

DRAFT AIA® Document A133™ - 2019

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

AGREEMENT made as of the « » day of « » in the year «2024»
(In words, indicate day, month, and year.)

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

Oregon State University

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

for the following Project:
(Name, location, and detailed description)

The Design Professional:
(Name, legal status, address, and other information)

The Owner and Construction Manager agree as follows.

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

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

AIA Document A201™-2017, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

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ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in this Section 1.1.

(For each item in this section, insert the information or a statement such as "not applicable" or "unknown at time of execution.")

§ 1.1.1 The Owner's program for the Project, as described in Section 4.1.1:

The Project consists of _____.

§ 1.1.2 The Project's physical characteristics:

(Identify or describe pertinent information about the Project's physical characteristics, such as size; location; dimensions; geotechnical reports; site boundaries; topographic surveys; traffic and utility studies; availability of public and private utilities and services; legal description of the site, etc.)

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§ 1.1.3 The Owner's budget for the Guaranteed Maximum Price, as defined in Article 6:

(Provide total and, if known, a line item breakdown.)

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§ 1.1.4 The Owner's anticipated design and construction milestone dates:

.1 Design phase milestone dates, if any:

« »

.2 Construction commencement date:

« »

.3 Substantial Completion date or dates:

« »

.4 Other milestone dates:

« »

§ 1.1.5 The Owner’s requirements for accelerated or fast-track scheduling, or phased construction, are set forth below:
(Identify any requirements for fast-track scheduling or phased construction.)

« »

§ 1.1.6 The Owner’s anticipated Sustainable Objective for the Project:
(Identify and describe the Owner’s Sustainable Objective for the Project, if any.)

«See <https://fa.oregonstate.edu/sustainability/requirements-sustainable-development> for Owner’s requirements »

§ 1.1.6.1 [Intentionally deleted.]

§ 1.1.7 Other Project information:
(Identify special characteristics or needs of the Project not provided elsewhere.)

« »

§ 1.1.8 The Owner identifies the following representative in accordance with Section 4.2:
(List name, address, and other contact information.)

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§ 1.1.9 The persons or entities, in addition to the Owner’s representative, who are required to review the Construction Manager’s submittals to the Owner are as follows:
(List name, address and other contact information.)

« »

§ 1.1.10 The Owner shall initially retain the following consultants and contractors:
(List name, legal status, address, and other contact information.)

§ 1.1.11 The Design Professional’s representative:
(List name, address, and other contact information.)

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§ 1.1.12 The Construction Manager identifies the following Representative in accordance with Article 3:
(List name, address, and other contact information.)

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The Construction Manager’s Representative shall not be replaced without the consent of the Owner. If the Owner approves replacement of the Construction Manager’s Representative, the Owner shall have the right to approve the replacement Construction Manager’s Representative. The Owner shall have the right, which shall be exercised in a reasonable fashion, to require replacement of the Construction Manager’s Representative.

§ 1.1.12.1 The Construction Manager Construction Manager’s personnel shall include those described in Construction Manager’s staff chart in attached Exhibit C (the “Key Personnel”). 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’s prior written approval. Construction Manager shall promptly replace any personnel assigned to the Work upon Owner’s objection to such personnel. In the event Construction Manager no longer employs any of the Key Personnel, Construction Manager shall promptly notify Owner and shall use best efforts to provide a permanent replacement suitable to Owner within ten (10) calendar days after such event.

§ 1.1.13 The Owner’s requirements for the Construction Manager’s staffing plan for Preconstruction Services:
(List any Owner-specific requirements to be included in the staffing plan.)

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§ 1.1.14 The Owner’s requirements for subcontractor procurement for the performance of the Work:
(List any Owner-specific requirements for subcontractor procurement.)

«See other Sections of this Agreement, including but not limited to Section 3.3.2.1 and the General Conditions. »

§ 1.1.15 Other Initial Information on which this Agreement is based:

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§ 1.2 The Owner and Construction Manager may rely on the Initial Information. Both parties, however, recognize that such information may materially change and, in that event, the Owner and the Construction Manager shall appropriately adjust the Project schedule, the Construction Manager’s services, and the Construction Manager’s compensation.

§ 1.3 Neither the Owner’s nor the Construction Manager’s representative shall be changed without ten days’ prior notice to the other party.

§ 1.4 Owner intends to use Project management platform – e-Builder. Construction Manager shall utilize e-Builder as the Project management platform. Construction Manager, will communicate and interact with the Design Professional and Owner via e-Builder. Construction Manager is required to become proficient with, and fully utilize e-Builder for Project information, including but not limited to, providing an accessible storage location for meeting minutes, requests for information, construction documents, photos, proposal requests, pay applications, invoices, contingency usage requests, and change orders. Owner will hold the license for e-Builder, and Construction Manager will not be required to pay hosting fees. Construction Manager shall comply with all e-Builder security requirements. The e-Builder Project management software platform facilitates Project information sharing between the Construction Manager, Design Professional and Owner, including but not limited to, providing an accessible storage location for meeting minutes, requests for information, construction documents, photos, proposal requests, pay applications, invoices, contingency usage requests and change orders. The Construction Manager is required to take an active role with applicable Project management tasks in e-Builder, responding to or initiating many of the tasks, and working in collaboration with the

Design Professional, Owner, and other Project stakeholders. All Construction Manager requests, changes and applications for payments shall be submitted, revised and reviewed via e-Builder.

ARTICLE 2 GENERAL PROVISIONS

§ 2.1 The Contract Documents

The Contract Documents consist of this Agreement, General Conditions, Drawings, Specifications, Addenda (but only those Addenda issued prior to the execution of this Agreement), other documents listed in this Agreement, and Modifications issued after execution of this Agreement. A “Modification” is (1) a written amendment to the Contract signed by both parties (including but not limited to any Early Work Amendment and the Guaranteed Maximum Price Amendment (“GMP Amendment”)), (2) a Change Order signed by both parties, or (3) a construction change directive issued by Owner (a “Construction Change Directive”). Upon the Construction Manager’s and Owner’s execution of the GMP Amendment, the Contract Documents will also include the documents incorporated by reference in the GMP Amendment. The Contract Documents form the Contract for Construction (the “Contract”) and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior and contemporaneous negotiations, representations or agreements, either written or oral. Any conflicts, inconsistencies, discrepancies or ambiguities between or among the Contract Documents will be resolved as set forth in Sections 1.2.4 and 1.2.5 of the General Conditions.

§ 2.2 Relationship of the Parties

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

§ 2.3 General Conditions

§ 2.3.1 The general conditions of the Contract shall be as set forth in A201–2017, as modified (the “General Conditions”), which document is incorporated herein by reference. The term “Contractor” as used in the General Conditions shall mean the Construction Manager.

§ 2.4 The Owner’s Reliance on the Construction Manager and the Subcontractors

The Owner and Construction Manager acknowledge and agree that (1) all Work performed by the Construction Manager and Subcontractors at all tiers shall be performed in the interests of the Owner and for its benefit, (2) the Construction Manager and Subcontractors at all tiers are authorized by the Owner to exercise their own independent, professional and trade judgments in performing their contractual obligations pursuant to this Section 2.4 on behalf of the Owner, (3) the Owner will be relying on the Construction Manager and Subcontractors at all tiers to perform their obligations consistent with this Section 2.4, and (4) as a result, the Construction Manager and Subcontractors at all tiers shall owe a duty to the Owner to exercise reasonable care and to avoid negligence in performing their obligations under the Contract and on the Project. The Construction Manager shall incorporate and shall cause to be incorporated into all subcontracts with Subcontractors a provision equivalent to this Section 2.4.

ARTICLE 3 CONSTRUCTION MANAGER’S RESPONSIBILITIES

The Construction Manager shall fully execute the Work described in the Contract Documents and incidental, necessary and reasonably inferable therefrom, except as specifically indicated in the Contract Documents to be the responsibility of others. The Construction Manager’s Preconstruction Phase responsibilities are set forth in Sections 3.1 and 3.2, and in the General Conditions. The Construction Manager’s Construction Phase responsibilities are set forth in Section 3.3 and in the General Conditions. The Owner and Construction Manager may agree, in consultation with the Design Professional, for the Construction Phase to commence prior to completion of the Preconstruction Phase, in which case, both phases will proceed concurrently. The Construction Manager shall identify a representative authorized to act on behalf of the Construction Manager with respect to the Project.

§ 3.1 Preconstruction Phase

§ 3.1 The date of commencement of the Preconstruction Services shall be the date of this Agreement. The Construction Manager shall perform Preconstruction Services diligently and continuously until either the Construction Manager's commencement of construction (other than Early Work) or the Owner's termination of the Contract, at which time the Construction Manager's performance of Preconstruction Services shall be deemed completed.

§ 3.1.1 Extent of Responsibility

In the performance of the Preconstruction Services, the Construction Manager shall exercise that professional standard that prevails in major metropolitan areas of the United States of America 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. The Construction Manager is not required to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Construction Manager shall promptly report in writing to the Design Professional and Owner any nonconformity discovered by or made known to the Construction Manager as a request for information in such form as the Design Professional may require.

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

§ 3.1.3 Consultation

§ 3.1.3.1 The Construction Manager shall schedule and conduct meetings with the Design Professional and Owner to discuss such matters as procedures, progress, coordination, and scheduling of the Work.

§ 3.1.3.2 The Construction Manager shall advise the Owner and Design Professional on proposed site use and improvements, selection of materials, building systems, and equipment. The Construction Manager shall also provide recommendations to the Owner and Design Professional, consistent with the Project requirements, on constructability; availability of materials and labor; time requirements for procurement, installation and construction; prefabrication; and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions.

§ 3.1.3.3 If required by Owner, the Construction Manager shall assist the Owner and Design Professional in establishing building information modeling and digital data protocols to establish the protocols for the development, use, transmission, and exchange of digital data.

§ 3.1.3.4 The Construction Manager shall review and advise on the Drawings and Specifications, each time they are released by Design Professional for Construction Manager's review, regarding completeness and clarity, suitability for supporting proper cost estimating, suitability for proper bidding, constructability and work sequence issues, and impact to the Project schedule.

