

**MARION COUNTY
CM/GC CONTRACT**

(CONSTRUCTION MANAGER/GENERAL CONTRACTOR)

THE CONTRACT IS BETWEEN:

OWNER: This Contract is between **Marion County**, a political subdivision of the State of Oregon,

And

(“CM/GC” and, in the Marion County General Conditions for Public Improvement Contracts, September 1, 2014 Edition, referred to as “Contractor”)

The Project is: Sheriff’s Office – Central District Office and Parole & Probation Buildings

**The Architect is:
Carlson Veit Architects PC
3095 River Road North
Salem, OR 97303**

**The Owner’s Authorized Representative is:
Day CPM Services LLC
12745 SW Beaverdam Rd. Ste. #120
Beaverton, OR 97005**

The Owner's Target GMP Range is: \$ TBD

MARION COUNTY

CM/GC CONTRACT

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RECITALS

- A. Owner desires to engage the CM/GC to provide construction services and other services for the Sheriff's Office - Central District Office and Parole & Probation buildings (the "Project").
- B. The CM/GC is the successful proposer in response to Owner's request for proposals (the "RFP").
- C. The CM/GC desires to perform services for Owner.
- D. The work of the Project (the "Work") will be performed in two phases:
 - (i) During the Preconstruction Phase, the CM/GC will perform the pre-construction services (the "Pre-Construction Services") described in Article 3.1. During the Preconstruction Phase, the CM/GC will comply with all terms of the Contract, except those requirements of the Marion County General Conditions applicable only to Construction Phase Services.
 - (ii) During the Construction Phase, the CM/GC will perform all portions of the Work (the "Construction Phase Services"), other than the Pre-Construction Services described in Article 3.1. During the Construction Phase, the CM/GC will comply with all terms of the Contract, without exception. Until Owner and the CM/GC successfully negotiate and execute an Early Work Amendment or the GMP Amendment described in Article 6, the CM/GC has not been awarded the Construction Phase portion of the Work.

AGREEMENT

Owner and the CM/GC agree to give effect to the recitals above by mutually establishing the terms and conditions below, and the promises so exchanged constitute adequate consideration for this Contract.

ARTICLE 1 DEFINITIONS

Except as expressly defined or modified below or elsewhere in this agreement (the "Contract" or this "CM/GC Contract"), all capitalized terms shall have the meanings set forth in Section A of the Marion County General Conditions for Public Improvement Contracts, September 1, 2014 Edition, attached as Exhibit A (the "Marion County General Conditions"). The terms below are expressly defined as follows:

1.1 Affiliate. Affiliate means any subsidiary of the CM/GC, and any other entity in which the CM/GC has a financial interest or which has a financial interest in the 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 that controls the CM/GC).

1.2 Allowances. Allowances means the allowance amounts shown in the GMP Supporting Documents, together with any further allowances the parties may develop as the Project progresses.

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1.3 Amendment. Amendment means a written modification of the Contract (including, without limitation, any change in the GMP to which the parties agree), that is identified as an Amendment, is executed by the CM/GC and Owner's Authorized Representative (as identified on the cover page of this CM/GC Contract), and, if required, approved in writing on behalf of Owner by the County Attorney.

1.4 Business Days. Business Days means every day except Saturday, Sunday, and legal holidays recognized for employees of Owner.

1.5 Change Order. Change Order means a written modification of the Contract under Section D.1 of the Marion County General Conditions, (including, without limitation, any change in the GMP to which the parties agree), that is identified as a Change Order, is executed by Owner's Authorized Representative and CM/GC, if applicable, and, if required, approved in writing by the County Attorney.

1.6 CM/GC Field Work. CM/GC Field Work means customary layout, clean up, supervision, and portions of the Work of a minor nature that are not feasibly part of the subcontracted work because of: exclusions by the Subcontractor that are not resolved through the process described in **Article 11.3.3**, 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, or other similar reasons typically providing cause for "pick-up" or GC Work (as defined in **Article 1.18**) under industry standards; provided, however, that (i) the CM/GC has reasonably determined that the CM/GC doing such portion of the Work using staff and direct resources of the CM/GC is in the best interests of Owner, (ii) the Work is identified as CM/GC Field Work in monthly billings and (iii) the CM/GC receives prior approval of Owner's Authorized Representative as to the scope of the CM/GC Field Work.

1.7 CM Services. CM Services has the meaning given in **Article 3.3** below.

1.8 Construction Documents. Construction Documents has the meaning given in the Marion County Standard Professional Services Contract for Architectural, Engineering & Related Services (the "A/E Contract") for this Project.

1.9 Construction Phase. Construction Phase means the period that begins when Owner executes a GMP Amendment or Early Work Amendment, together with the earlier of (i) issuance by 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.

1.10 Construction Phase Services. Construction Phase Services means all of the Work other than the Preconstruction Phase Services, including Early Work.

1.11 Contract Documents. Contract Documents has the meaning given in Section A of the Marion County General Conditions, and as supplemented by **Article 2.1** below.

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1.12 Costs for General Conditions Work. Costs for General Conditions Work means the sums paid on a cost reimbursable maximum, not-to-exceed price basis as described in **Article 8.8** and as identified in **Exhibit C**, Direct Costs/General Conditions Work Costs Matrix.

1.13 Design Development Documents. Design Development Documents has the meaning given in the A/E Contract for the Project.

1.14 Development Plan and Operations Manual. Development Plan and Operations Manual means the document described in **Article 2.4**.

1.15 Early Work. Early Work means Construction Phase Services authorized by Amendment that the parties agree should be performed before establishing the GMP. Permissible Early Work is 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 before establishing the GMP will materially affect the critical path schedule of the Project.

1.16 Early Work Amendment. Early Work Amendment means an Amendment to the Contract executed by and between the parties to authorize Early Work.

1.17 Fixed Cost for General Conditions Work. Fixed Cost for General Conditions Work or GC Work means a fixed sum identified in Article 8.8 or Exhibit C. [Note: Owner may decide not to fix General Conditions Work costs, but instead may wish to treat them as reimbursable items like all other costs of the Work. If so, this section, and all related sections will be deleted or amended as instructed in Section 8.8.]

1.18 General Conditions Work. General Conditions Work ("GC Work") means (i) the 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 in Exhibit C, and (ii) any other specific categories of Work approved in writing by Owner's Authorized Representative as forming a part of GC Work.

1.19 Guaranteed Maximum Price (the "GMP"). The GMP means the Guaranteed Maximum Price of this Contract, as stated in dollars in the GMP Amendment, as determined in accordance with Article 6, and as the price may be adjusted from time to time pursuant to the provisions of the Contract.

1.20 GMP Amendment. The GMP Amendment means an Amendment to the Contract, issued in the form of Exhibit B and executed by and between the parties, to establish the GMP and identify the GMP Supporting Documents for Construction Phase Services.

