

CM/GC CONTRACT
(Construction Manager/General Contractor)

THIS CONTRACT IS BETWEEN:

Owner: _____ **Molalla River School District**

And

Construction Manager/ General Contractor
(Referred to as "the CM/GC"): _____ **Woodburn Construction CM/GC LLC**

The Project is: Mulino Elementary School Seismic Rehabilitation

The Engineer is: **ZCS**

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The Owner and CM/GC agree as set forth below:

THIS CM/GC CONTRACT (the “**CM/GC Contract**”) is made and entered into by and between Molalla River School District (Owner) and Contractor Name (“**CM/GC**”) (Collectively, the “**Parties**”) as of the Effective Date of the Contract.

RECITALS

WHEREAS, the Owner requires the services of a Construction Manager / General Contractor (CM/GC) for the Mulino Elementary School Seismic Rehabilitation. The Owner will use the CM/GC Contract delivery approach for the construction of this Project. The Owner will enter into this CM/GC Contract with the CM/GC firm to provide Pre-Construction Phase Services only, with provisions for adding Construction Phase Services through an Early Work Amendment, and through later acceptance of a Guaranteed Maximum Price (GMP) by subsequent GMP Amendment. Alternatively to these Amendments, the Owner may choose not to continue the CM/GC Contract beyond the completion of Pre-Construction Phase Services or any Early Work, instead soliciting bids from qualified contractors for the construction of the Project, and otherwise reserving all rights to terminate the Contract for public convenience.

WHEREAS, the Owner may require additional related Work within the general vicinity of the Project which, if required, shall be included in the Project and added to the Contract by Change Order; and

WHEREAS, the Owner requires a contractor competent to perform all Work necessary to complete the Project in accordance with the terms and conditions for the Contract, and able to do so within the Contract Price and Time allocated herein; and

WHEREAS, the CM/GC asserts that it is competent and prepared to perform all Work necessary to complete the Project in accordance with the terms and conditions of Contract, and that it is able to do so within the Contract Price and Time allotted herein;

ARTICLE 1
GENERAL CONTRACT PROVISIONS

- 1.1 INCORPORATION OF RECITALS**: The foregoing Recital incorporated herein and made a part hereof for all purposes as if fully set forth; constitute additional promises, representations and warranties of the Parties.
- 1.2 APPLICABLE VERSION OF LAW OR STANDARD**: All Work shall be performed in accordance with the Law and Standards then in effect, unless otherwise specified in the Contract Document.

ARTICLE 2 **DEFINITIONS**

Except as expressly defined or modified below or elsewhere in this Contract, all capitalized terms shall have the following meanings. The terms below are expressly defined as follows:

- 2.1 **OWNER**: Owner shall mean the Molalla River School District.
- 2.2 **PROJECT NAME**: Project shall mean Mulino Elementary School Seismic Rehabilitation.
- 2.3 **CONTRACTOR/CM/GC**: Contractor / CM/GC shall mean **Woodburn Construction CM/GC LLC**.
- 2.4 **AFFILIATE**: Affiliate shall mean any subsidiary of CM/GC, and any other entity in which CM/GC has a financial interest or which has a financial interest in CM/GC (including without limitation parent companies, related businesses under the same holding company, or any other business controlled by, under common control with, or which controls CM/GC).
- 2.5 **ALLOWANCES**: Allowances shall mean the allowance amounts shown in the GMP Supporting Documents, together with such further allowances as may be developed by the parties as the Project progresses.
- 2.6 **AMENDMENT**: Amendment shall mean a written modification of this Contract (including without limitation any agreed change to the GMP), identified as an Amendment, and executed by CM/GC, the Owner's Authorized Representative.
- 2.7 **BUSINESS DAYS**: Business Days shall mean every day except Saturday, Sunday, and legal holidays recognized for employees of the State of Oregon.
- 2.8 **CHANGE ORDER**: Change Order shall mean a written modification of this Contract, identified as a Change Order and executed by the Owner's Authorized Representative, CM/GC, where applicable, and, where required, approved in writing by Owner.
- 2.9 **CM/GC CONTINGENCY**: The CM/GC contingency is available to the Contractor to cover increased costs incurred as the result of causes beyond its control, such as lost time, increases in bid or negotiated contracts, acceleration required to meet owner directed changes in scope of work, correcting defective, damaged or nonconforming work; design errors or omissions due to incomplete destructive investigation and/or lack of constructability review as defined in section 4.1.3 (c); subcontractor defaults; or unanticipated general condition expenses. The CM/GC is to provide the owner written notice of why the CM/GC is requesting the use of contingency funds for approval. Upon the completion of the project and final acceptance, any unused CM/GC contingency will be returned to the Owner.
- 2.10 **OWNER CONTINGENCY**: The Owner contingency is for the Owner's use in paying for design errors or omissions that could not have been identified through complete destructive investigation and/or complete construction feasibility review, unforeseen conditions neither the CM/GC nor Engineer could have anticipated during preconstruction services and changes in scope as directed by the Owner. All draws on Owner contingency shall be requested in writing and shall be approved prior to proceeding. Upon the completion of the project and final acceptance, any unused Owner contingency will be returned to the Owner.

- 2.11** CM/GC FIELD WORK: CM/GC Field Work shall mean customary layout, clean up, supervision, and portions of the Work of a minor nature and not feasibly part of the subcontracted work due to: exclusions by the Subcontractor not resolved through the process described in Article 12.3.3, undeveloped design owing to deviations in Work performed or materials delivered by Subcontractors or suppliers that do not represent defective or nonconforming work, a breach or failure to perform by the Subcontractor or supplier, complexity of coordination of the Work, and other similar reasons typically providing cause for “pick-up” or GC Work under industry standards; provided, however, that (i) the CM/GC has reasonably determined that doing such portion of the Work itself is in the best interests of the Owner, (ii) such Work is identified as CM/GC Field Work in monthly billings and (iii) CM/GC receives prior approval of the Owner’s Authorized Representative as to the scope of such CM/GC Field Work.
- 2.12** CM SERVICES: CM Services shall have the meaning given in Article 4.3 below.
- 2.13** CONSTRUCTION DOCUMENTS: Construction Documents shall have the meaning given in the Services Agreement with the Engineer of Record for this Project.
- 2.14** CONSTRUCTION PHASE: The Construction Phase shall mean the period commencing on the Owner’s execution of a GMP Amendment or Early Work Amendment, together with the earlier of (i) issuance by the Owner of a Notice to Proceed with any on-site construction or (ii) execution of a subcontract or issuance of a purchase order for materials or equipment required for the Work.
- 2.15** CONSTRUCTION PHASE SERVICES: Construction Phase Services shall mean all of the Work other than the Preconstruction Phase Services.
- 2.16** CONTRACT DOCUMENTS: The Contract Documents shall mean the writings and drawings embodying the legally binding obligations between the Owner and the Contractor for completion of the work.
- 2.17** DESIGN DEVELOPMENT DOCUMENTS: Design Development Documents shall have the meaning given in the Services Agreement with the Engineer of Record for this Project.
- 2.18** EARLY WORK: Early Work shall mean Construction Phase Services authorized by Amendment that the parties agree should be performed in advance of establishment of the GMP. Permissible Early Work shall be limited to: early procurement of materials and supplies; early release of bid or proposal packages for site development and related activities; and any other advance work related to critical components of the Project for which performance prior to establishment of the GMP will materially affect the critical path schedule of the Project.
- 2.19** EARLY WORK AMENDMENT: Early Work Amendment shall mean an Amendment to this Contract executed by and between the parties to authorize Early Work.
- 2.20** FIXED COST FOR GENERAL CONDITIONS WORK: Fixed Cost for General Conditions Work or GC Work shall mean that fixed sum identified in Article 9.
- 2.21** GENERAL CONDITIONS WORK: General Conditions Work (“GC Work”) shall mean (i) that portion of the Work required to support construction operations that is not included within

overhead or general expense but is called out as GC Work, and (ii) any other specific categories of Work approved in writing by the Owner's Authorized Representative as forming a part of the GC Work.

- 2.22** GUARANTEED MAXIMUM PRICE (GMP): GMP shall mean the Guaranteed Maximum Price of this Contract, as stated in dollars within the GMP Amendment, as determined in accordance with Article 7, and as it may be adjusted from time to time pursuant to the provisions of this Contract.
- 2.23** GMP AMENDMENT: GMP Amendment shall mean an Amendment to this Contract, issued in the form of Exhibit A and executed by and between the parties, to establish the GMP and identify the GMP Supporting Documents for Construction Phase Services.
- 2.24** GMP SUPPORTING DOCUMENTS: GMP Supporting Documents shall mean the documents referenced in the GMP Amendment as the basis for establishing the GMP. The GMP Supporting Documents shall expressly identify the Plans and Specifications, assumptions, qualifications, exclusions, conditions, allowances, unit prices, and alternates that form the basis for the GMP.
- 2.25** PRECONSTRUCTION PHASE: The Preconstruction Phase shall mean the period commencing on the date of this Contract and ending upon commencement of the Construction Phase; provided that if the Owner and CM/GC agree, the Construction Phase may commence before the Preconstruction Phase is completed, in which case both phases shall proceed concurrently, subject to the terms and conditions of the Contract Documents.
- 2.26** PRECONSTRUCTION PHASE SERVICES: Preconstruction Phase Services shall mean all services described in Article 4.1, and any similar services described in the Request for Proposals, including such similar services as are described in the CM/GC's RFP Response to the extent they are accepted by the Owner, but excluding any Early Work. Early Work shall be considered part of Construction Phase Services.
- 2.27** SCHEMATIC DESIGN DOCUMENTS: Schematic Design Documents shall have the meaning given in the Services Agreement with the Engineer of Record for this Project.
- 2.28** SCOPE CHANGE: Scope Change shall mean only (i) changed site conditions not reasonably inferable from information available to CM/GC at the time of execution of the GMP Amendment, and (ii) significant Work modifications (including additions, substitutions, and deletions), application of Allowances, and selection of alternates, all as approved by the Owner under this Contract beyond that identified or inferable from the GMP Supporting Documents (but in the case of Allowance items, the GMP will increase only if the cost to the Owner of the Allowance items exceeds the total amount of the Allowances).

ARTICLE 3 CONTRACT DOCUMENTS

- 3.1** CONTRACT DOCUMENTS: For valuable consideration as stated below, the Owner and the CM/GC agree to the terms of the agreement that are set forth in the Contract Documents which include this CM/GC Contract and all other Contract Documents. The Contract Documents other than this CM/GC Contract, and all exhibits attached to this CM/GC Contract, are by this

reference incorporated herein. Exhibits incorporated into this CM/GC Contract include the following:

- Exhibit A – Sample GMP Amendment to CM/GC Contract
 - Exhibit B – CM/GC Cost Matrix
- 3.2** Effective Date: This CM/GC Contract (hereafter the "Contract") shall become effective on the first date on which every party has signed this Contract and the Owner has received all necessary approvals.
- 3.3** The Contract; Order of Precedence: This Contract, together with the other Contract Documents, form the entire agreement between the parties. Except as expressly otherwise provided herein, the order of precedence shall be as follows if there are inconsistent or conflicting terms among the Contract Documents:
1. Change Orders
 2. Addenda
 3. Bidding and Contract Requirements
 4. Technical Specifications
 5. Contract Drawings

ARTICLE 4 WORK OF THIS CONTRACT

- 4.1** PRECONSTRUCTION PHASE SERVICES: The CM/GC agrees to provide all of the Preconstruction Phase Services described below on an ongoing basis in support of, and in conformance with, the time frames described in the Request for Proposals. Commencement of the Construction Phase shall not excuse CM/GC from completion of the Preconstruction Phase Services, if such services have not been fully performed at commencement of the Construction Phase. Preconstruction Phase Services shall include CM Services performed during the Preconstruction Phase.
- 4.1.1 The CM/GC shall provide at the minimum the following personnel to participate in all meetings between the design team and Owner related to constructability reviews, project schedules and cost estimates:
- a. Project Manager;
 - b. Project Superintendent:
 - It is understood that the Project Superintendent has other responsibilities and shall at a minimum attend meetings and present the constructability reports, budgets and schedules to the owner and design team.
- 4.1.2 The CM/GC shall provide a preliminary evaluation of the Owner's program and budget requirements, each in terms of the other.
- 4.1.3 The CM/GC shall provide the following services relating to design and construction tasks:
- a. The CM/GC shall consult with, advise, assist, and provide recommendations to the Owner and the design team on all aspects of the planning and design of the Work in the form of a written report.