§ 3.1.4 Project Schedule

The Construction Manager shall prepare and submit a monthly updated Project schedule using the critical path method for the Design Professional's and Owner's review. This monthly update shall include submission to Owner of the electronic file generated by the Construction Manager's scheduling program. The Construction Manager shall obtain the Architect's approval for the portion of the Project schedule relating to the performance of the Design Professional's services. The Project schedule shall coordinate and integrate the Construction Manager's services, the Design Professional's services, other Owner consultants' services, and the Owner's responsibilities and identify items that could affect the Project's timely completion. The updated Project schedule shall include the following: submission of the Guaranteed Maximum Price proposal; components of the Work; times of commencement and completion required of each Subcontractor; ordering and delivery of products, including those that must be ordered well in advance of construction; and the occupancy requirements of the Owner. The schedule shall not have any single activity with a duration of more than 10 days, and shall include all procurement activities including critical submittals.

§ 3.1.5 Construction Manager's Plans

The Construction Manager shall provide recommendations with regard to accelerated or fast-track scheduling, procurement, or phased construction. The Construction Manager shall take into consideration cost reductions, cost information, constructability, provisions for temporary facilities and procurement and construction scheduling issues. The Construction Manager shall develop and comply with a Conduct of Construction Plan that addresses phasing and scheduling, public safety, neighborhood interaction, and community relations.

§ 3.1.5.1 The Construction Manager shall prepare and submit a Safety Plan for use during construction.

§ 3.1.5.2 The Construction Manager shall prepare and submit a Cost Control Plan for use prior to and during construction. The Cost Control Plan shall include without limitation a description of how the Construction Manager shall monitor the Cost of the Work throughout construction, provide the necessary substantiation for monthly Pay Applications, substantiate all costs incurred, and organize its accounting records such that, if Owner elects to conduct an audit, Owner's auditors will be able to efficiently review Construction Manager's accounting and cost records.

§ 3.1.5.3 The Construction Manager shall prepare and submit a Quality Control Plan for use during construction.

§ 3.1.5.4 The Construction Manager shall develop and implement an Erosion Control Plan for use during construction that complies with governmental erosion control requirements for construction.

§ 3.1.5.5 If required by Owner, the Construction Manager shall develop and comply with a Sustainable Development Plan that establishes a reuse and recycling objective that complies with Owner's Requirements for Sustainable Development.

§ 3.1.6 Cost Estimates

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

§ 3.1.6.2 At the conclusion of the schematic design phase, the Construction Manager shall provide a construction cost estimate and comparable for potential design solutions for, including but not limited to, structural systems, envelope systems, mechanical systems, electrical systems, plumbing systems, fire protection systems, fire alarm systems and finishes as requested by Owner. As the Design Professional progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall prepare and update, at appropriate intervals agreed to by the Owner, Construction Manager and Design Professional, estimates of the Cost of the Work of increasing detail and refinement and allowing for the further development of the design, price escalation, impact of existing and anticipated market conditions, until such time as the Owner and Construction Manager agree on a Guaranteed Maximum Price for the Work. Such estimates shall be provided for the Owner's and Design Professional's review and be in such detail and include such substantiation as requested by Owner. The Construction Manager shall inform the Owner and Design Professional if any estimates of the Cost of the Work exceed the latest approved Project budget and make recommendations for corrective action. In preparing such estimates, Construction Manager shall use CSI or other format acceptable to Owner. The Design Professional may also provide a construction cost estimate that will be reviewed and reconciled with the Construction Manager's cost estimate. If the preliminary construction cost estimate is exceeded, Construction Manager shall identify feasible cost reducing options, including projected cost savings offset with any additional design costs, to bring construction costs within the estimate.

§ 3.1.7 Value Engineering

§ 3.1.7.1 The Work also shall include the obligation on the part of the Construction Manager to make an affirmative, good faith effort during the Preconstruction Phase and the course of construction to identify and propose for review and decision by the Owner value engineering and other deductive changes to the Work with the aim of lessening the overall cost of the Project without any or significant diminution in the overall value of the Project. Estimates shall be accompanied by a detailed list of cost saving and value engineering recommendations. The Construction Manager will meet with the Owner and Design Professional and explain the details of the Construction Manager's list of cost saving and value engineering recommendations. The Construction Manager will note causes for cost changes from the previous estimate including such items as design changes, scope changes, or changes in the market conditions.

§ 3.1.8 The Construction Manager shall provide recommendations and information to the Owner and Design Professional regarding equipment, materials, services, and temporary Project facilities.

§ 3.1.9 [Intentionally deleted.]

§ 3.1.10 [Intentionally deleted.]

§ 3.1.11 Subcontractors

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

§ 3.1.11.1 The Construction Manager shall be responsible to the Owner for acts and omissions of the Construction Manager's employees, Subcontractors at all tiers, design professionals performing services on behalf of the Construction Manager or Subcontractors, and their respective agents and employees, and other persons or entities performing portions of the Work for or on behalf of the Construction Manager or any of its Subcontractors. The Construction Manager shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Design Professional in its administration of the Contract, or by tests, inspections or approvals required or performed by persons other than the Construction Manager.

§ 3.1.11.2 The Construction Manager shall enter into written contracts with Subcontractors as provided in Section 5.2 of the General Conditions. Under no circumstances shall Construction Manager enter into subcontracts or any other agreement with itself.

§ 3.1.11.3 The Construction Manager shall prepare, for the Design Professional's review and the Owner's acceptance, a procurement schedule for items that must be ordered well in advance of construction. The Construction Manager shall expedite and coordinate the ordering and delivery of materials that must be ordered well in advance of construction. If the Owner agrees to directly procure any items prior to the establishment of the Guaranteed Maximum Price, the Owner shall procure the items on terms and conditions acceptable to the Construction Manager. Upon the establishment of the Guaranteed Maximum Price, the Owner may assign all contracts for these items to the Construction Manager and the Construction Manager shall thereafter accept responsibility for them.

§ 3.1.11.4 The Construction Manager shall cooperate with the Owner to: recommend division of the Work to facilitate bidding and award of trade subcontracts; recommend which work, if any, should be procured through value-based competitive selection in lieu of low bid; identify work which the Construction Manager proposes to self-perform and how competitive pricing will be accomplished.

§ 3.1.11.5 [Intentionally deleted.]

§ 3.1.11.6 The Work shall include design professional services provided on a design/build basis for the fire alarm and fire protection portions of the Work and other design/build items as identified in the Construction Documents. Such services shall be performed by design professionals licensed, registered and otherwise legally authorized to perform such services in Oregon, to the extent such licensure, registration and authorization are required by law to perform such services on such portions of the Work. Such services shall be performed by one or more employees or consultants of the Construction Manager or a Subcontractor. The Construction Manager shall ensure that all such design services and documents, during both the design and construction phases, are coordinated with the services and documents of the Design Professional and its consultants in the interests of the Owner and the Project to ensure deliverables and open issues are submitted and completed by the agreed upon dates and to ensure open and effective communication among team members.

§ 3.1.11.6.1 All drawings, specifications, and other work product of Construction Manager that results from this Agreement ("Work Product") will be provided to Owner upon request and will be considered the exclusive property of Owner. If any of the Work Product contains intellectual property of the Construction Manager or the Subcontractors that is or could be protected by federal copyright, patent, or trademark laws, or state trade secret laws, Construction Manager hereby grants Owner a perpetual, royalty-free, fully paid-up, nonexclusive and irrevocable license to copy, reproduce, perform, dispose of, use and re-use, in whole or in part, and to authorize others to do so for the benefit of Owner, all such Work Product. Construction Manager will cause a provision equivalent to this Section 3.1.11.6.1 to be included in all contracts, purchase orders and similar agreements with Subcontractors.

§ 3.1.12 Compliance with Laws

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

§ 3.1.13 Other Preconstruction Services

Insert a description of any other Preconstruction Phase services to be provided by the Construction Manager, or reference an exhibit attached to this document.

(Describe any other Preconstruction Phase services, such as providing cash flow projections, development of a project information management system, early selection or procurement of subcontractors, etc.)

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§ 3.1.14 Early Work

Construction Manager and Owner may enter into one or more amendments (each, an “Early Work Amendment”) identifying specific Work that shall be performed prior to the Project’s first GMP Amendment and subject to a not-to-exceed amount for the relevant Cost of the Work stated in such Early Work Amendment. If the Owner and Construction Manager reach agreement on the terms of an Early Work Amendment, Owner and Construction Manager shall execute the Early Work Amendment amending this Agreement using the form attached hereto as Exhibit A, a copy of which the Owner may provide to the Design Professional. Construction Manager shall be paid the Cost of the Work for all executed Early Work plus Construction Manager’s Fee for such Work, subject to the not-to-exceed amount. All Work under an Early Work Amendment 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. The Cost of the Work for all Early Work shall be included in the Guaranteed Maximum Price 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.

§ 3.1.15 Design-Build Work

The Work shall include design professionals services provided on a design-build basis for the _____, fire protection and fire alarm portions of the Work. Such services shall be performed by design professionals licensed, registered and otherwise legally authorized to perform such services in Oregon, to the extent such licensure, registration and authorization are required by law to perform such services on such portions of the Work. Such services shall be performed by one or more employees or consultants of the Construction Manager or a Subcontractor. The Construction Manager shall ensure that all such design services and documents, during both the design and construction phases, are coordinated with the services and documents of the Design Professional and its consultants in the interests of the Owner and the Project.

§ 3.1.15.1 Drawings, specifications, and all other documents furnished by Construction Manager or Construction Manager’s design-build Subcontractors, including those in electronic form (“Design-Build Work Product”) to the extent prepared specifically for this Project shall become the property of Owner and all copyrights and other rights shall hereby be assigned to Owner. The Owner shall have all common law, statutory and other reserved rights, including copyrights. Submission or distribution of the Design-Build Work Product to meet official regulatory requirements, or for similar purposes in connection with the Project, is not to be construed as publication in derogation of the Owner’s rights. Upon execution of this Agreement, the Construction Manager grants to the Owner a limited, irrevocable and non-exclusive license to use the Design-Build Work Product to the extent not prepared specifically for this Project solely and exclusively in connection with the Project, including but not limited to the Project’s further development by Owner and others retained by Owner for such purposes. Such license shall extend to those parties retained by Owner for such purposes, including but not limited to other design professionals. Construction Manager shall obtain ownership rights in any Design-Build Work Product prepared by design-build Subcontractors, including but not limited to copyrights and licenses, from the Construction Manager’s design-build Subcontractors that will allow the Construction Manager to satisfy its obligations to the Owner under this Section.