1.21 GMP Supporting Documents. The GMP Supporting Documents means the documents referenced in the GMP Amendment as the basis for establishing the GMP and that expressly identify the plans and specifications, assumptions, qualifications, exclusions, conditions, allowances, unit prices, and alternatives that form the basis for the GMP.

1.22 Preconstruction Phase. Preconstruction Phase means the period that begins on the date of this CM/GC Contract and ends upon commencement of the Construction Phase; provided that if

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Owner and the 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.

1.23 Preconstruction Phase Services. Preconstruction Phase Services means all services described in Article 3.1, and any similar services described in the RFP, including such similar services as are described in the CM/GC's response to Owner's RFP to the extent that Owner agrees to the services, but excluding any Early Work.

1.24 Schematic Design Documents. Schematic Design Documents has the meaning given in the A/E Contract for the Project.

1.25 Scope Change. Scope Change means (i) changed site conditions not reasonably inferable from information available to the 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 alternatives, all as approved by Owner under the Contract, beyond that identified or inferable from the GMP Supporting Documents (but in the case of Allowances items, the GMP will increase only if the cost to Owner of the Allowances items exceeds the total amount of the Allowances).

ARTICLE 2 **CONTRACT DOCUMENTS**

2.1 Contract Documents. For purposes of the Project, the document identified as "Marion County Public Improvement Agreement Form" in the Marion County General Conditions means this CM/GC Contract. This CM/GC Contract includes all exhibits attached hereto, which by this reference are incorporated herein.

2.2 Effective Date. The Contract becomes effective on the first date on which every party has signed the Contract and Owner has received all necessary approvals, including approval for legal sufficiency by the County Attorney.

2.3 The Contract; Order of Precedence. This CM/GC Contract, together with the other Contract Documents, forms the entire agreement between the parties. Except as otherwise expressly provided herein, the order of precedence of the Contract Documents is as established in **Section A.3.1** of the Marion County General Conditions. The parties shall look to this order of precedence to resolve inconsistent or conflicting terms among the Contract Documents.

2.4 CM/GC "Best Practices" Guiding Principles. The Development Plan and Operations Manual (the "DPOM") (Attachment 3) is an aspirational working tool used in execution and delivery of the Project. This tool is designed to serve Owner and Owner's representatives, the architect, engineers, the CM/GC, and the array of design sub-consultants and construction sub-contractors that are necessary for the Project.

ARTICLE 3
WORK OF THE CONTRACT

3.1 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 RFP. Commencement of the Construction Phase does not excuse the 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 include CM Services performed during the Preconstruction Phase.

- 3.1.1** The CM/GC shall provide a preliminary evaluation of Owner's program and budget requirements, each in terms of the other.
- 3.1.2** The CM/GC shall provide the following services relating to design and preconstruction tasks:
- (a) The CM/GC shall consult with, advise, assist, and provide recommendations to Owner and the design team on all aspects of the planning and design of the Work.
 - (b) The CM/GC shall jointly schedule and attend regular meetings with the architect and Owner's Authorized Representative. The CM/GC shall consult with Owner, the architect and Owner's Authorized Representative regarding site use and improvements, and the selection of materials, building systems and equipment.
 - (c) The CM/GC shall provide recommendations on construction feasibility; actions designed to minimize adverse effects of labor or material shortages; time requirements for procurement, installation and construction completion; and factors related to construction cost, including estimates of alternative designs or materials, preliminary budgets and possible economies.
 - (d) The CM/GC shall provide continuous in-progress review of 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. The CM/GC shall review these completed schematic development documents, design development documents, and construction documents and timely suggest modifications to improve completeness and clarity.
- 3.1.3** 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 architect and Owner's Authorized Representative to review and for Owner's Authorized Representative to approve.

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- (b) The CM/GC shall coordinate and integrate the preliminary Project schedule with the services and activities of Owner, the architect, and the CM/GC. As design proceeds, the CM/GC shall update the preliminary Project schedule to indicate proposed activity sequences and durations, milestone dates for receipt and approval of pertinent information, submission of a GMP proposal, preparation and processing of shop drawings and samples, delivery of materials or equipment requiring long-lead time procurement, and Owner's occupancy requirements showing portions of the Project that have occupancy priority, provided that the date(s) of substantial completion shall not be modified without 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 Owner's Authorized Representative and the architect.

3.1.4 The CM/GC shall make recommendations to the architect and Owner's Authorized Representative regarding the phased issuance of plans and specifications to facilitate phased construction of the Work, if 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.

3.1.5 The CM/GC shall provide the following services relating to cost estimating using "Target Value Design" estimating principles & techniques:

- (a) The CM/GC shall prepare, for the architect and Owner's Authorized Representative to review and for Owner to approve, a preliminary cost estimate utilizing area, volume or similar conceptual estimating techniques.
- (b) The CM/GC shall provide real time, iterative virtual design and construction (VDC) cost modeling and estimate updates in accordance with the RFP and supporting RFP documents, utilizing collaboration tools and processes throughout the duration of the planning and design phases.
- (c) After the architect prepares and Owner approves schematic design documents, the CM/GC shall prepare for a more detailed estimate with supporting data for the architect and Owner's Authorized Representative to review and for Owner to approve. During the preparation of the Design Development Documents, the CM/GC shall update and refine this estimate at appropriate intervals agreed to by Owner, the architect, Owner's Authorized Representative and the CM/GC.
- (d) After the architect prepares and Owner approves design development documents, the CM/GC shall prepare a detailed estimate with supporting data for the architect and Owner's Authorized Representative to review and for Owner to approve. During the preparation of the construction documents, the CM/GC shall update and refine the detailed estimate at appropriate intervals agreed to by Owner, the architect, Owner's Authorized Representative and the CM/GC.

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- (e) If any estimate submitted to Owner exceeds previously approved estimates or Owner's budget, the CM/GC shall make appropriate recommendations to the architect and Owner's Authorized Representative.
- (f) The CM/GC shall notify Owner and the design team immediately if any construction cost estimate appears to exceed the construction budget.
- (g) The CM/GC shall actively participate in an ongoing, iterative value engineering ("VE") analysis and studies that the parties expect to conduct at intervals consistent with the collaboration best practices and processes outlined in the RFP. The CM/GC acknowledges that VE services are intended to improve the value received by Owner with respect to the first cost and life cycle cost of the Project;
- (h) The CM/GC otherwise shall work with the architect and Owner to develop a GMP within Owner's Target GMP Range (stated on the cover page of this CM/GC Contract) and within Owner's schedule.
- (i) The CM/GC shall prepare and update cash flow forecasts that cover the entire duration of the Project.

For background and further information, the parties shall refer to the outline of anticipated design phases, Target Value Design, cost estimating and the description of collaboration tools and processes. To the extent specified here, the outline and description from the RFP are by this reference incorporated into the Contract.