- b. The CM/GC shall jointly schedule and attend regular meetings with the Engineer of Record and the Owner's Authorized Representative. The CM/GC shall consult with the Engineer of Record and regarding site use and improvements, and the selection of materials, building systems and equipment.
 - c. Given the complications associated with working in existing construction, the CM/GC will be relied upon during preconstruction services to review the existing construction with respect to as-built plans, verify existing construction elements, and assist with pricing models associated with varying in-situ conditions. This review will result in areas and details about the existing construction that are concealed and cannot be adequately documented without exposing the concealed construction. The CM/GC and the Engineer shall work together with the Owner to define exploratory locations to adequately identify the unknown construction techniques and detailing. Once all parties agree to the number and size of exploratory locations the Contractor shall provide a proposal to perform the destructive investigation to expose concealed construction. Included in the proposal the contractor shall include any pricing necessary for temporary patching as required by the Owner to maintain operations. The contractor's proposal will be processed as an early work amendment to the contract and following destructive investigation the contractor shall report to the Engineer and Owner the results of the investigation.
 - d. The CM/GC shall provide recommendations on constructability; actions designed to minimize adverse effects of labor or material shortages; time requirements for procurement, installation and construction completion; and factors related to construction cost including estimates of alternative designs or materials, preliminary budgets and possible economies in the form of a written report.
 - e. The CM/GC shall review in-progress design documents, including the documents generally described in the industry as Schematic Development Documents, Design Development Documents, and Construction Documents and provide input and advice on construction feasibility, alternative materials, and availability. CM/GC shall review these completed Schematic Development Documents, Design Development Documents, and Construction Documents and timely suggest modifications to improve completeness and clarity.
- 4.1.4 The CM/GC shall provide the following services related to the Project schedule:
- a. The CM/GC shall prepare, and periodically update, a preliminary Project schedule for the Engineer of Record and the Owner's Authorized Representative's review and the Owner's Authorized Representative's approval.
 - b. The CM/GC shall coordinate and integrate the preliminary Project schedule with the services and activities of the Owner, Engineer of Record, and CM/GC. As design proceeds, CM/GC shall update the preliminary Project schedule to indicate proposed activity sequences and durations, milestone dates for receipt and approval of pertinent information, submittal of a GMP proposal, preparation and processing of shop drawings and samples, delivery of materials or equipment requiring long-lead time procurement, and the Owner's occupancy requirements showing portions of the Project having occupancy priority, provided that the date(s) of Substantial Completion shall not be modified without the Owner's prior written approval. If preliminary Project schedule updates indicate that previously approved schedules may not be met, the CM/GC shall make appropriate recommendations to the Owner's Authorized Representative and Engineer of Record.

- 4.1.5 The CM/GC shall make recommendations to the Owner's Engineer of Record, authorized representative regarding the phased issuance of plans and specifications to facilitate phased construction of the work, if such phased construction is appropriate for the project, taking into consideration such factors as economics, time of performance, availability of labor and materials, and provisions for temporary facilities.
- 4.1.6 Provide the following services relating to cost estimating:
- a. The CM/GC shall prepare, for the review of the Owner's Engineer of Record; owner's authorized representative and approval of the Owner, a preliminary cost estimate utilizing area, volume or similar conceptual estimating techniques.
 - b. When Schematic Design Documents have been prepared by the Engineer of Record and approved by the Owner, the CM/GC shall prepare for the review of the Engineer of Record and the Owner's Authorized Representative and approval of the Owner, a more detailed estimate with supporting data. During the preparation of the Design Development Documents, the CM/GC shall update and refine this estimate at appropriate intervals agreed to by the Owner, Engineer of Record and the Owner's Authorized Representative and CM/GC.
 - c. When Design Development Documents have been prepared by the Engineer of Record and approved by the Owner, the CM/GC shall prepare a detailed estimate with supporting data for review by the Engineer of Record and the Owner's Authorized Representative and approval by the Owner. During the preparation of the Construction Documents, the CM/GC shall update and refine this estimate at appropriate intervals agreed to by the Owner, the Owner's Authorized Representative, and Engineer of Record and CM/GC.
 - d. If any estimate submitted to the Owner exceeds previously approved estimates or the Owner's budget, the CM/GC shall make appropriate cost reduction recommendations to the Owner's Authorized Representative and Engineer of Record.
 - e. CM/GC shall notify the Owner and the design team immediately if any construction cost estimate appears to be exceeding the construction budget.
 - f. The CM/GC otherwise shall work with the Engineer of Record and the Owner to develop a GMP within the Target GMP Range and within the Owner's schedule.
- 4.1.7 Perform the following services relating to Subcontractors and suppliers:
- a. The CM/GC shall seek to develop Subcontractor and supplier interest in the Project, consistent with applicable legal requirements, and shall furnish to the Owner's Authorized Representative and Engineer of Record for their information a list of possible Subcontractors and suppliers, including suppliers who may furnish materials or equipment fabricated to a special design, from whom competitive bids, quotes, or proposals (collectively, "Offers") will be requested for each principal portion of the Work. Submission of such list is for information and discussion purposes only and not for prequalification. The receipt of such list shall not require the Owner, the Owner's Authorized Representative or the Engineer of Record to investigate the qualifications of proposed Subcontractors and suppliers, nor shall it waive the right of the Owner or Engineer of Record later to object to or reject any proposed Subcontractor, supplier, or method of procurement.

- b. The CM/GC shall provide input to the Owner and the design team regarding current construction market bidding climate, status of key subcontract markets, and other local economic conditions. CM/GC shall determine the division of work to facilitate bidding and award of trade contracts, considering such factors as bidding climate, improving or accelerating construction completion, minimizing trade jurisdictional disputes, and related issues. CM/GC shall advise the Owner on subcontracting opportunities for minority/women/ESB firms.
- 4.1.8 The CM/GC shall recommend to the Owner's Authorized Representative and Engineer of Record a schedule for procurement of long-lead time items which will constitute part of the Work as required to meet the Project schedule, which shall be procured by the CM/GC upon execution of either a GMP Amendment or Early Work Amendment covering such procurement, and approval of such schedule by the Owner's Authorized Representative. The CM/GC shall expedite the delivery of long-lead time items.
- 4.1.9 The CM/GC shall work with the Owner in identifying critical elements of the Work that may require special procurement processes, such as prequalification of Offerors or alternative contracting methods.
- 4.1.10 The CM/GC shall Work with the Owner and Owner's Engineer of Record to maximize energy efficiency in the Project, including without limitation providing estimating and value engineering support to the Owner's analysis and application for energy related incentive programs offered by local utilities and the Oregon Department of Energy.

4.2 CONSTRUCTION PHASE SERVICES:

- 4.2.1 Upon execution of an Early Work Amendment or GMP Amendment, the CM/GC shall provide Construction Phase Services as provided in the Contract Documents, including, without limitation, providing and paying for all materials, tools, equipment, labor and professional and non-professional services, and performing all other acts and supplying all other things necessary to fully and properly perform and complete the Work, as required by the Contract Documents, to furnish to the Owner a complete, fully functional Project, capable of being legally occupied and fully used for its intended purposes upon completion of the Contract (or, as to an Early Work Amendment, to furnish such Work as is described in the Early Work Amendment). Construction Phase Services shall include CM Services performed during the Construction Phase.
- 4.2.2 Notwithstanding any other references to Construction Phase Services in this Contract, this Contract shall include Preconstruction Phase Services only unless (i) the parties execute a GMP Amendment or (ii) the parties execute an Early Work Amendment, defined below.
- 4.2.3 The parties may execute one or more Early Work Amendments identifying specific Construction Phase Services that must be performed in advance of establishment of the GMP, without exceeding a "not-to-exceed budget", a "not-to-exceed guaranteed maximum price", or a "fixed price" ("Early Work Price") to be stated in such Amendment, with such Amendment including all necessary State of Oregon approvals

where required. If the Early Work Price is a “not-to-exceed budget”, then CM/GC shall be obligated to perform the Early Work only to the extent that the Cost of Work therefore, together with the CM/GC Fee, does not exceed the Early Work Price; however if CM/GC performs Early Work with a cost in excess of the Early Work Price the CM/GC shall pay such excess cost without reimbursement. If one or more Early Work Amendments are executed, the CM/GC shall diligently continue to work toward development of a GMP Amendment acceptable to the Owner, which shall incorporate the Early Work Amendments.

- 4.2.4 Prior to commencement of the Construction Phase, and in any event not later than mutual execution of the GMP Amendment, CM/GC shall provide to the Owner a full performance bond and a payment security bond. If an Early Work Amendment is executed, CM/GC shall provide such bond in the amount of the Early Work Price under the Early Work Amendment. CM/GC shall provide to the Owner additional or replacement bonds at the time of execution of any subsequent Early Work Amendment or GMP Amendment, in each case prior to execution of the Amendment and the supplying of any labor or materials for the prosecution of the Work covered by the Amendment, and in each case in a sufficient amount so that the total bonded sum equals or exceeds the total Early Work Price or the GMP, as the case may be. In the event of a Scope Change that increases the GMP, CM/GC shall provide to the Owner an additional or supplemental bond in the amount of such increase prior to performance of the additional Work.

4.3 CONSTRUCTION MANAGEMENT (CM) SERVICES: Throughout the Preconstruction Phase and Construction Phase of the Project, the CM/GC shall provide CM Services, generally consisting of coordinating and managing the building process as an independent contractor, in cooperation with the Owner, the Owner’s Authorized Representative, the Engineer of Record and other designated Project consultants (the "Construction Principals"). CM Services shall include, but are not limited to:

- 4.3.1 Providing all Preconstruction Phase Services described above;
- 4.3.2 Developing and delivering schedules, preparing construction estimates, performing constructability review, analyzing alternative designs, studying labor conditions, coordinating and communicating the activities of the Construction Principals throughout the Construction Phase to all Construction Principals;
- 4.3.3 Continuously monitoring the Project schedule and making adjustments to ensure completion of the Project in the most expeditious manner possible;
- 4.3.4 Working with the Owner, Owner’s Authorized Representative, and the Engineer of Record to analyze the design, participate in decisions regarding construction materials, methods, systems, phasing, and costs, and suggest modifications to achieve the goals of providing the Owner with the highest quality Project within the budget, GMP and schedule;
- 4.3.5 Providing Value Engineering ("VE") services ongoing through the Project. CM/GC shall develop cost proposals, in the form of additions or deductions from the GMP, including detailed documentation to support such adjustments and shall submit such proposals to the Owner for its approval. CM/GC shall actively participate in a formal

VE study anticipated to be held at the end of the Design Development phase. CM/GC acknowledges that VE services are intended to improve the value received by the Owner with respect to cost reduction or life cycle of the Project;

- 4.3.6 Holding and conducting weekly construction meetings with the Owner's authorized representative and the Owner's Engineer of Record to coordinate, update and ensure progress of the Work. The following shall be the responsibility of the CM/GC to provide at each of the construction meetings:
- a. Meeting Agenda;
 - b. Review of last week's meeting minutes;
 - c. 2-week look ahead schedule;
 - d. RFI Log;
 - e. Submittal Log;
 - f. Change Management Log;
 - g. Discussion of old business and schedule/budget impacts;
 - h. New Business Discussion;
 - i. Provide Owner & EOR meeting minutes no more than 3 days after meeting for review.
- 4.3.7 Submitting monthly written report(s) to the Owner's authorized representative. Each report shall include, but shall not be limited to, Project updates including (i) actual costs and progress for the reporting period as compared to the estimate of costs; (ii) explanations of significant variations; (iii) work completed; (iv) work in progress; (v) changes in the work; and (vi) other information as determined to be appropriate by the Owner. Oral or written updates shall be provided to the Owner as deemed appropriate by the CM/GC or as requested by the Owner;
- 4.3.8 Maintaining a daily log containing a record of weather, Subcontractors working on the site, number of workers, Work accomplished, problems encountered, safety violations and incidents of personal injury and property damage, and other similar relevant data as the Owner may reasonably require. The log shall be available to the Owner and Engineer of Record on request;
- 4.3.9 Developing and implementing a system of cost control for the Work acceptable to the Owner's Authorized Representative, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The CM/GC shall identify variances between actual and estimated costs and report the variances to the Owner, owner's authorized representative and Owner's Engineer of Record at regular intervals;
- 4.3.10 Cooperating with any and all consultants hired by the Owner, including engineering and abatement firms, for the successful completion of the project;
- 4.3.11 At the Owner's request, cooperating and performing warranty and inspection Work for the Project through the expiration date of the applicable warranty period;
- 4.3.12 Assisting the Owner with start-up of the Project. Such start-up may occur in phases due to phased occupancy;

- 4.3.13 Incorporating commissioning and inspection agents' activities into the Project schedule and coordinating Subcontractors required to participate in the commissioning and inspection process;
- 4.3.14 Performing all other obligations and providing all other services set forth in the Contract Documents; and performing all other acts and supplying all other things necessary to fully and properly perform and complete the Work as required by the Contract.

