2 Governmental Authority Coordination. Contractor shall coordinate the Work with all Governmental Authorities and utility companies involved in the Project. Prior to excavation and in accordance with utility locating requirements, Contractor shall cause to have located all underground facilities on and about the Site before commencing any digging operations.

4.3.3 Supervision. Among Contractor's on-Site staff shall be a senior project manager, superintendent, and necessary assistants who shall be satisfactory to Owner Parties and who shall attend the progress of the Work. The project manager shall represent Contractor and all communications given to the project manager shall be binding on Contractor as if given directly to it.

4.3.4 Protection of Work; Mitigation. Contractor shall protect from damage and maintain the Work during the course of construction and shall mitigate any adverse impacts to the Project, including those caused by casualty and by Owner's authorized changes, which may affect Contract Sum, Contract Time, schedules, or quality.

4.3.5 Structure Surveys. Contractor shall cause to be performed comprehensive surveys of the structural components of the Work, verifying its complete conformance with all dimensional and performance requirements of the Contract Documents and Applicable Laws. **[Optional Section – project specific and discussion point]**

4.3.6 Owner's Separate Contractors. Contractor shall provide Owner's Separate Contractors reasonable opportunity to introduce and store at the Site their tools, equipment, and Materials and for the execution of their work. Contractor shall coordinate the Work with the work and services of Owner's Separate Contractors in accordance with the Contract Documents.

Work whose commencement depends upon completion of Owner's Separate Contractors' work shall not be commenced until Contractor inspects such Owner's Separate Contractors' work for conformance with the Contract Documents. In the event Contractor finds Owner's Separate Contractors' work defective or incomplete, Contractor shall promptly report to Owner Parties the apparent issues. Contractor's failure to

inspect and report such issues shall, except for latent, concealed defects, constitute an acceptance of Owner's Separate Contractors' work as fit for proper execution of the Work.

Any costs caused by defective or ill-timed Work and any damage to the Work or to Owner's Separate Contractors' work shall be borne by the party responsible for such defect, ill-timeliness, or damage.

**4.4 Labor and Materials.** Contractor shall provide and pay for all labor, Materials, machinery, utilities, transportation, and other facilities and services necessary for the proper execution and completion of the Work in accordance with the Contract Documents.

4.4.1 Quality of Work. Contractor shall execute the Work with a quality of workmanship consistent with first-class [public university projects]. Contractor warrants that all Materials shall be new unless otherwise called for in the Contract Documents and that the Work will be free from defects and conform to the Contract Documents' requirements.

4.4.2 Labor and Staffing. Contractor shall maintain sufficient numbers of qualified workers and personnel assigned to the Project to ensure that its obligations under the Contract Documents are timely met. Contractor shall maintain a competent, full-time staff at the Site, including personnel experienced with projects of similar size and scope to that of the Project.

4.4.3 Labor Relations. Contractor is responsible for the actions of all its personnel, laborers, Subcontractors, Sub-subcontractors, Suppliers, and all Persons performing Work on the Project. Contractor shall enforce strict discipline and good order among all Persons carrying out the Work. Contractor shall not permit employment of Persons who are unfit or unskilled for the tasks assigned to them or to whom Owner Parties make reasonable objection.

4.4.4 Medical and Workers' Compensation Payments. As a condition to Owner's performance, Contractor shall promptly, when due, make payment to any person, partnership, association, company, or corporation furnishing medical, surgical, or hospital care or other needed care and attention, incident to sickness or injury, to the Contractor's employees. Contractor agrees to pay for all such services, including from monies the Contractor has collected or deducted from the wages of personnel pursuant to any law, contract, or agreement for providing or paying for such services. Contractor shall comply with and shall ensure all Subcontractors and Sub-subcontractors comply with ORS Chapter 656.

**4.5 Quality Management and Control.**

4.5.1 Quality Management and Control Plan. Contractor shall develop, seek approval from Owner Parties of, and implement, the Quality Management and Control Plan. The Quality Management and Control Plan is intended to ensure performance of the Work is in accordance with the requirements of the Contract Documents and implements appropriate procedures to verify and document such compliance. The Quality Management and Control Plan shall include, at a minimum: (i) a breakdown of quality control responsibilities to the various Project participants; (ii) a cost control system for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes; (iii) a quality control matrix listing all testing, inspections, and Submittals, relating to the Work with specific reference to the source of the requirement and the party responsible (whether Owner Parties, Contractor, or others) for that testing, inspection, and Submittal; (iv) inspection and testing plans for all critical Work, including commissioning and Subcontractors' and inspection agents' activities necessary for the commissioning process; (v) field monitoring and inspection reports; (vi) Contractor's audit plan for auditing Subcontractor's quality control efforts; and (vii) Defective Work identification, reporting, and correction procedures.

Using Contractor's Quality Management and Control Plan, which shall be regularly updated and maintained, Contractor shall inspect the Work on an ongoing basis and document all Defective Work, whether identified by Governmental Authorities, Owner Parties, or Contractor.

**4.6 Communication.** Contractor and Owner Parties shall develop and implement acceptable procedures for reviewing, documenting, and processing questions and responses, including requests for

information, requests for clarification, minor changes in the Work, and Change Orders. If Owner Parties so choose, Contractor shall furnish a web-based system, to facilitate such communications quickly and accurately.

4.6.1 Meetings; Reports. Contractor shall regularly schedule, conduct, and record pre-construction and construction progress meetings. Contractor shall schedule, conduct, and record such progress meetings with Owner Parties at least weekly during construction. For all such meetings, Contractor shall distribute its minutes with promptness after each meeting, to Persons or organizations in attendance.

.1 Contractor shall submit to Owner Parties for review, comment, and approval within fifteen (15) Days after the effective date of the Agreement a form of Contractor's Progress Report. Contractor shall implement and update monthly its approved form of Progress Report.

.2 Contractor shall keep and make available at the Site a regularly maintained log of recordable OSHA incidents and recordable lost time accidents and shall include such log in Contractor's Progress Reports.

.3 Contractor shall keep and make available at the Site a log of Defective Work, as set forth in *Section 4.5.1* above, which shall also be included in Contractor's Progress Reports. Contractor shall maintain communications with Governmental Authorities having jurisdiction and conducting inspections of the Work to ensure timely inspections and adequate time for remedy of Defective Work.

.4 Contractor shall keep and make available at the Site a daily record of Site conditions and activities such as weather, number of workers, Work performed, problems encountered, and other relevant data.

.5 Contractor shall keep and make available at the Site a regularly maintained log of all Submittals.

.6 Contractor shall keep and make available at the Site an accurate record of all tests, inspections, and reports concerning the Work.

4.6.2 Certified Diverse Business Report. Contractor shall submit to Owner Parties its Certified Diverse Report with Contractor's final Application for Payment for each Deliverable Portion of Work.

4.6.3 Schedules. The Project Schedule shall include the overall timeline of all Project activities, major milestones, and phases if any, and shall include the general timeline of the Construction Schedules. Contractor's Construction Schedule shall include (i) all major components and phases of the applicable Work and their associated costs; (ii) break-downs of each major component or phase by building, floor, and trade as applicable; (iii) the time and duration that each activity will take to completion and accurate estimated float time for each activity; (iv) estimated manpower and cost loading for each phase and for each trade within such phase; and (v) the dependencies between all scheduled activities. Contractor shall also include in its Construction Schedule applicable dates of Substantial Completion and Final Completion, and all prerequisite activities to the applicable Work, including processing of Submittals and long lead-time products. Contractor shall adhere to the Project Schedule when managing the Project and to the Construction Schedule when managing and performing the Work. Contractor shall update monthly the Construction Schedule and recommend updates to the Project Schedule as and when necessary. Contractor shall deliver to Owner Parties upon request all native electronic files of all Project and Construction Schedules so requested.

Owner Parties' acceptance of a Construction Schedule does not constitute agreement as to Contractor's sequencing, means, methods, or durations. Any positive difference between the Contractor's scheduled completion dates, the milestone deadlines, and the Contract Time, is float time owned by the Owner.

4.6.4 Schedule Impacts. Within five (5) Days after occurrence of an event that Contractor reasonably believes will have a material impact on the Work or any schedule, Contractor shall provide written notice to Owner Parties describing the nature and impact of the event, and propose methods of any necessary mitigation.

#### **4.7 Documents and Submittals**

4.7.1 Site Copies. Contractor shall keep and make available at the Site one record copy, in physical or electronic form, of the complete Contract Documents in good order and marked to record field changes and selections made during construction along with one record copy of Owner's Separate Contractors coordinated work. Contractor shall also keep and make available at the Site one copy, in physical or electronic form, of each approved Submittal.

4.7.2 Contractor Review. Contractor shall cooperate with Owner Parties to develop an internet-based system to provide an up-to-date Submittal log. The Submittal log shall include proposed submittal dates and review time for each item, and the approval status of each Submittal.

.1 Contractor shall prepare, review, approve, and submit to Owner Parties, with reasonable promptness and in such sequence as to cause no Delay in the Work or in the work of Owner's Separate Contractors, all Submittals and mock-ups required by the Contract Documents. All Submittals shall be delivered in sufficient time to allow reviewing parties reasonable time for consideration and Contractor adequate time for resubmission if required. Contractor shall cooperate with Owner Parties and coordinate Contractor's Submittals with those of Owner's Separate Contractors.

.2 Prior to Contractor's submission to Owner Parties, Contractor shall cause all Submittals to conform to the Contract Documents, and shall confirm and evidence such conformity with Contractor's review stamp marked "approved." Owner Parties will annotate, correct, and stamp the Submittals as necessary, indicating what further action is necessary and appropriate, and return each Submittal to Contractor. Submittals corrected by Contractor and resubmitted for review and approval containing changes other than those indicated by Owner Parties shall have such additional, new changes, clearly marked to bring them to Owner Parties' attention as well as fully explained in a contemporaneous writing.

.3 In the event a Submittal is not approved, Contractor will be notified of the reasons for disapproval and Contractor shall timely re-submit the revised unapproved Submittal until approved.

.4 By presenting each Submittal to Owner Parties, Contractor represents that it has determined, verified, and approved all Materials and field measurements and criteria related to that Submittal and has confirmed each such Submittal meets the requirements of the Contract Documents.

.5 If a Submittal requires professional design services or certifications under the Contract Documents, Owner Parties will specify all performance and design criteria of such Submittal. Contractor shall cause a properly licensed design professional to deliver such services or certifications, and each affected Submittal document shall bear the signature and seal of that professional, as licensed in the state where the Project is located. Owner Parties shall be entitled to rely upon Contractor's design professionals' certifications and approvals.

.6 Owner Parties' approval of a Submittal shall not relieve Contractor of responsibility for deviation from the requirements of the Contract Documents, unless Owner Parties have given written approval to the specific deviation. The Owner Parties' approval does not imply that the items shown on each Shop Drawing are all-inclusive of Contractor's

responsibilities. Subject to the Standard of Care, in no event shall Contractor be relieved of responsibility for errors or omissions, in the Submittals.

.7 No portion of the Work requiring Owner Parties' approval of a Submittal shall be commenced until such Submittal has been approved. Approved Submittals will constitute the standard of quality, appearance, and assembly of all items represented by such Submittals.

4.7.3 Shop Drawings. Shop Drawings shall be submitted, shall be complete, clear, and easily readable, bearing the date of the original submission and of each subsequent resubmission, a title block with Project name and location, and a space for review stamps. All contents of each Shop Drawing shall include the manufacturer, fabricator, and installer, model numbers, schedule designation, and a reference to the Contract Documents requiring the Submittal. Shop Drawings shall be submitted for complete systems. Partial submissions will not be permitted without Owner Parties' prior written approval. Shop Drawings shall also include related work and equipment as appropriate for context and assembly.

4.7.4 Product Data. Product Data, brochures, illustrations, printed charts, schedules, and other such pre-prepared data shall be submitted plus one electronic copy. Such Submittals shall be clearly marked with the particular characteristics or model of the relevant products.

4.7.5 Samples. Upon request, Contractor shall promptly provide a detailed list of all Materials and their respective manufacturers proposed for installation, for Owner Parties' review and approval. The list shall be organized by the Specification section corresponding to each Material, and shall include the installers.

Contractor shall prepare and submit for Owner Parties' review and approval all Samples as required by the Contract Documents. If not otherwise specified, all Samples shall be large enough to clearly show all physical characteristics which have a bearing on selection and appearance and shall be submitted in triplicate. Each Sample transmittal document shall include the Project name and location, manufacturer, fabricator, and installer, model numbers, name, finish, and composition of the items, schedule designation, a reference to the Contract Document requiring the Submittal, and a space for review stamps. Upon approval, the Sample transmittal documents will indicate such approval and two samples will be returned to Contractor.

4.7.6 Purpose and Liability. Submittals are not Contract Documents. Their purpose is to demonstrate the way by which Contractor proposes to conform the Work to the information given and the design concept expressed in the Contract Documents. Owner Parties' review of Submittals is not conducted to determine the accuracy and completeness of other details such as dimensions and quantities, or for substantiating installation instructions, or performance requirements. Owner Parties' approval of a specific item shall not indicate approval of an assembly of which the item is a component.

**4.8 Intellectual Property Costs**. Contractor shall pay all royalties and license fees arising from the Work, and shall indemnify, defend, and hold harmless Owner from all intellectual property infringement claims arising from or pertaining to the Work, except for those claims concerning a particular design, process, or product selected by Owner Parties or required by the Contract Documents; provided, however, if Contractor has reason to believe that a design, process, or product infringes an intellectual property right, and fails to timely notify Owner Parties, Contractor shall be responsible for the same.

**4.9 Permits; Fees**. Unless specifically excluded from Contractor's scope in the Contract Documents, including but not limited to the Fee Matrix set forth in *Exhibit O*, Contractor shall obtain, manage, and pay for all Governmental Approvals that are customarily secured after signing the Agreement, that are legally required at the time the Contract Sum is agreed to, or that are necessary for the proper execution of the Work. Such Governmental Approvals also include, but are not limited to, Contractor's temporary obstructions, enclosures, and Work performed on or about public property other

than the Site (e.g., opening of streets for pipes, utilities, environmental work) as required for the Project. Contractor shall give all requisite notices to Governmental Authorities having jurisdiction and shall bear all responsibility for violations of Applicable Laws pertaining to such Work. Nothing in this *Section* shall make Contractor responsible for permits relating to zoning or environmental impact fees.

#### **4.10 Testing.**

4.10.1 Contractor's Testing. In accordance with Contractor's Quality Management and Control Plan, Contractor shall implement its checking and testing procedure at appropriate times during the Project to ensure that all systems, assemblies, and equipment are adequately tested and balanced. In doing so, Contractor shall make or obtain at the appropriate time and shall include in the Contract Sum, all tests, inspections, and approvals of the Work required by the Contract Documents and required by Applicable Laws. Unless otherwise approved or required, testing of the Work shall be conducted by an independent testing service acceptable to Owner Parties.

4.10.2 Notice and Results. Contractor shall give Owner Parties timely notice of when and where tests and inspections are to be conducted so that Owner Parties may be then present. Required certificates of testing, inspection, and approval shall, unless otherwise required by the Contract Documents, be secured by Contractor and promptly delivered to Owner Parties, with any warranties or assurances under such testing, assigned to Owner.

4.10.3 Owner Parties' Testing. If Owner Parties reserve the right to or request to test any Materials or any other portion or component of the Work, Contractor shall furnish samples of such Materials and make available the Work for such testing. Contractor shall cooperate with all such testing performed by others. If Owner Parties determine any Work requires special inspection or testing, Owner Parties may instruct Contractor to order such special inspection or testing. Contractor shall promptly do as ordered, and shall give to Owner Parties reasonable prior notice of the date and time of such special inspection or testing. Any testing performed or requested by or through Owner Parties shall not relieve Contractor of its responsibility to ensure the Work meets the Contract Documents' requirements.

4.10.4 Contractor's Expense. If any inspection or testing reveals Defective Work, or if Work is otherwise not approved by Governmental Authorities having jurisdiction, Contractor shall bear all costs associated with correction of such Work, including compensation for Owner Parties' additional services attributable to such failure.

**4.11 Cutting and Patching.** Contractor shall be responsible for coordinating all cutting, fitting, and patching of the Work to make its several parts come together properly and fit to receive other Work or the work of others. Contractor shall be responsible for restoring all cut, fitted, or patched surfaces to an original condition; provided, however, that if a different condition is specified in the Contract Documents, then Contractor shall be responsible for causing such surfaces to meet the conditions specified in the Contract Documents. Contractor shall not damage or endanger completed Work, the existing improvements, or the work of Owner's Separate Contractors. Contractor shall not cut or otherwise alter the work of Owner's Separate Contractor except with prior written consent and Contractor shall not unreasonably withhold from Owner's Separate Contractors consent to cutting or otherwise altering the Work.

**4.12 Cleaning Up.** At all times Contractor shall keep the Site free from accumulation of waste materials, rubbish, and debris. Contractor shall keep and maintain adequate on-Site refuse containers and dumpsters to collect and deposit daily excess construction debris. If Contractor fails to keep the Site in a clean and orderly manner, Owner may, with reasonable prior written notice sufficient to provide Contractor an opportunity to cure, perform cleaning duties and charge their costs to Contractor by offset to any payments due under the Agreement.

In conducting its operations and when performing the Work, Contractor shall use its best efforts to prevent the release of dust and accumulation of mud at the Site. Prior to the dates of Substantial Completion and Final Completion, Contractor shall clean the Site and remove all debris, rubbish, and



containers, and take away from the Site Contractor's tools, equipment, machinery, and those surplus Materials to which Owner has chosen not to take possession.

#### **4.13 Project Close-Out.**

4.13.1 Close-Out Plan. Contractor shall develop and deliver to Owner Parties a Close-Out plan at least thirty (30) Days before the date of Substantial Completion of the Project or a Deliverable Portion of Work, as applicable. Each Close-Out plan shall establish dates of: (i) Owner's partial and full occupancy of the Project or Deliverable Portion of Work, as applicable; (ii) all relevant Substantial and Final Completion inspections; (iii) expected issuance of all relevant temporary and permanent certificates of occupancy; (iv) equipment startup, balancing, testing, and training; (v) commencement and transfer to Owner of all utility accounts and charges and manufacturer and supplier warranties; (vi) transfer of spare parts and remaining Materials (of which Owner chooses to retain); and (vii) transfer of Record Documents as required.