3.1.6 The CM/GC shall 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 Owner's Authorized Representative and the architect 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. The parties acknowledge and agree that the CM/GC's submission of the list of possible Subcontractors and suppliers is for information and discussion purposes only and not for prequalification. The receipt of such list does not require Owner, Owner's Authorized Representative or the architect to investigate the qualifications of proposed Subcontractors and suppliers. Owner or the architect does not, as a consequence of receiving the list, waive any rights to object later to or reject any proposed Subcontractor, supplier, or method of procurement.
- (b) The CM/GC shall provide input to Owner and the design team regarding the current construction market bidding climate, the status of key subcontract markets, and other local economic conditions. The CM/GC shall determine the

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division of work to facilitate bidding for and awarding of trade contracts, considering such factors as the bidding climate, improving or accelerating construction completion, minimizing trade jurisdictional disputes, and related issues.

- (c) The CM/GC shall advise Owner on subcontracting opportunities for State of Oregon-certified minority-owned, women-owned and emerging small business firms (“MWESBs”).

3.1.7 The CM/GC shall recommend to Owner’s Authorized Representative and the architect a schedule for procuring long-lead time items that will constitute part of the Work 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 the procurement and approval of the schedule by Owner’s Authorized Representative. The CM/GC shall expedite the delivery of long-lead time items.

3.1.8 The CM/GC shall work with Owner in identifying critical elements of the Work that may require special procurement processes, such as prequalifying offerors or alternative contracting methods.

3.2 Construction Phase Services.

3.2.1 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; and to furnish to Owner a complete, fully functional Project, capable of being legally occupied and fully used for its intended purposes upon completion of the Contract (or, with respect to an Early Work Amendment, to furnish such Work as is described in the Early Work Amendment). Construction Phase Services include CM Services performed during the Construction Phase.

3.2.2 Notwithstanding any other references to Construction Phase Services in this Contract, the Contract includes Preconstruction Phase Services only unless (i) the parties execute a GMP Amendment or (ii) the parties execute an Early Work Amendment of the character described below.

3.2.3 The parties may execute one or more Early Work Amendments that identify specific Construction Phase Services that must be performed before establishing the GMP, without exceeding a not-to-exceed budget, a maximum not-to-exceed price, or a fixed price (“Early Work Price”) that is stated in the Early Work Amendment. The Early Work Amendment must include all necessary governmental approvals required for the Early Work. If the Early Work Price is a not-to-exceed budget, then the CM/GC shall perform the Early Work only to the extent that the Cost of the Work,

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together with the CM/GC Fee, does not exceed the Early Work Price. If the CM/GC performs Early Work in accordance with a maximum not-to-exceed price or a fixed price and the CM/GC incurs a cost in excess of the maximum not-to-exceed price or fixed price, respectively, the CM/GC shall complete the Early Work and pay the excess cost without reimbursement. If one or more Early Work Amendments are executed, the CM/GC shall diligently continue to work toward developing a GMP Amendment that is acceptable to Owner and incorporates the Early Work Amendments. If Owner thereafter terminates the Contract before executing a GMP Amendment, the provisions of Section J.5 of the State of Oregon General Conditions apply.

- 3.2.4** Before the Construction Phase begins, and in any event not later than the parties execute the GMP Amendment, the CM/GC shall provide to Owner a full performance bond and a payment security bond as required by Section G of the State of Oregon General Conditions that together are equivalent to the amount of the GMP. If an Early Work Amendment is executed, CM/GC shall provide a bond in the amount of the Early Work Price under the Early Work Amendment. The CM/GC shall provide to Owner additional or replacement bonds at the time the parties execute any subsequent Early Work Amendment or GMP Amendment, in each case before executing the Amendment and before any labor or materials are supplied to perform the Work covered by the Amendment, and in each case in an amount that equals or exceeds the total Early Work Price or the GMP, as the case may be. In the event of a Scope Change (as defined in Section 1.25 of this CM/GC Contract) that increases the GMP, the CM/GC shall provide to Owner an additional or supplemental bond in the amount of the increase before performing the additional Work.
- 3.2.5** As provided in Section C of the Marion County General Conditions, the CM/GC and all subcontractors shall comply with ORS 279C.800 through 279C.870. The Oregon Bureau of Labor and Industries (BOLI) prevailing wage rates that will apply to the Contract shall be the prevailing wage rates that are in effect at the time the first Early Work Amendment is executed or, if there is no Early Work Amendment, then the prevailing wage rates that are in effect at the time the GMP Amendment is executed. Once established, the prevailing wage rates are in effect for the remainder of the Contract. The prevailing wage rates that will apply will be those set forth in the then current version of the following BOLI booklet, together with any amendments to that booklet: **“PREVAILING WAGE RATES for Public Works Contracts in Oregon”**. For purposes of calculating the prevailing wage rates for the Project, the Construction Phase Services take place in Marion County, Oregon.
- 3.2.6** The CM/GC shall perform services needed to satisfy the Oregon Department of Energy 1.5% Solar Energy in Public Building Construction Contracts requirements pursuant to ORS 279C.527 and Oregon Administrative Rules 330-135-0010 to 330-135-0055.

3.3 Construction Management (CM) Services. Throughout the Preconstruction Phase and Construction Phase of the Project, the CM/GC shall provide CM Services, generally consisting of

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coordinating and managing the building process as an independent contractor, in cooperation with Owner, Owner's Authorized Representative, the architect and other designated Project consultants. CM Services include, but are not limited to:

- 3.3.1** Providing all Preconstruction Phase Services described above and as outlined in the RFP documents.
- 3.3.2** Implementing the CM/GC Safety Plan, including ensuring that all Subcontractors, suppliers, and other participants in the Project comply with the plan and reporting any incidents promptly to Owner.
- 3.3.3** Allowing access to the Project site for tours by representatives of Owner, the architect, the engineer, and other personnel as approved by Owner and providing personal protective equipment for tour participants.
- 3.3.4** Developing and delivering schedules, preparing construction estimates, performing constructability review, analyzing alternative designs, studying labor conditions, coordinating and communicating the activities of each of the construction principals (including Owner, Owner's Authorized Representative, the A/E Service Provider [as defined in the A/E Contract], Subcontractors, suppliers and governmental agency representatives assigned to the Project (the "Construction Principals") throughout the Construction Phase to other Construction Principals.
- 3.3.5** Continuously monitoring the Project schedule and recommending adjustments to ensure completion of the Project in the most expeditious manner possible.
- 3.3.6** Working with Owner, Owner's Authorized Representative, and the architect to analyze the design, participate in decisions regarding construction materials, methods, systems, phasing, and costs, and suggest modifications to achieve the goals of providing Owner with the highest quality Project within the budget, GMP and schedule.
- 3.3.7** Providing VE services ongoing throughout the Project. The CM/GC shall develop cost proposals, in the form of additions to or deductions from the GMP, including detailed documentation to support such adjustments, and shall submit such proposals to Owner and the Construction Principals for approval. The CM/GC acknowledges that VE services are intended to improve the value received by Owner with respect to the first cost and life cycle cost of the Project. The CM/GC shall hold and conduct periodic meetings with Owner and the architect to coordinate, update and ensure progress of the Work.
- 3.3.8** Submitting monthly written report(s) to Owner's Authorized Representative. Each report must include, but 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) a monthly Project schedule update, with a narrative explaining any line item changes in the Project schedule and a recovery plan for recuperating schedule delays; (v) work in progress;

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(vi) changes in the Work; (vii) material and equipment delivery status; (viii) man-loading information; and (ix) other information as Owner determines is appropriate. The CM/GC shall provide oral or written updates to Owner as the CM/GC deems appropriate or as Owner requests.