ARTICLE 5

RELATIONSHIP AND ROLES OF THE PARTIES

- 5.1 **CO-LOCATION REQUIREMENTS:** The owner may require co-location of key personnel during the pre-construction and construction phases of the project. Co-location requirements will be negotiated with the selected CM/GC.
- 5.2 **INDEPENDENT CONTRACTOR:** The CM/GC is an independent contractor and not an officer, employee, or agent of the Owner as those terms are used in ORS 30.265.
- 5.3 **PERFORMANCE OF WORK:** The CM/GC covenants with the Owner to cooperate with the Engineer of Record and the Owner's Authorized Representative and utilize the CM/GC's professional skill, efforts and judgment in furthering the interests of the Owner; to furnish efficient business administration and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in conformance with the terms and conditions of the Contract Documents and in an expeditious and economical manner consistent with the interests of the Owner.
- 5.4 **DESIGN CONSULTANTS:** The Owner has a separate contract with the Engineer of Record related to the Project. Both the CM/GC and the Engineer of Record shall be given direction by the Owner through the Owner's Authorized Representative. The CM/GC agrees to support the Owner's efforts to create a collaborative and cooperative relationship among the CM/GC, Engineer of Record, other Project consultants, and the Owner's Authorized Representative.
- 5.5 **FORMS AND PROCEDURES:** The Owner has developed or may develop procedures and forms for the administration and tracking of the Contract. The CM/GC agrees to abide by those procedures and use those forms.
- 5.6 **CM/GC'S PROJECT STAFF:** The CM/GC's Project staff shall consist of the following personnel:
 - 5.6.1 Project Manager and Assistant Project Manager: **Tony Morris** shall be the CM/GC's Project Manager and **Jenny Hesse** shall be CM/GC's Assistant Project Manager and one or both will supervise and coordinate all Construction Phase and Preconstruction Phase Services of CM/GC and participate in all meetings throughout the Project term unless otherwise directed by the Owner. CM/GC represents that each of the Project Manager and Assistant Project Manager has authority to execute Change Orders and Contract Amendments on behalf of CM/GC.

5.6.2 Job Superintendent: If Construction Phase Services are requested and accepted by the Owner, **Nate Brush** shall be the CM/GC's on-site job superintendent throughout the Project term.

5.7 KEY PERSONNEL: The CM/GC's personnel identified in Article 5.6, shall be considered Key Personnel and shall not be replaced during the Project without the written permission of the Owner, which shall not be unreasonably withheld. If the CM/GC intends to substitute personnel, a request must be given to the Owner at least 30 Days (or such shorter period as permitted by the Owner) prior to the intended time of substitution. When replacements have been approved by the Owner, the CM/GC shall provide a transition period of at least 10 Business Days during which the original and replacement personnel shall be working on the Project concurrently. Once a replacement for any of these staff members is authorized, further replacement shall not occur without the written permission of the Owner.

5.8 AGENCY REPRESENTATIVE AND CONTACT INFORMATION: The Owner's representative for this Project is the Owner Project Manager (Owner PM).

Name: Tony Tiano

Address: 412 S. Swiegle Ave, Molalla, OR 97038

E-mail Address: tony.tiano@molallariv.k12.or.us

Phone / Fax Numbers: 503.829.2359

ARTICLE 6

DATE OF COMMENCEMENT; SUBSTANTIAL AND FINAL COMPLETION

6.1 NOTICE TO PROCEED: If Construction Phase Services are added to the Contract as set forth in Article 4.2, then a notice to proceed will be issued by the Owner to begin the designated or full Construction Phase Services ("Notice to proceed"). It is anticipated that the Notice to Proceed will be issued on or about March, 2027. A separate Notice to Proceed shall be issued for any and every Early Work Amendment.

6.1.1 The CM/GC shall not allow any Subcontractor to enter onto, or move Materials, Equipment or Workers onto, the Project Site until the CM/GC has confirmed that the Subcontractor has filed the required Public Works Bond with the Construction Contractors Board.

6.1.2 Construction Phase Services may be added to the Contract as set forth in Article 4.2.

6.1.3 A Notice to Proceed (NTP) will be issued by the Owner to begin Work under each Early Work Amendment and the GMP Amendment.

6.2 COMPLETION OF PROJECT: The CM/GC shall achieve Substantial Completion, as defined by Oregon Law, of the entire Work not later than (to be included in GMP work Amendment) and shall achieve Final Completion not later than 30 Days after the earlier of (i) Substantial Completion or (ii) the required date for Substantial Completion.

6.2.1 Pre-Construction Phase Services (Interim Completion Date): April, 2027

6.2.2	Early Work Amendments (Interim Completion Date):	TBD
6.2.3	Construction Phase Services (Contract Completion Date):	TBD W/ GMP

(Complete all Work to be done under the Contract GMP Amendment, except for plan establishment and punch list items.

6.3 TIME IS OF THE ESSENCE: All time limits stated in the Contract Documents are of the essence.

6.4 TIME EXTENSIONS: The Owner and the CM/GC agree that timely completion of the Work is essential to the success of the Project, and that approval for time extension shall be granted only as a last resort. During this CM/GC Contract for Pre-Construction Services and Contract Amendments for Construction Phase Services, the CM/GC agrees to make every effort to avoid delays and recover "lost" time in a manner acceptable to the Owner.

6.5 LIQUIDATED DAMAGES RELATED TO AMENDMENTS FOR CONSTRUCTION PHASE SERVICES: The CM/GC acknowledges that the Owner will sustain loss of use damages as a result of the CM/GC's failure to complete the Work by the Interim and Contract Completion Dates in accordance with the Contract Documents. The liquidated damages for loss of use cover only loss of revenue and cost of replacement facilities. The liquidated damages for loss of use do not cover (and the Owner does not waive) delay damages incurred by the Owner for extended overhead or management costs, extra or extended financing costs, extra or extended services by the Engineer of Record or other design professionals, claims by other contractors, and possibly other types of costs, expenses and damages incurred by the Owner. The CM/GC and the Owner acknowledge that the actual amount of the Owner's loss of use damages would be difficult to determine accurately and agree that the liquidated damages figure(s) established represent a reasonable estimate of such damages and is not a penalty.

The CM/GC agrees to pay to the Owner the liquidated damage sums established for each Calendar Day of delay or any fraction thereof and further agrees that the Owner may deduct such sums from payments the Owner otherwise owes to the CM/GC. If such deduction does not result in payment to the Owner of the assessed liquidated damages in full, the CM/GC shall promptly pay any and all remaining sums due to the Owner upon demand.

The daily amount of liquidated damages applicable to the Owner established Contract Completion Date defined in Article 6.2 is:

- Liquidated damages for failure to complete all Work by the Contract Completion Date specified in Article 6.2 shall equal (to be determined by the Owner and CM/GC during the GMP Amendment) per Calendar Day.
- Liquidated damages that would apply to an Early Work Package will be negotiated based upon the scope of Work and schedule for completion of Work.

ARTICLE 7

CONTRACT SUM AND GMP

7.1 GMP: The GMP shall be determined in accordance with the formula set forth below and as described in this Article 7:

Pre-Construction Costs (Becomes a not-to-exceed amount)

- + CM/GC Fee (Initially based on a percentage of the Cost of the Work but becomes fixed dollar amount, which is subject to adjustment in accordance with Article 7.3)
 - + Early Work Amendment(s)
 - + Cost of the Work (becomes a total amount based on established Pay Items)
 - + Bonds and Insurance (estimated costs)
 - + CMGC / Contingency (an allowance not included in Cost of the Work)
 - + Owner Contingency (TBD but not less than 4%, not included in cost of work)
-
- = GMP

7.2 PRECONSTRUCTION FEE: The Preconstruction Fee shall be payable to CM/GC on a cost reimbursement basis up to a maximum sum of **\$13,815.00**, which shall cover constructability review, value engineering, cost estimating, development of GMP, and all other Preconstruction Phase Services, as described in Article 4. If CM/GC's costs for provision of Preconstruction Phase Services exceed the maximum Preconstruction Fee, CM/GC shall pay such additional cost without reimbursement. CM/GC shall not be entitled to any CM/GC Fee upon the Preconstruction Fee. The Owner shall pay the Preconstruction Fee on a cost-reimbursement basis with each application for payment during the Preconstruction Phase. If the total actual Preconstruction Fee is less than the maximum Preconstruction Fee used for initial calculation of the GMP as provided above, the GMP shall be reduced by the difference; provided that the Owner may direct instead that any applied portion of the maximum Preconstruction Fee be applied to Construction Phase Services, in which case the GMP shall not be reduced by the portion so applied. Except to the extent the parties may expressly agree to the contrary in the GMP Amendment, no Preconstruction Fee or other fee, compensation or reimbursement shall be payable to CM/GC with respect to Preconstruction Services performed after execution of the GMP Amendment.

7.3 ESTABLISHMENT OF CM/GC FEE; ADJUSTMENTS TO CM/GC FEE:

7.3.1 The "CM/GC Fee" shall be a fixed dollar lump sum to be identified in the GMP Amendment, and shall be calculated as **5.00%** of the Estimated Cost of the Work at the time of establishment of the GMP. In making such calculation, the Estimated Cost of the Work shall exclude the Preconstruction Fee, the CM/GC Fee itself, and any other cost or charge for which this Contract states is not to be included in calculating the CM/GC Fee, but shall include Allowances, selected alternates, Fixed Cost for GC Work, and reasonable CM/GC contingencies as designated in the GMP Supporting Documents. The CM/GC Fee is inclusive of profit, overhead, and all other indirect or non-reimbursable costs. The Owner shall pay the CM/GC Fee ratably with each application for payment during the Construction Phase. In the case of Early Work, the CM/GC Fee shall be the above percentage multiplied by the actual Cost of the Early Work, until such time as a GMP Amendment is executed, at which time such CM/GC Fee payments shall be credited against the CM/GC Fee fixed therein.

7.3.2 Unless the parties agree in writing to the contrary, any Amendment or Change Order that increases or decreases the GMP shall adjust the CM/GC Fee then in effect by multiplying the percentage shown in Article 7.3.1 by the change in the Estimated Cost of the Work reflected in such approved Amendment or Change Order. In addition, if the Contract is terminated for any reason prior to full completion of the Work (including, without limitation, termination during or following performance of Early Work), the CM/GC Fee shall be limited to the total CM/GC Fee multiplied by the

percentage of Work completed and accepted at the time of termination. The CM/GC Fee shall not be subject to adjustment for any other reason, including, without limitation, schedule extensions or adjustments, Project delays, unanticipated costs, or unforeseen conditions.

7.4 DETERMINATION OF PRICING OF WORK PACKAGES:

- 7.4.1 Collaboration: The CM/GC shall collaborate with the Owner and the Engineer of Record in the development of Work Packages, including those for any Early Work Amendments(s) and the GMP Amendment. Scope of the Work and value of each Work Package shall be determined through collaboration with the Owner and the Engineer of Record, and agreed to by the Owner prior to execution of any Amendment.
- 7.4.2 Bid (Pay) Items: The CM/GC shall propose Pay Items and corresponding estimated quantities for all Work items included in a Work Package. Once the Owner has agreed to the Pay Items and estimated quantities for all items of Work, the CM/GC shall propose a fixed lump sum, fixed unit cost, or estimated actual cost reimbursable amount for each Pay Item. The Owner and the CM/GC shall meet to review all proposed Pay Items and all necessary supporting data, including but not limited to, the following:
- a. Cost build-ups: All open-book cost build-ups including Subcontractor quotes and estimates inclusive of labor, material, equipment, overhead, general conditions and fee;
 - b. Project Bid Item List: The CM/GC shall prepare and submit along with its cost estimate a complete Bid Item List for each Work Package;
 - c. Cost Estimate Format: The CM/GC shall submit a Microsoft Excel spreadsheet, with all construction cost bid items broken out in a format agreed to by the Project Team. The CM/GC's estimates shall be in the agreed format to facilitate quantity and unit price reconciliation;
 - d. Detailed Back-up: The CM/GC's construction estimate shall be supported by quantity and material take-off calculations, and details cost build-ups for each proposed bid item as either a unit cost or lump sum item. The detailed cost build-up, in addition to being in the format agreed upon between the parties, shall include labor, materials, equipment type and rates, overhead and indirect costs not in the CM/GC Fee, and Construction General Conditions;
 - e. Construction General Conditions: The CM/GC shall provide a detailed itemization of all anticipated Construction General Condition costs with back-up to verify actual cost of each of these items, or estimated cost where actual cost is not available;
 - f. Assumptions: The CM/GC shall provide a list of clarifications and assumptions it made in the establishment of the proposed unit costs, including site conditions, access, staging, construction means and methods, and identification of Work to be subcontracted or self-performed by the CM/GC;
 - g. Schedule Milestone: The CM/GC shall propose key schedule milestones including any Interim Completion Date(s) applicable to the Work Packages and the Contract Completion Date for the GMP amendment;
 - h. Risk: The CM/GC shall identify proposed costs related to construction risks, agreed upon between the Owner and CM/GC;

- i. Pay Item Measurement: The CM/GC shall propose how each Pay Item will be measured and reimbursed as 1) a fixed lump sum amount, or 2) a fixed unit price amount with an estimated quantity independently taken off by the CM/GC, or 3) an actual cost reimbursable amount, or 4) an estimated allowance or provisional sum amount pending later bidding or further scope definition.

7.4.3 Good Faith Negotiations: The Owner and CM/GC shall negotiate the fixed lump amounts, estimated quantities, fixed unit prices, estimated cost reimbursable amounts, and all other aspects of any Work Packages in good faith and shall establish a set of assumptions upon which all Work and unit prices are based.