4.13.2 As-Built Documents. As a condition of Final Completion, Contractor shall provide to Owner a complete set of As-Built Documents, in duplicate and in digital format. As-Built Documents shall depict the Project as constructed and shall reflect each change, modification, and deletion made during construction. As-Built Documents include all modifications to the Contract Documents unless otherwise directed.

4.13.3 Operation and Maintenance Manuals. Contractor shall prepare operation and maintenance manuals ("O & M Manuals") containing a complete set of: all Submittals; training information; a telephone list and contact information for all consultants, manufacturers, installers, and suppliers; manufacturers' printed data; approved relevant Shop Drawings; schematic diagrams of systems; appropriate equipment indices; and warranties and bonds. As a condition to Substantial Completion, Contractor shall submit two (2) completed O & M Manuals for Owner Parties' prior review and approval. Owner Parties will review and return one O & M Manual containing any modifications, adjustments, or additional information required. Owner Parties' receipt of one (1) physical and one (1) electronic copy (in [native] file format) of the final approved O & M Manuals shall be a condition precedent to any payment thereafter due.

4.13.4 Training. As part of the Work, and prior to the date of Substantial Completion, Contractor shall schedule with Owner training sessions for all equipment and systems installed as part of the Work. Contractor shall schedule training sessions at least two (2) weeks in advance of the date of training to provide Owner adequate notice and time to coordinate.. In addition to any off-site training required, training shall include a formal session conducted at the Project in the users' normal operating environment.

4.13.5 Excess Materials. Contractor shall provide to Owner spare parts, extra maintenance materials, and other Materials, as specified in the Contract Documents, upon Substantial Completion. Any additional Materials not required to be delivered to Owner under the Contract Documents (the "Spare Materials") shall be accounted for by Contractor and offered to Owner. If Owner refuses to accept all or part of the Spare Materials, Contractor shall credit Owner the fair market value of the unaccepted Spare Materials in the final Application for Payment and shall promptly remove them from the Site.

4.13.6 Contractor's Personnel On-Call. During the first three (3) months following Substantial Completion and Owner's full occupancy of the Project or a Deliverable Portion of Work, as applicable, Contractor shall have appropriate personnel on-call to deal with break-down, inoperability, or other issues with major systems of the Work in accordance with the on-call parameters set forth in *Exhibit* \_\_\_\_\_. If such problems arise at the conclusion of such three (3) month on-call period, all on-call personnel shall remain on-call until the issue proves to be resolved for an additional period of not less than two (2) weeks. [Optional – discussion point]

4.13.7 Other Responsibilities. Contractor shall be responsible for returning to Owner all of Owner's property issued to Contractor during the term of the Project, including keys, security passes, and site admittance badges. Upon Owner's full occupancy of the Project or a Deliverable Portion of Work, as applicable, and in accordance with the Project's Close-Out plan, Contractor shall coordinate the transfer of all utility company accounts relating to the Project to the Owner. **[Consider Including in Owner's Standard Requirements Exhibit – discussion point]**

**4.14 Right to Stop Work**. If Owner fails to pay to Contractor, within thirty (30) Days after due, any undisputed amount under the Contract Documents, Contractor shall have the right to stop Work after fifteen (15) Days' additional prior written notice to Owner, until Owner delivers to Contractor such overdue payment, with interest, if interest is required by the Contract Documents.

## ARTICLE 5

### SUBCONTRACTS

**5.1 Award of Subcontracts**. Subcontract awarding shall adhere to the procedures and requirements of the Contract Documents. Once awarded and unless terminated for cause, Contractor shall not substitute any Subcontractor, or person or entity under a Subcontract, without Owner Parties' prior written consent.

**5.2 Form and Content**.

5.2.1 Form of Subcontract. Upon request, Contractor shall submit to Owner Parties for prior review and approval the form of Subcontract. If Owner Parties disapprove such form, Contractor shall revise and resubmit to Owner Parties the form of Subcontract until approved. Owner Parties' review, comment upon, and approval of, any such form, shall not relieve Contractor of its obligations under this Agreement. Unless otherwise waived in writing by Owner, all Subcontracts shall be awarded on a fixed lump-sum price basis. Upon request, Contractor shall supply Owner Parties with copies of all fully-signed Subcontracts.

5.2.2 Certain Terms of Subcontract. In addition to Owner Parties' right to review Subcontracts in *Section 5.2.1* above, certain terms shall be included in each Subcontract, as set forth below:

.1 Owner shall be a third party beneficiary of each Subcontract and Owner's rights and remedies under each Subcontract shall be all those of Contractor, including the right to be compensated for any loss, expense, or damage incurred resulting from Subcontractor's breach of express or implied terms and Subcontractor's error, omission, or negligence in its performance;

.2 following advance written notice to Contractor, Owner Parties may contact Subcontractor, to discuss Subcontractor's services; provided, however, such contact with Subcontractor shall not be construed to be Owner Parties' instructions concerning performance of Work;

.3 each Subcontractor shall meet the insurance requirements set forth in these General Conditions, including, but not limited to, naming Owner as an additional insured on applicable liability policies;

.4 a "no damage for delay" clause as set forth in *Section 7.2.6* of these General Conditions;

.5 a payment clause that obligates Subcontractor to pay its Sub-subcontractors for Work satisfactory performed but unpaid within ten (10) Days of Contractor's payment to Subcontractor for such Work;

.6 Contractor's rights and duties under the Subcontract shall be assignable, for the same fixed lump-sum price, to Owner or Owner's designee upon Owner's written notice to Subcontractor and to Contractor;

.7 Subcontractor shall expressly consent to conditional assignment to Owner of its Subcontract and continued diligent performance of Work;

.8 Subcontractor shall promptly notify Owner of any Contractor default, whether under the Agreement, or its Subcontract;

.9 Contractor may terminate upon [ten (10) Days'] prior written notice each Subcontract for a default or convenience identical in substance to Owner's right to terminate under *Section 13.2* of these General Conditions.

5.2.3 Flow-Down. Contractor shall require each Subcontractor and each Subcontractor shall require each Sub-subcontractor, to be bound by these General Conditions and any Supplemental General Conditions, and to assume toward Contractor and Subcontractor, as the case may be, all of the obligations and responsibilities the Contractor assumes toward the Owner, unless (i) the same are clearly inapplicable to the contract at issue because of legal requirements or industry practices, or (ii) Contractor requests specific exceptions that Owner approves in writing.

**5.3 Conditional Assignment.** Contractor hereby conditionally assigns to Owner its rights to all Subcontracts, [subject to Contractor's sureties' rights, under their bonds]. Owner may exercise, at its election, this assignment if Owner terminates the Agreement in whole or in part, or directly or indirectly takes control of all or any portion of the Work. In so doing, Owner may reassign the Subcontracts to any other Person or entity.

**5.4 Right to Review.** Owner has the right to review Subcontracts at any time during the Project and at any time during the audit period prescribed in the Contract Documents after Final Completion. Contractor shall, within three (3) Days of receiving written request from Owner or Owner's agent, submit to the requesting party a complete copy of the requested Subcontract. If Owner's or Owner's agent's request to review a Subcontract can be interpreted to cover more than one Subcontract, Contractor shall submit complete copies of all Subcontracts relevant to the request.

**5.5 Conditions to Payment.** As a condition to Owner's performance, Contractor shall: (i) make payment promptly when due, and in no event greater than ten (10) Days after receiving payment from Owner, to all Persons supplying to Contractor labor or Materials for prosecution of the Work; (ii) pay all contributions required by and amounts due the State Industrial Accident Fund incurred in performance of the Contract Documents; (iii) not permit any lien or bond claim to be filed or prosecuted against Owner or surety on account of any labor or Material furnished; (iv) not assign any claims or Claims that Contractor may have against Owner, nor assign any rights to payment from Owner, and will not make any agreement or act in any way to give Subcontractors standing to bring a claim or a Claim against Owner; (v) pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.

## ARTICLE 6

### PAYMENT

**6.1 Contract Sum.** A Contract Sum shall be subject to adjustment only when Owner so authorizes in writing.

6.1.1 Sales and Use Tax. As a condition precedent to commencement of the Work, Owner and Contractor shall agree upon a sales and use tax (collectively, "Taxes") applicability guideline. In the event Tax is chargeable to any portion of the Work, the Contract Sum shall include all such Tax unless directly paid by Owner. In the event Contractor pays such Tax directly, all invoices and

Applications for Payment that include Work subject to Tax shall clearly state “sales tax paid” and specifically identify such taxable Work. In the event Owner pays such Tax directly, the Contract Sum shall not include Tax and Owner shall provide to Contractor the necessary certificates evidencing the same. [Optional – discussion point]

6.1.2 Back-Up Documents; Audit Rights. Contractor shall cause to be kept and maintained, at a location subject to Owner’s prior written approval, all records of expenditures for Project-related services rendered and Work performed, including petty cash accounts and receipted invoices. Such records shall conform to the Contract Documents’ requirements and to generally accepted accounting principles (GAAP). Contractor shall furnish Owner with statements of such expenditures, with complete documentary back-up for each (“Back-Up Documents”), with every Application for Payment, for costs of services, labor, Materials, and expenses included in the same. In addition to these monthly statements, Owner Parties shall have access to all of Contractor’s Project accounting, records, and documentation pertaining to all Work (the “Audit Documents”) upon request at any time from the Agreement’s effective date until the expiration of a period of ten (10) years after Final Completion. Owner Parties shall have the right to produce copies of Audit Documents, at reasonable times and places, reasonably necessary for Owner Parties to audit and certify the nature and amount of the Contract Sum. Such Audit Documents subject to audit include, but are not limited to, those records pertaining to direct and indirect costs, including overhead, as they may apply to the Project. Contractor shall produce for Owner Parties those Audit Documents kept in digital form in a computer readable format in an exchange format suitable to Owner Parties.

.1 Owner shall bear the costs of its audits; provided, however, if an Owner Parties’ audit discloses overcharges to Owner of any kind (“Overcharges”), in excess of one-half of one percent (0.5%) of the total invoiced Contract Sum, Contractor shall pay to Owner the total amount of the Overcharges and the reasonable actual cost of the audit. If an Owners Parties’ audit discloses Overcharges less than one-half of one percent (0.5%) of the total invoiced Contract Sum, Contractor shall pay to Owner only the total amount of the Overcharges. Any payments that Contractor must make due to results of an Owner Parties’ audit shall be made within ninety (90) Days of Owner’s presentation to Contractor of the audit. If Contractor disagrees with an Overcharges finding, Contractor shall have a Claim.

.2 Notwithstanding the required retention time of Contractor’s Audit Documents above, if for any reason any part of the Work or the Contract Documents is the subject of litigation, Contractor shall retain all Audit Documents until all such litigation is complete, all periods for appeal have expired, and full and final satisfaction of any judgment, order, or decree is recorded (the “Litigation Hold Period”). During the Litigation Hold Period, Owner Parties shall continue to have full access to the Audit Documents at the times and in the manners set forth above.

[Optional – not appropriate for fixed lump-sum projects]

## 6.2 Schedule of Values.

6.2.1 Approval. Contractor shall submit to Owner Parties for approval, at least ten (10) Days prior to submission of its first Application for Payment, a Schedule of Values. Contractor shall revise and resubmit the Schedule of Values as necessary to meet Owner Parties’ approval. The Schedule of Values shall demonstrate reasonable, identifiable, and measurable components of the Work, as separate line items for each major item of Work, general conditions work, Fee, and Construction Contingency, among other items as Owner Parties may reasonably require, all of which shall be supported by data to substantiate its accuracy. The approved Schedule of Values, unless objected to by Owner Parties, shall be used as a basis for reviewing Contractor’s Applications for Payment. Once approved, Contractor’s requested changes to the Schedule of Values shall be subject to Owner Parties’ prior approval and supported by data to substantiate its accuracy.

6.2.2 Periodic Statements. Upon request from time to time, Contractor shall provide to Owner Parties a written summary of all outstanding, incomplete Work necessary to achieve Final Completion, and the total unpaid cost of that Work (a “Statement of Outstanding Work”). Each Statement of Outstanding Work shall contain sufficient information to allow Owner Parties to determine if the applicable Work can be completed for the Contract Sum and within the Contract Time. However, no such statement shall relieve Contractor of its obligations to complete the applicable Work for the Contract Sum and within the Contract Time.

### 6.3 Applications for Payment.

6.3.1 Supporting Documents. For each payment period established in the Agreement, Contractor shall submit to Owner Parties an Application for Payment together with: (i) an updated Progress Report; (ii) a schedule of the percentages of the various parts of the Work completed, based on the Schedule of Values; (iii) Contractor’s and Subcontractors’ payroll certifications pursuant to Section 1.5.4 of these General Conditions; (iv) all relevant Back-Up Documents; (v) an up to date Project Schedule and Construction Schedule; and (vi) other supporting documentation as required by the Specifications and the Agreement (collectively, the “Supporting Documents”).

6.3.2 Accuracy of Application. Applications for Payment shall be accurate and based upon estimates of Work completed in accordance with the Schedule of Values. Each Application for Payment shall include, on the face of each copy, Contractor’s statement in substantially the following form, dated and bearing Contractor’s signature:

“I, the undersigned, hereby certify that the above Application for Payment is true and correct, and payment for the same, has not yet been received.”

Owner Parties may reject any improper or incomplete Application for Payment until Contractor corrects and resubmits the same. However, Owner Parties reserve the right, instead of requiring Contractor to correct or resubmit a defective or improper Application for Payment, to reject the defective or improper portion of such Application for Payment and pay the remainder of such amounts that are proper and correct.

6.3.3 Stored Materials. Unless otherwise provided in the Contract Documents, Owner shall make payments on account of Materials not incorporated in the Work but delivered and suitably stored at the Site. If approved by Owner in advance, Owner may similarly make payments for Materials suitably stored at a location other than the Site, if agreed upon in writing. As a condition precedent to Owner’s payments for Materials stored on or off the Site, Contractor shall submit with its Applications for Payment that include such Materials, photographs of Materials and evidence (e.g., bills of sale), satisfactory to Owner to establish Owner’s title to or otherwise protect Owner’s interest in, the same.

.1 Contractor shall include with its Applications for Payment that include Materials stored off-Site, costs and evidence of applicable insurance, storage, and transportation to the Site. Owner Parties shall have the right to access, remove, and inspect, at any time during the Project, Materials stored off-Site for which Owner has paid.

.2 In consideration of Contractor’s ability to store certain Materials off-Site, Contractor waives and releases any Claims it may have against Owner, either directly or through Contractor’s insurer, for damage to or loss of, such Materials not stored at the Site.

.3 Contractor shall name Owner as additional named insured on the insurance policy covering the full value of the property while in the care and custody of the Contractor until installed in the Project. A certificate noting this coverage shall be issued to Owner. [Optional – discussion point]

6.3.4 Failure to Pay Subcontractors and Suppliers. Applications for Payment shall not include requests for payment of Work for which Contractor does not intend to pay a Subcontractor or

Supplier assigned to such Work, unless Contractor intends to pay others who actually performed such Work.

6.3.5 Title to Work. Contractor warrants that title to all Work covered by each Application for Payment will pass to Owner no later than the time of payment on account of such Application for Payment. Contractor further warrants that upon submittal of each Application for Payment, all Work for which payments have been received shall be free and clear of all liens, bond claims, Claims, security interests, and other encumbrances arising from or relating to the Work. This *Section* shall not relieve Contractor of: (i) its sole responsibility for all Work, (ii) any obligation to restore damaged Work, or (iii) its requirement to fulfill of all the terms of the Contract Documents, including, but not limiting, correction of any Defective Work. However, until Owner takes occupancy of all or any portion of the Project, as the case may be, all Work and Materials shall continue to be in the care and custody of Contractor, who shall bear the risk of loss for the same except to the extent insured pursuant to *Article 8*. The provisions of this *Section* concerning title to Work for which Owner makes payment shall not constitute an acceptance of the Work, except as otherwise set forth in the Contract Documents.

6.3.6 Incorrect Applications for Payment. If an Application for Payment is incorrect, lacks the required Supporting Documents set forth in this *Section 6.3*, or when there is a good faith dispute concerning the Work for which it is submitted, Owner Parties shall endeavor to notify Contractor within fifteen (15) Days of its receipt of such Application for Payment, stating the reasons it is rejected. If Contractor corrects the rejected Application for Payment within seven (7) Days of Owner Parties' notification to Contractor, payments due shall be made in accordance with *Section 6.5* below. [Optional – discussion point]

6.4 Certificate for Payment. Owner Parties will review each Application for Payment and either: (i) issue to Owner a Certificate for Payment indicating Contractor is due the amount set forth in such Application for Payment; (ii) issue to Owner a Certificate for Payment indicating Contractor is due an amount less than as requested, in which case the Certificate shall state the amount due, or (iii) notify Owner in writing of reasons to withhold payment. In the event Owner Parties determine Contractor is not entitled to the amount requested in an Application for Payment, Owner Parties shall forward to Contractor the reasons for withholding all or a portion of the payment requested. In the event Contractor disputes amounts withheld, Contractor shall have a Claim for such amounts.

Owner Parties' issuance of a Certificate for Payment constitutes a representation to Owner that, based on Owner Parties' Site observations and the data comprising the Application for Payment, the Work has progressed to the point indicated in Contractor's Application for Payment, that, to the best of Owner Parties' knowledge, information, and belief, the quality of the Work is in accordance with the Contract Documents, and that Contractor is entitled to payment in the certified amount.

6.5 Progress Payments. Provided no liens or bond claims related to the Work have been filed against the Project after Owner Parties issue a Certificate for Payment, and provided no Governmental Authorities have raised objections to the Work, Owner shall make payment to Contractor in the manner set forth in the Agreement. Upon its receipt of Owner's payment, Contractor shall promptly and within ten (10) Days, pay each Subcontractor the amount to which it is entitled, on account of such Subcontractor's Work, and each Subcontractor shall promptly pay its Sub-subcontractors and Suppliers in similar fashion. Owner Parties shall not, however, have any obligation to see that monies due to any Subcontractor are so paid, except as may otherwise be required by law.

6.5.1 Payment Not Acceptance. Owner's progress payments, partial payments, final payment, and Owner's use or occupancy of all or a part the Project, shall not constitute an acceptance of any Defective Work.