- 3.3.9** Maintaining a daily log containing a record of weather, Subcontractors working on the site, the number of workers, Work accomplished, problems encountered, safety violations and incidents of personal injury and property damage, and other similar relevant data as Owner may reasonably require. The daily log shall be available to Owner and the architect on request.
- 3.3.10** Developing and implementing a system of cost control for the Work that is acceptable to 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 Owner, the architect and the engineer at regular intervals; maintaining an accurate system to propose and account for contingency utilization throughout the Project; maintaining an accurate system to account for usage of Allowances included in the GMP; providing detailed cost information, contingency utilization and Allowances usage to Owner on a minimum of a monthly basis.
- 3.3.11** Cooperating with any and all consultants hired by Owner.
- 3.3.12** Cooperating with inspection authorities and obtaining necessary permits for construction; ensuring close-out of all permits; obtaining temporary certificate(s) of occupancy and a final certificate of occupancy for the Project.
- 3.3.13** Preparing and submitting monthly payment applications for the architect, engineer and Owner to review in accordance with Owner's accounting standards and Project procedures and participating in reviews and reconciliations of monthly payment applications with Owner's staff.
- 3.3.14** Preparing, implementing, and documenting Owner's training program for all building systems and features.
- 3.3.15** Facilitating and participating in Owner's move-in to the Project as required by the Contract Documents.
- 3.3.16** At Owner's request, cooperating and performing warranty and inspection Work for the Project through the expiration date of the applicable warranty period(s).
- 3.3.17** Incorporating commissioning and inspection agents' activities into the Project schedule and coordinating Subcontractors required to participate in the commissioning and inspection process. Cooperating with and supporting the activities of Owner's commissioning agent. Identifying a commissioning team that consists of a CM/GC test engineer and representatives of the major Subcontractors

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to plan, execute, and document commissioning activities in accordance with the Contract Documents.

- 3.3.18** Implementing all other testing activities required by the Contract Documents.
- 3.3.19** 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 4 **RELATIONSHIP AND ROLES OF THE PARTIES**

4.1 Independent Contractor. The CM/GC is an independent contractor and not an officer, employee, or agent of Owner as those terms are used in ORS 30.265.

4.2 Performance of Work. The CM/GC covenants with Owner to cooperate with the architect and Owner's Authorized Representative and to utilize the CM/GC's professional skill, efforts and judgment in furthering the interests of 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 Owner.

4.3 Design Consultants. Owner has a separate contract with the architect related to the Project. Both the CM/GC and the architect shall be given direction by Owner through Owner's Authorized Representative. The CM/GC agrees to support Owner's efforts to create a collaborative and cooperative relationship among the CM/GC, the architect, other Project consultants, and Owner's Authorized Representative.

4.4 Forms and Procedures. 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.

4.5 CM/GC's Project Staff. The CM/GC's Project staff shall consist of the following personnel:

- 4.5.1** Project Director and Project Manager: _____ shall be the CM/GC's Project Director, and _____ shall be the CM/GC's Project Manager. One or both will supervise and coordinate all Construction Phase and Preconstruction Phase Services of the CM/GC and participate in all meetings throughout the Project term, unless otherwise directed by Owner. The CM/GC represents that each of the Project Director and Project Manager has authority to execute Change Orders and Contract Amendments on behalf of the CM/GC.
- 4.5.2** Job Superintendent: If Construction Phase Services are requested and accepted by Owner, _____ shall be the CM/GC's on-site job superintendent throughout the Project term.

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4.6 Key Persons. The CM/GC's personnel identified in Article 4.5 and other key personnel identified in **Exhibit I** to this CM/GC Contract shall be considered Key Persons and shall not be replaced during the Project without the written permission of Owner, which shall not be unreasonably withheld. If the CM/GC intends to substitute personnel, a request must be given to Owner at least 30 days (or such shorter period as permitted by Owner) prior to the intended time of substitution. When replacements have been approved by 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 Owner. The County, at its sole discretion, may deduct \$25,000 from the CM/GC's invoice for each occurrence of replacement of key staff to account for the learning curve to bring new staff up to speed on the project

ARTICLE 5

DATE OF COMMENCEMENT; SUBSTANTIAL AND FINAL COMPLETION

5.1 Notice to Proceed. If Construction Phase Services are added to the Contract as set forth in **Article 3.2**, then a notice to proceed will be issued by Owner to begin the designated or full Construction Phase Services ("Notice to Proceed"). It is anticipated that the Notice to Proceed will be issued in or about the _____. A separate Notice to Proceed shall be issued for any and every Early Work Amendment.

5.2 Completion of Project. The CM/GC shall achieve Substantial Completion of the entire Work no later than _____. The exact date for final completion will be determined during pre-construction and established in the GMP amendment.

5.3 Time is of the Essence. All time limits stated in the Contract Documents are of the essence.

5.4 Time Extensions. Notwithstanding provisions for Contract time extensions in Section D.2 of the Marion County General Conditions, Owner and the CM/GC agree that timely completion of the Work is essential to the success of the Project, and that approval for a time extension shall be granted only as a last resort. The CM/GC agrees to make every effort to recover "lost" time.

ARTICLE 6

FEES, CONTRACT SUM AND GMP

6.1 Fees; Contract Sum; GMP. Owner shall pay the CM/GC the Preconstruction Fee described in Article 6.2. In addition, for each Early Work Amendment executed by the CM/GC and Owner, Owner shall pay the CM/GC, as payment for the Early Work, an amount equal to the sum of the CM/GC Fee attributable to the Early Work, and the actual cost of all Early Work completed and accepted by Owner, but not exceeding the Early Work Price.

If a GMP Amendment is executed, Owner shall pay the CM/GC, as payment for the Work, the "Contract Sum" which shall equal the sum of the Preconstruction Fee, the CM/GC Fee, the actual Cost of the Work including any Early Work, but not exceeding the GMP.

The GMP shall be determined in accordance with the formula set forth below and as described in **Article 6.4**. The "Cost of the Work" is defined in **Article 8**. Costs in excess of the GMP shall be paid

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by the CM/GC without reimbursement by Owner. Changes to the GMP shall only be authorized by Amendment or Change Order that includes any necessary governmental approvals, including any approvals by the County Attorney.