7.4.4 Cost of work package: Once all components of a Work Package are agreed upon by the Agency and CM/GC, all Pay Item total costs (the Pay Item estimated quantity multiplied by the unit price) shall be rolled into one total amount, which becomes the Cost of the Work for the Work Package. The CM/GC Fee shall then be applied by multiplying the percentage stated by the Cost of the Work for the Work Package. The CM/GC Fee then becomes a fixed amount for that Work Package, subject to adjustment by Change Order in accordance with Article 8. The estimated actual reimbursable costs for any applicable bonds and insurance shall be included.

7.4.5

$$\underline{\text{Cost of the Work} + \text{CM/GC Fee Bonds \& Insurance} = \text{Early Work Price}}$$

7.5 DETERMINATION OF GMP:

7.5.1 Preliminary, Updated and Final GMP Milestones: All provisions of Article 7 apply to the determination for the GMP. The CM/GC shall deliver to the Owner a proposed GMP and GMP Supporting Documents at the following milestones:

(a) Milestone #1 –TBD: Final Firm GMP @ Approved Permit Level Drawings

7.5.2 Risk / Contingency Allowance: The parties may agree to include within the GMP a risk/contingency allowance for the estimated cost of certain risk/contingency items. If the parties agree that the GMP will include a risk/contingency allowance, they will set forth their agreement in the GMP Amendment, including but not limited to their agreement on the amount and conditions under which the CM/GC may use the risk/contingency allowance. These are amounts for risk related to Pay Items that are not included in the Cost of the Work.

- a. Risk Management Plan: Certain risk cost items may be identified in the risk management plan, that the parties agree to carry within the GMP, but not price as part of the Cost of the Work when the Amendment for certain construction work is executed.
- b. Escalation / De-Escalation and Risk of Changes: The parties may agree to identify and carry contingency to reflect potential escalation of material and commodity prices during the course of construction, as well as estimated risk costs for changes and differing site conditions.

7.5.3 GMP Supporting Documents: In accordance with Article 7.5.1, four (4) GMP submittals are required: 1) Preliminary GMP, 2) 60% Drawing Preliminary GMP 3)

Updated Preliminary GMP, and 4) Final Firm GMP. The GMP supporting documents shall include:

- a. A list of the Plans and Specifications, including all Addenda thereto and the conditions of the Contract, which were used in preparation of the GMP proposal.
- b. A list of the clarifications and assumptions made by the CM/GC in the preparation of the GMP proposal to supplement the information contained in the Plans and Specifications;
- c. Risk Management Plan;
- d. Conduct of Construction Plan;
- e. Baseline Schedule;
- f. Site specific work plans related to each Work Package;
- g. The proposed Cost of the Work including detailed cost breakdown and build-up of all Pay Items for the Owner open-book review, with all costs organized by Pay Items and Early Work Packages. Cost breakdown of Pay Items unit prices shall show estimated labor, material, equipment, general conditions, quantities, and overhead costs. Estimated quantities and unit prices shall be rolled into a total lump sum amount.
- h. The proposed GMP shall then be established using the formula set forth in Article 7.1, and shall include the Cost of the Work, the CM/GC Fee (based on a percentage of the Cost of the Work, which shall become fixed amount subject to adjustment by Change Order and in accordance with Article 8), and the reimbursable bond insurance costs; and;
- i. The Interim Contract Completion Date(s) and Contract Completion Date upon which the proposed GMP is based, and a schedule of the construction documents issuance dates upon which those dates are based.

7.5.4 GMP Open Book Review Process: The CM/GC shall meet with the Owner's engineer or record, to review the GMP deliverables and its GMP Supporting Documents. The CM/GC shall make available to designate the Owner personnel including its Owner's Representative, Engineer of Record, the complete cost estimate and supporting documents including, but not limited to books, calculations, take-offs, productivity assumptions, internal equipment rates, risk and contingency assumptions, exclusions, cost data in support of Construction General Conditions, quotations, allowances and provisions sums. The Owner will provide confidentiality assurances to the CM/GC as is necessary to allow the Owner to perform its construction price analysis and review. This "Open Book Process" will be repeated and required when the CM/GC submits its cost estimate, preliminary GMP, Updated GMP and Final GMP. If the Owner or its consultants discover any inconsistencies or inaccuracies in the information presented, the Owner will promptly notify the CM/GC, who shall make appropriate adjustments to the GMP proposal, its basis or both.

7.5.5 Incurred Costs: Prior to the Owner's acceptance of the CM/GC's GMP proposal, execution of the GMP Amendment and issuance of a Notice to Proceed, the CM/GC shall not incur any cost to be reimbursed as part of the Cost of the Work, except as specifically provided in an Early Work Amendment. In the event the CM/GC incurs costs, it will be the responsibility of the CM/GC to pay for those costs.

7.5.6 GMP Plans and Specifications: The Owner shall authorize and cause the Engineer of Record to review the Plans and Specifications to the extent necessary to reflect the

agreed-upon assumptions and clarifications contained in the GMP Amendment. Such revised Plans and Specifications shall be furnished to the CM/GC in accordance with schedules agreed to by the Owner, Engineer of Record and CM/GC. The CM/GC shall promptly notify the Engineer of Record and the Owner if such revised Plans and Specifications are inconsistent with the agreed-upon assumptions and clarifications. Additionally, the CM/GC shall work with the Engineer of Record and the Owner to identify and confirm any Work not specifically shown but required for a complete, fully functional project.

- 7.6** FAILURE TO FURNISH ACCEPTABLE GMP: If the CM/GC does not furnish a GMP acceptable to the Owner, or if the Owner determines at any time in its sole discretion that the parties may fail to reach a timely agreement on a GMP acceptable to the Owner, the Owner may terminate the Contract without liability, and the CM/GC shall not receive additional compensation beyond that amount due to the CM/GC for Pre-Construction Phase Services under the Contract, payable to the date of termination, together with amounts payable for Work completed and accepted by the Owner under an Early Work Agreement, if an Early Work Agreement has been executed, plus any applicable costs of bonds and the insurance. Termination under this provision shall be for the Public's or the Owner's convenience. The CM/GC further agrees that the Owner shall not be liable for any damages whether actual, consequential or otherwise for termination of the Contract under this provision. The Owner may elect to complete the construction Work for this Project utilizing any alternative procurement method available.
- 7.7** ACCEPTANCE OF GMP: Upon acceptance of the GMP by the Owner, the parties shall execute a GMP Amendment.
- 7.8** CONSTRUCTION GENERAL CONDITIONS: Estimated Construction General Condition cost not included in the CM/GC Fee shall be negotiated and included in the "Cost of the Work". The CM/GC shall propose estimated Construction General Conditions costs that are cost-effectively tailored to the needs of this Project.
- 7.8.1 All costs related to construction equipment and vehicles shall be negotiated and based upon the CM/GC's internal, actual cost rates, and may not be based upon or exceed industry Bluebook rates in any event. The CM/GC's costs shall include maintenance, operations and fuel, based upon estimated utilization and standby time, as required in order to perform the Work.
- 7.8.2 Exception to 7.8.1: All costs related to specialized construction equipment and vehicles unique to this Project and the CM/GC's approach to the Work, as accepted by the Owner, and for which the CM/GC does not have internal, actual cost rates, and for which there are no Bluebook rates, shall be negotiated based upon actual costs as bid or estimated to perform the Work.
- 7.8.3 Actual Cost Reimbursable: All costs proposed by the CM/GC for Construction General Conditions shall be based upon actual costs or, if actual costs are unknown, estimated costs. Unless agreed to as a fixed lump sum amount for a particular Construction General Condition cost, such estimated General Condition cost will be subject to later adjustment to reflect actual costs incurred by the CM/GC for the particular item.

- 7.9** CM/GC'S SOLE RESPONSIBILITY FOR ERRORS: The CM/GC agrees that review or approval by the Owner or Engineer of Record of the CM/GC's estimates, proposals, pricing, or any other information disclosed to the Owner by CM/GC during the negotiation of Work Packages, including those under Early Work Amendment(s) or the GMP Amendment, shall not relieve CM/GC of its sole responsibility for any costs resulting from or arising out of defects or deficiencies in the CM/GC's estimates, proposals, pricing, or any other information disclosed to the Owner.

ARTICLE 8
CHANGES IN THE WORK

- 8.1** ADJUSTMENTS TO GMP: Adjustments to the GMP after execution of the GMP Amendment may be made only (i) in the event of Scope Changes or (ii) as otherwise expressly provided in this Contract, and then only in accordance with the following procedure:
- 8.1.1 CM/GC shall review subsequent iterations of the Plans and Specifications as they are prepared to determine whether, in the opinion of CM/GC, they result in a Scope Change so that it can be determined if an adjustment to the GMP is warranted.
- 8.1.2 Changes to the GMP shall be initiated by written notice by one party to the other ("GMP Change Request"). CM/GC shall deliver any such GMP Change Request to Engineer of Record and the Owner's Authorized Representative promptly after becoming aware of any Scope Change. Any GMP Change Request shall include a proposal as to the appropriate GMP adjustment with respect to the Scope Change at issue.
- 8.1.3 CM/GC shall submit its GMP Change Requests as soon as possible, and CM/GC shall not be entitled to claim a GMP increase unless CM/GC submitted a GMP Change Request to the Owner's Authorized Representative and to Engineer of Record within the earlier of: (a) 10 Days after CM/GC has received the information constituting the basis for the claim, or (b) as to Work not yet bid or proposed, prior to submission of solicitations for such Work and as to Work already solicited, prior to commencement of the portion of the Work for which CM/GC intends to claim a Scope Change; or (c) in any event, prior to CM/GC's signing of a Change Order for the Scope Change.
- 8.1.4 The Owner may, at any time, submit a GMP Change Request requesting a reduction of the GMP, which shall include the Owner's basis for such request, which may include, for example, reduction of the CM/GC's Contingency after further development of the Plans and Specifications that form the basis for the original GMP Amendment, and/or unused Allowances.
- 8.1.5 CM/GC shall work with Engineer of Record to reconcile all differences in its GMP Change Request with the Engineer of Record within seven Days from the date of submission of the GMP Change Request. "Reconciled" means that the CM/GC and the Engineer of Record have verified that their assumptions about the various categories are the same, and that identifies the reason for differences in the GMP Change Request and the Engineer of Record's position. CM/GC shall submit the Reconciled GMP Change Request to the Owner, which submission shall be a condition to any CM/GC claim for a GMP increase.

- 8.1.6 If the Reconciled GMP Change Request is not acceptable to the Owner, CM/GC agrees to work with the Owner and the Engineer of Record to provide a GMP Change Request that is acceptable to the Owner.
- 8.1.7 CM/GC agrees to make all records, calculations, drawings and similar items relating to GMP Change Request available to the Owner and to allow the Engineer of Record and the Owner access and opportunity to view such documents at CM/GC's offices. Upon the Owner's reasonable notice, CM/GC shall deliver two copies of such documents to the Owner and Engineer of Record at any regular meeting or at the Site.
- 8.1.8 Subcontractor costs shall be the Cost of the Work plus the percentage markup provided at the time of the original bid.
- 8.1.9 GMP increases, if any, shall not exceed the increased Cost of the Work arising from the Scope Change (whether based on agreed fixed pricing, or the estimated Cost of the Work increase based on cost-reimbursable pricing), reconciled in accordance with the above provisions, as arising from the incident justifying the GMP increase, plus or minus the CM/GC Fee applicable to such change in the Cost of the Work.
- 8.2** EXECUTION BY OWNER: If Engineer of Record is the Owner's Authorized Representative, then notwithstanding any provision in the Contract to the contrary, the Engineer of Record has no authority to execute Change Orders or Amendments on behalf of the Owner, and only duly authorized personnel of the Owner may do so.

ARTICLE 9
COST OF THE WORK
(TO BE REIMBURSED)

- 9.1** COST OF THE WORK: The term "Cost of the Work" shall mean the following costs. The Cost of the Work shall include only those items necessarily and reasonably incurred by CM/GC in the proper performance of the Work and specifically identified in this Article 9, and only to the extent that they are directly related to the Project.
- 9.2** LABOR COSTS:
- 9.2.1 Wages of construction workers directly employed by the CM/GC to perform the construction of the Work at the site.
- 9.2.2 Wages and salaries of the CM/GC's supervisory and administrative personnel (i) stationed at the site, or (ii) engaged at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work with the Owner, or otherwise engaged and off the site when specifically related to the Project, in each case under this clause (iii) only with the Owner's prior written approval, and only for that portion of their time directly required for the Work.
- 9.2.3 Fringe benefit costs paid or incurred by the CM/GC for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining contracts and, for personnel not covered by such contracts, 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 Articles 9.2.1 through 9.2.2.