6.5.2 EFT Payments. Owner, upon written notice to the Contractor, may elect to make payments to Contractor by means of Electronic Funds Transfers (EFT) through automated clearinghouse

payments. If Owner makes this election, Contractor shall make the necessary arrangements to receive such EFT payments.

6.5.3 Payment Directly to Subcontractors. Unless Contractor advises Owner of a good faith dispute concerning payment due to a Subcontractor or Supplier, Owner may make payments directly or jointly to Subcontractors and to Suppliers who seek payment for work included in an Application for Payment. Contractor shall credit against the Contract Sum such amounts that Owner directly pays. However, Owner's direct payments to Subcontractors or Suppliers shall not relieve Contractor or Contractor's surety from their obligations to payment claims or demands.

6.5.4 Retainage. Owner will not retain an amount in excess of five percent (5%) of that portion paid for Work completed. If Contractor has performed at least fifty percent (50%) of the Work of a Deliverable Portion of Work and is progressing satisfactorily, upon the Contractor's submission of written application containing the surety's written approval, Owner Parties may, in their sole discretion, reduce or eliminate retainage on any remaining progress payments for that Work. Owner Parties will respond in writing to all such applications within a reasonable time. Upon Contractor's written recommendation to Owner Parties, which shall necessarily include applicable sureties' written approval, Owner will consider early release of retainage for Subcontractors whose Work is completed prior to Substantial Completion of all applicable Work; provided, however, the final decision whether to release such retainage shall be in Owner's sole discretion and Contractor shall promptly pay the same to the appropriate Subcontractor. When the Work of a Deliverable Portion of Work is ninety-seven and one-half percent (97.5%) completed, Owner Parties may, in their sole discretion and without application by the Contractor, reduce the retainage amount to one hundred percent (100%) of the remaining unpaid Contract Sum. Owner Parties may at any time reinstate retainage. Retainage will be included in the final payment under the Contract Documents.

If the Contract Sum exceeds one million dollars (\$1,000,000), Contractor may request retainage be deposited in an interest-bearing account at a financial institution upon which Owner and Contractor agree. Title to such retainage funds will remain in the Owner until the applicable Work is complete and accepted. Interest on deposited retainage, less the financial institution's fees necessary to open and maintain the account, shall accrue to the benefit of the Contractor but remain in the retainage account until the Owner accepts all Work.

6.5.5 Subcontractor Retainage. Unless Owner gives prior approval, Contractor's payments to Subcontractors and Suppliers shall be subject to retainage of five percent (5%).

6.5.6 Retainage Alternatives. In lieu of cash retainage as set forth above, Contractor may substitute one of the following:

.1 *Deposit of Securities*. Contractor may deposit bonds or securities with Owner or in any bank or trust company approved by Owner, as retainage. In any event, all such bonds and securities shall be held for Owner's benefit. Bonds and securities deposited or acquired in lieu of cash as retainage will be of a character approved by Owner, including: (i) bills, certificates, notes, or bonds of the United States; (ii) other obligations of the United States or its agencies; (iii) obligations of any corporation wholly owned by the United States federal government; or (iv) indebtedness of the Federal National Mortgage Association.

If Contractor deposits bonds or securities in lieu of cash as retainage, the cash value of such bonds or securities will reduce the cash retainage by an equal amount, and Owner shall reimburse Contractor the excess cash retainage. Following Final Completion, after Owner determines all requirements for the protection of its interests have been fulfilled, Owner will release to the Contractor all bonds and securities deposited in lieu of cash as retainage.

.2 *Deposit of Surety Bond*. Owner may, in a form acceptable to it and in its sole discretion, allow Contractor to deposit with Owner a surety bond as retainage in lieu of all or a portion of cash retainage or to be retainage for the Project. A Contractor depositing

such a surety bond shall also accept surety bonds from Subcontractors and Suppliers in lieu of cash as retainage. If Contractor deposits a surety bond as retainage, the value of such bond will reduce the cash retainage by an equal amount, and Owner shall reimburse Contractor the excess cash retainage.

6.5.7 Retainage Handling Costs. Owner shall have the right to recover from Contractor by reduction to the final payment, its costs for handling cash retainage and securities.

6.5.8 Release of Retainage. Owner's release of retainage shall not constitute acceptance of Work that fails to conform to the Contract Documents.

**6.6 Right to Withhold Payment**. Notwithstanding any provision of the Contract Documents to the contrary, Owner shall have the right to withhold payment to Contractor as necessary to protect itself if[, after written notice and reasonable opportunity to cure]: (i) Contractor is in default of any of its Contract Documents obligations; (ii) Owner reasonably believes any part of a payment due is attributable to Project services or Work that fails to conform to the Contract Documents' requirements, except that Owner shall make payment attributable to services or Work that does conform to the Contract Documents' requirements; (iii) Contractor causes damage to the Work, Owner, or Owner's Separate Contractors; (iv) Contractor fails to timely make payments due and owing to Subcontractors or Suppliers who contributed to Work for which Owner has paid Contractor and for which Contractor has given to Owner no notice of its good faith dispute concerning the unpaid Subcontractor or Supplier; (v) reasonable doubt that Contractor can complete the Work in accordance with the Contract Documents, including the Construction Schedule; (vi) Owner determines, based on a Statement of Outstanding Work or otherwise, that the Work of a Deliverable Portion of Work cannot be completed for the Contract Sum unless and until Contractor furnishes a reasonable and satisfactory statement and plan showing and certifying that the Work can be completed for the Contract Sum, or Contractor, at no cost to Owner, causes a sufficient portion of the applicable Work to be performed such that the unpaid portion of the Contract Sum is reasonably sufficient to complete the Work; (vii) reasonable evidence that the Work of a Deliverable Portion of Work will not be completed within the Contract Time, and the unpaid Contract Sum balance will not be adequate to cover Owner's damages for the Delay; (viii) entitlement to offset for assessment of Liquidated Damages; (ix) reasonable evidence of probable third party claims, unless Contractor furnishes to Owner acceptable security.

**6.7 Completion Milestones**.

6.7.1 Substantial Completion. When Contractor considers a Deliverable Portion of Work Substantially Complete, Contractor shall prepare for Owner Parties' review and approval a comprehensive list of incomplete and unsatisfactory items. Owner Parties will edit and supplement this list, as appropriate, and when approved the list shall be the Punch List for such Deliverable Portion of Work. Contractor and Owner Parties shall also, at the same time they develop the first Punch List, establish a schedule (the "Punch List Schedule") setting forth anticipated dates for Owner Parties' inspections of all anticipated Deliverable Portions of Work to determine Substantial Completion and Final Completion of the same.

.1 Notwithstanding anything to the contrary contained in the Contract Documents, a Deliverable Portion of Work with systems - e.g., mechanical, electrical, HVAC - shall not be considered Substantially Complete until it has demonstrated a minimum of thirty (30) consecutive Days of successful, trouble-free operation, beginning after all inspections and testing have been completed for such Deliverable Portion of Work.

.2 Once a Punch List and Punch List Schedule are mutually accepted, Owner Parties will inspect the Project to determine if each Deliverable Portion of Work is Substantially Complete. During inspection, if Owner Parties determine any incomplete or incorrect item, whether or not included on the Punch List, causes the Deliverable Portion of Work to fail to be Substantially Complete, Contractor shall be given notice and shall



promptly correct such item. Following completion of all incomplete items, Contractor shall request that Owner Parties' re-inspect the Deliverable Portion of Work to again determine if it is Substantially Complete. When Owner Parties determine a Deliverable Portion of Work is Substantially Complete, Owner Parties will prepare a certificate (a "Certificate of Substantial Completion") that will establish the date of Substantial Completion of that Deliverable Portion of Work, fix the time within which Contractor shall complete and correct items noted in that Certificate of Substantial Completion, and designate the responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, and insurance pertaining to such Deliverable Portion of Work.

.3 Upon receipt of a Certificate of Substantial Completion, Contractor shall diligently complete all items of incomplete Work and repair all Defective Work, including those identified in the applicable Punch List and Certificate of Substantial Completion. However, failure by any party to include an item on the Punch List or in the Certificate of Substantial Completion shall not alter Contractor's responsibility to complete all Work in accordance with the Contract Documents.

.4 In accordance with the Punch List Schedule, Owner Parties anticipate they will make an initial visit and one re-inspection for each of Contractor's Deliverable Portions of Work. If, after making a re-inspection, Owner Parties determine a Deliverable Portion of Work is not Substantially Complete or that previously scheduled Punch List Work has not been completed, Contractor shall pay, without Owner's reimbursement, Owner Parties' costs and expenses resulting from additional inspections necessary for Owner Parties to issue Certificates of Substantial Completion.

6.7.2 Payment Upon Substantial Completion. When Owner Parties issue a Certificate of Substantial Completion and Contractor submits an applicable Application for Payment, Owner shall make payment to Contractor, reflecting adjustment in retainage, if any, as provided in the Contract Documents. However, Owner shall not release retainage to Contractor that will result in Owner holding total retainage less than twice the amount that Owner Parties determine necessary to complete and correct all items on an applicable Punch List.

6.7.3 Commencement of Warranties. Applicable warranties required by the Contract Documents shall commence on the date of Substantial Completion of each Deliverable Portion of Work unless otherwise set forth in a Certificate of Substantial Completion. Contractor will collect all written guaranties, warranties, and equipment manuals, and deliver them to Owner upon Substantial Completion of each Deliverable Portion of Work.

6.7.4 Delay. After Owner Parties issue a Certificate of Substantial Completion for a Deliverable Portion of Work, if Final Completion of that Deliverable Portion of Work is subject to material Delay through no fault of Contractor or by the issuance of Change Orders affecting Final Completion of that Deliverable Portion of Work, Contractor shall be entitled to the balance due for that Deliverable Portion of Work fully completed, accepted, and certified as complete by Owner Parties. However, if the balance of the Contract Sum for Work not fully completed or corrected is less than the retainage then held by the Owner and bonds have been furnished for the Project, Contractor shall forward to Owner Parties the written consent of Contractor's surety to the payment of the balance due for Work fully completed and accepted. Any such payment shall not constitute a waiver of Owner's Claims.

6.7.5 Final Completion. Following (a) issuance of a Certificate of Substantial Completion for a Deliverable Portion of Work and (b) Contractor's completion of all Work of that Deliverable Portion of Work, including the applicable Punch List, but not more than [forty-five (45) Days after Substantial Completion], Contractor shall forward to Owner Parties written notice that the applicable Work is ready for inspection together with a final Application for Payment for such Work. Upon receipt, Owner Parties will promptly inspect the subject Work and, when Owner Parties determine the Deliverable

Portion of Work meets the Contract Documents' requirements, will issue a Certificate for Payment approving final payment due Contractor for the applicable Work.

.1 Owner Parties' approval of a final payment represents that, to the best of Owner Parties' knowledge, information, and belief, and on the basis of observations and inspections, the Work subject to final review and payment has been completed in accordance with the terms and conditions of the Contract Documents, the conditions precedent to Contractor's entitlement to final payment for the Deliverable Portion of work are met, and the entire balance noted in the applicable Certificate for Payment is due and payable to Contractor.

.2 As part of Contractor's notice to Owner Parties of Final Completion, or as a separate written notice submitted with or before the notice of Final Completion, and as a condition precedent to Owner's obligation to make final payment, Contractor shall furnish Owner Parties with written confirmation that all environmental and pollution clean-up, remediation, and closure have been completed in accordance with all Applicable Laws. Contractor shall provide to Owner Parties all documentation related to the same, including directives, orders, letters, certificates, and permits. Contractor's notice shall further reaffirm its grant to Owner of indemnification given under *Section 9.5.3* of these General Conditions.

6.7.6 Payment Upon Final Completion. The final payment requirements of this *Section 6.7.6* shall apply to the Project and to Deliverable Portions of Work, as applicable and as set forth in the Contract Documents. Final payment, including release of all retainage, shall not be due until Final Completion of the Project of the Deliverable Portion of Work, as applicable, and until Contractor has timely furnished to Owner Parties: (i) an affidavit stating that to Contractor's best knowledge, information, and belief, all payrolls, bills for Materials, and other indebtedness connected with such Work (less amounts withheld by Owner) have been satisfied; (ii) payroll certifications pursuant to *Section 1.5.4* of these General Conditions (iii) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is and will remain in effect and will not be canceled or expire without at least thirty (30) Days' prior written notice to Owner; (iv) Contractor's written statement that it knows of no reason all required insurance will not be renewable to cover the period required by the Contract Documents; (v) all warranties and guaranties required by the Contract Documents; (vi) three reproducible copies and an electronic copy of Record Documents; (vii) surety's consent to final payment; (viii) applicable Certified Diverse Business Reports; (ix) final affidavits and releases of liens and bond claims, as well as satisfactions for liens and bond claims filed on account of the Work of the Deliverable Portion of Work and such other affidavits, waivers, and releases as Owner may reasonably require in order to assure lien and claim-free completion of such Work; and (x) if Owner requires, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, Claims, security interests or encumbrances arising out of the Deliverable Portion of Work, to the extent and in such form as may be reasonably designated by Owner. If any such lien or bond claim remains unsatisfied after final payment, Contractor shall immediately refund to Owner all monies that the latter may be compelled to pay in discharging such lien or bond claim, including all costs and reasonable attorney fees.

.1 Contractor's acceptance of final payment shall constitute a waiver of all Claims applicable to the Deliverable Portion of Work for which such final payment is made by Contractor, Subcontractors, Sub-Subcontractors, Suppliers and all other Persons delivering services, labor, or Materials to the Project, except those previously made in writing and identified by Contractor as unsettled, at the time of the applicable final Application for Payment.

.2 Owner's final payment shall not extinguish, satisfy, or waive any of the Contract Documents' obligations or procedures.

6.7.7 Final Inspection. On or about a date eleven (11) months after Substantial Completion of a Deliverable Portion of Work, Contractor shall, together with Owner Parties, attend a final inspection of the Work to ensure that it comports with all warranties and guarantees. Contractor shall promptly correct any deficiencies noted during such inspection.

**6.8 No Liens; No Bond Claims**. Contractor shall permit neither the Project nor any of the Work from incurring any claim, bond claim, lien, charge, or encumbrance. Contractor shall, after first receiving notice of any such claim, bond claim, lien, charge, or encumbrance, immediately pay and discharge of record the same.

## ARTICLE 7

### TIME

**7.1 Progress and Completion**. All time limits stated in the Contract Documents are of the essence of the agreement between Owner and Contractor. Contractor shall begin each phase of the Project, where applicable, in accordance with the Project Schedule and shall commence the Work on the dates set forth in the applicable Construction Schedule. Contractor shall carry out the Work expeditiously, with adequate forces, and shall achieve Substantial Completion in accordance with the Project's milestones, the Construction Schedule, and within the Contract Time.

7.1.1 Periodic Statements. At Owner's request, from time to time, Contractor and Owner Parties shall each provide a written statement setting forth the date on which each reasonably believes each Deliverable Portion of Work will be Substantially Complete. However, no such statement shall relieve Contractor of its obligations to complete the Work in accordance with the Contract Documents.

7.1.2 Acceleration Upon Default. If, in Owner Parties' reasonable judgment, Contractor: (i) fails to supply a sufficient number of qualified workers or Materials to prevent Delay; (ii) fails in any way to prosecute the Work or proceed in accordance with the Construction Schedule, or (iii) fails to meet the material covenants of the Contract Documents, Owner shall have the right to direct Contractor to accelerate completion of the Work without adjustment to the Contract Sum and until such time as the amount and timing of the completed Work complies with the Construction Schedule. Owner's right to compel acceleration includes demanding Contractor provide additional labor or expedited deliveries of Materials, and perform overtime, additional shifts, or re-sequencing the Work. Costs of such acceleration may be funded, with Owner's prior written approval, from any available Construction Contingency, if not recoverable from Subcontractors. Owner's right to demand acceleration under this *Section* shall not limit other rights and remedies Owner may have.

### **7.2 Delays and Extension of Time**

7.2.1 Delays Generally. Contractor shall be granted an extension of time for each Unavoidable Delay (defined below) in accordance with *Section 7.2.4* below. Contractor shall not be granted an extension of time for any Avoidable Delay (also defined below).

7.2.2 Force Majeure. "Force Majeure" shall mean an act, event, or occurrence caused by fire, riot, war, acts of God, tornado, hurricane, named storms, flood, earthquake, explosion, public enemy, civil disturbance, embargo, unusual and abnormal severe and adverse weather, or any other act, event or occurrence that is beyond the reasonable expectation or control of the party who is asserting an inability to conform to Contract Documents' requirements. Unusually and abnormal severe and adverse weather shall not include weather events that could be reasonably anticipated from the previous 10-year historical records of the general locality of the Site. Such historical records shall be from the Office of the Environmental Data Service of the National Oceanic and Atmospheric Administration of the U.S. Department of Commerce nearest the Site. However, notwithstanding such historical records, (a) daily rainfall greater than one-half (1/2) inch during a month when the monthly rainfall exceeds the normal

monthly average by at least twenty-five percent (25%) or (b) daily rainfall greater than three (3) inches, cannot be reasonably anticipated.

7.2.3 Avoidable Delays. An “Avoidable Delay” is any Delay other than an Unavoidable Delay, and those Unavoidable Delays that could have been avoided, because: (i) Contractor, Sub-contractors, or Sub-subcontractors failed to exercise care, prudence, foresight, or diligence; (ii) such Delay only affects a portion of Work that does not necessarily interfere with prosecution of other parts of the Work; (iii) such Delay does not impact the Project’s critical path; or (iv) such Delay results from Owner’s Separate Contractors’ work that does not necessarily prevent the timely completion of all Work.

7.2.4 Unavoidable Delays. An “Unavoidable Delay” is any Delay that is not due to the direct or indirect fault of Contractor, Subcontractor, Sub-subcontractors, Suppliers, or any of their respective agents, employees, or contractors, and that affects the Project’s critical path. Unavoidable Delays include: (i) Delays caused by Owner and Owner’s employees and agents, or by Owner’s Separate Contractors; (ii) Delays caused by Force Majeure that in fact adversely impact the Project in a manner that could not have been avoided by rescheduling or by implementing protective measures; (iii) Delays caused by any differing Site conditions in accordance with *Section 10.3.4* of these General Conditions.