Preconstruction Fee	+	CM/GC Fee	+	Estimated Cost of the Work ("ECOW") = GMP*
Cost Reimbursement		____% of ECOW		Includes CM/GC's Contingency and the
\$_____Maximum		Becomes Lump Sum		Maximum Cost for GC Work

(Note: Bonds, Insurance, & Builder's Risk are not considered part of the ECOW when Calculating the CM/GC Fee)

6.2 Preconstruction Fee. The Preconstruction Fee shall be payable to the CM/GC on a cost reimbursement basis up to a maximum sum of \$_____, which shall cover constructability review, VE, cost estimating, development of the GMP, and all other Preconstruction Phase Services, as described in **Article 3** (the "Preconstruction Fee"). If the CM/GC's costs for provision of Preconstruction Phase Services exceed the maximum Preconstruction Fee, the CM/GC shall pay such additional cost without reimbursement. The CM/GC shall not be entitled to any CM/GC Fee upon the Preconstruction Fee. 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 Owner may direct, instead, that any unapplied 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 the CM/GC with respect to Preconstruction Services performed after execution of the GMP Amendment.

6.3 Establishment of CM/GC Fee; Adjustments to CM/GC Fee.

6.3.1 The "CM/GC Fee" shall be a fixed dollar lump sum to be identified in the GMP Amendment, and shall be calculated as ____% of the ECOW at the time of establishment of the GMP. In making such calculation, the ECOW shall exclude the Preconstruction Fee, Performance and Payment Bonds, Commercial General Liability "CCIP", and Professional Liability Insurance, Builder's Risk Insurance, the CM/GC Fee itself, and any other cost or charge that this CM/GC Contract states is not to be included in calculating the CM/GC Fee, but shall include Allowances, selected alternates, Maximum 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. No additional markup will be paid to the CM/GC for change order or force account work or for subcontracted labor or materials, notwithstanding anything to the contrary in the Marion County General Conditions. 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

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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.

- 6.3.2** Notwithstanding any provision of Section D.1.3 of the Marion County General Conditions to the contrary, and 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 6.3.1** by the change in the ECOW 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.

6.4 Determination of GMP.

- 6.4.1** The CM/GC shall deliver to Owner a proposed GMP and GMP Supporting Documents at a time designated by Owner during the Preconstruction Phase. If any actual subcontract Offers (as defined in Article 3.1.6[a]) are available at the time the GMP is being established, CM/GC shall use those subcontract Offers in establishing the GMP.
- 6.4.2** As the Plans and Specifications (as defined in Section A.1 of the Marion County General Conditions) may not be developed to the stage of biddable design documents at the time the GMP proposal is prepared, the CM/GC shall provide in the GMP for further development of the Plans and Specifications by the architect that is consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include such things as changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which, if required, shall be incorporated by Change Order or Amendment with a corresponding GMP adjustment.
- 6.4.3** The CM/GC shall include with the GMP proposal a written statement of its basis (the "GMP Supporting Documents"), which 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 Allowances and a statement of their basis.
 - (c)** 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.

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- (d) The proposed GMP, including a statement of the estimated cost organized by trade categories, allowances, contingency, and the other items and associated fees that comprise the GMP.
 - (e) The Date of Substantial Completion upon which the proposed GMP is based and a schedule of the Construction Documents issuance dates upon which the date of Substantial Completion is based.
- 6.4.4** The CM/GC shall meet with Owner, Owner's Representative, and the architect to review the GMP proposal and the written statement of its basis. If Owner or the architect discovers any inconsistencies or inaccuracies in the information presented, they shall promptly notify the CM/GC, which shall make appropriate adjustments to the GMP proposal, its basis or both.
- 6.4.5** Prior to Owner's acceptance of the CM/GC's GMP proposal 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.
- 6.4.6** Owner shall authorize and cause the architect to revise 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 Owner, the architect and the CM/GC. The CM/GC shall promptly notify the architect and Owner if such revised Plans and Specifications are inconsistent with the agreed-upon assumptions and clarifications.
- 6.4.7** The GMP shall include in the ECOW only those taxes that are enacted at the time the GMP is established.
- 6.4.8** The ECOW shall include the CM/GC's contingency, a sum established by the CM/GC for the CM/GC's exclusive use to cover additional development of Plans and Specifications and unanticipated costs and unforeseen conditions which are properly reimbursable as a Cost of the Work but which are not the basis for a Change Order. For purposes of the CM/GC's contingency, unanticipated costs and unforeseen conditions include Work within the scope of the Project and any conditions that the CM/GC reasonably should have anticipated might be encountered in a project of this size and complexity. The CM/GC shall provide advance, written notice to Owner each time the CM/GC proposes to use its contingency and shall include in the notice the proposed purpose for such use and those approved for use in advance by Owner.
- 6.4.9** The CM/GC shall work with the architect and Owner to identify and confirm components and systems not specifically shown but required for a complete, fully functional Project. Owner will direct the architect to complete the final Construction Documents in accordance with the Project scope agreed upon by all parties at the time the GMP is established.

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6.4.10 Notwithstanding the level of detail represented in the GMP Supporting Documents, the CM/GC shall represent and warrant, at the time that it submits the GMP, that the GMP includes the entire cost of all components and systems required for a complete, fully functional Project.

6.4.11 In developing the GMP, the CM/GC shall include and identify such contingencies within the GMP as may be necessary to pay for unanticipated costs and unforeseen conditions that are required for a complete, fully functional Project.

6.5 Failure to Furnish an Acceptable GMP. If the CM/GC does not furnish a GMP acceptable to Owner within Owner's **Target GMP Range** (stated on the cover page of this CM/GC Contract), or if Owner determines at any time in its sole discretion that the parties may fail to reach a timely agreement on a GMP acceptable to Owner, Owner may terminate the Contract without liability, and the CM/GC shall not receive additional compensation beyond the Preconstruction Fee under the Contract and sums due under any Early Work Amendment. Termination under this provision shall proceed under Section J.5 of the State of Oregon General Conditions as a termination for Owner's convenience. The CM/GC further agrees that Owner shall not be liable for any damages whether actual, consequential or otherwise for termination of the Contract under this provision.

6.6 Acceptance of GMP. Upon acceptance of the GMP by Owner, the parties shall execute a GMP Amendment.

6.7 Owner Savings. If the sum of the Preconstruction Fee, plus the CM/GC Fee, plus the actual and final Cost of the Work (the Contract Sum as defined in **Article 6.1**), is less than the GMP, the savings shall accrue to Owner.

6.8 Allowance Work.

6.8.1 The CM/GC shall not perform any Allowance Work without prior execution by Owner of a Change Order approving the Specifications for the Allowance Work and the price thereof.

6.8.2 Owner shall be entitled to apply any Allowance line items that have not been fully expended to other line item Allowances that have been fully expended, without any resulting increase in the GMP.