9.3 SUBCONTRACT COSTS:

9.3.1 CM/GC's actual payment to Subcontractors pursuant to CM/GC's contract with such Subcontractor for the Work on the Project. No amount paid by or payable to any such Subcontractor other than the fixed or cost reimbursement price of its subcontract shall be included in the Cost of the Work, unless otherwise approved in writing by the Owner.

9.4 COSTS OF MATERIALS AND EQUIPMENT INCORPORATED IN THE WORK OR STORED ON SITE:

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

9.4.2 Costs of materials in excess of those actually installed, but required to provide reasonable allowance for waste and for spoilage. Unused excess materials, if any, shall be delivered to the Owner at the completion of the Work or, at the Owner's option, shall be sold by the CM/GC. Any sale shall be commercially reasonable and CM/GC shall provide accounting for such a sale within 15 Days of the transaction. Net amounts realized, if any, from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

9.5 COSTS OF MISCELLANEOUS EQUIPMENT AND OTHER ITEMS; EQUIPMENT RENTAL CHARGES:

9.5.1 Costs, including transportation, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment, and hand tools not customarily owned by the construction workers, which are provided by the CM/GC at the site and fully consumed in the performance of the Work; and cost less salvage value on such items if not fully consumed, whether sold to others or retained by the CM/GC; provided that the Owner at the Owner's option may require that CM/GC deliver to the Owner (at no charge) at the end of the Project any of such items procured for this Project. Cost for items previously used by the CM/GC shall mean fair market value. CM/GC shall charge no additional administrative or other mark-up for purchased items. The CM/GC shall document all small tools purchased for the Project via invoices in monthly billing, and shall document the disposition of small tools which have an individual price that exceeds \$100. A copy of such disposition log shall accompany the payment application whenever these items are included in the application.

9.5.2 Rental charges for temporary facilities, machinery, equipment, and hand tools not customarily owned by the construction workers, which are provided by the CM/GC at the site, whether rented from the CM/GC or others, and costs of transportation, installation, minor repairs and replacements, dismantling and removal thereof. Rates and quantities of equipment rented shall be according to industry standards, shall not exceed 100% of the rental rates published from time to time by the American Association of Equipment dealers in effect at the time of rental, shall not exceed acquisition costs, and for individual items exceeding \$10,000, will be subject to the Owner's prior approval. CM/GC shall deliver to the Owner a list of published rates at the Owner's request. For all items rented or leased, the CM/GC shall charge the Owner only the rental charge incurred by CM/GC with no additional administrative or other

mark-up. CM/GC shall make efforts and use its best skills and judgment to procure equipment in the most expeditious and economical manner consistent with the interest of the Owner. Efforts shall include, but not be limited to, providing the Owner with a rent/buy analysis so that the Owner may elect for CM/GC to procure the item in lieu of rental if the facility at issue is expected to be rented for six months or longer. Such rent/buy analysis shall include, when available, a leasing rate commensurate with the expected term of rental of the facility at issue. Inclusions to and exclusions from rental rates will be made in accordance with American Association of Equipment Dealer standards.

9.5.3 Costs of removal of debris from the site.

9.5.4 Cost of long-distance telephone calls, postage and parcel delivery charges, telephone service at the site and reasonable petty cash expenses of the site office, which are solely for the benefit of the Work.

9.6 OTHER COSTS:

9.6.1 Sales, use or similar excise taxes imposed by a governmental authority which are directly related to the Work and for which the CM/GC is liable.

9.6.2 Fees and assessments for the building permit and for other permits, special inspections required and special inspections required shall be paid by the Owner. The CM/GC shall obtain all subcontractors' building permits. Main building permit will be obtained by the Owner.

9.6.3 CM/GC deposits lost for causes other than the CM/GC's fault or negligence.

9.6.4 Costs of drawings, Specifications and other documents required to complete the Work, except as provided by the Owner or Engineer of Record.

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

9.7 SAFETY AND SECURITY: The Cost of the Work shall also include costs which are incurred by the CM/GC in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property.

9.8 COST FOR GENERAL CONDITIONS WORK: CM/GC shall be paid for all services as stated in Exhibit B as payment for the GC Work, including all labor, materials, and direct and indirect costs thereof. To the extent any General Conditions Work is listed in Exhibit B and also otherwise described above in this Article 9, CM/GC's compensation for the same is included in the Cost for GC Work and shall not otherwise be charged as Cost of the Work. The Cost for General Conditions Work, less 5% retainage thereon, shall be paid in installments over the scheduled Construction Phase, commencing with the first progress billing after commencement of the scheduled Construction Phase.

ARTICLE 10
COSTS EXCLUDED FROM COST OF WORK
(NOT TO BE REIMBURSED)

10.1 COSTS EXCLUDED FROM COST OF WORK: The following shall not be included in the Cost of the Work:

- 10.1.1 Salaries and other compensation of the CM/GC's personnel stationed at the CM/GC's principal office or offices other than the site office except as allowed under Articles 9.2.2 and 9.2.3.
- 10.1.2 Expenses of the CM/GC's principal office and offices other than the site office
- 10.1.3 Any overhead and general expenses, except as may be expressly included in Article 9.
- 10.1.4 CM/GC's capital expenses, including interest on the CM/GC's capital employed for the Work.
- 10.1.5 Rental cost of machinery and equipment, except as provided in Article 9.5.2
- 10.1.6 Any cost associated with the Project not specifically and expressly described in Article 9.
- 10.1.7 Costs due to the fault or negligence of the CM/GC, Subcontractors, suppliers, anyone directly or indirectly employed by any of them, or for whose acts any of them may be liable.
- 10.1.8 The cost of correction of any repair work, non-conforming or defective work, or warranty work;
- 10.1.9 Merit, safety, or other incentive payments, bonuses or awards, or any expenses in connection therewith, except as provided in Article 9.6.6;
- 10.1.10 Fines and penalties;
- 10.1.11 Except for Early Work, the cost of Preconstruction Phase Services;
- 10.1.12 The Cost of the Work for GC Work in excess of the Fixed Cost for GC Work;
- 10.1.13 Any costs in excess of the GMP.

ARTICLE 11
DISCOUNTS, REBATES AND REFUNDS

- 11.1** DISCOUNTS, REBATES AND REFUNDS: Cash discounts obtained on payments made by the CM/GC shall accrue to the Owner. Trade discounts, rebates, refunds and net amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the CM/GC shall make provisions so that they can be secured.

- 11.2** AMOUNTS CREDITED TO OWNER: Amounts which accrue to the Owner in accordance with the provisions of Article 11.1 shall be credited to the Owner as a deduction from the Cost of the Work.

ARTICLE 12
SUBCONTRACTS AND OTHER CONTRACTS

12.1 GENERAL SUBCONTRACTING REQUIREMENTS:

- 12.1.1 Other than Work performed pursuant to Articles 12.4 or 12.5 of this Contract, CM/GC shall subcontract the Work to Subcontractors other than the CM/GC and its Affiliates.
- 12.1.2 The CM/GC shall comply with Oregon Administrative Rules (“OAR”) 580-050-0040, OAR 580-050-0041, and OAR 580-050-0042 in all respects for the solicitation of Minority, Women and Emerging Small Business Enterprises. Compliance shall include pass-through requirements for Subcontractor demonstrations of good faith efforts for all subcontract Offer packages, for which set goals shall not be utilized.

The CM/GC shall report to the Owner on the results of the good faith efforts of compliance required in Article 12.1.2 following award of all subcontracts. The CM/GC shall also submit quarterly reports to the Owner listing Work contracted to date with Minority, Women and Emerging Small Business Enterprises.

- 12.1.3 At the time of bid submission, Subcontractor shall include a standard markup percentage above direct labor and material costs to be applied to any change orders.

12.2 CM/GC'S OBLIGATIONS UNDER SUBCONTRACTS:

- 12.2.1 No use of a Subcontractor or supplier shall relieve the CM/GC of any of its obligations or liabilities under the Contract. Except as may expressly otherwise be provided in this Contract, the CM/GC shall be fully responsible and liable for the acts or omissions of all Subcontractors and suppliers including persons directly or indirectly employed by them. The CM/GC shall have sole responsibility for managing and coordinating the operations of its Subcontractors and suppliers, including the settlement of disputes with or between the CM/GC and any such Subcontractor or supplier.
- 12.2.2 The CM/GC shall include in each subcontract and require each Subcontractor to include in any lower tier subcontract, any provisions necessary to make all of the provisions of the Contract Documents fully effective as applied to Subcontractors. CM/GC shall indemnify the Owner for any additional cost based on a subcontractor claim which results from the failure of CM/GC to incorporate the provisions of this Contract in each subcontract. The CM/GC shall provide all necessary Plans, Specifications, and instructions to its suppliers and Subcontractors to enable them to properly perform their work.
- 12.2.3 Retainage from subcontractors:
- a. Except with the Owner's prior approval, payments to Subcontractors shall be subject to retainage of no more than 5%. The Owner and the CM/GC shall agree upon a mutually acceptable procedure for review and approval of payments and retainage for Subcontractors.

- 12.2.4 The Contractor's relations with subcontractors shall comply with Public Contracting Law.

12.3 SUBCONTRACTOR SELECTION:

- 12.3.1 Unless otherwise provided under this Article 12, the selection of all Subcontractors and suppliers shall be made by competitive Offers in a manner that will not encourage favoritism or substantially diminish competition. While not subject to the competitive procurement requirements of ORS Chapter 279, the process shall conform to the following procedures, in general compliance with the open and competitive nature of public procurement, taking into account industry subcontracting practices.
- 12.3.2 CM/GC shall submit to the Owner's Authorized Representative its proposed procurement documents for review and comment before they are issued for solicitation. CM/GC shall consider and respond to all the Owner's comments regarding any proposed Offer packages. As Offers are received, CM/GC shall submit to the Owner an Offer comparison in a mutually agreeable form together with any specific back-up requested by the Owner. The competitive process used to award subcontracts by the CM/GC may be monitored by the Owner's Authorized Representative; provided that such monitoring shall not excuse CM/GC from compliance with the subcontracting requirements of this Contract. CM/GC shall cooperate in all respects with the Owner's monitoring. The Owner's Authorized Representative shall be advised in advance of and be given the opportunity to be present at Offer openings, and CM/GC shall provide him or her with a summary or abstract of all Offers in a form acceptable to the Owner's Authorized Representative, and copies of particular Offers if requested, prior to CM/GC's selection of Offerors. Prior to opening Offers, the CM/GC agrees to disclose in writing to the Owner any financial interest it has in any such Subcontractor, supplier or other contracting party whenever such Subcontractor, supplier or contracting party intends to compete on any Project work, directly or indirectly, including whether such party is an Affiliate of CM/GC.
- 12.3.3 The following minimum requirements apply to the Subcontract solicitation process:
- a. Solicitations will be advertised at least 10 Days prior to opening in at least one newspaper of general circulation in the area where the contract is to be performed and in as many additional issues and publications as the CM/GC may determine.
 - b. Unless specific other prior arrangement has been made with the Owner, all Offers will be written, and submitted to a specific location at a specific time. CM/GC shall time-stamp all Offers as received. Subcontractors must be qualified to perform the Work for this Project by being appropriately registered with the State of Oregon Construction Contractors Board.
 - c. If fewer than three (3) Offers are submitted in response to any solicitation (inclusive of any Offer submitted by CM/GC), prior written approval by the Owner shall be required to accept the Offer.
 - d. CM/GC may develop and implement a prequalification process for particular solicitations; followed by selection of successful Offers among those Offerors that CM/GC determines meet the prequalification standards, with the Owner's prior written approval of such prequalification process.

- e. CM/GC shall comply, and require Subcontractor compliance with, State of Oregon Bureau of Labor & Industries prevailing wage rates as specified in the RFP.
- f. The Owner may at its sole discretion, require CM/GC to re-solicit for Offers based on the same or modified documents.
- g. CM/GC shall review all Offers and shall work with Offerors to clarify Offers, reduce exclusions, verify scope and quantities, and seek to minimize work subsequently awarded via the Change Order process.
- h. The CM/GC will document any and all discussions, questions and answers, modifications and responses from any Offeror and ensure that the same are distributed to all Offerors, and the Owner shall be entitled to inspect such documentation on request.
- i. CM/GC shall determine the lowest Offer for each solicitation that meets CM/GC's reasonable performance standards for the components of the Work at issue; provided that if CM/GC determines it is unable to execute a suitable subcontract with such Offeror, CM/GC may, with the Owner's prior approval, execute a subcontract with the second-lowest Offeror pursuant to Article 12.3.4 below.

12.3.4 Under special circumstances and only with prior written authorization by the Owner, Work may be subcontracted on other than a low price basis, including without limitation, through competitive negotiation. As a condition to its authorization, the Owner may require CM/GC's agreement to establish and implement qualification and performance criteria for Offerors, including a scoring system within requests for proposals. Examples include: where there are single fabricators of materials; special packaging requirements for Subcontractor work; design-build work or, where an alternative contracting method can be demonstrated to clearly benefit the Owner.