If Contractor’s delivery of services or performance of the Work is impacted by an Unavoidable Delay, Contractor’s sole remedy shall be an equitable extension to time [and a Claim for documented increases to on-Site general conditions costs]; provided, however, in each instance Contractor must first meet the notice provisions and other conditions of the Contract Documents, including *Section 12.1* of these General Conditions. Notwithstanding the foregoing, Contractor shall not be granted relief: (i) due to Contractor’s financial inability to perform; (ii) unless a Delay is an Unavoidable Delay and affects the Project’s or phase’s critical path as set forth in the applicable Construction Schedule, and then only to the extent such critical path is affected; or (iii) if a Delay would have resulted because of Contractor’s concurrent Avoidable Delay, notwithstanding the existence of an Unavoidable Delay.

7.2.5 Mitigation Required. Contractor shall use best efforts to remove, relieve, minimize, and mitigate the effect of all Delays, no matter the cause.

7.2.6 No Damage for Delay. To the fullest extent permitted by Applicable Laws, unless otherwise set forth in the Contract Documents, Contractor shall have no Claim against Owner Parties for any increase in the Contract Sum, damages, losses, or expenses, resulting from a Delay, unless Owner or its agents actively interfered and directly caused such Delay, in which case Contractor’s Claim shall be limited to reimbursement for Contractor’s actual and direct costs, expressly excluding impact costs such as extended home office, overhead, and loss of profit. [Discussion point – if this is permissible, must be narrowly tailored]

**7.3 Owner-Caused Schedule Changes**. Contractor acknowledges and agrees as the Project progresses, as is customary among projects of this size and complexity, Owner may make changes to, and Contractor shall subsequently update, the Project Schedule. Contractor shall cooperate with and advise Owner Parties of potential outcomes of such changes including their impact on the Construction Schedule. If Owner subsequently approves any such change, Contractor will have a Claim, but only if the approved change impacts the critical path of the applicable Construction Schedule.

#### **7.4 Phased Construction**.

7.4.1 Phases. Contractor acknowledges and agrees the Project will progress in phases, in accordance with the Project Schedule. Contractor shall prepare, for Owner Parties’ review and approval, a separate Construction Schedule, for each phase. Each phase shall commence upon Owner Parties’ issuance of a Notice to Proceed for such phase and shall achieve Substantial Completion by the milestone dates set forth in the Contract Documents, including the Construction Schedule.

7.4.2 Contract Sums. Owner may choose to establish separate Contract Sums for each phase of the Project and, if so, Contractor shall cooperate to prepare and timely deliver to Owner when due such Contract Sums as set forth in the Project Schedule.

7.4.3 Sequential Bidding. Contractor acknowledges and agrees the Work will be bid sequentially and that some portions of the Work will require that bids be received before design of the overall Project or applicable phase is complete. Nevertheless, Contractor will cooperate with and assist Owner Parties to secure competitive bids for the Work and recommend the order and sequencing of Work and of phases to accomplish the most efficient and economical delivery of the Project.

7.4.4 Fast-Track Methods. Contractor represents to Owner that it has experience and expertise in fast-track construction and management practices. As such, Contractor acknowledges, agrees, and will actively participate in project planning, that may necessitate preparation, issuance, and analysis of a number of bid packages in excess of that which is ordinarily required in non-fast-track construction projects. [Optional Section – project specific]

7.4.5 Waiver of Claims. In consideration of the foregoing, Contractor hereby waives all rights and remedies it may have at law or in equity to extra compensation or damages of any kind, and to extensions to the Project and Construction Schedules, due in any way to performance or planning of the Work on a fast track basis. [Optional Section – discussion and negotiation point – project specific]

## ARTICLE 8

### INDEMNITY; INSURANCE; BONDS

**8.1 Contractor Responsibility**. Contractor shall be responsible for all damage to property, injury to persons, and loss, expense, inconvenience, and delay caused by, or resulting from, performing its services and carrying out the Work. “Indemnitees” as used in this *Article 8* shall mean Owner Parties, [Owner’s lenders], [ ] [Discussion point – bonding/finance issues?], and their respective officers, board members, shareholders, members, partners, directors, affiliates, agents, assigns, attorneys, and employees.

### **8.2 Indemnification**

8.2.1 General Indemnity. **TO THE FULLEST EXTENT PERMITTED BY LAW, CONTRACTOR SHALL INDEMNIFY, DEFEND, AND HOLD HARMLESS, THE INDEMNITEES, FROM ALL LIABILITIES, DAMAGES, LOSSES, EXPENSES, AND COSTS, INCLUDING REASONABLE ATTORNEY FEES AT BOTH THE TRIAL AND APPELLATE LEVELS, (COLLECTIVELY, “LOSSES”) AND CLAIMS OF LOSSES, INCLUDING DUE TO BODILY INJURY, DISEASE, DEATH, OR PROPERTY DAMAGE (BUT EXCLUDING DAMAGE TO THE WORK ITSELF TO THE EXTENT COVERED BY BUILDERS RISK INSURANCE), MADE BY ANY THIRD PARTY, THAT IN ANY WAY ARISE OR RESULT FROM: (I) THE WORK; (II) CONTRACTOR’S ACTIVITIES OR THE ACTIVITIES OF ITS SUBCONTRACTORS, SUB-SUBCONTRACTORS, SUPPLIERS, OR OTHER PERSONS PERFORMING WORK; (III) OPERATIONS AT THE SITE; OR (IV) VIOLATION OF ANY APPLICABLE LAWS. THE FOREGOING INDEMNITY SHALL BE THE “CONTRACTOR’S GENERAL INDEMNIFICATION.”**

**TO THE FULLEST EXTENT PERMITTED BY LAW, CONTRACTOR’S GENERAL INDEMNIFICATION SHALL INCLUDE LOSSES FOUNDED IN WHOLE OR IN PART ON THE ALLEGED NEGLIGENCE OR MISCONDUCT OF ANY OF THE INDEMNITEES; PROVIDED, HOWEVER, TO THE EXTENT THAT THE NEGLIGENCE OR MISCONDUCT OF THE INDEMNITEES IS ADJUDGED OR STIPULATED TO BE THE CAUSE OF THE LOSSES, THE INDEMNITEES SHALL BEAR ITS ADJUDGED OR STIPULATED PROPORTIONAL SHARE OF THOSE LOSSES AND SHALL PROMPTLY REIMBURSE**

**CONTRACTOR FOR THEIR PROPORTIONAL SHARE OF THE COSTS AND EXPENSES OF DEFENSE.**

8.2.2 Special Indemnity. **TO THE FULLEST EXTENT PERMITTED BY LAW AND SUBJECT TO THE STANDARD OF CARE, CONTRACTOR SHALL INDEMNIFY AND HOLD HARMLESS THE INDEMNITEES FROM ALL LOSSES AND CLAIMS OF LOSSES DUE TO CONTRACTOR'S MISCONDUCT, NEGLIGENCE, ERROR, OR OMISSION, MADE BY ANY THIRD PARTY, THAT IN ANY WAY ARISE OR RESULT FROM CONTRACTOR'S PROFESSIONAL SERVICES, INCLUDING CLAIMS OF PROFESSIONAL LIABILITY AND VIOLATION OF APPLICABLE LAWS. THE FOREGOING INDEMNITY SHALL BE THE "CONTRACTOR'S SPECIAL INDEMNIFICATION."** [OPTIONAL – DISCUSSION POINT]

8.2.3 Liens; Bond Claims. Contractor shall further indemnify, defend, and hold harmless, the Indemnitees, from all Losses and claims of Losses arising or resulting from liens and bonds of any kind asserted against the Project (individually, a "Payment Claim"), Project phase, or any part thereof, by any of Contractor's Subcontractors, Sub-subcontractors, Suppliers, and other Persons contributing to the Work, except for Payment Claims properly filed due to Owner's wrongful failure to make payments to Contractor.

8.2.4 Indemnitees' Control of Defense. Contractor's obligations in the Contract Documents to defend Indemnitees shall be performed by counsel approved by such Indemnitees', in their reasonable discretion. Indemnitees shall have the right to participate in direction of their defense and shall have the ultimate authority whether to settle any claim that may require any payment or admission of liability.

8.2.5 No Limitation. Contractor's indemnification obligations shall not be restricted by any limitation on the amount of damages, compensation, or benefits, payable by or for Contractor under applicable workers' compensation acts, disability benefit acts, or other employee benefits acts. Contractor expressly waives its immunity from suit from Owner under applicable workers' compensation acts, disability benefit acts, and other employee benefits acts.

8.2.6 Costs of Enforcement. Contractor shall reimburse all costs and expenses incurred by the Indemnitees to enforce Contractor's indemnification duties in the Contract Documents.

**8.3 Insurance**

8.3.1 Contractor's Requisite Insurance. Contractor shall furnish and keep in force, and shall cause each Subcontractor to furnish and keep in force, the insurance required in *Exhibit P*. Contractor shall further furnish, keep in force, and file certificates evidencing coverage, such additional insurance required by Governmental Authorities having jurisdiction over the Work. To the fullest extent permitted by law, all such insurance requirements: (i) are minimum requirements intended to benefit the Indemnitees; (ii) will not be interpreted to limit Contractor's liability under the Contract Documents; and (iii) are independent of Contractor's other obligations under the Contract Documents. Contractor's failure to furnish, or failure to require Subcontractors to furnish, and Owner's failure to enforce, the Contract Documents' required insurance, certificates, or endorsements, shall not waive the Contract Documents' requirements.

8.3.2 Subcontractor Default Insurance. Contractor may maintain Subcontractor default insurance and Owner shall have the right to accept or reject such insurance in Owner's sole discretion. [Optional – discussion point]

8.3.3 Owner-Controlled Insurance Program. Owner shall furnish for the benefit of the Project, the Site, and all Persons performing Work, [Workers' Compensation], General Liability, Excess Liability, Builders Risk, [Installation Floater], Pollution Liability insurance, and [ ] through an Owner-Controlled Insurance Program (an "OCIP"), subject to the coverages and according to the limits set forth in *Exhibit P*. Contractor and Subcontractors shall furnish and keep in force all other

insurance required of them in *Exhibit P*. All Persons covered by the OCIP shall comply with the administrative and reporting requirements set forth in *Exhibit P*. [Optional Section – discussion point]

8.3.4 **Contractor-Controlled Insurance Program.** In the event Contractor provides any of the insurance required by the Contract Documents through a Contractor-Controlled Insurance Program (a “CCIP”), Contractor shall deliver to Owner for review and approval a written description of the material features of the CCIP, including carriers, coverages, policy limits, and deductibles. [Optional Section – discussion point]

8.3.5 **Notice Required.** If the total of any potential claims against Contractor or any of its Subcontractors exceeds more than fifty percent (50%) of the available respective insurance coverage carried by Contractor or its Subcontractor, Contractor shall give to Owner prompt written notice. Thereafter, Owner shall have the right to require Contractor or Subcontractor, as the case may be, to increase its coverage in an amount Owner reasonably requires.

8.3.6 **Evidence of Renewal.** Not less than thirty (30) Days prior to the expiration of any insurance required by the Contract Documents due to its normal expiration or renewal date, Contractor shall furnish Owner with updated certificates of insurance and other necessary documentation, to clearly evidence continuation of all requisite coverage.

#### **8.4 Bonds.**

8.4.1 **Contractor’s Bonds.** When a Contract Sum is One Hundred Thousand and 00/100 Dollars (\$100,000) or more, or Fifty Thousand and 00/100 Dollars (\$50,000) or more when the Project includes highways, bridges, and other transportation projects, Contractor shall furnish and keep in effect at all times while the Contract Documents are in effect (a) a performance bond in sum equal to the Contract Sum and (b) a payment bond in sum equal to the Contract Sum. Notwithstanding the dollar thresholds state in this *Section*, Contractor shall furnish performance and payment bonds if otherwise required by the Contract Documents and in the amounts set forth in the Contract Documents. Any requisite performance bond shall cover all warranties and guarantees required by the Contract Documents.

8.4.2 **Subcontractor Bonds.** Owner and Contractor shall agree in writing to the bonding strategy and requirements of Subcontractors prior to any contracts pertaining to the Project between Contractor and any Subcontractors.

8.4.3 **Public Works Bonds.** Prior to signing of the Contract Documents, Contractor shall file with the Oregon Construction Contractors Board, and maintain in full force and effect, the separate public works bond as and when required by Oregon Laws 2015, Chapter 279C, and OAR 839-025-0015. Contractor shall also include in every Subcontract a provision requiring Subcontractor to file and maintain with the Oregon Construction Contractors Board, a separate public works bond as and when required, before starting Work. Contractor shall verify that each Subcontractor has complied with the requirements of this *Section* before permitting each such Subcontractor to begin Work.

8.4.4 **Form of All Bonds.** All Project bonds shall be in the forms attached as *Exhibit Q* unless Owner otherwise approves in writing. All sureties guaranteeing performance or payment shall be (i) authorized to do business in the State of Oregon, (ii) have a rating of not less than “A” in the latest version of A.M. Best & Company’s Insurance Guide, (iii) an A.M. Best & Company financial size category of “X” or higher, and (iv) listed by, and in the net limit of, the United States Treasury Department as acceptable for bonding Federal projects. Contractor shall have no affiliation with the bonding agent or agency.

## ARTICLE 9

### PROTECTION OF LIFE AND PROPERTY

#### **9.1 Safety Precautions and Protective Measures.**

9.1.1 Contractor's Safety Plan. Contractor shall have overall responsibility and liability for Site, Project, and Work safety. Contractor shall develop, implement, and supervise all safety measures and programs at the Site and in connection with the Work, [shall implement the safety and fire prevention program set forth in the Construction Plan,] and shall require all Subcontractors and other Persons performing Work to conform to the same. Contractor shall review and recommend appropriate changes to, but shall not have direct control over, each Subcontractor's safety program. As such, Contractor's review and recommendations shall not relieve Subcontractors of their responsibility for the safety of persons and property, and for compliance with all Applicable Laws.

9.1.2 Safeguards. Contractor shall erect and maintain, as required by existing conditions and the progress of the Work, all reasonable safeguards, including posting danger signs and other warnings against hazards, promulgating safety regulations, and notifying affected Persons.

.1 Contractor shall take all reasonable safety precautions, protective measures, and care to prevent damage, injury, and loss to: (i) all Persons on, about, and adjacent to the Site and in locations with stored Materials; (ii) all Work under the custody or control of Contractor, Subcontractors, or Sub-subcontractors, whether completed, in progress, or stored; and (iii) work of Owner and Owner's Separate Contractors; (iv) existing Site landscaping and plant life not designated for removal in the Contract Documents.

.2 Without limiting Contractor's responsibility for Site and Work safety, Contractor shall comply with all of Owner's Standard Requirements, attached as *Exhibit K*, and Owner Parties shall have the right, but not the obligation, to review and approve Contractor's safety measures and programs. [Optional – discussion point]

.3 Contractor's safety practices and protection of persons and property shall be industry best practices, conform to the Contract Documents, and comply with all Applicable Laws, including all applicable regulatory and advisory agency safety standards.

9.1.3 Adjacent Property and Work. Contractor shall not enter upon property that is private or adjacent to the Site without first obtaining permission. Contractor shall be responsible for and use every precaution to preserve all public and private property adjacent to the Work, including trees, shrubs, lawns, walks, pavement, roadways, structures, and utilities. Contractor shall be responsible for protection of adjacent work areas, including other work, brought about by activities, equipment, labor, utilities, vehicles, or materials on the Site.

9.1.4 Damages. Contractor shall promptly remedy all damage and loss (other than damage or loss covered by property insurance required by the Contract Documents) to any property referred to above, caused in whole or in part by Contractor, Subcontractors, Sub-subcontractors, or by Person for whose acts they may be liable.

9.1.5 Site Safety Supervisor. Contractor shall designate and keep at the Site a responsible and qualified member of Contractor's organization who shall manage Contractor's safety program. Contractor shall report to Owner the name, position, and direct contact information, of the person so designated.

**9.2 Emergencies**. In any emergency affecting the safety of persons or property, Contractor shall act in its sound discretion to prevent threatened damage, injury, or loss. Contractor's Claims for additional compensation or extension of time as a result of an emergency shall be determined in accordance with *Article 12* of these General Conditions.

**9.3 Reporting Requirements**. Following an emergency or occurrence involving personal injury or property damage, Contractor shall furnish Owner with, not more than three (3) Days after an incident, the full written details, photographs, and statements of witnesses, of each incident. In addition, following an emergency or an occurrence involving serious personal injuries, serious property damage, or death, Contractor shall immediately report the same to Owner by telephone or messenger. Contractor



shall again promptly inform Owner of the ultimate disposition of any occurrences as set forth above, following their conclusion.

**9.4 Hazardous Materials.** Contractor shall not use, in connection with the Work, any Hazardous Materials (defined below) in a manner that poses unreasonable safety risks or violates Applicable Laws. This *Section* shall not prohibit Contractor from using any item specified in the Contract Documents unless Contractor knows it violates Applicable Laws, in which case Contractor shall notify Owner Parties in writing so that Owner may issue an appropriate Change Order.

9.4.1 Definition. “Hazardous Materials” shall mean any hazardous waste, toxic substance, radioactive material, asbestos containing material, petroleum product, or related materials including substances defined as “hazardous substances,” “toxic substances,” and similar designations in any Applicable Laws, including without limitation, in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Sec. 9061 et seq.; Hazardous Materials Transportation Act, as amended, 49 U.S.C. Sec. 1802 et seq.; the Resource Conservation and Recovery Act, as amended, 42 U.S.C. Sec. 6901 et seq.; and the corresponding regulations (as amended) issued pursuant to these acts.

9.4.2 Existing Conditions. Unless Hazardous Materials disposition is specifically a part of the Contract Documents or was necessitated by that actions of Contractor, Subcontractors, Sub-subcontractors, or the acts or omissions of Persons’ for whom they are liable, Contractor shall not be responsible for Hazardous Materials existing at the Site prior to commencement of Work (the “Preexisting Hazardous Materials”). If Contractor reasonably suspects it has encountered Preexisting Hazardous Materials, Contractor shall, immediately upon recognizing the condition, have the right to stop Work in the affected area, and shall immediately notify Owner Parties of the same.

9.4.3 Owner Actions Upon Notice. Promptly after receiving notice of reasonably suspected Preexisting Hazardous Materials, Owner Parties shall take reasonable measures to ensure that the Preexisting Hazardous Materials are remediated. Specifically, Owner shall retain qualified independent experts to (a) determine if the area of concern does contain a Hazardous Material and (b) prescribe remedial measures to render Hazardous Material harmless as necessary. Contractor shall resume Work in the affected area only upon Owner and Contractor’s written agreement.