6.8.3 If the total Cost of the Allowance Work exceeds the total Allowances within the GMP, the CM/GC shall not perform any Allowance Work in excess of such amount until either (i) the parties agree that the additional Allowance work will be performed within the then-current GMP or (ii) a GMP Amendment is executed to increase the GMP by the excess cost of the Allowance work.

6.8.4 The Contract Sum shall not include any Allowance items not identified in the GMP Amendment or the GMP Supporting Documents until such allowance item is reduced to a fixed price by Change Order or Amendment.

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- 6.8.5** If, at the Final Completion of the Project, any portion of the Allowance funds remains unexpended, the GMP shall be reduced by a corresponding amount via a Change Order or Amendment.

6.9 Reallocating Projected Cost Underruns after Bid (Offer) Buyout. As soon as possible after the awarding of the Work to the primary Subcontractors, the CM/GC shall review projected costs and provide Owner with a buy-out status report showing any projected cost underruns, reconciling accepted Offers and other reasonably anticipated costs, to the cost estimate used by the CM/GC to establish the GMP. The CM/GC shall include with its report any underlying documentation requested by Owner and used to develop or support such report. The CM/GC shall also consider the reduced risk associated with known subcontracting costs, and the impact that reduced risk has on the amount of the CM/GC's Contingency. The parties shall negotiate in good faith to execute a Change Order transferring an appropriate portion of any projected cost underruns to an Owner-controlled contingency fund to be held within the GMP to pay for additional costs arising from (a) any Owner-directed or approved change to the Work, (b) schedule changes that would otherwise entitle the CM/GC to an increase in the GMP, (c) Allowance items after exhaustion of all Allowances, (d) selection by Owner of more expensive alternates than those used for calculation of the GMP, (e) Owner selection of substitutions that increase the Cost of the Work, or (f) any other costs which otherwise would entitle the CM/GC to an increase in the GMP. Any transfer of projected cost underruns from the CM/GC's contingency to the Owner-controlled contingency fund will not affect the CM/GC's obligation to furnish Owner with a complete, fully functional Project ready for its intended use within the GMP, without use of the funds transferred to the Owner-controlled contingency fund, unless such funds are released by Owner for the purposes set forth in (a) through (f) of this Article 6.9. Any transfer of funds to the Owner-controlled contingency fund will not reduce the CM/GC Fee, nor will any subsequent release and use of funds from the Owner-controlled contingency fund for the purposes set forth in (a) through (f) of this Article 6.9 increase the CM/GC Fee.

ARTICLE 7 **CHANGES IN THE WORK**

7.1 Price Adjustments. Adjustments to the Estimated Cost of the Work required by changes in the Work shall be determined by any of the methods listed in Section D of the Marion County General, except that, unless the adjustment is based upon fixed pricing or unit pricing:

- 7.1.1** The overhead and profit markup for the CM/GC shall be limited to the CM/GC Fee adjustment, if any, permitted under Article 6.3.2 of this CM/GC Contract;
- 7.1.2** The increase or decrease in the Estimated Cost of the Work, other than for subcontract work, shall be calculated pursuant to Articles 8 and 9 of this CM/GC Contract, instead of being based on the CM/GC's Direct Costs as defined in the Marion County General Conditions; and
- 7.1.3** In calculating adjustments to subcontracts, unless the parties agree otherwise, the change shall be limited to the Subcontractor's Direct Costs plus the supplemental mark-up provided in Section D of the Marion County General Conditions, and shall not be modified by Articles 8 and 9 of this CM/GC Contract.

7.2 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 CM/GC Contract, and then only in accordance with the following procedure:

- 7.2.1** The CM/GC shall review subsequent iterations of the Plans and Specifications as they are prepared to determine whether, in the opinion of the CM/GC, they result in a Scope Change so that it can be determined if an adjustment to the GMP is warranted.
- 7.2.2** Changes to the GMP shall be initiated by written notice by one party to the other ("GMP Change Request"). The CM/GC shall deliver any such GMP Change Request to the architect and Owner's Authorized Representative promptly after becoming aware of any Scope Change if, in the CM/GC's opinion, it constitutes grounds for adjustment of the GMP. Any GMP Change Request shall include a proposal as to the appropriate GMP adjustment with respect to the Scope Change at issue.
- 7.2.3** The CM/GC shall submit its GMP Change Requests as soon as possible, and the CM/GC shall not be entitled to claim a GMP increase unless the CM/GC submitted a GMP Change Request to Owner's Authorized Representative and to architect within the earlier of (a) 14 days after the 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 the CM/GC intends to claim a Scope Change; and (c) in any event, prior to the CM/GC's signing of a Change Order for the Scope Change.
- 7.2.4** Owner may, at any time, submit a GMP Change Request requesting a reduction of the GMP, which shall include 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.
- 7.2.5** The CM/GC shall work with architect to reconcile all differences in its GMP Change Request with the architect within seven days from the date of submission of the GMP Change Request. "Reconciled" means that the CM/GC and the architect have verified that their assumptions about the various categories are the same, and that they have identified the reason for differences in the GMP Change Request and the architect's position. The CM/GC shall submit the Reconciled GMP Change Request to Owner, which submission shall be a condition to any CM/GC claim for a GMP increase.
- 7.2.6** If the Reconciled GMP Change Request is not acceptable to Owner, the CM/GC agrees to work with Owner and the architect to provide a GMP Change Request that is acceptable to Owner.

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- 7.2.7** The CM/GC agrees to make all records, calculations, drawings and similar items relating to GMP Change Request available to Owner and to allow the architect and Owner access and opportunity to view such documents at the CM/GC's offices. Upon Owner's reasonable notice, the CM/GC shall deliver two copies of such documents to Owner and the architect at any regular meeting or at the Site.
- 7.2.8** 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.
- 7.2.9** Except as provided in this Article 7.2, adjustments to the GMP shall be reconciled in accordance with Section D of the Marion County General Conditions.

7.3 Execution by Owner. The architect has no authority to execute Change Orders or Amendments on behalf of Owner, and only duly authorized personnel of Owner may do so.

ARTICLE 8 **COST OF THE WORK** **(To Be Reimbursed)**

8.1 Cost of the Work. The term "Cost of the Work" means, and the costs properly reimbursable as a Cost of the Work are, those costs that are directly related to the Project, necessarily and reasonably incurred by the CM/GC in the proper performance of the Work, and specifically and expressly described in this Article 8. Cost of the Work does not include the Costs for GC Work as defined in Article 1.12 or Costs Excluded from Cost of the Work as set forth in Article 9.

8.2 Labor Costs. The Cost of the Work includes the following Labor Costs:

- 8.2.1** Wages of construction workers directly employed by the CM/GC to perform the construction of the Work at the site.
- 8.2.2** 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 Owner, or otherwise engaged and off the site when specifically related to the Project, and (iii) under either clause (i) or (ii), only with Owner's prior written approval and only for that portion of their time directly required for the Work.
- 8.2.3** 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 8.2.1 and 8.2.2.