12.3.5 CM/GC shall notify the Owner in writing in advance before award of any proposed Subcontract, which notice shall include summaries in a form acceptable to the Owner of all Offers received for the Subcontract at issue. The Owner reserves the right to disapprove any proposed Subcontractors, suppliers and Subcontract or supply contract awards, based on legal standards of responsibility. The Owner shall not unreasonably disapprove any proposed Subcontractor or supplier and increased costs due to the Owner's disapproval shall be cause for an increase in the GMP.

12.3.6 CM/GC's subcontracting records shall not be considered public records; provided, however, that the Owner and other agencies of the State shall retain the right to audit and monitor the subcontracting process in order to protect the Owner's interests.

12.4 CM/GC FIELD WORK:

12.4.1 The CM/GC or its Affiliate may provide CM/GC Field Work required to complete the Project with its own forces, without the necessity of subcontracting such work.

12.4.2 Except as provided in Article 12.4.1, any other portion of the Work proposed to be performed by CM/GC or any Affiliate, including without limitation provision of any materials, equipment, or supplies, shall be subject to the provisions of Article 12.5.

12.5 SUBCONTRACTING BY CM/GC:

12.5.1 Except to the extent otherwise approved in advance in writing by the Owner's Authorized Representative, the CM/GC or its Affiliates may submit an Offer in accordance with Article 12.3 to do Work with its own forces, provided at least 50% of the labor by such work unit is performed by employees of the CM/GC or such Affiliate.

12.5.2 For those items for which the CM/GC or any of its subsidiaries intends to submit an Offer, such intent must be publicly announced with the solicitation for Offers required by Article 12.3.1, and the Owner notified in writing. All Offers for this work shall be delivered to the Owner and publicly opened by the Owner at an announced time, date, and place.

12.6 PROTESTS: CM/GC, acting as an independent contractor, shall include in the competitive process to award all subcontracts, a protest process for Subcontractors and suppliers that are competing Offerors, which process shall be subject to approval by the Owner. CM/GC shall be solely responsible for resolving the procurement protests of Subcontractors and suppliers. CM/GC shall indemnify, defend, protect and hold harmless the Owner from and against any such procurement protests and resulting claims or litigation. CM/GC shall act as an independent contractor, and not an agent of the Owner, in connection with any procurement protest. The provisions of this Article 12 are solely for the benefit of the Owner, and do not grant any rights or remedies (including third party beneficiary rights) to any Offer or other protester, in connection with any procurement protest or claim.

12.7 NOTICE OF CLAIM: Persons claiming to have supplied labor or materials for the performance of the work provided for in a public contract and claiming a right of action on the Contractor's payment bond must provide notice pursuant to ORS 279C.605.

ARTICLE 13 **ACCOUNTING RECORDS**

13.1 ACCOUNTING; AUDIT ACCESS: The CM/GC shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under this Contract; the accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's representatives, including the Oregon Secretary of State accountants and auditors, shall be afforded reasonable and regular access to the CM/GC's records, books, correspondence, instructions, drawings, receipts, subcontracts, purchase orders, vouchers, memoranda and other data relating to this Contract, and the CM/GC shall preserve these for a period of three years after final payment, or for such longer period as may be required by law.

13.2 PERIODIC AND FINAL AUDITS: The Owner may, at its discretion, perform periodic audits of the Cost of the Work and any other reimbursable costs associated with the Project. The Owner intends to conduct a final audit of reimbursable costs prior to the Contract closeout. The CM/GC shall cooperate fully with the Owner in the performance of such audits. Disputes over audit findings or conclusions shall be subject to the process set forth in Article 15.4.

ARTICLE 14 **PROGRESS PAYMENTS**

14.1 CONTRACT AMOUNT: The Owner will pay the CM/GC the Contract Amount for the performance of the Pre-Construction Phase Services and Construction Phase Services. The Contract Amount is guaranteed by the CM/GC not to exceed the GMP as adjusted by Change

Orders. Costs incurred by the CM/GC in performing the Pre-Construction Phase Services and Construction Phase Services that would cause the GMP to be exceeded shall be paid by the CM/GC without reimbursement by the Owner. In the event that the Contract Amount is less than the GMP, the savings shall accrue to the Owner. The Owner will pay the CM/GC for the Pre-Construction Phase Services and Construction Phase Services in accordance with the following.

- 14.1.1 **Pre-Construction Phase Services:** The Owner will pay the CM/GC for all Pre-Construction Phase Services performed under the Contract based on (a) the reasonable and actual number of hours expended multiplied by the hourly rate for those items compensated on an hourly basis, or (b) the reasonable and actual number of months or portion thereof multiplied by the monthly rate for those items compensated on a monthly basis, or (c) the lump sum amounts for any items compensated on a lump sum basis. The amount of the Pre-Construction Costs represents the entire cost of completing the Pre-Construction Phase Services in accordance with all Contract requirements and further includes all CM/GC mark-up, including but not limited to overhead and profit. The CM/GC Fee percentage is inapplicable to Pre-Construction Phase Services. Cost incurred by the CM/GC in performing the Pre-Construction Phase Services that would cause the maximum Not To Exceed amount of Pre-Construction Costs to be exceeded shall be paid by the CM/GC without the reimbursements by the Owner. In the event that the total amount payable to the CM/GC for Pre-Construction Phase Services is less than the Pre-Construction Costs Not To Exceed amount, the savings shall accrue to the Owner. Except to the extent that the parties may expressly agree to the contrary in the GMP Amendment, no additional compensation for Pre-Construction Phase Services shall be payable to the CM/GC for Pre-Construction Services performed after execution of the GMP Amendment.
- 14.1.2 **Construction Phase Services:** The Owner will pay the CM/GC for all Construction Phase Services performed under the Contract based on (a) the Cost of the Work, plus (b) the reasonable and actual costs of Bonds and Insurance, plus (c) the CM/GC Fee as adjusted in accordance with Article 14.4. In the event that the Cost of the Work includes Pay Items for which the CM/GC will be compensated on a cost reimbursable basis, and subject to any restrictions or limitations the Owner places on such Pay Items, including but not limited to “not-to-exceed” amounts for discrete Pay Items.
- 14.2** PROGRESS PAYMENTS: Progress payments shall be made in accordance with Article 14.1.1 for Pre-Construction Phase Services and Article 14.1.2 for Construction Phase Services. A progress payment shall not be considered as acceptance or approval of any part of the Work, and shall not relieve the CM/GC of responsibility for defective Materials or workmanship.
- 14.3** CALCULATION OF PRE-CONSTRUCTION PHASE SERVICES WORK COMPLETED: Applications for payment for Pre-Construction Phase Services Work shall show the total hours worked for services that are paid on an hourly basis. Lump sum unit prices shall be paid based upon receipt of the required deliverables.
- 14.4** CALCULATIONS OF CONSTRUCTION PHASE SERVICES WORK COMPLETED:
- a. **Lump Sum Work:** Applications for payment for lump sum unit priced Work shall show the percentage of completion of each portion of the Work at the end of the period covered by the application for payment. The percentage of completion

shall be the share of the Early Work Price (for Early Work) or GMP allocated to that portion of the Work in the Owner approved Schedule of Values. The amounts to be allowed for lump sum Pay Items in progress payments shall not exceed the reasonable value of the Work, as determined by the Owner.

- b. Unit Priced Work: Payment for all unit priced Work shall be measured according agreed upon provisions in either the early work or GMP Amendments.
- c. Cost Reimbursable Work: Payment for all Work compensated on a cost reimbursable basis shall be based on the reasonable and actual costs incurred by the CM/GC subject to any restrictions or limitation the Owner places on such Pay Items, including but not limited to NTE amounts for discrete Pay Items.
- d. Extra Work and Force Account Work: The Owner will make payments for Extra Work and Force Account similar to Cost Reimbursable Work as outlined in Article 14.4(c).

14.4.1 Calculation of Monthly Payment: Subject to other provisions of the Contract Documents, the amount of each progress payment for Construction Phase Services Work shall be computed by the Owner as follows:

- a. Take that portion of the Early Work Price of GMP properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work under the Schedule of Values by the share of the Early Work Amendment or GMP allocated to the portion of the Work in the Schedule of Values. Pending final determination of cost to the Owner or changes in the Work, amounts not in dispute shall be included.
- b. Add that portion of the Early Work Amendment or GMP properly allocable to Materials and Equipment delivered and suitably stored.
- c. Add the CM/GC Fee. The portion of the CM/GC Fee payable shall be an amount that bears the same ratio to CM/GC Fee as sum of the amounts in the two preceding Clauses bears to the lump sum total for each Early Work Amendment and GMP Amendment, but in no event causing the total CM/GC Fee payments to exceed the total, previously fixed CM/GC Fee identified in the Early Work Amendment or GMP Amendment.
- d. Add that portion of the actual, reimbursable bonds and insurance costs.
- e. Subtract the aggregate of previous payments made by the retained by the Owner.
- f. Subtract the shortfall, if any, indicated by the documentation required substantiating prior applications for payment, or resulting from errors subsequently discovered by the Owner in such documentation.
- g. Subtract an amount for which the Owner has withheld or denied payment as provided by the Contract Documents.
- h. Subtract 5.0% retainage on the entire progress payment.

14.5 DEDUCTIONS FROM MONIES DUE: Without limiting the Owner's rights to withhold payment as set forth elsewhere in this CM/GC Contract, the Owner may deduct from monies due or to become due to the CM/GC for: (a) amounts representing price adjustments authorized under the commodity escalation/de-escalation provisions; (b) amounts representing recoupment of damages, including but not limited to liquidated damages; (c) amounts assessed by Authorities (e.g., fines and penalties) for which the CM/GC is responsible under the terms of the Contract or by Law; (d) amounts the Owner is compelled by court order or other legal mandate to withhold and/or tender to Authorities or third parties; (e) amounts as reimbursement for the Owner payments made on behalf of the CM/GC or to meet the CM/GC's obligation, as

authorized under terms of the Contract; and (f) any other amounts authorized under the Contract or by Law to be deducted or withheld.

- 14.6** PROMPT PAYMENT, CONTRIBUTIONS, LIENS, AND WITHHOLDING TAXES: Pursuant to ORS 279C.505(1), Contractor shall (a) make payment promptly, as due, to all persons supplying to the contractor labor or material for the performance of the work provided in the contract; (b) pay all contributions or amounts due the Industrial Accident Fund from the contractor or subcontractor incurred in the performance of the contract; and (c) not permit any lien or claim to be filed or prosecuted against the state or the Owner, municipality, municipal corporation, or subdivision thereof, on account of any labor or material furnished.

ARTICLE 15 **FINAL PAYMENT**

- 15.1** FINAL PAYMENT ACCOUNTING: CM/GC shall submit to the Owner a final detailed accounting of the Cost of the Work together with CM/GC's final application for payment.
- 15.2** CALCULATION OF FINAL PAYMENT: The amount of the final payment shall be calculated as follows:
- 15.2.1 Take the sum of the CM/GC Fee, plus the Preconstruction Fee, plus the actual Cost of the Work substantiated by the CM/GC's final accounting. Said sum shall not exceed the GMP.
 - 15.2.2 Subtract amounts, if any, for which the Owner's Authorized Representative withholds, in whole or in part, approval of payment.
 - 15.2.3 Subtract the aggregate of previous payments made by the Owner to CM/GC. If the aggregate of previous payments made by the Owner exceeds the amount due the CM/GC, the CM/GC shall reimburse the difference to the Owner within 30 Days with interest at the rate applicable to the Owner payments.
- 15.3** FINAL PAYMENT REVIEW: The Owner or its accountants will review and report in writing on the CM/GC's final accounting within 30 Days after delivery of the final accounting by the CM/GC. Based upon such Cost of the Work as the Owner or the Owner's accountants report to be substantiated by the CM/GC's final accounting, and provided the other conditions of this Contract have been met, the Owner's Authorized Representative will, within 10 Days after receipt of the written report of the Owner's accountants, either issue to the Owner an approval of CM/GC's final application for payment with a copy to the CM/GC or notify the CM/GC and the Owner in writing of the Owner's Authorized Representative's reasons for withholding approval of any part of the application for payment, which disapproval shall include the Owner's Authorized Representative's estimate of the amount that is due Contractor under the application for payment.
- 15.4** PAYMENT DISPUTES: If the Owner's accountants report the Cost of the Work as substantiated by the CM/GC's final accounting to be less than claimed by the CM/GC or if the Owner's Authorized Representative declines to approve any duly submitted payment request by CM/GC, the CM/GC shall be entitled to demand a review by the Owner's highest contracting authority of the disputed amount. Such demand shall be made by the CM/GC within 30 Days after the CM/GC's receipt of a copy of the rejection of the application for payment; failure to

demand additional review within this 30-Day period shall result in the substantiated amount reported by the Owner's accountants becoming binding on the CM/GC. In addition, if the Owner or any other state agency performs a subsequent audit of the Cost of the Work and determines any item therein to have been unsubstantiated or that CM/GC was otherwise overpaid, CM/GC shall have 30 Days after delivery of request for reimbursement by the Owner to demand additional review by the Owner's highest contracting authority; failure to make such demand within this 30 Day period shall result in the requested reimbursement becoming unconditionally due and payable by CM/GC. Pending a final resolution, the Owner shall pay the CM/GC the amount of the application for payment approved by the Owner's Authorized Representative.