**9.5 Contractor’s Responsibility.**

9.5.1 Environmental Protection. Contractor shall at all times direct its activities and the activities of its Subcontractors, Sub-subcontractors, Suppliers, and other Persons performing Work in and around the Site to minimize adverse effects on the environment.

Contractor shall, at all times: (i) at no additional cost to Owner, properly handle and dispose of all environmental pollutants and hazardous substances brought onto the Site during performance of the Work, to the satisfaction of Owner and Government Authorities having jurisdiction, and in a manner that complies with Applicable Laws; (ii) be responsible for all spills, releases, discharges, or leaks of environmental pollutants, brought to the Site during performance of the Work; and (iii) promptly clean up and remediate, without cost to the Owner, such spills, releases, discharges, and leaks, to Owner’s satisfaction and in compliance with Applicable Laws.

9.5.2 Reporting. Contractor shall report all releases of Hazardous Materials as required by Applicable Laws, including 40 CFR Part 302, Table 302.4 and OAR 340-142-0050.

In addition to following the emergency procedures set forth in *Sections 9.2 and 9.3* above, Contractor shall immediately report to Owner Parties by telephone all releases of Hazardous Materials introduced to the Site during performance of the Work. A written follow-up report shall be submitted to Owner Parties within forty-eight (48) hours of the initial report, and shall contain at a minimum: (i) a description of items released including identity, quantity, manifest numbers; (ii) whether amounts of items released is EPA/DEQ reportable, and, if so, when Contractor so reported; (iii) exact time and location of each

release, including a description of the area involved; (iv) Contractor's containment procedures initiated; (v) a summary of communications about the release between Contractor and officials other than Owner; and (vi) a description of cleanup procedures employed or to be employed, including disposal locations.

9.5.3 **Indemnity.** **TO THE FULLEST EXTENT PERMITTED BY LAW, INCLUDING ORS 30.140, CONTRACTOR SHALL INDEMNIFY, DEFEND, AND HOLD HARMLESS, THE INDEMNITEES FROM ALL LOSSES AND CLAIMS OF LOSSES, MADE BY ANY THIRD PARTY, THAT IN ANY WAY ARISE OR RESULT FROM HAZARDOUS MATERIALS THAT CONTRACTOR, ITS SUBCONTRACTORS, OR ANY PERSON FOR WHOSE ACTS THEY MAY BE LIABLE, INTRODUCE TO THE SITE.**

The foregoing indemnity shall not apply to Hazardous Materials that Contractor or its Subcontractors introduce to the Site in accordance with the Contract Documents and in compliance with all Applicable Laws.

9.6 **No Limitation.** Nothing in this *Article 9* shall limit Contractor's responsibility for obtaining insurance coverage required under the Contract Documents, and Contractor shall take no action that would void or impair such coverage.

## ARTICLE 10

### ALLOWANCES; SUBSTITUTIONS; CHANGES

10.1 **Allowances.** Contractor shall include in the Contract Sum all Allowances stated in the Contract Documents and their Associated Costs (defined below). Items included in Allowances shall be furnished and installed for the amounts and by Persons as Owner Parties direct. Unless Owner Parties request otherwise, Contractor shall provide to Owner Parties for approval, at their request, a proposed fixed lump-sum price for any Allowance, including its Associated Costs, prior to its performance.

Unless otherwise set forth in the Contract Documents: (i) when finally reconciled, Allowances shall cover Contractor's cost of Materials delivered to the Site, and all applicable Taxes, less applicable trade discounts; (ii) Contractor's costs for unloading and handling at the Site, labor, installation costs, overhead, profit, and other expenses, contemplated for the Allowance (collectively, the "Associated Costs") shall be included in the Contract Sum but not in the Allowance; and (iii) whenever Contractor's costs are more than or less than an Allowance, the Contract Sum shall be adjusted accordingly by Change Order in the amount of the difference between the amount of the original Allowance item and its actual cost including changes, if any, to Associated Costs.

10.2 **Substitutions.** When more than one product or process is specified by the Contract Documents as being acceptable (including the designation "or equal"), Contractor shall have the option of using any such specified product. When only one product or process is specified, Contractor shall not be permitted a Substitution except as set forth in this *Section*.

10.2.1 Requested Substitutions shall meet the standards, required function, size, type, appearance, and quality, of Materials they are intended to supplant. In the event Contractor wishes to request a Substitution, Contractor shall first submit a written request for Owner Parties' approval. Requests for Substitutions shall be timely, fully documented, and will be accompanied by evidence about the requested Substitution, including: (i) its quality and serviceability; (ii) changes in details and construction of related Work; (iii) pertinent drawings, specifications, samples, performance data; (iv) its design and artistic effect; and (v) changes to the Contract Sum. By submitting a Substitution proposal, Contractor represents that the Substitution meets or exceeds the standards, qualities, guarantees, and warranties, of the specified item being substituted, except to the extent Contractor disclaims in writing within its proposal.

10.2.2 Substitutions will only be considered under the following circumstances: (i) when a product or process specified in the Contract Documents is discontinued and not reasonably available; (ii) when a requested Substitution, in Contractor's and Owner Parties' opinion, is in Owner's best interest; or (iii) when Contractor can demonstrate that the price of the specified product or process is unreasonably inflated and Substitution will be significantly less expensive. Owner Parties will make recommendations to Owner regarding requested Substitutions, and Owner may, in its discretion, reject or approve the same.

10.2.3 Approved Substitutions that result in a change to the Contract Sum shall be accompanied by a Change Order in the amount of the difference in the Contract Sum between the specified product or process and its Substitution.

### **10.3 Changes.**

10.3.1 Minor Changes in the Work. Owner Parties shall have authority to order minor changes in the Work that shall be effective and bind Contractor upon Owner Parties' written order. Contractor shall promptly carry out all written orders of minor changes in the Work. In the event Contractor reasonably believes a change in the Work is not minor, and Contractor will be harmed without adjustment to the Contract Sum or Contract Time, Contractor shall immediately notify Owner Parties and shall not proceed to implement the change in the Work. If Owner Parties disagree that Contractor is entitled to an adjustment to the Contract Sum or the Contract Time, Contractor shall proceed with the ordered change in the Work and may submit a Claim. However, if Contractor performs the change in the Work set forth in the Owner Parties' order without prior notice that it believes such change will affect the Contract Sum or Contract Time, Contractor waives any such Claim.

10.3.2 Change Orders. All Change Orders shall be in the form attached as *Exhibit R*, shall be priced in accordance with this *Article 10*, and shall contain the details of the changes to the scope of Work, Contract Time, Contract Sum, and any related adjustments to the Contract Documents. Except as set forth in this *Article 10*, only a Change Order shall authorize a change to: (i) the scope of the Work, (ii) the Contract Time or a significant modification to the schedule of performance of the Work or the Project, or (iii) the Contract Sum or Contractor's compensation. As such, Contractor shall have no Claim for Work performed that would have been subject to, but for which Contractor failed to request, a Change Order.

10.3.3 Owner-Directed Changes. Owner Parties may order Contractor to price and determine time impacts of, at any time, a change in the scope of Work, by submitting to Contractor a reasonably-detailed written statement setting forth the nature of the change. If Contractor determines in good faith that Owner Parties' change will (a) increase or decrease the Contract Sum or (b) impact the dates for Substantial Completion set forth in the applicable Construction Schedule, Contractor shall promptly furnish Owner Parties with detailed information setting forth the cost and time impacts of the change in accordance with *Section 10.3*. If Owner elects to order the changed Work, it shall issue to Contractor a Change Order ordering and authorizing Contractor to proceed with the changes, as agreed. Contractor shall not commence such a change until Owner has issued a Change Order, except in an emergency endangering life or property, as set forth in *Section 9.2* of these General Conditions.

10.3.4 Changes Other than Owner Directed. If Contractor encounters at the Site (a) concealed physical conditions materially differing from those indicated in the Contract Documents or (b) unknown and unforeseen physical conditions of unusual nature, materially differing from those ordinarily found to exist in the vicinity of the Site or as otherwise provided for in the Contract Documents, and such differing conditions will reasonably harm Contractor, Contractor shall give to Owner Parties notice before such conditions are further disturbed and in no event later than three (3) Days after their discovery. Owner Parties will promptly investigate purported differing conditions to determine if in fact they materially differ from those ordinarily found near the Site or as provided in the Contract Documents.

10.3.5 Owner Parties' Determination. Owner Parties shall be entitled to review Contractor's Claims for differing Site conditions as set forth in *Section 10.3.4* above, and for changes due to Unavoidable Delay as set forth in *Section 7.2.4* of these General Conditions. If, after investigation, Owner Parties agree that a Change Order is appropriate under the circumstances, Contractor will be entitled to adjustment to the Contract Sum, Contract Time, or schedule of performance of the Work, as the case may be, and as agreed to by Owner and Contractor. If a request for Change Order includes requests from Subcontractors, Sub-subcontractors, Suppliers, or other Persons performing Work, Contractor shall analyze and evaluate the merits of such requests prior to including them in Contractor's submission to Owner Parties. By submitting such requests, Contractor represents they are accurate and appropriate.

In any event, if Owner Parties disagree that Contractor is entitled to a Change Order under the circumstances, Owner Parties shall notify Contractor in writing, stating the reasons for disagreement. If Contractor wishes to dispute Owner Parties' determination, Contractor shall have a Claim. However, Owner shall in no event approve a Change Order because of missed Work scope or a lack of coordination in the execution or bidding of the Work.

All Claims due to changes shall proceed in accordance with *Article 12*.

10.3.6 Requisite Performance of Changes. In the event Owner refuses to issue a Contractor-requested Change Order or Owner and Contractor fail to agree to the terms of a Change Order, Owner Parties shall have the right to issue a Construction Change Directive. Upon receiving a Construction Change Directive, Contractor shall proceed to perform such changed Work and Owner shall pay Contractor on a time and material basis in accordance with *Section 10.3.7* below. Owner Parties and Contractor shall continue to make good faith efforts to agree to the terms of a Change Order for the Work of the Construction Change Directive. Change Orders may be issued for all or any part of a Construction Change Directive. However, if Owner and Contractor cannot agree to one or more Change Orders for all of the Work of a Construction Change Directive, Contractor shall have a Claim for that Work executed but not included in a Change Order.

10.3.7 Price and Schedule Adjustments. Unless Owner and Contractor agree in writing, all monetary adjustments included in Change Orders and Construction Change Directives, whether cost or credit to Owner, shall be calculated using the terms and figures of *Exhibit S* and other unit prices set forth in the Contract Documents. However, if quantities of Materials and labor originally contemplated in a unit price significantly differ from those in a Change Order such that a unit price will cause substantial inequity to Owner or Contractor, that unit price shall be equitably adjusted.

When submitting a request for, or responding to, a Change Order, Contractor shall furnish Owner with detailed estimates of proposed adjustment to the Contract Time, changes to the schedule of performance of the Work or the Project, and the Contract Sum or Contractor's compensation, as the case may be. As applicable, each approved Change Order shall incorporate an accurate revised Schedule of Values and an accurate revised Construction Schedule.

10.3.8 Accounting. Contractor and Subcontractors impacted by a Change Order or Construction Change Directive shall maintain itemized accounts of all charges and credits due to changes in the Work as a result of all such changes. Such itemized accounts shall be open to Owner Parties' inspection.

10.3.9 Owner-Directed Acceleration; Constructive Acceleration. The Owner shall have the right to accelerate the completion date of the Work by Change Order, which may require the use of overtime. Additionally, Owner shall have the right to refuse to grant to Contractor an extension of time to meet the completion milestones set forth in the Construction Schedule or Project Schedule, even if Contractor is entitled to an extension pursuant to the Contract Documents. In the event Owner accelerates performance of the Work, the Contract Sum shall be adjusted in accordance with *Section 10.3.3* above, but Contractor shall not be entitled to any other compensation or recovery. Prior to commencing the

acceleration of Work, Contractor shall submit to Owner Parties for approval its written plan to cost efficiently execute such acceleration.

10.3.10 No Additional Claims. Neither Contractor nor Subcontractors shall have Claims for impact costs due to a Change Order. All money and time impacts associated with a Change Order shall be included in that Change Order. Contractor shall not be entitled to and shall not request, a Change Order, and shall make no Claims after Owner Parties receive Contractor's final Application for Payment that includes such changed Work.

## ARTICLE 11

### WORK ASSURANCES AND GUARANTEES

#### **11.1 Uncovering of Work.**

11.1.1 Wrongful Covering. If any portion of Work is covered contrary to Owner Parties' written request or contrary to the Contract Documents' requirements, Contractor shall, upon request, uncover such Work for Owner Parties' inspection and shall recover and replace the same upon Owner Parties' approval. All uncovering and recovering under this *Section* shall be at Contractor's expense.

11.1.2 Requested Uncovering. If Owner Parties have not specifically requested in writing any portion of Work remain uncovered for inspection, Owner Parties may still require that Contractor promptly uncover such Work. Following uncovering and Owner Parties' review, if such Work is in accordance with the Contract Documents, then Owner shall pay the cost of uncovering and replacement by Change Order. However, if such Work is Defective Work, Contractor shall pay all such costs.

#### **11.2 Correction of Work.**

11.2.1 Contractor's Obligation. Prior to Substantial Completion of each Deliverable Portion of Work and for a period of [one (1) year] following the later of: (i) Substantial Completion of each Deliverable Portion of Work; (ii) the date for commencement of warranties in accordance with the Contract Documents; or (iii) such longer periods of time contained in the Contract Documents' specific warranties (collectively, the "Defective Work Warranty"), Contractor shall promptly remove from the Site and correct and repair all Defective Work, whether completed or in progress. Costs of removing and correcting Defective Work, including additional testing and inspections, uncovering, replacement, and recovering, and associated compensation for the Owner Parties' additional services, shall be at Contractor's expense.

11.2.2 Opportunity to Cure. If Owner Parties become aware of Defective Work they will promptly deliver to Contractor written notice of the same and shall provide Contractor reasonable opportunity to cure the Defective Work. However, if Contractor does not fully perform its obligations under this *Section* within [thirty (30) Days] after it receives Owner Parties' written notice of Defective Work, Owner shall have a Claim and may cause Contractor's obligations to be performed at Contractor's expense. If Owner chooses to repair such Defective Work using Owner's own forces, Contractor shall pay to Owner one and one half (1-1/2) times the standard hourly rate of Owner's forces used to perform the work, plus related overhead and direct non-salary costs. If Owner completes the repairs using Owner's Separate Contractor, Contractor shall pay to Owner the direct expense billed by Owner's Separate Contractor for its work plus the direct salary costs, related overhead, and direct non-salary expenses, of Owner, for monitoring Owner's Separate Contractor's work. If any of these expenses cause the Contract Sum to be exceeded, the excess shall be payable to Owner from Contractor on demand, or deducted from amounts to be paid by Owner to Contractor.

11.2.3 Term Upon Correction or Completion. The [one (1) year] Defective Work Warranty shall be extended for those portions of Work first performed after Substantial Completion of

each Deliverable Portion of Work and for the corrective Work performed pursuant to this *Section* by the longer of (a) the period of time between Substantial Completion of each Deliverable Portion of Work and the actual completion or correction of that portion of the Work or (b) the period of time prescribed by law or by the terms of any applicable special warranty or guarantee under the Contract Documents.

11.2.4 Equitable Adjustment. In the event Owner does not require Contractor to remove or correct any Defective Work, Owner shall be entitled to an equitable deduction to the Contract Sum for the reduced value of that Defective Work. Owner and Contractor shall agree upon a deduction to the Contract Sum that is equitable and all such deductions shall be evidenced by Change Order.

11.2.5 No Limitation. The [one (1) year] Defective Work Warranty neither limits the time within which Owner may enforce Contractor's obligation to comply with the Contract Documents, nor the time within which Owner may commence proceedings pertaining to Contractor's obligations under the Contract Documents. The expiration of the Defective Work Warranty, and expiration of any of Contractor's other guarantees or obligations to correct Defective Work, shall not relieve Contractor of the obligation to correct, at its own expense, latent defects in the Work.

Nothing contained in this *Article 11* shall establish a period of limitation for any warranty obligation under the Contract Documents (other than the Defective Work Warranty) or modify a statute of limitations or repose.

11.2.6 On-Call. During the first [three (3)] months following Substantial Completion of each Deliverable Portion of Work, Contractor shall have appropriate personnel on call to respond rapidly to system emergencies, all as agreed to by Contractor and Owner in *Exhibit* \_\_ (the "On-Call Parameters"). [Optional Section – discussion point]

**11.3 Warranties**. Warranties arising from this *Article 11* and all other warranties and guarantees required by the Contract Documents (collectively, the "Warranties") that are applicable to a Deliverable Portion of Work shall commence upon Substantial Completion of such Deliverable Portion of Work, and shall run directly to Owner or be fully assignable to Owner and its designee. All such Warranties shall be assigned to Owner or, at Owner's option, its designee. Contractor shall furnish Owner with documentation necessary to enable Owner to obtain the benefit of all Warranties. Contractor shall assist Owner to enforce its long-term warranties or guarantees. The Warranties shall be in addition to and not in limitation of any other warranty or remedy at law or in equity.

## ARTICLE 12

### CLAIMS

[Consider moving to a separate Dispute Resolution Exhibit]

#### **12.1 Notice.**

12.1.1 Initial Notice. If Owner has a Claim, Owner shall promptly notice Contractor of such Claim in writing, setting forth the known details and support for the Claim. If Contractor has a Claim, Contractor shall furnish Owner with a detailed, supported, written notice, setting forth the known or estimated length of any Delay and any known or estimated monetary impacts, due to such Claim. Contractor shall deliver to Owner such notice no later than seven (7) Days following actual knowledge of the event giving rise to the Claim. For purposes of Owner Parties' denial of any of Contractor's requests to modify any terms of the Contract Documents (whether Contract Sum, Contract Time, or otherwise) in accordance with Contractor's rights to make such requests under the Contract Documents, the event giving rise to the Claim (and thus the start of the seven (7) Day period) shall be Contractor's receipt of Owner Parties' written denial.