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8.3 Subcontract Costs. The Cost of the Work includes the following Subcontract Costs:

- 8.3.1** The CM/GC's actual payment to Subcontractors pursuant to the 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 Owner.

8.4 Costs of Materials and Equipment Incorporated in the Work or Stored On Site. The Cost of the Work includes the following Incorporated Materials and Equipment Costs:

- 8.4.1** Costs, including transportation, of materials and equipment incorporated or to be incorporated in the completed Work.
- 8.4.2** 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 Owner at the completion of the Work or, at Owner's option, shall be sold or otherwise disposed of by the CM/GC. Any sale shall be commercially reasonable, and the 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 Owner as a deduction from the Cost of the Work.

8.5 Costs of Miscellaneous Equipment and Other Items; Equipment Rental Charges. The Cost of the Work includes the following Miscellaneous Equipment Costs and Equipment Rental Charges:

- 8.5.1** 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 Owner at Owner's option may require that the CM/GC deliver to 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. The 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.
- 8.5.2** 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 75% of the rental rates published from

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time to time in the Rental Rate Blue Book for Construction Equipment, prepared by Machinery Information Division of Primedia Information Incorporated in effect at the time of rental, shall not exceed acquisition costs, and for individual items exceeding \$500.00, will be subject to Owner's prior approval. The CM/GC shall deliver to Owner a list of published rates from time to time at Owner's request. For all items rented or leased, the CM/GC shall charge Owner only the rental charge incurred by the CM/GC with no additional administrative or other mark-up. The 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 Owner. Efforts shall include, but not be limited to, providing Owner with a rent/buy analysis so that Owner may elect for the CM/GC to procure the item in lieu of rental if the facility, machinery or equipment at issue is expected to be rented for six months or longer. Such rent/buy analysis shall include, where available, a leasing rate commensurate with the expected term of rental of the facility, machinery or equipment at issue.

8.5.3 Costs of removal of debris from the site.

8.5.4 Cost of long-distance telephone calls, communication devices, 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.

8.5.5 That portion of the travel and subsistence expenses of the CM/GC's personnel determined by Owner to be reasonable and necessary as approved by Owner, at Owner approved rates, incurred while traveling in discharge of duties connected with the Work. Main office staff travel shall not be reimbursed unless approved in advance by Owner. These travel costs shall be reimbursed only to the extent allowed under the State of Oregon travel reimbursement guidelines ("State Travel Rules") applicable to Owner and only at approved State travel rates. The CM/GC personnel who are scheduled to work at the Project site for less than six months may receive a subsistence per diem, if approved by Owner, in accordance with State Travel Rules, if their place of residence is greater than 60 miles from the Project site; provided no such personnel shall be entitled to such per diem reimbursement beyond such six-month period. The CM/GC personnel who live within a 60 mile radius from the Project site shall not be eligible for travel and subsistence expenses.

8.6 Other Costs. The Cost of the Work includes the following Other Costs:

8.6.1 The cost of that portion of premiums for insurance directly attributable to the Contract, including the deductible for builder's all risk insurance, and payment and performance bonds as required by Section G of the Marion County General Conditions.

8.6.2 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.

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- 8.6.3** Fees and assessments for the building permit and for other permits, licenses and inspections for which the CM/GC is required by the Contract Documents to pay.
- 8.6.4** CM/GC deposits lost for causes other than the CM/GC's fault or negligence.
- 8.6.5** **RESERVED**
- 8.6.6** Costs of drawings, Specifications and other documents required to complete the Work, except as provided by Owner or the architect.
- 8.6.7** Other costs incurred in the performance of the Work if and to the extent approved in advance in writing by Owner.

8.7 Costs to Prevent Damage or Injury in Emergencies. The Cost of the Work includes 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.

8.8 Costs For General Conditions Work. The Cost of the Work does not include the Costs for GC Work as defined in Article 1.12. The CM/GC shall be paid on a cost reimbursable maximum not-to-exceed price basis as payment for the GC Work, including all labor, materials, and direct and indirect costs thereof. The maximum not-to-exceed amount for GC Work shall be established in each Early Work Amendment or the GMP Amendment, as applicable. To the extent any GC Work is otherwise described above in this **Article 8**, the 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. **(See Exhibit C)**(Reference: RFP solicitation attachment 10). The Cost for GC Work, less 5% retainage thereon, shall be paid monthly on a reimbursable basis over the number of months of the scheduled Construction Phase, including any period of Early Work, commencing with the first progress billing after commencement of the scheduled Construction Phase or Early Work Period. However, no adjustment in the maximum amount payable for GC Work will be made if the actual construction period or Early Work period is shorter or longer than the number of months scheduled for the Construction Phase or Early Work period, unless such period is extended because of an Owner-requested delay.

ARTICLE 9 **COSTS EXCLUDED FROM COST OF WORK** (Not To Be Reimbursed)

9.1 Costs Excluded from Cost of Work. The Cost of the Work does not include the costs set forth in this Article 9, and Owner shall not reimburse the CM/GC for the costs herein:

- 9.1.1** 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 8.2.2 and 8.2.3.

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- 9.1.2 Expenses of the CM/GC's principal office and offices other than the site office.
- 9.1.3 Any overhead and general expenses, except as specifically and expressly described in Article 8.
- 9.1.4 The CM/GC's capital expenses, including interest on the CM/GC's capital employed for the Work.
- 9.1.5 **RESERVED**
- 9.1.6 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.
- 9.1.7 The cost of correction of any repair work, nonconforming or defective work, or warranty work.
- 9.1.8 Merit, safety, or other incentive payments, bonuses or awards, or any expenses in connection therewith, except as otherwise provided in Article 8.
- 9.1.9 Fines and penalties.
- 9.1.10 Except for Early Work, the cost of Preconstruction Phase Services.
- 9.1.11 The Cost of the Work for GC Work in excess of the Fixed Cost for GC Work.
- 9.1.12 Any costs in excess of the GMP.
- 9.1.13 Any costs associated with travel expenses within a 60 mile radius of the Project.

ARTICLE 10

DISCOUNTS, REBATES AND REFUNDS

10.1 Discounts, Rebates and Refunds. Cash discounts obtained on payments made by the CM/GC shall accrue to Owner. Trade discounts, rebates, refunds and net amounts received from sales of surplus materials and equipment shall accrue to Owner, and the CM/GC shall make provisions so that they can be secured.

10.2 Amounts Credited to Owner. Amounts which accrue to Owner in accordance with the provisions of Article 10.1 shall be credited to Owner as a deduction from the Cost of the Work.

ARTICLE 11

SUBCONTRACTS AND OTHER CONTRACTS

11.1 General Subcontracting Requirements.

- 11.1.1 Other than Work performed pursuant to Articles 11.4 or 11.5 of this CM/GC Contract, the CM/GC shall subcontract the Work to Subcontractors other than the

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CM/GC and its Affiliates. If the CM/GC elects to bid on any Work, the CM/GC shall inform Owner of its intention to do so prior to the bid date for that Work.