- 15.5** EFFECT OF PAYMENT: Neither approval of an application for payment, a progress payment, release of retainage, or final payment, or partial or entire use or occupancy of the Project by the Owner shall constitute acceptance of work not conforming to the Contract Documents, or waiver of the right to assert overpayment.
- 15.6** PROMPT PAYMENT POLICY, PROGRESS PAYMENTS, RATE OF INTEREST: In accordance with ORS 279C.570, all payments due on a public improvement contract and owed by the Contracting Agency shall be paid promptly.
- 15.7** RETAINAGE: The withholding of retainage by a contractor or subcontractor shall be in accordance with ORS 279C.550 et seq, ORS 701.420, and ORS 701.430.

ARTICLE 16

TERMINATION OR SUSPENSION

- 16.1** OWNER'S RIGHT TO TERMINATE PRIOR TO EXECUTION OF GMP AMENDMENT: Prior to execution by both parties of the GMP Amendment, the Owner may terminate this Contract at any time without cause. Upon such termination, the amount to be paid to the CM/GC shall not exceed the Preconstruction Fee payable to the date of termination, together with amounts payable for Early Work if an Early Work Amendment has been executed. If the Owner terminates prior to the execution of the GMP Amendment, the Owner shall be entitled to copies of, and shall have the right to use, all work product of CM/GC and its Subcontractors performed to the date of termination, and CM/GC shall deliver copies of the same to the Owner on request.
- 16.2** OWNER'S TERMINATION FOR CONVENIENCE AFTER GMP AMENDMENT: After the GMP Amendment is executed by both parties, the Contract may be terminated by the Owner without penalty in which case CM/GC shall be entitled to payment of the amount stated in Article 16.1 together with the actual Cost of the Work, plus the CM/GC's Fee prorated based on the actual Cost of the Work to the date of termination, but in any event not in excess of the GMP. If the Owner terminates after the execution of the GMP Amendment, the Owner shall be entitled to copies of and shall have the right to use all work product of CM/GC and its Subcontractors performed to the date of termination, and CM/GC shall deliver copies of the same to the Owner on request.
- 16.3** OWNER'S TERMINATION FOR CAUSE: In the event of termination of this Agreement by the Owner for cause, the amount, if any, to be paid to the CM/GC after application of the Owner's rights at law shall not exceed the amount the CM/GC would be entitled to receive under Article 16.2.

- 16.4** ADDITIONAL DEFAULTS: The following shall also be considered defaults for which the Contract may be terminated.
- 16.4.1 The CM/GC no longer holds the licenses or certificates required to perform the Work or any portion thereof.
- 16.4.2 The CM/GC also fails to perform any agreed-upon portion of the Work as to endanger the CM/GC's performance under the Contract in accordance with its terms, and such breach, default or failure is not cured within 30 days after written notice.
- 16.4.3 The CM/GC made knowing, reckless, or negligent misrepresentations, concealed facts, or failed to disclose information in the CM/GC's proposal. Such actions shall constitute fraudulent inducements, and shall entitle the Owner to recover reliance damages, in addition to any other available remedies to which it may show itself entitled.
- 16.5** CM/GC TERMINATION FOR CAUSE: CM/GC acknowledges that disputes regarding payments and Change Orders may occur as part of the CM/GC process, and that the Owner's declining to pay disputed amounts shall not be grounds for suspension of the Work or termination for cause by CM/GC. If CM/GC terminates this Contract for the Owner's material breach, the amount to be paid to CM/GC shall not exceed the amount CM/GC would have been entitled to receive under Article 16.2 above through termination and demobilization from the Project, with the CM/GC Fee prorated based on the actual Cost of the Work through the date of termination.
- 16.6** ASSIGNMENT OF SUBCONTRACTS: Each subcontract and supply contract for any portion of the Work is hereby irrevocably assigned by the CM/GC to the Owner, provided that such assignment is effective only after termination of this Contract by the Owner, and only for those subcontracts and supply contracts which the Owner accepts by notifying the Subcontractor/supplier and CM/GC in writing. For those subcontracts and supply contracts accepted by the Owner, if the Work has been suspended for more than 30 Days, the Subcontractor's/supplier's compensation shall be equitably adjusted for increases in cost resulting from the suspension. CM/GC shall include a provision in each subcontract and supply agreement whereby the Subcontractor/supplier acknowledges the Owner's rights under this Article 16.6. with respect to any subcontracts/supply contracts that are not accepted by the Owner.
- 16.7** QUALITY OF WORK: In the event of the Owner's termination of the Contract, regardless of the reason, the CM/GC shall remain responsible for the quality of the Work performed through the date of termination.

ARTICLE 17 **REPRESENTATIONS AND WARRANTIES**

- 17.1** REPRESENTATIONS: CM/GC represents and warrants to the Owner as of the effective date of this Contract:
- 17.1.1 It is qualified to do business as a licensed general contractor under the laws of the State of Oregon, and has all requisite corporate power and corporate authority to carry on its business as now being conducted;
- 17.1.2 It has full corporate power and corporate authority to enter into and perform the Contract and to consummate the transactions contemplated hereby; CM/GC has duly

and validly executed and delivered the Contract to the Owner and that the Contract constitutes the legal, valid and binding obligation of CM/GC, enforceable against CM/GC in accordance with its terms, except as enforceability may be limited or affected by applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting creditors' rights generally and by general principles of equity (regardless of whether enforceability is considered in a proceeding in equity or at law);

- 17.1.3 CM/GC's execution and delivery of the Contract and the consummation of the transactions contemplated hereby will not conflict with or result in a material breach of any terms or provisions of, or constitute a material default under, (i) CM/GC's Articles of Incorporation or Bylaws; (ii) any note, bond, mortgage, indenture, license, lease, contract, commitment, agreement or other instrument or obligation to which CM/GC is a party or by which CM/GC may be bound; or (iii) any statute, order, writ, injunction, decree, rule or regulation applicable to CM/GC;
- 17.1.4 No material consent, approval, authorization, declaration or other order of, or registration or filing with, any court or regulatory authority or any third person is required for the valid execution, delivery and performance of the Contract by CM/GC or its consummation of the transactions contemplated hereby;
- 17.1.5 There is no action, proceeding, suit, investigation or inquiry pending that questions the validity of the Contract or that would prevent or hinder the consummation of the transactions contemplated hereby; and
- 17.1.6 The CM/GC's Project Manager and Assistant Project Manager identified in Article 5.6 are duly appointed representatives and each has the authority to bind the CM/GC to any and all duties, obligations and liabilities under the Contract Documents and any Amendments thereto;
- 17.1.7 The CM/GC certifies that all subcontractors performing Work described in ORS 701.005(2) (i.e., construction Work) will be registered with the Construction Contractors Board or licensed by the State Landscape Contractors Board in accordance with ORS 701.035 to 701.055 before the subcontractors commence Work under the Contract.
- 17.2** TAX COMPLIANCE CERTIFICATION: The individual signing on behalf of the CM/GC hereby certifies and swears under penalty of perjury that s/he is authorized to act on behalf of the CM/GC, s/he has authority and knowledge regarding the CM/GC's payment of taxes, and to the best of her/his knowledge, the CM/GC is not in violation of any Oregon tax laws. For purposes of this certification, "Oregon Tax Laws" are those tax laws listed in ORS 305.380(4), namely ORS Chapters 118,314,316,317,318,320, 321 and 323 and section 10 to 20, Chapter 553, Oregon Laws 1981, as amended by Chapter 16, Oregon Laws 1982 (first special session); the elderly rental assistance program under ORS 310.630 to 310.706; and any local taxes administered by the Oregon Department of Revenue under ORS 305.620.

ARTICLE 18 MISCELLANEOUS

- 18.1** HEADINGS: The headings used in the Contract are solely for convenience of reference, are not part of the Contract and are not to be considered in construing or interpreting the Contract.

- 18.2** MERGER: The Contract Documents constitute the entire contract between the parties. No waiver, consent, modification or change of terms of the Contract shall bind either party unless in writing and signed by both parties. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. There are no understandings, agreements, or representations, oral or written, not specified herein regarding the Contract. CM/GC, by signature of its representative, hereby acknowledges that it has read the Contract, understands it and agrees to be bound by its terms and conditions.
- 18.3** EXEMPTION FROM COMPETITIVE BIDDING: The parties acknowledge that the Contract has been awarded under an exemption from competitive bidding requirements pursuant to ORS 279C.335.
- 18.4** EMPLOYEE DRUG TESTING PROGRAM: The CM/GC certifies that:
- 18.4.1 It has an employee drug-testing program complying with the requirements of ORS 279C.505 in place and shall maintain such program for the duration of the Contract.
- 18.4.2 It shall include in each of its subcontracts a requirement that the Subcontractor either maintain such a program or participate in the CM/GC's program for the duration of the subcontract.
- 18.5** NONDISCRIMINATION: The CM/GC certifies that:
- 18.5.1 In compliance with ORS 279A.110, the CM/GC will not discriminate against Minority, Women or Emerging Small Business Enterprises in obtaining any subcontracts.
- 18.5.2 It shall not discriminate on the basis of race, color, nation origin or sex in the performance of the Contract and in the award of subcontracts.
- 18.6** JOINT VENTURES AND PARTNERSHIPS: If the CM/GC is a joint venture or partnership, each joint venture member or partner is executing this CM/GC Contract on behalf of and thereby binds both itself and the CM/GC, and each joint venture member or partner and the CM/GC shall be jointly and severally liable under this CM/GC Contract.
- 18.7** NOTICES: Notices to be given hereunder shall be given in writing by personal delivery, facsimile, or mailing the same, postage prepaid, to the CM/GC or the Owner at the addresses or numbers set forth in Articles 5.6 and 5.8, or as either Party may hereafter indicate pursuant to this Section. Any notice so addressed and mailed shall be deemed to be received five (5) Calendar days after the date of the mailing. Any notice delivered by facsimile shall be deemed to be received when confirmation of successful transmission is generated by the transmitting machine. To be effective against the Owner, such facsimile transmission must be confirmed by telephone notice to the Owner for the Project. Any notice by personal delivery shall be effective as to the CM/GC upon the delivery into the possession of one of the CM/GC's designated personnel, and as to the Owner, upon delivery to the Owner's designated Project Manager. Regular, pay-to-day communications may be transmitted through one of the methods set forth above, in person, by e-mail, or by other similar electronic transmission.
- 18.8** DISCLOSURE OF TAX IDENTIFICATION NUMBER: The CM/GC shall provide its federal tax ID number to the Owner. This number is required pursuant to ORS 305.385. The Tax Identification Number provided pursuant to this authority will be used for the administration of State, federal and local tax laws.

- 18.9** SEVERABILITY: The parties agree that if any term or provision of the CM/GC Contract is declared by a court of competent jurisdiction to be illegal or otherwise invalid, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if the Contract did not contain the particular term or provision held to be invalid.
- 18.10** NO WAIVER: The failure of the Owner to enforce any provision of the Contract, shall not constitute a waiver by the Owner of the Provision or any other provision of the Contract.
- 18.11** MEDIA CONTACTS; CONFIDENTIALITY: Unless otherwise specifically authorized in writing, the CM/GC shall provide no news release, press release, or any other statement to a member of the news media regarding this Project without the Owner's prior written authorization. Furthermore, except in the case where the Owner specially authorizes disclosure of the Owner's confidential information in writing, the CM/GC shall maintain the confidentiality of the Owner's information pertaining to the Project, unless withholding or such information would violate the law, create risk of significant harm to the public or prevent the CM/GC from establishing a claim to defense in an adjudicatory proceeding. The CM/GC shall require of its Subcontractors similar agreements to maintain confidentiality of the Owner's information.
- 18.12** CONFLICT OF INTEREST: The CM/GC shall not engage in any activity that would create a "Conflict of Interest" for or on behalf of the Owner, as a "Conflict of Interest" is contemplated under the Owner policy.
- 18.13** OWNER AND USE OF WORK PRODUCT: All Work products of the CM/GC arising from performance of the Contract shall be exclusive property of the Owner.
- 18.14** MAXIMUM HOURS, HOLIDAYS AND OVERTIME: Pursuant to public contracting laws, all employers, including the CM/GC, shall comply with laws regulating hours of labor and time limitations on claims for overtime.
- 18.15** PAYMENT FOR MEDICAL CARE: Pursuant to ORS 279C.530(1), Contractor shall promptly, as due, make payments to any person, co-partnership, association or corporation furnishing medical, surgical and hospital care services or other needed care and attention, incident to sickness or injury, to the employees of contractor, of all sums that the contractor agrees to pay for the services and all monies and sums that contractor collected or deducted from wages of employees under any law, contract or agreement for the purpose of providing or paying for services.
- 18.16** HOURS OF LABOR: "Pursuant to ORS 279C.520, a person employed under this Contract may not be employed more than 10 hours in any one day, or 40 hours in any one week except when the law allows otherwise.
- 18.17** LATE PAYMENT: Pursuant to ORS 279C.515(2), if the contractor or a first-tier subcontractor fails, neglects, or refuses to make payment to a person furnishing labor or materials in connection the Contract within thirty (30) days after receipt of payment from the contracting agency or a contractor, then the Contractor or first-tier subcontractor shall owe the person the amount due plus interest charges commencing at the end of the 10-day period that payment is due under ORS 279.580(4) and ending upon final payment, unless payment is subject to a good faith dispute as defined in ORS 279C.580.