§ 3.2 Guaranteed Maximum Price Proposal

§ 3.2.1 The Construction Manager will provide the Owner with a Guaranteed Maximum Price proposal for the entire scope of the Project at the time when the Drawings and Specifications are at least ___% complete or at such other time agreed to by Owner and Construction Manager. The Guaranteed Maximum Price proposal will be provided in writing with all back-up line item costs attached supporting the proposed Guaranteed Maximum Price. The Guaranteed Maximum Price proposal shall be reviewed by the Owner and the Design Professional. The proposed Guaranteed Maximum Price shall include all fees and percentages as well as the estimated Cost of the Work for all Work and services required to complete the Project in accordance with the Contract Documents.

§ 3.2.2 To the extent that the Drawings and Specifications are anticipated to require further development by the Design Professional, the Construction Manager shall provide in the Guaranteed Maximum Price for such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include

such things as changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which, if required, shall be incorporated by Change Order.

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

- .1 A list of the Drawings and Specifications, including all Addenda thereto;
- .2 A list of the alternates, allowances, unit prices, clarifications and assumptions made by the Construction Manager in the preparation of the Guaranteed Maximum Price proposal, including assumptions under Section 3.2.2, to supplement the information provided by the Owner and contained in the Drawings and Specifications;
- .3 A statement of the proposed Guaranteed Maximum Price, including a statement of the estimated Cost of the Work organized by trade categories or systems, allowances, contingency, and the Construction Manager's Fee in such detail as may be requested by Owner;
- .4 An additional statement of the proposed Guaranteed Maximum Price organized into Owner's asset categories and in such detail as may be requested by Owner;
- .5 The anticipated date of Substantial Completion specified in Section 1.1.4.3, upon which the proposed Guaranteed Maximum Price is based;
- .6 Construction Manager's construction schedule and submittal schedule (in accordance with Section 3.10 of the General Conditions); and
- .7 Such other information as the Owner may require.

§ 3.2.4 In preparing the Construction Manager's Guaranteed Maximum Price proposal, the Construction Manager shall include an agreed-upon amount for contingency for the Construction Manager's use with Owner's prior written approval to cover those costs considered reimbursable as the Cost of the Work but not included in a Change Order. In no event shall Construction Manager's contingency exceed _____ percent (___%) of the estimated Cost of the Work. Subject to Owner's prior written approval, Construction Manager may apply contingency funds to unexpected cost escalation due to changes in market conditions in the Cost of the Work and Subcontractor default if Construction Manager establishes to Owner's satisfaction that Construction Manager took reasonable steps to cause each such defaulting Subcontractor or Subcontractor's surety to perform its Work; provided, however, available insurance would not cover such default. Contractor shall maintain a written contingency log and deliver it to Owner no less often than monthly. Contingency may not be used to correct defective work, bid misses, or costs incurred from performing work out of sequence. In no event shall contingency be used to pay liquidated damages.

§ 3.2.5 The Construction Manager shall meet with the Owner and Design Professional to review the Guaranteed Maximum Price proposal. In the event that the Owner and Design Professional discover any inconsistencies or inaccuracies in the information presented, they shall promptly notify the Construction Manager, who shall make appropriate adjustments to the Guaranteed Maximum Price proposal, its basis, or both, within ten (10) days from the date of such notification.

§ 3.2.6 If the Owner and Construction Manager reach agreement on the terms of the GMP Amendment, Owner and Construction Manager shall execute the GMP Amendment amending this Agreement using the form attached hereto as Exhibit B, a copy of which the Owner shall provide to the Design Professional. The GMP Amendment shall set forth the agreed upon Guaranteed Maximum Price with the information and assumptions upon which it is based. Under no circumstances shall the Construction Manager's Guaranteed Maximum Price proposal form part of the GMP Amendment, except to the extent it is explicitly incorporated by reference.

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

§ 3.2.8 Regardless of whether the final permit set of Drawings and Specifications is incorporated by reference into the Contract in the GMP Amendment or otherwise, the Construction Manager agrees to perform the Work in accordance with such final permit Drawings and Specifications and, before commencing the Work, shall notify Owner and Design Professional of any inconsistency between those Drawings and Specifications and the Drawings and Specifications incorporated by reference into the GMP Amendment.

§ 3.2.9 The Construction Manager shall include in the Guaranteed Maximum Price all sales, consumer, use, excise, corporate activity (including but not limited to Oregon's Corporate Activity Tax) and similar taxes.

§ 3.2.10 If Construction Manager’s proposal (including but not limited to a Guaranteed Maximum Price proposal) is incorporated into this Contract in an amendment or otherwise, the Work will also include, without limitation, the scope of services identified in the proposal, provided such scope does not conflict or diminish the Work required under the Drawings and Specifications and other scope information set forth in the Contract Documents. Further, if Construction Manager’s (or a Subcontractor’s) proposal is included as an exhibit to this Contract or any amendment to this Contract, only the supplemental services in the proposal are included in the Contract Documents and any other provisions, including but not limited to any provision which conflicts with or diminishes the scope of Work described in the Contract Documents, shall be disregarded (including, but not limited to, any limitations of liability or remedy or disclaimers of liability or remedy). Any inconsistency between this Contract and any such proposal shall be resolved in favor of this Contract, which means that, in the case of limitations and disclaimers, no such limitations or disclaimers shall be allowed.

§ 3.3 Construction Phase

§ 3.3.1 General

§ 3.3.1.1 For purposes of Section 8.1.2 of the General Conditions, the date of commencement of the Work shall mean the date of commencement of the Construction Phase.

§ 3.3.1.2 The Construction Phase shall commence upon the earlier of the Owner’s authorization of the Construction Manager’s performance of specified early work or the date determined pursuant to the GMP Amendment.

§ 3.3.1.3 Constraints on Operations at the Project Site

§ 3.3.1.3.1 In addition to its other obligations under the Contract, the Construction Manager shall perform the Work and conduct its operations at the Project site and elsewhere so as to not interfere with the Owner’s operations, the occupancy and use of other spaces and sidewalks, parking, roads, thoroughfares, delivery and access areas, and other common areas at the Project site.

§ 3.3.2 Administration

§ 3.3.2.1 Solicitation and Selection of Subcontractors

§ 3.3.2.1.1 Those portions of the Work that the Construction Manager does not customarily perform with the Construction Manager’s own personnel shall be performed under subcontracts or by other appropriate written agreements with the Construction Manager. The Owner may designate specific persons from whom, or entities from which, the Construction Manager shall obtain bids.

§ 3.3.2.1.2 Absent a written justification prepared by the Construction Manager and approved in writing by the Owner, the Construction Manager’s subcontractor selection process should include publicly-advertised subcontractor solicitations and be based on a low-bid competitive method, a low-quote competitive method for contracts in a specified dollar range agreeable to Owner, or a method whereby both price and qualifications of the subcontractors are evaluated in a competitive environment consistent with the requirements of the Contract and the Request for Proposals to which the Construction Manager responded.

§ 3.3.2.1.2.1 If the Construction Manager or a bidder that may be considered a “related party” according to Section 7.8. will be included in the subcontractor selection process to perform particular construction Work on the Project, the Construction Manager must disclose that fact in the selection process documents and announcements. In such an event, the Construction Manager shall also notify the Owner in writing of its intent to submit a bid, and the Owner shall assume responsibility for selecting the successful bidder for that particular construction Work on the Project.

§ 3.3.2.1.3 The Construction Manager shall be responsible for soliciting and selecting prospective subcontractors and resolving any protests in connection with such solicitations and selections. Notwithstanding the foregoing the Owner reserves the right to monitor the subcontracting process in order to protect the Owner’s interests and to confirm the Construction Manager’s compliance with the Contract. Furthermore, the Owner shall have final authority to approve all subcontract awards, but the Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection. No later than ten (10) days after selecting a subcontractor-bidder for award, the Construction Manager shall notify all subcontract bidders in writing that the subcontract has been awarded.

§ 3.3.2.1.4 For all portions of the Work (including those the Construction Manager proposes to self-perform), whose contract value is expected to exceed \$25,000, Construction Manager shall solicit and make a good faith effort to obtain bids from no fewer than three (3) independent Subcontractor bidders, unless the Owner agrees in advance to fewer than three (3) bids, for particular subcontracted or supplied Work. The Construction Manager shall solicit and make a good

faith effort to obtain bids from no fewer than two (2) independent Subcontractor bidders, unless the Owner agrees in advance to fewer than two (2) bids, for portions of the Work that the Construction Manager desires to self-perform with its own personnel. In the event the Construction Manager provides bids for self-performed Work, such bids shall be prepared and submitted to Owner one (1) day in advance of receipt of competitor's bids and considered in the same manner as if they were bids from Subcontractors. For the purposes of this Section, references to the Construction Manager's "own personnel" shall be construed to mean both (1) the Construction Manager's own personnel per se and (2) the Construction Manager's affiliated or associated firms or companies, including but not limited to firms or companies owned or controlled by officers of the Construction Manager.

§ 3.3.2.1.5 If Construction Manager intends to perform a non-competitive selection process for a particular portion of the Work, the Construction Manager must prepare and submit a written justification to the Owner explaining the circumstances that support the proposed non-competitive selection process, including, but not limited to, emergency circumstances, the Construction Manager's need to utilize a key subcontractor member of the Construction Manager's project team consistent with the Construction Manager's proposal, the need to meet other specified Contract requirements, the continuation or expansion of an existing subcontractor agreement that was awarded through a competitive process consistent with Section 3.3.2.1.2 along with facts supporting the continuation or expansion of the subcontractor agreement, or a sole source justification. Non-competitively selected subcontractors often are called "trade partners" and, for purposes of this agreement, the terms "subcontractor" and "trade partner" are synonymous. The Owner reserves the right to condition the award of any non-competitively selected subcontractor on the subcontractor's agreement to use a subcontract with a cost-plus a fee with a guaranteed maximum price compensation method pursuant to Section 3.3.2.3.