If it is impracticable to specify the actual length of a delay or monetary amount of a Claim at the time notice is required, the claimant shall provide estimates and periodic supplemental notices to keep the

nonclaimant party informed of any change and other relevant information while the events giving rise to the Claim continue.

12.1.2 Formal Claim Process. Promptly following notice of the Claim as set forth above, Contractor's on-Site senior project manager (designated in *Section 4.3.3* of these General Conditions) and Owner Parties' project manager, shall work cooperatively to resolve the Claim (the "Preliminary Claim"). However, if three (3) weeks after the notice of Claim has been received by the non-claimant, Contractor's and Owner Parties' project managers believe the Preliminary Claim will not be resolved, the Claim shall be submitted to the Major Claim (defined below) process.

All Claims not resolved by the Preliminary Claim process shall be "Major Claims." Owner shall designate **a neutral third party**, with a substantial understanding of and experience in the design and construction industry, to review all Claims (the "Claims Examiner") to hear and decide all Major Claims. Within thirty (30) Days after the initial notice of a Major Claim, the claimant shall submit to the Claims Examiner and non-claimant a complete and detailed written description of its Major Claim including: (i) a detailed, factual statement of the basis of the Claim; (ii) pertinent dates of the events giving rise to the Claim; (iii) Contract Documents provisions that support or allow the Claim; (iv) copies of all documents which support the Claim; (v) the total monetary and time impacts of the Claim, broken down to clearly demonstrate its impact on the Contract Sum, Contractor's compensation, the Contract Time, and schedules of performance of the Work (collectively, the "Detailed Claim"). Within ten (10) Days of receiving the Detailed Claim, the non-claimant shall have the right to submit to the Claims Examiner a formal response to the Detailed Claim, confirming or rebutting the allegations and other details set forth in that Detailed Claim.

12.1.3 Indirect Claims. If a Contractor's Claim involves Work of Subcontractors, Sub-subcontractors, Suppliers, or other Persons performing work on their behalf, Contractor shall analyze and evaluate the merits of such Claim prior to noticing Owner of the same and by giving such notice, represents such Claim is accurate and appropriate. Owner Parties will not consider direct claims from Subcontractors, Sub-subcontractors, Suppliers, and others not a party to the Contract Documents.

12.1.4 Limited Claims for Damages. Neither Contractor nor Owner shall have a Claim for damages to property or injury arising from an act, omission, or peril, insured pursuant to any policy carried by the party suffering such damage. Furthermore, such a Claim shall not be assignable or the subject of a subrogation action by any third party. To the extent a party suffering damage receives insurance proceeds for damages that otherwise could give rise to a Claim, the other party shall be released from liability, for such damages.

12.1.5 Waiver. Unless a notice of Claim and the Formal Claim is made in accordance with the time requirements of this *Section*, it shall be deemed waived.

12.1.6 Continuation of Work. Unless otherwise directed by Owner Parties, Contractor shall continue to diligently prosecute the Work while any Claim is pending.

## **12.2 Formal Claim Review**

12.2.1 Initial Decision. The Claims Examiner will review all Major Claims and take one or more of the following preliminary actions within fifteen (15) Days of receipt of a Detailed Claim: (i) request additional supporting information from the claimant; (ii) inform the Contractor and Owner in writing of the time required for adequate review and response; (iii) reject the Claim in whole or in part and identify the reasons for rejection; (iv) based on unit prices identified in *Exhibit S* and recommend approval of all or part of the Claim; or (v) propose an alternate resolution. In any event, notwithstanding anything to the contrary contained in this *Article 12*, if the Claims Examiner has not issued its decision within thirty (30) Days of the Detailed Claim being filed, that Claim shall be subject to appeal and submitted to non-binding mediation all as set forth below.

12.2.2 Appeal. The Claims Examiner's decision shall be final and binding unless appealed by Contractor's or Owner's written notice to the other, setting forth those portions of the Claims Examiner's decision being appealed, within fifteen (15) Days of all parties' receipt of such decision. Owner and Contractor hereby acknowledge and agree mediator, whether temporary or presiding, shall not be subject to subpoena or otherwise asked or required to produce records, notes, or work product, or asked or required to testify in any proceedings as to information disclosed or representations made during the course of mediation, except to the extent required by law.

12.2.3 Mediation. A proper and timely appeal of the Claims Examiner's decision shall be submitted to non-binding mediation within fifteen (15) Days following all parties' receipt of the notice of appeal and such appeal shall be reviewed by the mediator *de novo*. The presiding mediator shall be an individual mutually acceptable to Owner and Contractor, unless the parties cannot agree, in which case each party shall select a temporary mediator and the temporary mediators shall jointly select a presiding mediator. Owner and Contractor shall pay their own costs and expenses and the cost of the mediator shall be split equally between the two parties. The schedule, time and place for mediation will be mutually acceptable to Owner and Contractor, unless the parties cannot agree, in which case the mediation venue shall be at or in close proximity to the Site.

.1 Owner and Contractor acknowledge and agree that, subject to Claim Preservation as set forth below, participation in mediation shall be a prerequisite to litigation of any Contract Documents disputes. Owner and Contractor shall use best efforts in good faith to resolve through the mediation process all Major Claims within sixty (60) Days of the commencement of such mediation (the "Mediation Period"). However, if the presiding mediator fails to issue its decision on one or more of the issues presented within **ninety (90) Days** of the commencement of such mediation, the parties shall have the option to file a lawsuit in accordance with *Section 12.2.4* below and adjudicate those undecided issues, notwithstanding the requirement to mediate as a condition precedent to filing suit. Additionally, if a lawsuit must be filed within the Mediation Period in order to preserve a cause of action (a "Claim Preservation"), Owner and Contractor agree that they will nevertheless proceed diligently to mediate the Claim to its conclusion prior to actively prosecuting the lawsuit. As such, Owner and Contractor shall seek from the Court presiding over the Claim Preservation lawsuit such stays and extensions, including the filing of an answer, as may be necessary to mediate effectively. Further, if during the Mediation Period Owner and Contractor settle any issues, the plaintiff in the Preservation Claim lawsuit shall promptly cause the Court to enter a stipulated general judgment of dismissal with prejudice, or other appropriate order, limiting the remaining scope of litigation.

.2 The parties agree to comply with **Owner's Standard Requirements**, which may include but are not limited to confidentiality of mediation, and shall promptly sign all documents necessary to give effect to such requirements.

12.2.4 Litigation. Major Claims not resolved by mediation during the Mediation Period shall be submitted to the Benton County Oregon Circuit Court and the Parties hereby consent to the jurisdiction of the same and waive any objection which it may now or later have to the laying of venue of any action or proceeding in such court; provided, however, notwithstanding the foregoing, if a legal action or proceeding must be brought in a federal forum, the Party bringing such action or proceeding shall do so in the United States District Court for the District of Oregon. This paragraph shall not be construed to (a) authorize Contractor to bring a legal action or proceeding against Owner in a federal forum except to the extent Congress has validly abrogated OSU's sovereign immunity or (b) waive any form of Owner's immunity, including sovereign immunity and immunity based on the Eleventh Amendment to the United States Constitution.

Owner and Contractor hereby acknowledge and agree mediator, whether temporary or presiding, shall not be subject to subpoena or otherwise asked or required to produce records, notes, or work product, or



asked or required to testify in any proceedings as to information disclosed or representations made during the course of mediation, except to the extent required by law. [Discussion point – waive jury trial?]

### **12.3 No Claims for Consequential Damages.**

12.3.1 Consequential Damages Waived. Contractor and Owner each waive Claims against the other for consequential damages arising out of the Contract Documents, including (a) Owner's damages for rental expenses, loss of use, lost opportunity, loss of income, lost profit, interest from financing, and damage to reputation, and (b) Contractor's damages for principal office expenses, lost opportunity, interest from financing, damage to reputation, and loss of profit except anticipated profit arising directly from the Work and earned by Contractor in accordance with the Contract Documents.

12.3.2 Limitations. Nothing in this *Section 12.3* shall preclude recovery of: (i) Liquidated Damages in accordance with the Contract Documents; (ii) third-party claims, Claims, and indemnity requirements of *Section 8.2* of these General Conditions; (iii) Claims, damages, costs, or expenses due to violations of Applicable Laws; (iv) Claims, damages, costs, or expenses relating to fraud, gross negligence, or willful misconduct; (v) Claims, damages, costs, or expenses covered by any insurance policy; (vi) Claims, damages, costs, or expenses due to Contractor's refusal to perform in accordance with the Contract Documents; or (vii) breach of any intellectual property or confidentiality obligations.

## ARTICLE 13

### TERMINATION

#### **13.1 Suspension.**

13.1.1 Owner's Right to Suspend. Owner may, with or without cause, furnish Contractor with a written order to suspend the Work in whole or in part for such period of time as Owner may determine in its sole discretion, but not to exceed [ninety (90)] Days. Upon receipt of such an order to suspend, Contractor shall promptly cease all Work, except to the extent Owner's order also requires Contractor to protect completed and partially-completed Work or to maintain during the period of suspension the Work protection of the Work, maintenance of access, protection of stored Materials, maintenance of temporary facilities, and general cleaning. If Owner's suspension of the Work exceeds [ninety (90)] Days, and Owner re-engages Contractor to commence the Work once again with written notice, Contractor shall be entitled to an equitable adjustment to the Contract Sum for the length of time exceeding [ninety (90)] days. No such suspension of the Work will be the basis of a Claim except for Cost of the Work directly relating to maintenance of the Site during such suspension.

#### **13.2 Termination.**

13.2.1 Owner's Right to Perform. If Contractor fails to perform any of its obligations under the Contract Documents, then Owner may, after five (5) Days' prior written notice, during which time Contractor continues to fail to diligently pursue performance of any such breached obligation and without prejudice to any other remedy Owner may have at law or in equity, cause Contractor's breached obligations to be completed by others. All costs and expenses Owner incurs addressing Contractor's failure to perform under this *Section* shall become Contractor's liability to Owner payable upon demand and subject to offset against the Contract Sum. If the balance of the Contract Sum is not sufficient to cover such offset amount, Contractor shall immediately pay to Owner the difference. However, in no event shall Owner's actions under this *Section* be deemed a termination of the Agreement.

13.2.2 Funds Available and Authorized. If Owner fails to receive funding, appropriations, allocations, or other expenditure authority, as contemplated by Owner's budget, Owner may terminate the Contract Documents based on its assessment and ranking of the policy objectives

explicit or implicit in Owner's budget, and such termination shall be deemed and proceed according to Owner's termination for convenience (below).

13.2.3 Owner's Termination for Convenience. Owner may, at any time and without cause terminate the Agreement, in whole or in part, by delivering to Contractor at least ten (10) Days in advance, a notice of termination for convenience specifying the extent and the effective date of termination. Upon such date of termination, Contractor shall (a) immediately and peacefully surrender possession of the Site and all Materials for which the Contractor received progress payments, and (b) assign to Owner those Subcontracts that Owner requests. Under those Subcontracts to which Owner elects to take assignment, Owner shall assume Contractor's obligations that accrue after the date of termination. Contractor shall take such action and shall execute such documents as Owner may reasonably require for such assignments to be effective and shall not enter agreements that prevent such assignment.

Following termination, Contractor shall only be entitled to: (i) Fee earned up until the effective date of termination, (ii) Cost of the Work performed through the effective date of termination, and (iii) reasonable actual demobilization costs.

13.2.4 Owner's Termination for Cause. If a Defaults occurs at any time during the Project and Contractor fails after five (5) Days written notice to commence and diligently pursue a cure to such Default or fails to actually cure the Default within a reasonable period of time, Owner may terminate the Agreement for cause and take possession of the Site and all Materials on the Site, including those Contractor owns. Owner may subsequently finish the Work by whatever reasonable methods are expedient and Contractor shall not be entitled to receive any further payment until the Work is finished. However, in the event of such a termination for Default, Contractor shall not be relieved from its obligations under the Contract Documents.

If Owner completes the Work and the unpaid balance of the Contract Sum exceeds Owner's cost and expense to finish the Work, including its consequential damages and professional services fees, Contractor shall be compensated for the Work it actually performed. However, if Owner's costs and expenses to complete the Work, including its consequential damages and professional services fees, exceed the unpaid balance of the Contract Sum, Contractor shall pay to Owner the difference upon demand. This *Section* shall survive termination of the Agreement.

13.2.5 Termination Deemed Termination for Convenience. If a court of competent jurisdiction, mediator, or arbitrator, as the case may be, determines that Owner's termination for cause was wrongful, such termination shall be deemed a termination for convenience pursuant to *Section 13.2.3* of these General Conditions and Contractor's remedy shall be limited to the provisions of that *Section*.

13.2.6 Transfer of Documents. As directed by Owner, Contractor shall, upon any termination under this *Article 13*, transfer title and deliver to the Owner all Record Documents, information, and other property, that is reasonably necessary to effectuate completion of the Work or assignment of subcontracts, or that Owner Parties may otherwise reasonably request.

13.2.7 Contractor's Termination. If Owner fails to pay to Contractor within forty-five (45) Days after due any undisputed amounts under the Agreement, Contractor may, after fifteen (15) additional Days' written notice to Owner during which time Owner continues to fail to make such payment, terminate the Agreement. If Contractor properly terminates for cause under this *Section*, it may recover from Owner that portion of the Contract Sum earned prior to the date of termination. Contractor hereby waives any other right of recovery for damages due to termination under this *Section*, including anticipated profits (for the balance of the un-executed Work) and consequential damages.

ARTICLE 14

MISCELLANEOUS

**14.1 Use of Drawings and Specifications; Ownership.** The Drawings, Specifications, and other documents prepared by or for Owner Parties, are instruments of service. Contractor may retain one record set of such instruments of service but Contractor, Subcontractors, Sub-subcontractors, and other Persons performing Work shall have no claim to or ownership of them and shall not use them for any purpose other than for the Work. Unless otherwise indicated, Owner shall be deemed the author and owner of all Project instruments of service.

Contractor, Subcontractors, Sub-subcontractors and Suppliers are granted a limited license to use and reproduce applicable portions of the instruments of service to aid in the execution of their Work. All such copies made under this license shall bear any statutory copyright notice found on the originals. All such copies, except Contractor's record set, shall be returned to Owner upon request and upon completion of the Work.

**14.2 Interest.** Interest on payments past due and owing between parties to the Contract Documents shall be at the rate of two thirds of one percent (0.667%) per month.

**14.3 Independent Contractor Status.** The services and work to be performed under the Contract Documents are those of an independent contractor as defined in ORS 670.600. Contractor represents and warrants that it is not and will not employ an officer, employee, or agent, of Owner, as those terms are used in ORS 30.265.

**14.4 Confidentiality.** The terms of the Contract Documents and all information and materials Contractor obtains from Owner Parties pertaining to the Work are confidential. Contractor shall not disclose any such information and materials without Owner's prior written consent, except when disclosure is to Persons who have a need to know such information and who first agree to maintain their confidentiality.

All information Owner obtains from Contractor concerning Contractor's costs, accounting, finances, and business operations, is confidential, and Owner shall not disclose the same without Contractor's prior written consent, except when disclosure is to Persons who have a need to know such information and who first agree to maintain their confidentiality and when required by law or court order.

This *Section* shall not apply to information that comes into the public domain unless as a result of a disclosure prohibited by this *Section*, and shall not apply to an enforceable court order. This *Section* shall survive the termination of the Agreement.

[Optional – discussion point]

**14.5 Successors and Assigns.** Owner and Contractor bind themselves, their successors, and their assigns, to the other, by the terms of the Contract Documents. Contractor shall not assign or transfer any interest in the Contract Documents, whether by merger, consolidation, dissolution, operation of law or any other manner, other than to Contractor's surety, without Owner's prior written consent.

**14.6 Written Notice.** Notices required under the Contract Documents shall be in writing and shall be deemed given when delivered if done so in accordance with the Contract Documents.

**14.7 Governing Law; Venue.** The Contract Documents shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law.

[Reference ADR Exhibit [Optional – discussion point]

**14.8 Rights and Remedies.** Subject to express limitations of the Contract Documents, rights and remedies available to the parties to the Agreement shall be in addition to, and not a limitation of, any available at law or in equity. No action or failure to act by Owner Parties or Contractor shall constitute a

waiver of any right or duty under the Contract Documents, except as may be set forth in the Contract Documents, or as specifically agreed to in writing.

**14.9 Severability.** The invalidity or unenforceability of any provision of the Contract Documents shall not impair or affect the validity or enforceability of any other provision of the Contract Documents and invalid or unenforceable provisions shall be limited to the extent necessary to enable enforcement of the remainder of the Contract Documents.

**14.10 Survival.** All warranty and indemnification provisions of the Contract Documents, and all terms of the Contract Documents that are said to or clearly intended to, shall survive termination and completion of the Contract Documents.

SAMPLE

**Exhibit B**

**Early Work Amendment**

See attached

[Note: this can also be built from OSU's preferred notice to proceed.]

## Early Work Amendment

Date: [\_\_\_\_\_]

Early Work Amendment Number \_\_

[Construction Manager Name]

Attn: [\_\_\_\_\_]

[Address]

[Address]

with copy to:

[Name]

Attn: [\_\_\_\_\_]

[Address]

[Address]

**RE: [Project Name], [Contract Number]**

Construction Manager:

In accordance with Section 6.8 of the Agreement, you are hereby authorized to commence the Early Work described in Section 1 below and shall be paid for such Early Work in accordance with the Agreement, subject to the not to exceed price set forth in Section 2 below. In accordance with Section 6.8 of the Agreement, the amount paid on account of this Early Work Amendment Number \_\_ shall be included in the GMP Amendment applicable to the Deliverable Portion of Work to which the Early Work relates.

1. The Early Work of this Early Work Amendment Number \_\_ consists of the following: **[Note: Describe the Early Work in reasonable detail]**

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2. The not to exceed price for the Early Work of this Early Work Amendment Number \_\_ shall be: **[Note: Insert the Early Work NTE budget]**

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Signed and accepted as of the date first written above:

**OWNER:**

**CONSTRUCTION MANAGER:**

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

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

SAMPLE

**Exhibit C**

**General Conditions Work Description**

See attached

[Note: Construction Manager to provide, for Owner's approval, the General Conditions Work description.]