- 18.18** CLAIMS: Pursuant to ORS 279C.515(1), if the Contractor fails, neglects, or refuses to make prompt payment of any claim for labor or services furnished to the contractor or a subcontractor by an person in connection with the public improvement contract as the claim becomes due, then the Owner may pay such claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due the Contractor by reason of the Contract.

ARTICLE 19 BONDING AND INSURANCE

- 19.1** INSURANCE REQUIREMENTS: During the term of the Contract, the CM/GC shall maintain in full force from insurers (a) having at least either an AA/A-3 rating by two (2) nationally-recognized rating agencies or an A-VII rating by A.M. Best and Company, and (b) holding a current certificate of authority to transact business of insurance in the State of Oregon, all of the insurance required in this CM/GC Contract.

19.1.1 Pre-Construction Phase Services: Insurance types and amounts as follows:

- a. Prior to the start of any work covered by this Contract, Contractor shall procure and maintain in force, for the entire duration of this Contract, insurance providing coverage for bodily injury and property damage which may arise out of the operations of the Contractor or his subcontractors, employees, agents, assigns or for anyone whose acts any of them may be liable. Such insurance shall have coverage limits equal to or greater than the minimum limits specified by this Contract document.
- b. Contractor shall furnish to the Owner an Accord 25-S certificate of insurance evidencing the existence of all insurance coverages required under section 19 of this Contract prior to the commencement of any work. All insurance policies must contain a provision that states that no coverage will be cancelled, non-renewed, or restrictive endorsements added without written notice to the Owner.
- c. Commercial General Liability Insurance (CGL) shall be provided on an Occurrence Form with coverage limits as shown in this section below. Claims-made coverage and Modified occurrence forms are unacceptable.

Each Occurrence Limit: \$2,000,000
General Aggregate Limit: \$4,000,000
Products/Completed Operations Limit: \$2,000,000
Personal and Advertising Injury Limit: \$2,000,000

Contractor shall endorse the CGL to include the Owner as an "additional insured", including coverage for products and completed operations, and a copy of this endorsement shall accompany each certificate. The additional insured endorsement shall be a CG20 I 0 \1985 edition or its' equivalent.

Contractor's insurance shall be primary and not excess to, or contributory with any insurance coverage provided by the Owner. Contractor's insurance shall be endorsed to provide project specific aggregate limits with respect to the project covered by this contract.

CGL coverage, including products and completed operations coverage, shall be maintained from the date work commences until two years after the work has been completed.

- d. Commercial Automobile Liability Coverage shall be provided at the following limits: Combined Single Limit: \$2,000,000 Automobile Liability coverage shall include coverage for owned, non-owned and hired automobiles and be endorsed naming The Owner as an additional insured and a copy of the Endorsement shall accompany all certificates provided to the Owner.
- e. Worker's Compensation / Employers Liability Insurance: Pursuant to ORS 279C.530(2), all employers, including Contractor, that employ subject workers who work under this Contract in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage, unless such employers are exempt under ORS 656.126. Contractor shall ensure that each of its subcontractors complies with these requirements. All contractors and subcontractors are required to purchase and maintain in force worker's compensation coverage and employer's liability coverage at the following limits:
Worker's Compensation Coverage: Statutory Limits

Federal Acts Coverage (if applicable): Statutory Limits

Employer's Liability Insurance

Each Occurrence Limit: \$1,000,000

Disease - Each Employee: \$1,000,000

Disease - Policy Limit: \$1,000,000

If the work required by this contract or the location of the work specified in this contract constitutes an exposure to the employees of the contractor or his subcontractors under the U.S. Longshoremen and Harbor Workers Act, the Jones Act, or under any laws, regulations or statutes that apply to maritime workers, the contractor shall ensure that proper coverage is purchased and maintained.

Contractor and all Subcontractors shall endorse the Worker's Compensation coverage to provide a "waiver of subrogation" in favor of The Owner.

- f. Commercial Pollution Liability Coverage: (CPL), Contractor and any Subcontractors whose work involves hazardous substance or pollutant remediation work shall provide CPL coverage. CPL coverage is required for abatement work involving, but not limited to, lead, asbestos, PCB's and other hazardous materials.

CPL per occurrence limit: \$2,000,000.

CPL will be endorsed to name the Owner as an "Additional Insured" and coverage shall be provided on an Occurrence Form. Claims Made coverage is unacceptable

- g. **Builder's Risk Coverage:** Owner shall provide a special form builder's risk property insurance coverage, to include earthquake and flood, in the full amount of the project.
- h. **Professional Liability Coverage:** If the Contractor is providing design services, Contractor shall obtain, at Contractor's expense and keep in effect during the term of this contract and two years after completion of this project, Professional Liability Insurance covering damages caused by an error, omission or any negligent acts. Coverage per occurrence shall not be less than a Combined Single limit of \$2,000,000 and an Annual Aggregate of not less than \$4,000,000.

Any other specific liability exposures presented by activities of the Contractor under this CM/GC Contract that may require specific insurance coverages to adequately protect the Owner, shall be the responsibility of the Construction Manager/General Contractor.

19.1.2 **Construction Phase Services:** For Early Work Amendments and GMP Amendment in addition to the coverage of 19.1.1, insurance types and amounts will be negotiated with each Construction Amendment.

19.2 BONDING REQUIREMENTS: Prior to the commencement of Construction Phase Services and in any event not later than execution of the GMP Amendment, the CM/GC shall provide to the Owner full Performance and Payment Bonds in the amount of the GMP Amendment.

If any Early Work Amendment is executed, the CM/GC shall provide Performance and Payment Bonds in the amount of the Early Work Amendment. The CM/GC shall provide to the Owner additional or replacement bonds at the time of execution of any subsequent Early Work Amendment or GMP Amendment, in each case prior to execution of the Amendment and the supplying of labor or Materials for the prosecution of the Work covered by the Amendment, and in each case a sufficient amount so that the total bonded sum equals or exceeds the total Early Work Price or the GMP, as the case may be. In the event of the scope change that increased the GMP, the CM/GC shall provide to the Owner an additional or supplemental bond in the amount of such increase prior to the performance of the additional work.

The CM/GC shall maintain the Performance and Payment Bonds in full force from Sureties licensed to do business in Oregon. The Parties understand and agree that the obligation of the CM/GC's surety for the faithful performance of the Contract pursuant to the requirements of ORS 279C.375.

In accordance with ORS 279C.830(2), the contractor and every subcontractor shall have a public works bond filed with the Construction Contractors Board before starting work on the project, unless exempt under ORS 279C.836(4), (7), (8), or (9).

The remainder of this page is intentionally blank

THIS CONTRACT is executed in two original copies of which one is to be delivered to the CM/GC, and the remainder to the Owner.

CM/GC:

Name of Firm: _____

Address: _____

CM/GC's Federal I.D. #: _____

Construction Contractor's Board Registration No.: _____

Signature of Authorized Representative of CM/GC

Title:

Date _____

OWNER:

Owner's Authorized Representative Name

Signature of Owner's Authorized Representative

Title:

Date _____

APPROVED AS TO LEGAL SUFFICIENCY

EXHIBITS:

Exhibit A – GMP Amendments to CM/GC Contract

Exhibit B – CM/GC Cost Matrix

EXHIBIT A

SAMPLE
GMP AMENDMENT TO CM/GC CONTRACT

THIS AMENDMENT IS BETWEEN:

OWNER: _____

And

CONTRACTOR CONSTRUCTION MANAGER/
GENERAL CONTRACTOR ("the CM/GC"): _____

The Project is: _____

Date of Original CM/GC Contract ("Contract"): _____

Date of this Amendment: _____

The Owner and CM/GC hereby amend the Contract as set forth below. Capitalized terms not otherwise used herein shall have the meanings given in the Contract. Except as amended hereby, the Contract remains in full force and effect.

1. GMP. The parties agree that the GMP for the Project is \$ _____, consisting of the, Estimated Cost of the Work and the CM/GC Fee (stated as a fixed dollar lump sum amount), as follows:

Pre-Construction Services:	\$ _____
Early Work Amendments:	\$ _____
Estimated Cost of Work (Est. COW):	\$ _____
CM/GC Fee (XX% of Est. COW):	\$ _____
CM/GC Contingency:	\$ _____
Owner Contingency:	\$ _____
Bonding + Insurance:	\$ _____
GMP (Total of above categories):	\$ _____

For purposes of determining the GMP, the Estimated Cost of the Work includes the CM/GC's Contingency, the Fixed Cost for GC Work, and the costs of all components and systems required for a complete, fully functional facility.

2. Basis of GMP. The GMP is based on the GMP Supporting Documents attached as Attachments A-C including the, assumptions and exclusions.
3. Plans and Specifications. The Plans and Specifications for the Project are as listed in the GMP Supporting Documents. CM/GC shall perform Construction Phase Services in accordance with the Plans and Specifications and the other Contract Documents.
4. Substantial Completion Date. Notwithstanding any provision in the GMP Supporting Documents to the contrary, the required date for Substantial Completion shall be _____.
5. Liquidated Damage: Liquidated Damages for failure to complete all Work by the Contract Completion Date specified in Article 6.2 shall equal \$1,000.00 per Calendar Day.

THIS CONTRACT is executed in two original copies of which one is to be delivered to the CM/GC, and the remainder to the Owner.

CM/GC:

Name of Firm:

Address:

CM/GC's Federal I.D. #:

Construction Contractor's Board Registration No.:

Signature of Authorized Representative of CM/GC

Title:

Date _____

OWNER:

Name of the Owner's authorized representative

Signature of Owner's Authorized Representative

Title:

Date _____

APPROVED AS TO LEGAL SUFFICIENCY

Attachments:

Attachment A: GMP Breakdown Spreadsheet

Attachment B: Project Schedule

Attachment C:

EXHIBIT B
 CM/GC COST MATRIX

	Direct Cost of Work	General Conditions	CM/GC Fee	Owner Cost
Project Superintendent		X		
Senior Project Manager (for project specific time only)		X		
Project Manager		X		
Assistant Project Manager		X		
Field Foremen		X		
On Site Clerical support		X		
Scheduler (for project specific time only)		X		
MEP Coordinator (for project specific time only)		X		
Safety Coordinator (for project specific time only)		X		
Employee fringes, vacation and sick leave		X		
Project related travel, lodging, meals, per diem, etc.		X		
Jobsite office and storage trailer rental		X		
Job office furniture, equipment and expendables		X		
Job office security and cleaning		X		
Costs for project based vehicles		X		
Postage and Shipping		X		
Project photos		X		
Computers, copiers, Printers, Fax Machines		X		
Document printing		X		
Warranty and correction of non-conforming work	X			
Commissioning coordination		X		
Cost estimating		X		
Value engineering		X		
Temporary toilets		X		
Drinking water		X		
Contractor signage		X		
Safety equipment for CM/GC personnel		X		
First aid supplies & Fire Extinguishers		X		
Substance abuse testing/monitoring		X		
CM/GC mobilization/demobilization		X		
Jobsite security		X		
CM/GC parking/shuttles		X		
Phone & Internet installation & line charges		X		
Telephones, cell phones, radios, pagers		X		

Small tools for CM/GC usage		X		
General Superintendents			X	
Project Executive			X	
CM/GC principal(s) in charge			X	
Payroll/Accounting/ Data Processing			X	
Bonuses			X	
Corporate safety officer			X	
Home office administration			X	
Corporate IT support			X	
Computer Software			X	
Home office payroll costs, fringes, bonuses, etc.			X	
Soils report				X
Initial site survey				X
Special inspections and testing				X
Planning and building permits and fees				X
Developments fees				X
Performance/ payment bond		X		
Subcontractor bonds	X			
Builder's risk insurance				X
General liability insurance		X		
Subcontractor Default Insurance		X		
Contractor Controlled Insurance Program (CCIP)		X		
Construction surveying/building layout	X			
Subcontracts	X			
Wages for trade labor	X			
Labor burden for trade labor	X			
Materials and equipment for site logistics	X			
Rental equipment used on site	X			
Temporary fencing	X			
Barricades	X			
Temporary enclosures	X			
Temporary Stairs	X			
Opening protection	X			
Safety railings and falls protection	X			
Weather protection	X			
Temporary utilities hookup	X			
Temporary utility bills	X			
Periodic cleanup	X			
Dump fees	X			
Final cleanup	X			
Flagging/traffic control	X			
Dust control	X			
Trade permits (is not included in subcontracts)	X			