§ 3.3.2.1.5.1 The Construction Manager must (1) provide an independent cost estimate for the portion of the Work that will be subject to a non-competitive process, and (2) fully respond to any questions or comments submitted by the Owner.

§ 3.3.2.1.5.2 The Construction Manager shall not pursue a non-competitive procurement without obtaining Owner's Contract Administrator's prior written approval.

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

§ 3.3.2.3 Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement, and shall not be awarded on the basis of cost plus a fee with or without a guaranteed maximum price unless required by or with the prior consent of the Owner. If the Subcontract is awarded on a cost-plus a fee basis with or without a guaranteed maximum price, the Construction Manager shall provide in the subcontract for the Owner to receive the same audit rights with regard to the Subcontractor as the Owner receives with regard to the Construction Manager in Article 10. Under any such subcontract or other agreement awarded on the basis of cost plus fee, the "costs" to be paid shall include only items included in the Cost of the Work under Article 6 and all savings shall devolve one hundred percent (100%) to Owner and zero percent (0%) to the subcontractor. As provided in Section 3.11 of the General Conditions, Construction Manager shall maintain current copies of such subcontracts or other agreements at the Project site for the Owner's and Design Professional's review. Construction Manager shall notify Owner of any amendments to such subcontracts or other agreements.

§ 3.3.2.4 If the Construction Manager recommends a specific bidder that may be considered a "related party" according to Section 7.8, then the Construction Manager shall promptly notify the Owner in writing of such relationship and notify the Owner of the specific nature of the contemplated transaction, according to Section 7.8.

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

§ 3.3.2.6 [Intentionally deleted.]

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

§ 3.3.2.8 The Construction Manager shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. In addition, the Construction Manager's cost control system shall provide for allocation of the Cost of the Work into Owner's asset categories. The Construction Manager shall identify variances between actual and estimated costs and report the variances to the Owner and Design Professional and shall provide this information in its monthly reports to the Owner and Design Professional, in accordance with Section 3.3.2.7 above.

§ 3.3.3 In no event shall the Construction Manager be authorized to self-perform any portion of the Work unless it provides to Owner a detailed proposal for performance of the Work, which is supported by at least one independent cost estimate prior to the Work being included in the Contract.

§ 3.3.4 Construction Manager shall keep Owner informed of the progress of the Work, including the Preconstruction Services. Before submitting each Pay Application, Construction Manager shall submit to Owner and Design Professional monthly progress reports ("Progress Reports"), which shall include: (i) estimated percentages of completion; (ii) Work completed for the reporting period; (iii) an updated construction schedule; (iv) an updated Submittal log including a summary of outstanding Submittals; (v) pending changes and executed Change Orders; (vi) test and inspection reports; (vii) Project site progress photos and videos; (viii) incident reports, and (ix) MWESB usage/status update report. Construction Manager shall keep and make available to Owner at the Project site a daily record of Project site conditions and activities such as weather, number of workers, Work performed, problems encountered, and other relevant data.

ARTICLE 4 OWNER'S RESPONSIBILITIES

§ 4.1 Information and Services Required of the Owner

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

§ 4.1.2 The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Article 7, (2) the Owner's other costs, and (3) reasonable contingencies related to all of these costs. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Construction Manager and Design Professional. The Owner and the Design Professional, in consultation with the Construction Manager, shall thereafter agree to a corresponding change in the Project's scope and quality.

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

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

§ 4.1.3.2 The Owner shall furnish to the Construction Manager, after receipt of written request, surveys describing known physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The surveys and legal information may include, as applicable, grades and lines of streets, alleys, pavements and

adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark. The Construction Manager shall confirm indicated dimensions and other aspects of existing conditions at the Project site as necessary for the proper performance of the Work.

§ 4.1.3.2.1 Notwithstanding the provisions of Section 4.1.3.2, the Construction Manager shall be responsible for determining, prior to commencement of the Work, the locations of all underground utility lines, cables, pipelines and similar such underground public service installations within and serving the Project site, utilizing utility locating services or other means permitted by law. The Construction Manager shall coordinate with utility and other involved third-party representatives regarding utility locations and related issues, and shall hand excavate or otherwise take special precautions so as to perform the Work in such a manner as to avoid damaging or interrupting the operation of all utility lines, cables, pipelines and similar public service installations within and serving the Project site, whether above ground or underground.

§ 4.1.3.3 The Owner, when such services are requested in writing by Construction Manager, shall furnish services of geotechnical engineers, which may include test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

§ 4.1.4 During the Construction Phase, the Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services. The Construction Manager shall make its requests for such information or services so as to allow the Owner a reasonable time to respond without delaying the performance of the Work.

§ 4.2 Owner's Designated Representative

The Owner shall identify a representative authorized to act on behalf of the Owner with respect to the Project (the "Owner's Designated Representative"). The Owner's Designated Representative shall render decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the Construction Manager. Changes to the Contract involving modification to the Contract Time or Contract Sum must be signed by the Owners Designated Representative. Changes to the Contract involving modification to the Contract Time or Contract Sum may not be signed by the Design Professional, Owner's Contract Administrator or the Owner's Project Manager.

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

§ 4.3 Design Professional

The Owner shall retain a Design Professional to provide services, duties and responsibilities as described in the agreement between Owner and Design Professional. The Owner shall provide the Construction Manager with a copy of the scope of services in the executed agreement between the Owner and the Design Professional, and any further modifications to the Design Professional's scope of services in the agreement.

ARTICLE 5 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

§ 5.1 Compensation

§ 5.1.1 For the Construction Manager's Preconstruction Phase services described in Sections 3.1 and 3.2, the Owner shall compensate the Construction Manager as follows: based on the hourly billing rates set forth in Section 5.1.2 multiplied by the actual amount of time those individuals spend performing the Preconstruction Services up to a not-to-exceed amount of \$_____.

§ 5.1.2 The hourly billing rates for Preconstruction Phase services of the Construction Manager and the Construction Manager's Consultants and Subcontractors, if any, are set forth below.

(If applicable, attach an exhibit of hourly billing rates or insert them below.)

«See Exhibit J - Construction Manager's Hourly Rates »

Individual or Position

Rate

§ 5.1.2.1 Hourly billing rates for Preconstruction Phase services include all costs to be paid or incurred by the Construction Manager, as required by law or collective bargaining agreements, for taxes, insurance, contributions, assessments and benefits and, for personnel not covered by collective bargaining agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, overhead, profit and any other markup and shall remain unchanged unless the parties execute a Modification.

§ 5.1.3 If the Preconstruction Phase services covered by this Agreement have not been completed within « » (« ») months of the date of this Agreement, through no fault of the Construction Manager, the Construction Manager's compensation for Preconstruction Phase services shall be equitably adjusted.

§ 5.2 Payments

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

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

« » % « »

ARTICLE 6 COMPENSATION FOR CONSTRUCTION PHASE SERVICES; LIQUIDATED DAMAGES

§ 6.1 Contract Sum

§ 6.1.1 The Owner shall pay the Construction Manager the Contract Sum in current funds for the Construction Manager's performance of the Contract after execution of the Guaranteed Maximum Price Amendment. The Contract Sum is the Cost of the Work as defined in Article 7 plus the Construction Manager's Fee.

§ 6.1.2 The Construction Manager's Fee:

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

« % of the Cost of the Work. Construction Manager's Fee shall be inclusive of all overhead, other than the costs that are expressly reimbursable hereunder, and profit to be paid to Construction Manager on the Project.»

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

«The same rate specified in Section 6.1.2.»

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

«Subcontractor overhead and profit shall not exceed: ___ percent (___ %) overhead and ___ percent (___ %) profit.»

§ 6.1.5 Rental rates for Construction Manager-owned equipment shall not exceed «seventy-five» percent («75» %) of the standard rental rate paid at the place of the Project.

§ 6.1.6 Liquidated Damages

§ 6.1.6.1 The Construction Manager acknowledges that the Owner will incur significant damages if the Project is not completed within the Contract Time, including without limitation, damages in the form of: inability to use the Project and all related facilities (i.e. "loss of use"); delay costs for completion of portions of the Project or related projects to be constructed by the Owner or the Owner's separate contractors; or costs of extended services of the Owner's project management staff, outside construction management firms, Design Professional, any separate contractors and consultants, and others performing work or services related to the Project. In consideration of the factors set out in this Section 6.1.6.1, the Construction Manager acknowledges and agrees that time is particularly of the essence in the Construction Manager's performance of the Work in accordance with the agreed date of commencement of the Work, the agreed dates of Substantial Completion and Final Completion of the Work, and the approved construction schedule.

§ 6.1.6.2 Loss of Use Liquidated Damages; Final Completion Liquidated Damages

§ 6.1.6.2.1 The Owner and Construction Manager acknowledge and agree that if Substantial Completion of the Work is not achieved by the Contract Time for Substantial Completion, the amount of the Owner's actual loss of use damages (as described in Section 6.1.6.1 above) will be difficult, impractical or impossible to determine. Accordingly, the parties agree that if Substantial Completion is not achieved by the agreed date of Substantial Completion as may be adjusted pursuant to the Contract Documents, the Construction Manager shall pay to the Owner as liquidated damages for the loss of use of the Project the following amounts: the sum of _____ dollars (\$ _____) for each partial day or full day of delay beyond the deadline for Substantial Completion.

§ 6.1.6.2.2 The parties further acknowledge and agree that the Construction Manager's obligation to pay liquidated damages under this Section 6.1.6 shall be in lieu of the obligation to pay actual delay damages for the loss of use damages. The parties agree that the daily rate agreed to above is reasonable in comparison to the approximate scope of actual delay damages for loss of use that the parties anticipate as of the time of execution of this Agreement, and that the payment of such liquidated damages is not intended to be a penalty or forfeiture. The parties further acknowledge that these liquidated damages are meant to reimburse the Owner only for loss of use delay damages and that Owner reserves the right to claim other types of damages against Construction Manager resulting from delays, including but not limited to the other delay damages described in Section 6.1.6.1.

§ 6.1.6.2.3 Final Completion Liquidated Damages

The parties agree that if Final Completion is not achieved by the agreed date of Final Completion as may be adjusted pursuant to the Contract Documents, the Construction Manager shall pay to the Owner as liquidated damages the following amounts: the sum of _____ dollars (\$ _____) for each partial day or full day of delay beyond the deadline for Final Completion.