**Exhibit D**

**Form of GMP Amendment**

See attached

SAMPLE

## GMP Amendment

Pursuant to Section 5.11 of the Construction Manager At-Risk and General Contractor Agreement (the "Agreement") dated \_\_\_\_\_, 20\_\_\_\_, between Owner and Construction Manager, Owner and Construction Manager agree to the following terms and conditions for the \_\_\_\_\_ Deliverable Portion of Work (this "GMP Amendment"). Capitalized terms used but not defined in this GMP Amendment shall have the meanings given in the Agreement.

### ARTICLE 1, GUARANTEED MAXIMUM PRICE

1. Construction Manager's guaranteed maximum price for the \_\_\_\_\_ Deliverable Portion of Work (herein, the "GMP") is \_\_\_\_\_ Dollars (\$\_\_\_\_\_).
2. The General Conditions Work Cost Limit for the \_\_\_\_\_ Deliverable Portion of Work is \_\_\_\_\_ Dollars (\$\_\_\_\_\_).
3. The Guaranteed Substantial Completion Date for the \_\_\_\_\_ Deliverable Portion of Work is \_\_\_\_\_, 20\_\_\_\_.
4. The following schedules are attached to and incorporated into the Agreement:

**Schedule 1** GMP Drawings and Specifications upon which the GMP is based, dated \_\_\_\_\_, \_\_\_\_\_ pages.

**Schedule 2** GMP Qualifications and Assumptions, dated \_\_\_\_\_, \_\_\_\_\_ pages.

**Schedule 3** Schedule of Values, dated \_\_\_\_\_, \_\_\_\_\_ pages.

**Schedule 4** Construction Schedule, dated \_\_\_\_\_, \_\_\_\_\_ pages.

**Schedule 5** Allowance items, dated \_\_\_\_\_, \_\_\_\_\_ pages.

**Schedule 6** Alternates, dated \_\_\_\_\_, \_\_\_\_\_ pages.

**Schedule 7** Unit Prices, dated \_\_\_\_\_, \_\_\_\_\_ pages.

**Schedule 8** Claims, if any, \_\_\_\_\_, \_\_\_\_\_ pages.

5. Except as set forth in this GMP Amendment, the Agreement shall remain in full force and effect. In the event of an irreconcilable conflict between the terms of the Agreement and those of this GMP Amendment, the terms of this GMP Amendment control.
6. As of the date of this GMP Amendment, Construction Manager acknowledges it is neither aware of, nor has reserved, any Claim except as identified on **Schedule 8**.
7. This GMP Amendment shall take effect upon the date it is last signed and may be signed in separate counterparts, each of which when signed and delivered shall be an original, and all which when taken together, shall constitute one and the same instrument.

This GMP Amendment is entered as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

**OWNER:**

**CONSTRUCTION MANAGER:**

By:

Name:  
Its:

By:

Name:  
Its:

SAMPLE

**Exhibit E**

**Preconstruction Services and Cost Limit**

See attached

[Note: Construction Manager to provide, for Owner's approval, the scope of precon services and the cost.]

**Exhibit F**

**Key Personnel and Hourly Rates**

See attached

SAMPLE

## Construction Manager's Key Personnel

The personnel indicated below shall be committed to the Project and shall not be assigned any other work responsibilities that lessen or hinder their ability to perform their Project responsibilities:

1. Project Executive. Construction Manager shall assign \_\_\_\_\_ as Project Executive to supervise Construction Manager's services and the Work and be available to Owner at all reasonable times.
2. Senior Project Manager. Construction Manager shall assign \_\_\_\_\_ as Senior Project Manager to supervise the Work and be available to Owner at all reasonable times.
3. Project Manager. Construction Manager shall assign \_\_\_\_\_ as Project Manager to supervise the Work and be available to Owner at all reasonable times.
4. General Superintendent. Construction Manager shall assign \_\_\_\_\_ as General Superintendent to supervise the Work.
5. Preconstruction Manager. Construction Manager shall assign \_\_\_\_\_ as Preconstruction Manager to supervise Construction Manager's preconstruction services.
6. Submittals Coordinator. Construction Manager shall assign \_\_\_\_\_ as Construction Manager's Submittals Coordinator to coordinate all Submittals and shall check for conflicts, completeness, and accuracy, and confirm such Submittals conform to the requirements of the Contract Documents and are appropriate for Owner Parties' review.
7. Other Personnel. Construction Manager shall assign other persons as necessary who shall be responsible for the job descriptions set forth next to each of their names. **[Note: Construction Manager to provide for Owner's approval.]**

**Construction Manager's Personnel Rates**

[Note: Construction Manager to provide hourly rates for Owner's approval]

SAMPLE

**Exhibit G**

**Form of Payment Claim Waiver**

See attached

[Note: Insert OSU's preferred form of claim waiver, if any.]



**Exhibit H**

**Per Diem Liquidated Damages**

See attached

SAMPLE

### Per Diem Liquidated Damages

Deliverable Portion of the Work 1 [ ]	Guaranteed Substantial Completion Date [ ]	Per Diem Damages (30 Days) [ ]	Per Diem Damages (60 Days) [ ]	Per Diem Damages (90 Days) [ ]
Deliverable Portion of the Work 2 [ ]	Guaranteed Substantial Completion Date [ ]	Per Diem Damages (30 Days) [ ]	Per Diem Damages (60 Days) [ ]	Per Diem Damages (90 Days) [ ]
Deliverable Portion of the Work 3 [ ]	Guaranteed Substantial Completion Date [ ]	Per Diem Damages (30 Days) [ ]	Per Diem Damages (60 Days) [ ]	Per Diem Damages (90 Days) [ ]
Deliverable Portion of the Work 4 [ ]	Guaranteed Substantial Completion Date [ ]	Per Diem Damages (30 Days) [ ]	Per Diem Damages (60 Days) [ ]	Per Diem Damages (90 Days) [ ]

**Exhibit I**

**Notice and Contact Information**

Notices required under the terms of the Agreement shall be given to the attention of each party's representative designated below using the following contact information:

***Owner:***

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Attn:

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Phone:

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Fax:

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Email:

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***with copy to:***

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Attn:

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Phone:

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Fax:

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Email:

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***Owner Parties:***

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Attn:

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Phone:

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Fax:

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Email:

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***with copy to:***

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Attn:

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Phone:

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Fax:

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Email:

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***Construction  
Manager***

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Attn:

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Phone:

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Fax:

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Email:

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***with copy to:***

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Attn:

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Phone:

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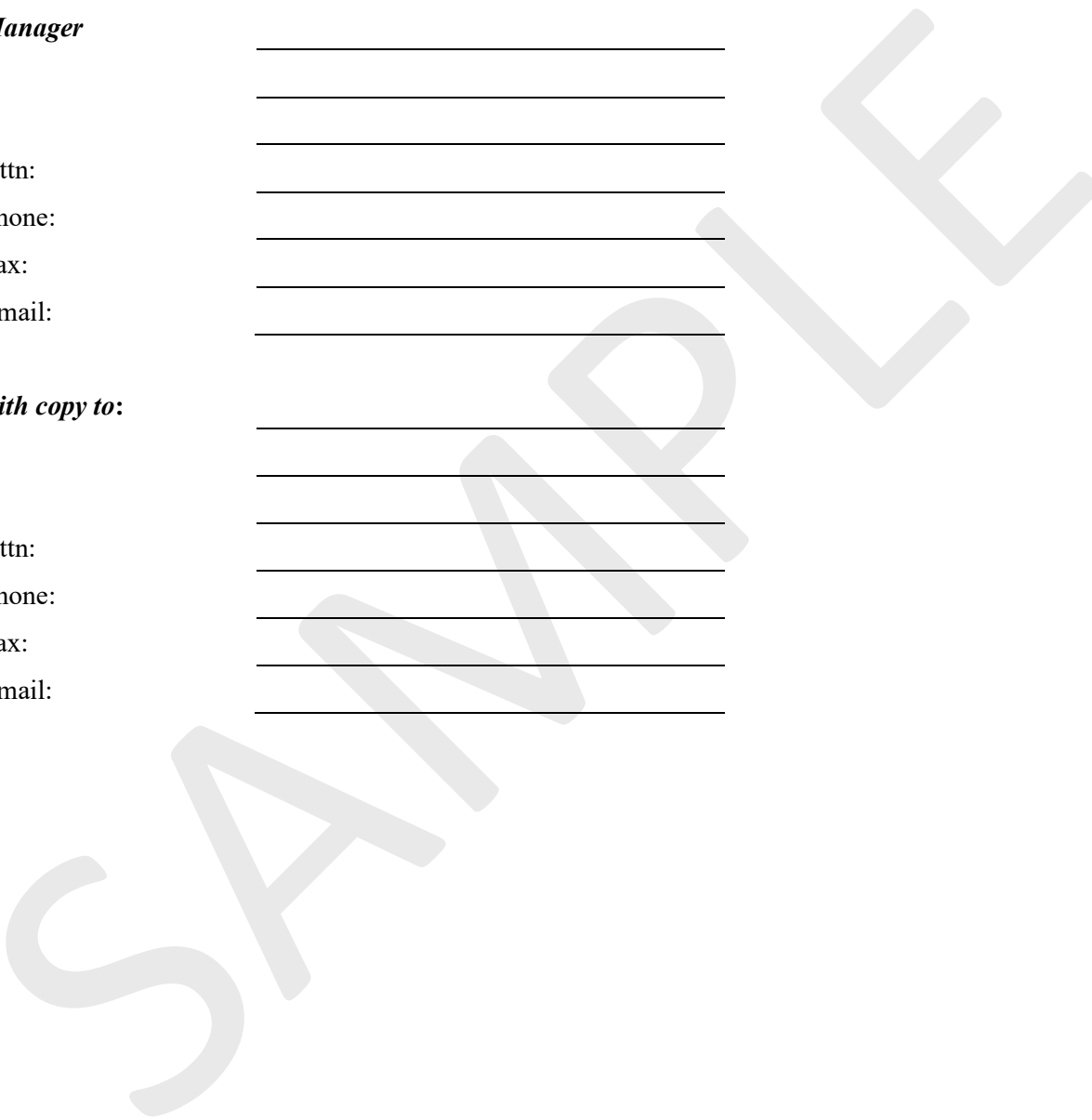
Fax:

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Email:

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**Exhibit J**  
**Labor Agreement**

See attached

[Note: Insert OSU's negotiated labor agreement, if any, when applicable.]

**Exhibit K**

**Owner's Standard Requirements**

See attached

SAMPLE

### **Security/Background Checks:**

The OSU facilities in which work performed under this Agreement is performed are designated as critical, occupied or security-sensitive facilities. Thus, Contractor shall conduct criminal background checks, including sex offender registration checks, (for both: Oregon at a minimum, and national for Contractor employees that formerly lived outside of the state of Oregon) on each Contractor employee and agent with satisfactory results before referral or placement at any OSU work location. The Contractor shall also conduct drug and alcohol testing of each Contractor employee and agent with satisfactory results before referral or placement at any OSU work location. Contractor must perform the criminal background checks and drug and alcohol testing within the 12 months immediately preceding referral or placement at any OSU work location.

Disqualifying crimes may include: 1) felony convictions of any kind within the last 8 years, 2) all crimes involving weapons of any kind ever committed, 3) all person to person crimes involving physical injury to another person ever committed, 4) sexual offenses, including stalking, and 5) child abuse, molestation, child pornography or other crimes involving child endangerment, including neglect and abandonment ever committed.

Contractor shall require Contractor's employees and agents to self-disclose to Contractor any new convictions that occur within three business days of the conviction and Contractor shall reassess the individual's assignment under this Contract.

OSU, at its discretion, may require Contractor to reassign a Contractor employee or agent to no longer perform work under this Agreement or for OSU if, at any time, OSU believes that the Contractor employee or agent may create a danger to the health or safety of the campus community.

Contractor is solely responsible for complying with all applicable federal, state or local laws, rule, and regulations, including but not limited to the Fair Credit Reporting Act and equal opportunity laws and regulations, when conducting background checks. The costs and Fair Credit Reporting Act obligations for criminal background checks and drug and alcohol testing are the responsibility of Contractor.

Contractor shall require Contractor's subcontractors and agents providing services under this Agreement to comply with this provision. OSU may audit Contractor's background check and drug and alcohol testing processes at any time to ensure compliance with this section. Failure of Contractor to comply with this section is a material breach of the Agreement and may result in OSU seeking monetary damages or pursue other remedies, termination by OSU without further liability or obligation, or both. Contractor shall indemnify, defend, and hold harmless OSU and its directors, agents, trustees, and employees from all claims, suits, and actions arising out of or related to any and all claims relating to the conducting of such checks and testing and any adverse action that may be taken as a result of such checks and testing.

**OSU to add/supplement as needed**

**Exhibit L**

**Project Description**

See attached

[Insert written description of the Project]



**Exhibit M**

**Quality Management and Control Plan**

See attached

SAMPLE

- Cost control system
- Breakdown of quality control responsibilities to the various Project participants
- Quality Control matrix identifying and cross referencing
  - Testing
  - Inspections
  - Submittals
  - Project participants
- Inspection and testing plans for all critical Work including commissioning
- Field monitoring and inspection report qualitative examples issuance schedule
- Contractor's Subcontractor's quality control audit plan
- Defective Work identification, reporting, and correction procedures

[Construction Manager to insert written descriptions and supplement the above list]

**Exhibit N**

**Site Description**

See attached

[Insert description of the Site, which may include  
a legal description and survey]

**Exhibit O**  
**Fee Matrix**

See attached

SAMPLE

# Cost Matrix

Project Name: \_\_\_\_\_



CMGC Fee \_\_\_\_\_%

CMGC Preconstruction Fee \$ \_\_\_\_\_

Lump Sum

CMGC General Conditions

Monthly Charge \$ \_\_\_\_\_

Per Month

CMGC General Conditions Duration \_\_\_\_\_

# of Months

## Cost Responsibility Matrix for CMGC

### Subject to CMGC Fee Mark Up

CMGC Fee

Precon Fee

General Conditions

Direct Cost of Work

Owner

### Construction Staff (For Project Specific Time)

Costs for the staff listed below must include fringe benefit (including vacation, health care, etc.), communication device, computer, tablet, project specific software, vehicle, gas, prof. develop., workers comp insurance, payroll taxes and any other misc. cost associated with labor. DOES NOT include standard compensation bonus.

1	CM/GC Project Manager and all on-site CM/GC personnel based upon OSU approved CM/GC organization chart and percentage of time that each person is dedicated to the Project. On-Site personnel may include construction manager, superintendents, project/field engineers, coordinator, scheduler, cost estimator, safety, quality control, administrator, Project accountant, and other Project specific personnel deemed necessary for the Project and approved by OSU			X		
2	Costs related to transportation (including trucks, shuttles, parking, corporate vehicles and their operation and maintenance, owned or rented) for all staffing in Item 1. Does not include commuting to and from Project site.			X		
3	Standard Compensation Bonuses	X				
4	CM/GC home (or main), branch and/or regional office general, administrative and support staff who provide corporate management oversight, corporate accounting, corporate safety, corporate quality control, corporate administration, corporate IT, legal services, corporate payroll and benefits accounting/administration.	X				
5	CM/GC Profit on all Work	X				
<b>Temporary Facilities</b>						
6	Office/Trailer Rental, Furnishings, and Cleaning			X		
7	Copy/Fax/Printer & Supplies			X		
8	PPE Safety Equipment, Fire Ext & First Aid			X		
9	Fire Watch				X	
10	Temporary Toilets			X		
11	Water/Ice/Cups			X		
12	Temporary Stairs/Scaffolding				X	
13	Temporary Enclosures/Weather Protection				X	
14	Temporary Building Heating			X		
15	Project Signs & Bulletin Boards			X		
16	Temporary Fencing			X		
17	Covered Walkways			X		

	CMGC Fee	Precon Fee	General Conditions	Direct Cost of Work	Owner
18	Barricades			X	
<b>Overhead, Fee, Insurance and Bonds</b>					
19	Profit and Overhead	X			
20	Builder's Risk Insurance			X - No Mark up	
21	General Liability	X			
22	Excess Liability Coverage	X			
23	Performance & Payment Bonds			X - No Mark up	
24	Subcontractor Bonds/Subcontractor Default Insurance			X - No Mark up	
<b>On-Site Equipment and Utilities</b>					
25	Job Site Utility Set up		X		
26	Job Site Utility Consumption				X
27	Document Management Programs		X		
28	Safety/Ceremony Lunches	X			
29	Construction Progress Photos		X		
30	Off-Site Storage		X		
31	Housekeeping & Final Clean		X		
32	Trash & Recycling		X		
33	Dust Controls/Street Cleaning			X	
34	Snow and Ice Removal			X	
35	Dewatering Equipment			X	
36	Temporary Roads (if required)			X	
37	Radio equipment		X		
38	On Site Storage		X		
39	Lifts (Rented or Contractor owned)		X		
40	Lift Operators		X		
41	Fuel, Repairs, Maintenance for Lifts		X		
42	Small Tools Purchase	X			
43	Small Equipment Rental		X		
44	Crane and Hoisting			X	
45	Temporary Elevator Rental			X	
46	Elevator Operator			X	
<b>Reproduction and Printing</b>					
47	Reproduction and Printing during construction		X		
<b>Permits and Special Fees</b>					
48	Craft Parking when paking lot is not already provided by Owner		X - No Mark up		
49	PIPC Permit				X
50	General Building Permit				X
51	Craft Permits		X - No Mark up		
52	Surveying			X	

**Exhibit P**

**Insurance Requirements**

See attached

SAMPLE

## **INSURANCE REQUIREMENTS**

### **A. GENERAL.**

Contractor shall, and shall cause each Subcontractor to, maintain the insurance coverages set forth below:

1. **Commercial General Liability (CGL)**

\$2,000,000          Each Occurrence  
\$4,000,000          General Aggregate – Per Project Aggregate  
\$X,000,000          Products/Completed Operations Aggregate  
\$2,000,000          Personal Injury

2. **Business Automobile**

\$1,000,000 Combined Single Limit

3. **Workers' Compensation/Employers' Liability (Stop Gap)**

Statutory Workers' Compensation – Coverage A

\$1,000,000          Each Accident  
\$1,000,000          Disease – Policy Limits  
\$1,000,000          Disease – Each Employee

4. **Contractors Pollution Liability**

\$3,000,000          Each Occurrence and General Aggregate

5. **Excess Umbrella Liability:**

For Contractor:

\$5,000,000 Each Occurrence/Annual General Aggregate

For Subcontractors, unless a higher limit is set by Subcontract:

Where the Subcontract Sum is \$500,000 or less, \$2,000,000 Each Occurrence/Annual General Aggregate

Where the Subcontract Sum is over \$500,000 but not more than \$2,000,000,  
\$5,000,000 Each Occurrence/Annual General Aggregate

Where the Subcontract Sum is over \$2,000,000 but not more than \$5,000,000,  
\$10,000,000 Each Occurrence/Annual General Aggregate

Where the Subcontract Sum is over \$5,000,000 but not more than \$10,000,000,  
\$15,000,000 Each Occurrence/Annual General Aggregate

Where the Subcontract Sum is over \$10,000,000, then \$25,000,000 Each  
Occurrence/Annual General Aggregate

### **B. ADDITIONAL REQUIREMENTS.**

1. **Commercial General and Excess Umbrella Liability Insurance.**

- a) CGL insurance shall be written on current ISO occurrence for CG 00 01 or its equivalent if Owner approves and shall cover liability arising from premises, operations, independent contractors, products-completed operations, death, bodily injury, property damage, personal injury and advertising injury and liability assumed



under an insured contract. Excess Umbrella Insurance coverage shall be provided on a follow-form basis and Contractor shall be responsible for any gaps between underlying coverage and excess coverage for all policies required under the terms of this Agreement.