§ 6.1.6.2.4 Withholding of Liquidated Damages

Owner may withhold liquidated damages from any progress or final payment.

§ 6.1.6.3 Acceleration of Work

Without limiting the Owner's rights and remedies as set forth in Section 8.3.2.2 of the General Conditions, in the event the Construction Manager, at any time, is behind the schedule for the completion of the Work, the Owner shall have the right to accelerate the completion date of the Work.

§ 6.2 Guaranteed Maximum Price

The Construction Manager guarantees that the Contract Sum shall not exceed the Guaranteed Maximum Price set forth in the Guaranteed Maximum Price Amendment, subject to additions and deductions by Change Order as provided in the Contract Documents. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Construction Manager without reimbursement by the Owner.

§ 6.2.1 In the event the sum of the final Contract Sum shall be less than the final Guaranteed Maximum Price, the savings shall devolve one hundred percent (100%) to the Owner. In the event of any such savings, upon the making of final payment, the Guaranteed Maximum Price shall be deemed reduced by the amount of any difference between the Guaranteed Maximum Price and the Cost of the Work plus the Construction Manager's Fee so that the final amount of the Guaranteed Maximum Price is equal to the Cost of the Work plus the Construction Manager's Fee as of the date of such final payment.

§ 6.3 Changes in the Work

§ 6.3.1 The Owner may, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions. The Owner shall issue such changes in writing; no oral changes shall be binding on Owner. The Construction Manager may be entitled to an adjustment in the Contract Time as a result of changes in the Work. Notwithstanding any other provision of the Contract to the contrary, the Construction Manager agrees that no additional or different Work shall be allowed or compensated unless prior written approval is given by the Owner for the specific Work at issue.

§ 6.3.2 Adjustments to the Guaranteed Maximum Price on account of changes in the Work subsequent to the execution of the Guaranteed Maximum Price Amendment may be determined by any of the methods listed in Article 7 of the General Conditions. Construction Manager shall present requests for adjustment of the Guaranteed Maximum Price using the form set forth in Exhibit I, Change Pricing Form.

§ 6.3.3 Adjustments to subcontracts awarded on the basis of a stipulated sum shall be determined in accordance with Article 7 of the General Conditions, as they refer to “cost” and “fee,” and not by Articles 6 and 7 of this Agreement. Adjustments to subcontracts awarded with the Owner’s prior written consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.

§ 6.3.4 In calculating adjustments to the Guaranteed Maximum Price, the terms “cost” and “costs” as used in Article 7 of the General Conditions shall mean the Cost of the Work as defined in Article 7 of this Agreement and the term “fee” shall mean the Construction Manager’s Fee as defined in Section 6.1.2 of this Agreement.

§ 6.3.5 If no specific provision is made in Section 6.1.3 for adjustment of the Construction Manager’s Fee in the case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment provisions of Section 6.1.3 will cause substantial inequity to the Owner or Construction Manager, the Construction Manager’s Fee shall be equitably adjusted on the same basis that was used to establish the Fee for the original Work, and the Guaranteed Maximum Price shall be adjusted accordingly.

§ 6.3.6 A Change Order shall be a written amendment to the Contract between Owner and Construction Manager. A Construction Change Directive requires written direction by Owner and may or may not be agreed to by Construction Manager. In order to be binding upon Owner, all Change Orders and Construction Change Directives must be properly completed in writing before commencement of the altered or additional Work, and before Construction Manager incurs any additional time or expense. Owner will not be responsible for additional costs, fees, or time associated with any altered or additional Work unless a corresponding Change Order or Construction Change Directive is properly and timely prepared and executed as required by the Contract Documents in advance of the extra or different Work. Construction Manager hereby waives any argument that Owner’s conduct (including, but not limited to, orally approving changes or extras) amounts to a waiver of the prior written change requirements of the Contract Documents.

ARTICLE 7 COST OF THE WORK FOR CONSTRUCTION PHASE

§ 7.1 Costs to Be Reimbursed

§ 7.1.1 The term Cost of the Work shall mean costs necessarily incurred by the Construction Manager in the proper performance of the Work. The Cost of the Work shall include only the items set forth in Sections 7.1 through 7.7.

§ 7.1.2 Where, pursuant to the Contract Documents, any cost is subject to the Owner’s prior written approval, the Construction Manager shall obtain such approval in writing prior to incurring the cost.

§ 7.1.3 Costs shall be at rates not higher than the standard rates paid at the place of the Project, except with prior written approval of the Owner.

§ 7.2 Labor Costs

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

§ 7.2.2 Wages or salaries of the Construction Manager’s supervisory and administrative personnel when stationed at the site and performing Work, with the Owner’s prior written approval except for the Construction Manager’s superintendent and project engineer who both will be stationed at the Project site.

§ 7.2.2.1 Wages or salaries of the Construction Manager’s supervisory and administrative personnel when performing Work and stationed at a location other than the site, but only for that portion of time required for the Work, and limited to the personnel and activities listed below:

(Identify the personnel, type of activity and, if applicable, any agreed upon percentage of time to be devoted to the Work.)

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§ 7.2.3 With Owner’s prior written approval, wages and salaries of the Construction Manager’s supervisory or administrative personnel engaged at factories, workshops or while traveling, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work. For the avoidance of doubt, this Section does not permit Construction Manager to seek reimbursement for the costs associated with its personnel and workers commuting to and from their homes to the Project site.

§ 7.2.4 Costs paid or incurred by the Construction Manager, as required by law or collective bargaining agreements, for taxes, insurance, contributions, assessments and benefits and, for personnel not covered by collective bargaining agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Sections 7.2.1 through 7.2.3.

§ 7.2.5 If agreed rates for labor costs, in lieu of actual costs, are provided in this Agreement, the rates shall remain unchanged throughout the duration of this Agreement, unless the parties execute a Modification.

§ 7.3 Subcontract Costs

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

§ 7.4 Costs of Materials and Equipment Incorporated in the Completed Construction

§ 7.4.1 Costs, including transportation and storage at the Project site, of materials and equipment incorporated, or to be incorporated, in the completed construction.

§ 7.4.2 Costs of materials described in the preceding Section 7.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold by the Construction Manager. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

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

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

§ 7.5.2 Rental charges for temporary facilities, machinery, equipment, and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site, and the costs of transportation, installation, dismantling, minor repairs, fuel, lubrication, and removal of such temporary facilities, machinery, equipment, and hand tools. Rates and quantities of equipment owned by the Construction Manager, or a related party as defined in Section 7.8, shall be subject to the Owner's prior written approval. The total rental cost of any such equipment may not exceed the purchase price of any comparable item.

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

§ 7.5.4 Costs of the Construction Manager's site office, including general office equipment and supplies.

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

§ 7.6 Miscellaneous Costs

§ 7.6.1 Premiums for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to this Contract.

§ 7.6.1.1 Costs for self-insurance, for either full or partial amounts of the coverages required by the Contract Documents, with the Owner's prior written approval.

§ 7.6.1.2 Costs for insurance through a captive insurer owned or controlled by the Construction Manager, with the Owner's prior written approval.

§ 7.6.2 Sales, use, or similar taxes (excluding Oregon's Corporate Activity Tax), imposed by a governmental authority, that are related to the Work and for which the Construction Manager is liable.

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

§ 7.6.4 Fees of laboratories for tests required by the Contract Documents; except those related to defective or nonconforming Work for which reimbursement is excluded under Article 13 of the General Conditions or by other provisions of the Contract Documents, and which do not fall within the scope of Section 7.7.3.

§ 7.6.5 Royalties and license fees paid for the use of a particular design, process, or product, required by the Contract Documents.

§ 7.6.6 Costs for communications services, electronic equipment, and software, directly related to the Work and located at the site, with the Owner's prior written approval.

§ 7.6.7 Costs of document reproductions and delivery charges.

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

§ 7.6.9 [Intentionally deleted.]

§ 7.6.10 Expenses incurred in accordance with the Construction Manager's standard written personnel policy for relocation and temporary living allowances of the Construction Manager's personnel required for the Work, with the Owner's prior written approval in each instance.

§ 7.6.11 That portion of the reasonable expenses of the Construction Manager's supervisory or administrative personnel incurred while traveling in discharge of duties connected with the Work, with the Owner's prior written approval in each instance.

§ 7.7 Other Costs and Emergencies

§ 7.7.1 Other costs incurred in the performance of the Work if, and to the extent, (1) approved in writing in advance by Owner as a Cost of the Work or (2) expressly identified as a Cost of the Work in the Contract.

§ 7.7.2 Costs incurred in taking action to prevent threatened damage, injury, or loss, in case of an emergency affecting the safety of persons and property, as provided in Article 10 of the General Conditions.

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

§ 7.7.4 The costs described in Sections 7.1 through 7.7 shall be included in the Cost of the Work, notwithstanding any provision of the General Conditions which may require the Construction Manager to pay such costs, unless such costs are excluded by the provisions of Section 7.9.

§ 7.8 Related Party Transactions

§ 7.8.1 For purposes of this Section 7.8, the term "related party" shall mean (1) a parent, subsidiary, affiliate, or other entity having common ownership of, or sharing common management with, the Construction Manager; (2) any entity in which any stockholder in, or management employee of, the Construction Manager holds an equity interest in excess of ten percent in the aggregate; (3) any entity which has the right to control the business or affairs of the Construction Manager; or (4) any person, or any member of the immediate family of any person, who has the right to control the business or affairs of the Construction Manager.

§ 7.8.2 If any of the costs to be reimbursed arise from a transaction between the Construction Manager and a related party, the Construction Manager shall notify the Owner of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction in writing, then the cost incurred shall be included as a cost to be reimbursed, and the Construction Manager shall procure the Work, equipment, goods, or service, from the related party, as a Subcontractor, according to the terms of Article 9. If the Owner fails to authorize

the transaction in writing, the Construction Manager shall procure the Work, equipment, goods, or service from some person or entity other than a related party according to the terms of Article 9.

§ 7.9 Costs Not To Be Reimbursed

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

- .1 Salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal office or offices other than the site office, except as specifically provided in Section 7.2, or as may be provided in Article 14;
- .2 Bonuses, profit sharing, incentive compensation, and any other discretionary payments, paid to anyone hired by the Construction Manager or paid to any Subcontractor or vendor, unless the Owner has provided prior written approval;
- .3 Expenses of the Construction Manager's principal office and offices other than the site office;
- .4 Overhead and general expenses, except as may be expressly included in Sections 7.1 to 7.7;
- .5 The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work;
- .6 Except as provided in Section 7.7.3 of this Agreement, costs due to the negligence of, or failure to fulfill a specific responsibility of the Contract by, the Construction Manager, Subcontractors, and suppliers, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable;
- .7 Any cost not specifically and expressly described in Sections 7.1 to 7.7;
- .8 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded;
- .9 Costs of commuting to and from the Project site, travel, per-diem, food, parking or related access;
- .10 Costs of insurance, including but not limited to commercial general liability, worker's compensation, business auto, excess/umbrella liability, professional liability and subcontractor default insurance (e.g., Subguard); and
- .11 Oregon's Corporate Activity Tax.

§ 7.9.1.1 The Cost of the Work shall not include costs incurred before the Owner's written approval thereof, when such prior approval is required by the Contract Documents, and costs incurred in excess of the Owner's limitations or contrary to the Owner's limitations or instructions, when such limitations or instructions are imposed by the Owner pursuant to the Contract Documents.

§ 7.9.1.2 The Cost of the Work shall not include costs expressly excluded from the Cost of the Work by the Contract Documents.

§ 7.9.1.3 The Cost of the Work shall not include fees and costs of business licenses and contractor, design professional and other licenses or registrations.

ARTICLE 8 DISCOUNTS, REBATES, AND REFUNDS

§ 8.1 Cash discounts obtained on payments made by the Construction Manager shall accrue to the Owner if (1) before making the payment, the Construction Manager included the amount to be paid, less such discount, in an Application for Payment and received payment from the Owner, or (2) the Owner has deposited funds with the Construction Manager with which to make payments; otherwise, cash discounts shall accrue to the Construction Manager. Trade discounts, rebates, refunds, and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Construction Manager shall make provisions so that they can be obtained. The Construction Manager shall inform the Owner and Design Professional in a timely manner of opportunities for cash discounts under this Section.

§ 8.2 Amounts that accrue to the Owner in accordance with the provisions of Section 8.1 shall be credited to the Owner as a deduction from the Cost of the Work.

ARTICLE 9 SUBCONTRACTS AND OTHER AGREEMENTS

§ 9.1 The Owner has the right to review the Construction Manager's list of proposed subcontractors and suppliers in consultation with the Design Professional and, subject to Section 9.1.1, to object to any subcontractor or supplier. Any advice of the Design Professional, or approval or objection by the Owner, shall not relieve the Construction Manager of its responsibility to perform the Work in accordance with the Contract Documents. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection.

§ 9.2 Subcontracts or other agreements including bid scope shall be delivered to Owner upon request within (7) seven days.

ARTICLE 10 ACCOUNTING RECORDS

§ 10.1 The Construction Manager shall keep full and detailed records and accounts related to the Cost of the Work, including but not limited to those records necessary to clearly document (1) its performance; and (2) any claims arising from or relating to its performance under the Contract. The Construction Manager shall exercise such controls as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. In addition, Construction Manager shall maintain and permit Owner and its agents to audit all records necessary to document Construction Manager's performance of the Work and all claims arising from or relating to Construction Manager's performance. The Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Construction Manager's records and accounts, including complete documentation supporting accounting entries, books, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, purchase orders and similar agreements, vouchers, memoranda and other data relating to this Contract. The Construction Manager shall preserve these records for a period of ten (10) years after final payment, or for such longer period as may be required by law. The term "Owner's auditors" as used in this Contract shall mean, at the Owner's discretion, "Owner's accountants", "Owner's internal audit department", or "Owner's Designated Representative".

§ 10.2 The Owner shall have the right to conduct an independent audit of the Construction Manager's records, books and other documents referenced in Section 10.1 at any time during the performance of the Work and thereafter until the end of the period referenced in Section 10.1. If such audit determines that the Construction Manager has submitted Applications for Payment for more than the amount actually due under the Contract Documents or has been paid pursuant to Applications for Payment for more than the amount actually due under the Contract Documents, the Construction Manager shall (1) issue a credit to the Owner in the amount of the overage, if the overage has not been paid, and (2) pay the amount of the overage and accumulated interest thereon, if the overage has been paid.

§ 10.3 If the amount of the overage determined by the audit referenced in Section 10.2, whether paid or not, is one hundred two percent (102%) or more of the amount actually due under the Contract Documents, the Construction Manager shall pay the cost of the audit. Such cost shall not be included in the Cost of the Work.

ARTICLE 11 PAYMENTS FOR CONSTRUCTION PHASE SERVICES

§ 11.1 Progress Payments

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

§ 11.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month.

§ 11.1.3 Provided that an Application for Payment is received by the Owner not later than the ~~twenty-fifth~~ day of a month, the Owner shall make payment of the amount certified to the Construction Manager not later than ~~14~~ days after receipt of a progress payment application and not later than the ~~7~~ days after receipt of a final payment application. If an Application for Payment is received by the Owner after the application date fixed above, payment of the amount certified shall be made by the Owner not later than ~~fourteen~~ (~~14~~) days after the Owner receives the complete Application for Payment for progress payments and not later than ~~seven~~ (~~7~~) days after the Owner receives the Application for Payment for final payment.

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

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

§ 11.1.5 Each Application for Payment shall be based on the most recent schedule of values submitted by the Construction Manager in accordance with the Contract Documents. The schedule of values shall allocate the entire

Guaranteed Maximum Price among: (1) the various portions of the Work as divided into standard CSI categories and a separate schedule of values using Owner's asset categories; (2) any contingency for costs that are included in the Guaranteed Maximum Price but not otherwise allocated to another line item or included in a Change Order; and (3) the Construction Manager's Fee.

§ 11.1.5.1 The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Owner may require. The schedule of values shall be used as a basis for reviewing the Construction Manager's Applications for Payment. Owner may require asset tracking on this Project, and, if required by Owner, Contractor shall submit a schedule of values and draft billing prior to any billings being submitted that align with the Owner's asset category tracking requirements for the Project. Contractor acknowledges that this asset category tracking is important to Owner and may require additional spreadsheets to track the assets. The schedules of values will be reviewed by Owner and after they are approved, the Construction Manager may submit its first Application for Payment.

§ 11.1.5.2 Except for amounts allocated to allowances, the allocation of the Guaranteed Maximum Price under this Section 11.1.5 shall not constitute a separate guaranteed maximum price for the Cost of the Work of each individual line item in the schedule of values.

§ 11.1.5.3 Before the Construction Manager allocates costs from a contingency to another line item in the schedule of values, the Construction Manager shall obtain advance written approval from, and submit supporting documentation to, the Owner.

§ 11.1.6 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed, or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Construction Manager on account of that portion of the Work and for which the Construction Manager has made payment or intends to make payment prior to the next Application for Payment, by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values. At no point may a portion of the work (or a schedule of values line item) be billed over 100%. Any adjustments to the schedules of values shall be subject to Owner's prior written approval.

§ 11.1.7 In accordance with the General Conditions and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

§ 11.1.7.1 The amount of each progress payment shall first include:

- .1 That portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the most recent schedule of values;
- .2 That portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction or, if approved in writing in advance by the Owner, suitably stored off the site at a location agreed upon in writing;
- .3 That portion of Construction Change Directives that the Owner reasonably determines is justified; and
- .4 The Construction Manager's Fee, computed upon the Cost of the Work described in the preceding Sections 11.1.7.1.1 and 11.1.7.1.2 at the rate stated in Section 6.1.2 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work included in Sections 11.1.7.1.1 and 11.1.7.1.2 bears to a reasonable estimate of the probable Cost of the Work upon its completion.

§ 11.1.7.2 The amount of each progress payment shall then be reduced by:

- .1 The aggregate of any amounts previously paid by the Owner;
- .2 The amount, if any, for Work that remains uncorrected and for which the Owner has previously withheld payment as provided in Article 9 of the General Conditions;
- .3 Any amount for which the Construction Manager does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Construction Manager intends to pay;
- .4 For Work performed or defects discovered since the last payment application, any amount for which the Owner may withhold payment, or nullify a previous payment, in whole or in part, as provided in Article 9 of the General Conditions;

- .5 The shortfall, if any, indicated by the Construction Manager in the documentation required by Section 11.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
- .6 Retainage withheld pursuant to Section 11.1.8.

§ 11.1.8 Retainage

§ 11.1.8.1 For each progress payment made prior to Final Completion of the Work, the Owner may withhold the following amount, as retainage, from the payment otherwise due:

(Insert a percentage or amount to be withheld as retainage from each Application for Payment. The amount of retainage may be limited by governing law.)

«Five percent (5%) of each progress payment.»

§ 11.1.9 If Final Completion of the Work is materially delayed through no fault of the Construction Manager, the Owner shall pay the Construction Manager any additional amounts in accordance with Article 9 of the General Conditions.

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

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

§ 11.1.12 In taking action on the Construction Manager's Applications for Payment the Owner shall be entitled to rely on the accuracy and completeness of the information furnished by the Construction Manager, and such action shall not be deemed to be a representation that (1) the Owner has made a detailed examination, audit, or arithmetic verification, of the documentation submitted in accordance with Section 11.1.4 or other supporting data; (2) that the Owner has made exhaustive or continuous on-site inspections; or (3) that the Owner has made examinations to ascertain how or for what purposes the Construction Manager has used amounts previously paid on account of the Contract. Such examinations, audits, and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

§ 11.2 Final Payment

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

- .1 the Construction Manager has fully performed the Contract, except for the Construction Manager's responsibility to correct Work as provided in Article 12 of the General Conditions, and to satisfy other requirements, if any, which extend beyond final payment;
- .2 the Construction Manager has submitted a final accounting for the Cost of the Work and a final Application for Payment; and
- .3 an audit has been conducted by the Owner in accordance with Section 11.2.2 and its subsections.