- b) The Indemnitees shall be included as additional insureds under the CGL, excess umbrella liability and contractors pollution liability coverages. The additional insured coverage under the CGL shall be on current ISO additional insured endorsements CG 20 10 (07 04) and CG 20 37 (07 04) or substitutes providing equivalent coverage if Owner approves. Such insurance shall apply as primary insurance to the additional insureds.

## 2. **Completed Operations Liability Insurance.**

Completed operations coverage required by the Contract Documents shall be maintained for at least **ten (10) years** following Final Completion of the Work.

## 3. **Business Auto and Umbrella Liability Insurance.**

- a) Business Auto and Umbrella Liability Insurance shall cover liability arising out of any auto including owned, unowned, and hired.
- b) Business auto coverage shall be written on current ISO form CA 00 01, CA 00 05, CA 00 12, CA 00 20 or its equivalent if Owner approves.

## 4. **Railroad Protective Liability.**

- a) Where required by the railroad for construction or demolition activities, Subcontractors shall procure and maintain Railroad Protective Liability meeting the railroad's requirements.
- b) If the Work involves construction or demolition operations at or near railroad property the Subcontractors' CGL policies shall contain current ISO Form Endorsement CG 24 17 01 96 or substitute form providing equivalent coverage.

## 5. **General/Certificates of Insurance.**

- a) All insurance policies shall: (i) be written by insurance companies authorized to do business in the State of Oregon having a financial size of VII or higher and a rating of not less than "A-X" in the latest version of Best's Insurance Guide and (ii) not be suspended, canceled, or altered except after thirty (30) days' prior written notice to Owner by certified mail, return receipt requested.
- b) Prior to commencement of any applicable Work, Contractor shall file with Owner certificates of insurance evidencing the required insurance is in effect. At Owner's request, Contractor shall deliver to Owner the actual insurance policies and any endorsements or riders. **The endorsements and riders shall include cross-claim and severability of interests endorsements.**

## 6. **Deductibles.**

- a) **CGL and Workers' Compensation/Employer's Liability (Stop Gap) policies shall not include a deductible or self-insured retention of more than [\$200,000] per claim.**

## 7. **Professional Liability Insurance.**

- a) Contractor shall maintain professional liability insurance for claims arising from any professional services Contractor and its Subcontractors perform on the Project. The professional liability insurance shall be maintained throughout the Project and for a

period of not less than [eight (8) years after Final Completion of the Work]. Contractor's consultants and contractors working on Contractor's behalf shall maintain professional liability insurance with limits customary for the scope and character of the professional services performed.

**C. BUILDERS' RISK INSURANCE.**

1. [Contractor] shall place and maintain, on an "all-risk" or "special form" policy form, builders risk insurance for the Project, insuring against the perils and including extended coverage and coverage for physical loss or damage. Contractor shall be responsible for [\$50,000] per claim deductible under the builders risk policy if the loss is caused by Contractor, its Subcontractor, Sub-subcontractor or other person or entity for whose acts Contractor may be liable. [Owner shall be responsible for the remaining deductible.] Owner and Contractor shall cooperate with each other and jointly adjust and settle any loss insured under the builders risk policy. Any loss shall be made payable to Contractor as fiduciary for the insureds, as their interests may appear, and Contractor shall pay to Owner its just share of insurance proceeds. Contractor shall pay its Subcontractors and sub-subcontractors their just share of insurance proceeds received, and by appropriate agreements shall require all Subcontractors and Sub-Subcontractors to make their respective obligated payments.
2. Owner and Contractor waive all rights against (a) each other and their respective contractors, subcontractors, sub-subcontractors, agents and employees, and (b) Design Professional and any of its respective consultants, contractors, agents and employees, for damages caused by perils to the extent covered by the builders risk policy, except such rights as any of them may have to the proceeds of such insurance. The builders risk policy shall expressly provide such waivers of subrogation which shall be effective against all parties whether they have a duty of indemnification, pay the insurance premium directly or indirectly, or have an insurable interest in the damaged property.
3. The builders risk insurance shall include Owner and Contractor as named insureds. Subcontractors and Sub-subcontractors shall be loss payees as their interests may appear.

**D. SUBCONTRACTOR DEFAULT INSURANCE.**

1. Subject to the terms of the Agreement, and if permitted by the Agreement, including but not limited to Section 8.3.2 of the General Conditions, Contractor may place and maintain subcontractor default insurance.
2. The premium cost of any subcontractor default insurance policy permitted and chargeable to Owner as Cost of the Work shall be limited in accordance with Section 7.5.14 of the Agreement.

**Exhibit Q**

**Form of Bonds**

See attached

SAMPLE

**[OREGON STATE UNIVERSITY]**

**STANDARD FORM OF  
PERFORMANCE BOND**

Bond No. \_\_\_\_\_  
Contract \_\_\_\_\_  
Contract Date \_\_\_\_\_  
Project Name \_\_\_\_\_

_____ (Surety #1)	Bond Amount No. 1:	\$ _____
_____ (Surety #2)*	Bond Amount No. 2:*	\$ _____
<i>* If using multiple sureties</i>	Total Penal Sum of Bond:	\$ _____

We, \_\_\_\_\_, as Principal, and the above identified Surety or Sureties, collectively as Surety, authorized to transact surety business in Oregon, hereby jointly and severally bind ourselves, our respective heirs, executors, administrators, successors and assigns firmly by these presents and will pay unto [Oregon State University], as Obligee, the sum of (Total Penal Sum of Bond) \_\_\_\_\_, lawful money of the United States of America (provided, that we the Surety bind ourselves, and our heirs, executors, administrators, successors and assigns, in such sum “jointly and severally” as well as “severally” only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sum only as is set forth opposite the name of such Surety), and

WHEREAS, the Principal has entered into the above-referenced written Contract with the Obligee;

WHEREAS, the terms and conditions of the Contract are made a part of this Performance Bond by reference, whether or not attached to the Contract; and

WHEREAS, the Principal has agreed to perform the Contract in accordance with its terms, conditions, requirements, plans and specifications, and all authorized modifications of the Contract which change the amount of the work, the amount of the Contract, or constitute an authorized extension of the time for performance;

NOW, THEREFORE, THE CONDITION OF THIS BOND IS SUCH that if the Principal herein shall faithfully and truly observe and comply with the terms, conditions and provisions of the Contract, in all respects, and shall well and truly and fully do and perform all matters and things undertaken by Contractor to be performed under the Contract, upon the terms set forth therein, and within the time prescribed therein, or as extended as provided in the Contract, with or without notice to the Surety, and shall indemnify and save harmless Obligee and the \_\_\_\_\_ (name of any other Owner agency), and members thereof, their respective officers, employees and agents, from and against any direct or indirect damages of every kind and description, and claims of every kind and description, that shall be suffered or claimed to be suffered in connection with or arising out of performance of the Contract by the Principal or its subcontractors, and shall in all respects perform said Contract according to law, then this obligation is to be void; otherwise, it shall remain in full force and effect.

Surety hereby waives notice of all modifications and amendments to the Contract and agrees that the obligations undertaken by this Performance Bond shall not be impaired in any manner by reason of the same.

Surety hereby agrees this Performance Bond shall be deemed amended automatically and immediately, without formal or separate amendments hereto or notice to the Surety thereof, upon any amendment to the Contract, so as to bind the Principal and Surety, jointly and severally, to the full and faithful performance of the Contract as so amended or modified, provided only that the Surety shall not be liable for more than the Total Penal Sum of Bond.

Nonpayment of the bond premium will not invalidate this bond nor shall Obligee, [or the above-referenced agency(ies)], be obligated for the payment of any premiums.

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

No right of action shall accrue on this Performance Bond to any person or entity other than Obligee and its executors, administrators, successors and assigns.

IN WITNESS WHEREOF, WE HAVE CAUSED THIS INSTRUMENT TO BE SIGNED AND SEALED BY OUR DULY AUTHORIZED LEGAL REPRESENTATIVES.

*[Signature page follows]*

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**PRINCIPAL:** \_\_\_\_\_

By \_\_\_\_\_  
Signature

\_\_\_\_\_  
Official Capacity

Attest: \_\_\_\_\_  
Corporation Secretary

**SURETY:** \_\_\_\_\_  
*[Add signatures for each surety if using multiple bonds]*

**BY ATTORNEY-IN-FACT:**  
*[Power-of-Attorney must accompany each surety bond]*

\_\_\_\_\_  
Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Address

\_\_\_\_\_  
City State Zip

\_\_\_\_\_  
Phone Fax

**[OREGON STATE UNIVERSITY]**

**STANDARD FORM OF  
PAYMENT BOND**

Bond No. \_\_\_\_\_  
Contract \_\_\_\_\_  
Contract Date \_\_\_\_\_  
Project Name \_\_\_\_\_

_____ (Surety #1)	Bond Amount No. 1:	\$ _____
_____ (Surety #2)*	Bond Amount No. 2:*	\$ _____
* <i>If using multiple sureties</i>	Total Penal Sum of Bond:	\$ _____

We, \_\_\_\_\_, as Principal, and the above identified Surety or Sureties, collectively as Surety, authorized to transact surety business in Oregon, hereby jointly and severally bind ourselves, our respective heirs, executors, administrators, successors and assigns firmly by these presents and will pay unto [Oregon State University], as Obligee, the sum of (Total Penal Sum of Bond) \_\_\_\_\_ lawful money of the United States of America (provided, that we the Surety bind ourselves, and our heirs, executors, administrators, successors and assigns, in such sum “jointly and severally” as well as “severally” only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sum only as is set forth opposite the name of such Surety), and

WHEREAS, Principal has entered into the above-referenced written Contract with the Obligee;

WHEREAS, the terms and conditions of the Contract are made a part of this Payment Bond by reference, whether or not attached to the Contract; and

WHEREAS, the Principal has agreed to perform the Contract in accordance with its terms, conditions, requirements, plans and specifications, and all authorized modifications of the Contract which change the amount of the work, the amount of the Contract, or constitute an authorized extension of the time for performance;

NOW, THEREFORE, THE CONDITION OF THIS BOND IS SUCH that if the Principal shall faithfully and truly observe and comply with the terms, conditions and provisions of the Contract, in all respects, and shall well and truly and fully do and perform all matters and things by it undertaken to be performed under said Contract and any duly authorized modifications that are made, upon the terms set forth therein, and within the time prescribed therein, or as extended therein as provided in the Contract, with or without notice to the Sureties, and shall indemnify and save harmless Obligee and the \_\_\_\_\_ (name of any other Owner agency), and members thereof, their respective officers, employees and agents, against any claim for direct or indirect damages of every kind and description that shall be suffered or claimed to be suffered in connection with or arising out of the performance of the Contract by the Principal or its subcontractors, and shall promptly pay all persons supplying labor, materials, or services to the Principal or its subcontractors for prosecution of the work provided in the Contract; and shall promptly pay all contributions due the State Industrial Accident Fund and the State Unemployment Compensation Fund from the Principal or its subcontractors in connection with the performance of the Contract; and shall pay over to the Oregon Department of Revenue all sums required to be deducted and retained from the wages of employees of the Principal and its subcontractors

pursuant to ORS 316.167, and shall permit no lien nor claim to be filed or prosecuted against the Oblige, the State, Project or the work of the Contract, on account of any labor, materials, or services; and shall do all things required of the Principal by the laws of this State, then this obligation shall be void; otherwise, it shall remain in full force and effect.

Surety hereby waives notice of all modifications and amendments to the Contract and agrees that the obligations undertaken by this Payment Bond shall not be impaired in any manner by reason of the same.

Surety hereby agrees this Payment Bond shall be deemed amended automatically and immediately, without formal or separate amendments hereto or notice to the Surety thereof, upon any amendment to the Contract, so as to bind the Principal and Surety, jointly and severally, to the full and faithful performance of the Contract as so amended or modified, provided only that the Surety shall not be liable for more than the Total Penal Sum of Bond.

Nonpayment of the bond premium will not invalidate this bond nor shall the Oblige, [or the above-referenced agency(ies)], be obligated for the payment of any premiums.

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

This Payment Bond is made for the use and benefit of all persons and entities who may furnish materials or perform labor or services on account of the construction to be performed or supplied in accordance with the Contract, and each of them may sue hereon.

IN WITNESS WHEREOF, WE HAVE CAUSED THIS INSTRUMENT TO BE EXECUTED AND SEALED BY OUR DULY AUTHORIZED LEGAL REPRESENTATIVES:

*[Signature page follows]*



Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**PRINCIPAL:** \_\_\_\_\_

By \_\_\_\_\_  
Signature

\_\_\_\_\_  
Official Capacity

Attest: \_\_\_\_\_  
Corporation Secretary

**SURETY:** \_\_\_\_\_

*[Add signatures for each surety if using multiple bonds]*

**BY ATTORNEY-IN-FACT:**

*[Power-of-Attorney must accompany each surety bond]*

\_\_\_\_\_  
Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Address

\_\_\_\_\_  
City State Zip

\_\_\_\_\_  
Phone Fax

**Exhibit R**

**Form of Change Order**

See attached.

SAMPLE

**CHANGE ORDER**

PROJECT: \_\_\_\_\_ DATE: \_\_\_\_\_

CHANGE ORDER NUMBER: \_\_\_\_\_ CONTRACT NUMBER: \_\_\_\_\_

Contractor is authorized to make the following changes in the Project:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Subject to the following:

The original [Contract Sum] [GMP] was..... \$

Net change to [Contract Sum] [GMP] by previously authorized Change Orders..... \$

This Change Order is in the amount of..... \$

The current [Contract Sum] [GMP], including this Change Order, is..... \$

The change in time for completion of the applicable Deliverable Portion of Work is [increased] [decreased] \_\_\_\_ ( ) days.

The date of Substantial Completion of the [insert name of Deliverable Portion of Work] as of the date of this Change Order is \_\_\_\_\_.

**By signing this Change Order, Contractor acknowledges and agrees it is fully-compensated for the changes in Work described above. All impact costs and changes in time as a result of this Change Order are included in this Change Order. All other terms and conditions of the Agreement remain in full force and effect. Contractor further acknowledges, as of the date of this Change Order, there are no Claims against Owner, except as otherwise previously identified to Owner by written notice in accordance with the Agreement.**

OWNER: [ ] CONTRACTOR: [ ]

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

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

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**Exhibit S**

**Change Pricing**

1. Unless Owner otherwise previously approves in writing, an increase or decrease in the [Contract Sum] [GMP] by Change Order shall be determined by

[stipulated lump sum acceptable to Owner and Contractor, based on Contractor's estimated costs, with allowance for Contractor's profit and overhead, as set forth in Section 2 below. Contractor shall provide to Owner Parties supporting documentation of the increase or decrease in the [Contract Sum] [GMP] sufficient, in Owner Parties reasonable opinion, to evaluate Contractor's estimated costs.]

**OR**

[Unit Prices stated in the Contract Documents, including but not limited those identified in attached **Schedule 1**, or to which Owner and Contractor subsequently agree. Contractor shall submit to Owner Parties an itemized list of quantities and applicable unit price for each, in form and to the level of detail Owner Parties reasonably require.]

**OR**

[actual Cost of the Work of the change, plus allowances for overhead and profit, all as set forth below and not to exceed a pre-determined maximum amount. Contractor shall provide to Owner Parties supporting documentation of the actual Cost of the Work of the change sufficient, in Owner Parties reasonable opinion, to support Contractor's costs.]

2. The allowable overhead and profit mark-up included in each Change Order shall be as follows; provided, however, if Unit Prices are used to determine Change Order pricing for all or a portion of the applicable Work, Contractor shall be entitled to only those Unit Prices and no additional mark-up for that Work:

	Overhead/ Profit
Contractor:	[4%] of Cost of the Work as defined in the Agreement
Subcontractor:	[7%] of costs as defined in this Exhibit [ ]

3. The percentages allowed for overhead and profit under Section 2 above pertaining to Subcontractors include all costs resulting from each Change Order, even if not expressly set forth as a cost in section 4 below.
4. The term "costs" in this Exhibit [ ] means: (a) actual, direct costs of labor, including social security, customary fringe benefits, and workers' compensation insurance; (b) actual, direct costs of Materials; (c) out of pocket rental costs of machinery and equipment at rates prevailing in the area where the Project is located; (d) out of pocket costs of premiums for all bonds and insurance, permit fees, and taxes related directly to the Work; and (e) actual, direct costs of Key Personnel directly attributable to the Change Order if the Substantial Completion date of the applicable Deliverable Portion of Work is changed.

5. Upon Owner's request, Contractor or Subcontractor shall submit evidence to substantiate all costs. Materials shall be quoted at prices including all discounts realized.
6. When additions and credits apply to a Change Order both increasing and decreasing the [Contract Sum] [GMP], the allowable overhead and profit, if applicable in accordance with Section 2 above, shall be determined based on a net increase or decrease to the [Contract Sum] [GMP].

SAMPLE

**Schedule 1**

**Unit Prices**

In addition to those Unit Prices set forth in the GMP Amendment dated \_\_\_\_\_, which are incorporated in this Schedule 1 by this reference, the following Unit Prices shall be used when determining this Change Order pricing:

SAMPLE