§ 11.2.2 Without limiting Owner's right to audit Construction Manager at any time, within 30 days of the Owner's receipt of the Construction Manager's final accounting for the Cost of the Work, the Owner may elect to conduct an audit of the Cost of the Work

§ 11.2.2.1 If the Owner conducts an audit of the Cost of the Work, the Owner may prepare a written report based upon the auditors' findings.

§ 11.2.2.2 Within seven days after receipt of the written report described in Section 11.2.2.1, if any, or receipt of notice that the Owner will not conduct an audit, and provided that the other conditions of Section 11.2.1 have been met, the Owner will either issue a final payment, or notify the Construction Manager and Owner in writing of the Owner's reasons for withholding payment as provided in Article 9 of the General Conditions. The time periods stated in this Section 11.2.2 supersede those stated in Article 9 of the General Conditions.

§ 11.2.2.3 If the Owner's auditors' conclude that the Cost of the Work, as substantiated by the Construction Manager's final accounting, is less than claimed by the Construction Manager, the Construction Manager shall be entitled to request mediation of the disputed amount pursuant to Article 15 of the General Conditions. A request for mediation

shall be made by the Construction Manager within 30 days after the Construction Manager's receipt of notice from the Owner. Failure to request mediation within this 30-day period shall result in the substantiated amount reported by the Owner's auditors becoming binding on the Construction Manager. Pending a final resolution of the disputed amount, the Owner shall pay the Construction Manager the amount due.

§ 11.2.3 The Owner's final payment to the Construction Manager shall be made no later than 7 days after completion of the audit.

§ 11.3 Interest

Payments due and unpaid under the Contract shall bear interest from the date payment is due at the legal rate.

ARTICLE 12 DISPUTE RESOLUTION

§ 12.1 [Intentionally deleted.]

§ 12.2 Binding Dispute Resolution

For any Claim subject to, but not resolved by mediation pursuant to Article 15 of the General Conditions, the method of binding dispute resolution shall be as follows:

(Check the appropriate box.)

Arbitration pursuant to Article 15 of the General Conditions.

Litigation in a court of competent jurisdiction pursuant to Article 15 of the General Conditions.

ARTICLE 13 TERMINATION OR SUSPENSION

§ 13.1 Termination Prior to Execution of the Guaranteed Maximum Price Amendment

§ 13.1.1 If the Owner and the Construction Manager do not reach an agreement on the Guaranteed Maximum Price within a time period determined by Owner in Owner's sole discretion, the Owner may terminate this Agreement upon not less than seven days' written notice to the Construction Manager.

§ 13.1.2 In the event of termination of this Agreement pursuant to Section 13.1.1, the Construction Manager shall be compensated for Preconstruction Phase services and Work performed prior to receipt of a notice of termination, in accordance with the terms of this Agreement. In no event shall the Construction Manager's compensation under this Section exceed the amount set forth in Section 5.1.

§ 13.1.3 Prior to the execution of the Guaranteed Maximum Price Amendment, the Owner may terminate this Agreement upon not less than seven days' written notice to the Construction Manager for the Owner's convenience and without cause, and the Construction Manager may terminate this Agreement, upon not less than seven days' written notice to the Owner, for the reasons set forth in Article 14 of the General Conditions.

§ 13.1.4 In the event of termination of this Agreement pursuant to Section 13.1.3, the Construction Manager shall be compensated for Preconstruction Phase services and Work performed prior to receipt of a notice of termination in accordance with the terms of this Agreement. In no event shall the Construction Manager's compensation under this Section exceed the compensation set forth in Section 5.1.

§ 13.1.5 If the Owner terminates the Contract pursuant to Section 13.1.3 after the commencement of the Construction Phase but prior to the execution of the Guaranteed Maximum Price Amendment, the Owner shall pay to the Construction Manager an amount calculated as follows, which amount shall be in addition to any compensation paid to the Construction Manager under Section 13.1.4:

- .1 Take the Cost of the Work incurred by the Construction Manager to the date of termination;
- .2 Add the Construction Manager's Fee computed upon the Cost of the Work to the date of termination at the rate stated in Section 6.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion; and
- .3 Subtract the aggregate of previous payments made by the Owner for Construction Phase services.

§ 13.1.6 The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Section 13.1.5.1. To the extent that the Owner elects to take legal

assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a condition of receiving the payments referred to in this Article 13, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders. All Subcontracts, purchase orders and rental agreements entered into by the Construction Manager will contain provisions allowing for assignment to the Owner as described above.

§ 13.1.6.1 If the Owner accepts assignment of subcontracts, purchase orders or rental agreements as described above, the Owner will reimburse or indemnify the Construction Manager for all costs arising under the subcontract, purchase order or rental agreement, if those costs would have been reimbursable as Cost of the Work if the contract had not been terminated. If the Owner chooses not to accept assignment of any subcontract, purchase order or rental agreement that would have constituted a Cost of the Work had this agreement not been terminated, the Construction Manager will terminate the subcontract, purchase order or rental agreement and the Owner will pay the Construction Manager the costs necessarily incurred by the Construction Manager because of such termination. In no event shall Owner be obligated to pay the Construction Manager for overhead, profit or other markup on unperformed Preconstruction Services or Work, or both.

§ 13.2 Termination or Suspension Following Execution of the Guaranteed Maximum Price Amendment

§ 13.2.1 Termination

The Contract may be terminated by the Owner or the Construction Manager as provided in Article 14 of the General Conditions.

§ 13.2.2 Termination by the Owner for Cause

§ 13.2.2.1 If the Owner terminates the Contract for cause as provided in Article 14 of the General Conditions, the amount, if any, to be paid to the Construction Manager under Article 14 of the General Conditions shall not cause the Guaranteed Maximum Price to be exceeded, nor shall it exceed an amount calculated as follows:

- .1 Take the Cost of the Work incurred by the Construction Manager to the date of termination;
- .2 Add the Construction Manager's Fee, computed upon the Cost of the Work to the date of termination at the rate stated in Section 6.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- .3 Subtract the aggregate of previous payments made by the Owner; and
- .4 Subtract the costs and damages incurred, or to be incurred, by the Owner under Article 14 of the General Conditions.

§ 13.2.2.2 The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Section 13.2.2.1.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a condition of receiving the payments referred to in this Article 13, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders.

§ 13.2.3 Termination by the Owner for Convenience

If the Owner terminates the Contract for convenience in accordance with Article 14 of the General Conditions, then the Owner shall pay the as set forth in those provisions.

§ 13.3 Suspension

The Work may be suspended by the Owner as provided in Article 14 of the General Conditions; in such case, the Guaranteed Maximum Price and Contract Time shall be increased as provided in Article 14 of the General Conditions, except that the term "profit" shall be understood to mean the Construction Manager's Fee as described in Sections 6.1 and 6.3.5 of this Agreement.

ARTICLE 14 MISCELLANEOUS PROVISIONS

§ 14.1 Terms in this Agreement shall have the same meaning as those in the General Conditions. Where reference is made in this Agreement to a provision of the General Conditions or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

§ 14.2 Successors and Assigns

§ 14.2.1 The Owner and Construction Manager, respectively, bind themselves, their partners, successors, assigns and legal representatives to covenants, agreements, and obligations contained in the Contract Documents. Except as provided in Section 13.2.2 of the General Conditions, neither party to the Contract may assign the Contract as a whole without written consent of the other. If either party attempts to make an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 14.3 Insurance and Bonds

For all phases of the Project, the Construction Manager shall purchase and maintain insurance as set forth in Article 11 of the General Conditions and Exhibit F. The Construction Manager shall furnish a payment bond and a performance bond in accordance with Section 11.6 of the General Conditions.

§ 14.4 The Construction Manager represents and warrants to the Owner, in addition to the other representations and warranties contained in the Contract Documents and as an inducement to the Owner to execute the Agreement, which representations and warranties shall survive the execution of this Agreement and the Final Completion of the Work, as follows:

- .1 that the Construction Manager is financially solvent, able to pay its debts as they mature and possessed of sufficient working capital to perform and complete the Work as described in the Contract Documents and to otherwise perform its obligations under the Contract Documents;
- .2 that the Construction Manager is able to furnish the labor, services, materials, equipment, facilities, supervision, project management and other services necessary and required to perform and complete the Work as described in this Agreement and to otherwise perform its obligations under the Contract Documents, and has sufficient experience and competence to do so;
- .3 that the Construction Manager is authorized to do business in the state where the Project is located and is properly licensed and registered by all necessary governmental and quasi-public authorities having jurisdiction over the Construction Manager, the Work and the Project; and
- .4 that the Construction Manager's execution of this Agreement and its performance of the Contract is within its duly authorized powers.

§ 14.5 Construction Manager hereby agrees that the Project will be completed substantially in accordance with building permits and any other permits related to development of the Project, the Contract Documents and unless otherwise provided in the Contract Documents all manufacturers' or suppliers' recommended installation procedures so as to preserve any warranties with respect thereto, free and clear of all liens or encumbrances and within the time set forth in the Contract Documents. Construction Manager does further agree that on the date of Substantial Completion, the Project shall comply with all applicable building laws, ordinances, rules and regulations known, or which should in the exercise of reasonable care be known, to Construction Manager, and that all utility services necessary for the operation of the Project shall have been provided to the Project within the time for completion of construction.

§ 14.6 The Contract Documents have been carefully reviewed and negotiated by both parties at arm's length, and they shall be given fair and reasonable interpretation in accordance with the words contained in them without any weight being given to whether a provision was drafted by one party or its counsel. Section headings are for convenience only and shall not be a part of the Contract Documents or considered in their interpretation. The Exhibits attached hereto are made a part hereof.

§ 14.7 If the Construction Manager fails, neglects or refuses to make prompt payment for labor, materials, equipment or other services furnished to the Construction Manager or a Subcontractor by any person in connection with the Project as such claim becomes due, the Owner may pay the claim and charge the amount of the payment against funds due or to become due the Construction Manager under this Contract. Payment of claims in this manner shall not relieve the Construction Manager or the Construction Manager's surety from obligation with respect to any unpaid claims.

§ 14.8 Construction Manager shall cooperate with Owner 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 Guaranteed Maximum Price.

§ 14.9 Construction Manager shall obtain and deliver payment and performance bonds in the form attached as Exhibit D and as required by the General Conditions.

Prevailing Wage Requirements

§ 14.10 This Contract is subject to the State of Oregon BOLI Prevailing Wage Rates, and Construction Manager shall pay or cause to be paid all workers accordingly.

§ 14.10.1 The Project is a public works project subject to the prevailing wage rate requirements in ORS 279C.800 to 279C.870. Construction Manager and the Subcontractors shall comply with ORS 279C.840. Workers in each trade or occupation required for the Work of the Project shall not be paid less than the minimum hourly rate of wage for such workers as detailed in the Specifications for the Contract.

§ 14.10.2 Before starting the Work, Construction Manager and every Subcontractor shall file with the Construction Contractors Board a public works bond in accordance with ORS 279C.836, unless the Construction Manager or Subcontractor has elected not to file a public works bond under ORS 279C.836(7) or (8) or is exempt under ORS 279C.836(4) or (9). Before permitting a Subcontractor to start the Work, Construction Manager shall verify that the Subcontractor has filed a public works bond as required by ORS 279C.836, has elected not to file a public works bond under ORS 279C.836(7) or (8) or is exempt under ORS 279C.836(4) or (9). Construction Manager shall also ensure that each subcontract entered into by a Subcontractor for the Project shall include a clause obligating each Subcontractor to comply with the requirements of this Section 14.10.2, such that all subcontracts at all tiers include a requirement to comply with this Section 14.10.2.

§ 14.11 Construction Manager shall not discriminate based on race, religion, color, sex, marital status, familial status, national origin, age, mental or physical disability, sexual orientation, gender identity, source of income, or political affiliation in programs, activities, services, benefits, or employment. Construction Manager shall not discriminate against minority-owned, women-owned, or emerging small businesses. Construction Manager shall also include a provision in each subcontract requiring Subcontractors to comply with the requirements of this Section 14.11.

§ 14.12 The Construction Manager shall not be relieved from its obligations to perform the Work pursuant to the Contract Documents, or from responsibility for defects or nonconformities in the Work, either by observations, reviews, inspections or approvals of the Work by the Owner or Design Professional or other persons or entities or by other observations, reviews, inspections, tests or approvals of the Work by any person, entity or agency.

§ 14.13 Remedies Cumulative

§ 14.13.1 The Owner may, at its discretion, avail itself of any or all rights or remedies set forth in these rules, in the Contract, or available at law or in equity.

§ 14.14 Apprenticeship Requirements

§ 14.14.1 If the Guaranteed Maximum Price exceeds \$3,000,000, the Construction Manager shall (i) employ apprentices (as that term is defined in ORS 660.010) to perform twelve percent (12%) or more of the work hours that workers in apprenticeable occupations (as that term is defined in ORS 660.010) perform; and (ii) require in each subcontract with a value of \$750,000 or more that the Subcontractor employ apprentices to perform twelve percent (12%) or more of the work hours that workers in apprenticeable occupations perform on the subcontract. Construction Manager acknowledges and agrees that this Section 14.14 is a material provision of this Contract.

§ 14.14.2 The Construction Manager shall establish and implement a plan for outreach to and recruitment and retention of women (as that term is defined in ORS 200.005), minority individuals (as that term is defined in ORS 200.005) and veterans (as that term is defined in ORS 408.225) to perform work under this Contract, with an aspirational target of having individuals in one or more of these groups to compose at least fifteen percent (15%) of the total number of workers who perform work under the Contract. The Construction Manager must have a written plan for outreach, recruitment and retention of women, minority individuals and veterans and the Construction Manager shall: (i) advertise employment opportunities available under this Contract in general circulation publications, trade association publications and publications that serve an audience or readership that consists primarily of minority individuals, women or veterans; (ii) follow up on the Construction Manager's initial solicitations of interest by contacting minority individuals, women or veterans who expressed interest in or responded to the initial solicitation to determine with certainty whether the minority individual, woman or veteran is interested in the opportunities described in (i) above; (iii) provide all persons who express continued interest with adequate information about hiring qualifications, pay rates, benefits, the expected duration of employment, work hours and other conditions of employment under this Contract; (iv) make efforts to encourage minority individuals, women and veterans to seek employment under the public improvement contract that the contractor may reasonably expect will produce a level of participation that meets the

aspirational target described in this Section; and (v) use the services of minority community organizations, local, state, federal and tribal governments or other organizations that have recruiting, training and otherwise assisting minority individuals, women and veterans as the organization's primary purpose or mission to assist the Construction Manager with outreach, recruitment and retention.

§ 14.14.3 The Construction Manager shall demonstrate adequate good faith efforts to comply with the requirements of Section 14.14.2.

§ 14.14.4 The Construction Manager shall require any Subcontractor with a subcontract value of \$750,000 or more to comply with the requirements set forth in Sections 14.14.2 and 14.14.3 to the same extent as the Construction Manager is required to comply with such requirements.

§ 14.14.5 No less often than weekly, the Construction Manager shall report to Owner the extent of compliance with this Section 14.14, and the compliance of all Subcontractors described Section 14.14.4, to the Owner using the Bureau of Labor and Industries' Enhanced Payroll and Certified Statement form, Enhanced WH-38.

§ 14.14.6 With each Application for Payment, the Construction Manager shall submit for this Contract and each subcontract the report described in Section 14.14.5 as part of, or as a supplement to, certified statements required under ORS 279C.845. Construction Manager shall preserve the reports in the same manner as provided for certified statements in ORS 279C.845 (5).

§ 14.15 Owner and Construction Manager acknowledge and agree that ORS 654.150 (relating to sanitary facilities at construction projects) applies and Construction Manager will be responsible for complying with ORS 654.150 and any costs incurred related to such compliance. This requirement is included in this Agreement in accordance with ORS 654.160(1).

§ 14.16 The notice of claim required by ORS 279C.600 must be sent by registered or certified mail or hand delivered no later than 180 days after the day the person last provided labor or furnished materials or 180 days after the worker listed in the notice of claim by the Commissioner of the Bureau of Labor and Industries last provided labor. The notice may be sent or delivered to the Construction Manager or Subcontractor at any place the Construction Manager or Subcontractor maintains an office or conducts business or at the residence of the Construction Manager or Subcontractor. If the claim is for a required contribution to a fund of any employee benefit plan, the notice required by ORS 279C.600 must be sent or delivered within 200 days after the employee last provided labor or materials. The notice shall be in the form of a signed writing substantially as follows:

To (here insert the name of the Construction Manager or Subcontractor and the name of the Owner):

Notice hereby is given that the undersigned (here insert the name of the claimant) has a claim for (here insert a brief description of the labor or materials performed or furnished and the person by whom performed or furnished; if the claim is for other than labor or materials, insert a brief description of the claim) in the sum of (here insert the amount) dollars against the (here insert public works bond or payment bond, as applicable) taken from (here insert the name of the principal and, if known, the surety or sureties upon the public works bond or payment bond) for the work of (here insert a brief description of the work concerning which the public works bond or payment bond was taken). Such material or labor was supplied to (here insert the name of the Construction Manager or Subcontractor).

_____ *(here to be signed by the person making the claim or giving the notice)*

ARTICLE 15 SCOPE OF THE AGREEMENT

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

§ 15.2 The following documents comprise the Agreement:

- .1 AIA Document A133–2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price, as modified herein
- .2 the General Conditions;
- .3 Exhibits incorporated into this Agreement by this reference:

- Exhibit A: Early Work Form
- Exhibit B: GMP Amendment Form
- Exhibit C: Key Personnel
- Exhibit D: Lien and Bond Claim Waiver Form
- Exhibit E: Owner’s Standard Requirements
- Exhibit F: Insurance
- Exhibit G: Bond Forms
- Exhibit H: Change Order Form
- Exhibit I: Change Pricing Form
- Exhibit J: Construction Manager’s Hourly Rates
- Exhibit K: Cost Matrix

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

OREGON STATE UNIVERSITY

OWNER *(Signature)*

« »« »

(Printed name and title)

CONSTRUCTION MANAGER *(Signature)*

« »« »

(Printed name and title)

Exhibit A

Early Work Amendment

RESERVED

Exhibit B

Form of GMP Amendment

RESERVED

Exhibit C

Key Personnel

See attached

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.]**

Exhibit D

Form of Payment Claim Waiver

See attached

TBD

Exhibit E

Owner's Standard Requirements

See attached

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 F

Insurance Requirements

See attached

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
\$2,000,000 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**
\$X,000,000 Each Occurrence and General Aggregate
5. **Excess Umbrella Liability:**

For Contractor:

\$10,000,000 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 G

Form of Bonds

See attached

[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 H

Form of Change Order

See attached.

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 I

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].

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:

Exhibit J

Construction Manager's Hourly Rates

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

Cost Matrix

Project Name: _____



CMGC/DB Fee _____%

CMGC/DB Preconstruction Fee \$ _____ Lump Sum

CMGC/DB General Conditions Monthly Charge \$ _____ Per Month

CMGC/DB General Conditions Duration _____ # of Months

Cost Responsibility Matrix for CMGC/DB

Subject to CMGC/DB Fee Mark Up

CMGC Fee	Precon Fee	General Conditions	Direct Cost of Work	Owner
----------	------------	--------------------	---------------------	-------

Construction Staff (For Project Specific Time)

In response to the evaluative sections of the solicitation, hourly rates for the staff listed below must be attributable to actual costs - base hourly wage paid to employee including fringe benefits, vacation, health care, insurance and payroll taxes only. DOES NOT include standard compensation bonus.

1	CM/GC or DB Project Manager and all on-site CM/GC or DB 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 project 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 Costs related to transportation (including trucks, shuttles, parking, corporate vehicles and their operation and maintenance, owned or rented) for all staffing in Item 1.			X		
2	Communication devices, computer, tablet, project specific software, vehicle, gas, prof. development. Commuting to and from Project site and any other misc. cost associated with labor.	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				
Temporary Facilities						
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		
18	Barricades				X	
Overhead, Fee, Insurance and Bonds						
19	Profit and Overhead	X				

		CMGC Fee	Precon Fee	General Conditions	Direct Cost of Work	Owner
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	
On-Site Equipment and Utilities						
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	
Reproduction and Printing						
47	Reproduction and Printing during construction			X		
Permits and Special Fees						
48	Craft Parking when parking 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	