11.1.2 The CM/GC shall comply with Oregon Administrative Rules (“OAR”) 580-061-0030, and OAR 580-061-0035 in all respects regarding Minority, Women and Emerging Small Business Enterprises. The CM/GC shall take the actions specified in ORS 200.045(2) and (3) to make good faith efforts to subcontract with Minority, Women and Emerging Small Business Enterprises.

11.1.3 The CM/GC shall report to Owner on the results of the good faith efforts of compliance required in Article 11.1.2 following award of all subcontracts. The CM/GC shall also submit monthly reports to Owner listing Work contracted to date with Minority, Women and Emerging Small Business Enterprises.

11.2 CM/GC's Obligations under Subcontracts.

11.2.1 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 the 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.

11.2.2 The CM/GC shall include in each subcontract and require each Subcontractor to include in any lower tier subcontract, all provisions necessary to make all of the provisions of the Contract Documents, including the State of Oregon General Conditions (as amended by the Supplemental General Conditions), fully effective as applied to Subcontractors. The CM/GC shall indemnify Owner for any additional cost based on a subcontractor claim which results from the failure of the CM/GC to incorporate the provisions of this CM/GC Contract into 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.

11.2.3 Retainage from Subcontractors. Except with Owner's prior approval, payments to Subcontractors shall be subject to retainage of five percent (5%). Owner and the CM/GC shall agree upon a mutually acceptable procedure for review and approval of payments and retainage for Subcontractors.

11.3 Subcontractor Selection.

11.3.1 Unless otherwise provided under this Article 11, 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 279C, the process shall conform to the following procedures, in general compliance with the open and

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competitive nature of public procurement, taking into account industry subcontracting practices.

11.3.2 The CM/GC shall submit to Owner's Authorized Representative its proposed procurement documents for review and comment before they are issued for solicitation. The CM/GC shall consider and respond to all Owner comments regarding any proposed Offer packages. As Offers are received, the CM/GC shall submit to Owner an Offer comparison in a mutually agreeable form, together with any specific back-up documentation requested by Owner. The competitive process used to award subcontracts by the CM/GC may be monitored by Owner's Authorized Representative; provided that such monitoring shall not excuse the CM/GC from compliance with the subcontracting requirements of this CM/GC Contract. The CM/GC shall cooperate in all respects with Owner's monitoring. Owner's Authorized Representative shall be advised in advance of and be given the opportunity to be present at Offer openings, and the CM/GC shall provide him or her with a summary or abstract of all Offers in form acceptable to Owner's Authorized Representative, and copies of particular Offers if requested, prior to the CM/GC's selection of offerors. Prior to opening Offers, the CM/GC agrees to disclose in writing to 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 the CM/GC.

11.3.3 The following minimum requirements apply to the Subcontract solicitation process:

- (a) Solicitations will be advertised at least 10 days prior to opening in the Daily Journal of Commerce and at least one other newspaper specifically targeted to reach the Minority, Women and Emerging Small Business audience. The CM/GC also agrees to advertise in a local community newspaper in the area in which the Project is located, in order to allow for local participation in the solicitation process.
- (b) Unless specific other prior arrangement has been made with Owner, all Offers will be written, and submitted to a specific location at a specific time. The 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 the CM/GC), prior written approval by Owner shall be required to accept an Offer.
- (d) The CM/GC must develop and implement a prequalification process for particular solicitations; followed by selection of successful Offers among those offerors that the CM/GC determines meet the prequalification standards, with Owner's prior written approval of such prequalification process.

Sample Contract

- (e) The 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) Owner may at its sole discretion, require the CM/GC to re-solicit for Offers based on the same or modified documents.
- (g) The 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 to from any offeror and ensure that the same are distributed to all offerors, and Owner shall be entitled to inspect such documentation on request.
- (i) The CM/GC shall determine the lowest Offer for each solicitation that meets the CM/GC's reasonable performance standards for the components of the Work at issue; provided that if the CM/GC determines it is unable to execute a suitable subcontract with such offeror, the CM/GC may, with Owner's prior approval, execute a subcontract with the second-lowest offeror pursuant to Article 11.3.4 below.

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

11.3.5 The CM/GC shall notify Owner in writing in advance before award of any proposed Subcontract, which notice shall include summaries in a form acceptable to Owner of all Offers received for the Subcontract at issue. Owner reserves the right to disapprove any proposed Subcontractors, suppliers and Subcontract or supply contract awards, based on legal standards of responsibility.

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

11.4 CM/GC Field Work.

- 11.4.1** The CM/GC or its Affiliate may provide the CM/GC Field Work required to complete the Project with its own forces, without the necessity of subcontracting such work.
- 11.4.2** Except as provided in Article 11.4.1, any other portion of the Work proposed to be performed by the CM/GC or any Affiliate, including without limitation provision of any materials, equipment, or supplies, shall be subject to the provisions of Article 11.5.

11.5 Subcontracting by the CM/GC.

- 11.5.1** Except to the extent otherwise approved in advance in writing by Owner's Authorized Representative, the CM/GC or its Affiliates may submit an Offer in accordance with Article 11.3 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. If the CM/GC is selected to perform the work, the overhead and markup paid to the CM/GC shall be limited to the markups applicable to Change Order Work set forth in the State of Oregon General Conditions, as adjusted in the Supplemental General Conditions. The CM/GC shall not be entitled to any CM/GC Fee for the self-performed work.
- 11.5.2** 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 11.3.1, and Owner notified in writing. All Offers for this work shall be delivered to Owner and publicly opened by Owner at an announced time, date, and place.

11.6 Protests. The 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 Owner. The CM/GC shall be solely responsible for resolving the procurement protests of Subcontractors and suppliers. The CM/GC shall indemnify, defend, protect and hold harmless Owner and Owner's Authorized Representative from and against any such procurement protests and resulting claims or litigation. The CM/GC shall act as an independent contractor, and not an agent of Owner, in connection with any procurement protest. The provisions of this Article 11 are solely for the benefit of Owner and do not grant any rights or remedies (including third party beneficiary rights) to any offeror or other protester, in connection with any procurement protest or claim.

ARTICLE 12
ACCOUNTING RECORDS

12.1 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 the Contract; the accounting and control systems shall be satisfactory to Owner. Owner and Owner's representatives, including accountants and auditors employed by or under contract with OJD and DAS, shall be afforded reasonable and regular access to the CM/GC's records, books,

Sample Contract

correspondence, instructions, drawings, receipts, subcontracts, purchase orders, vouchers, memoranda and other data relating to the Contract, and the CM/GC shall preserve these for a period of six (6) years after final payment, or for such longer period as may be required by law.

12.2 Periodic and Final Audits. Owner may, at its discretion, perform periodic audits of the Cost of the Work and any other reimbursable costs associated with the Project. Owner intends to conduct a final audit of reimbursable costs prior to the Contract closeout. The CM/GC shall cooperate fully with Owner in the performance of such audits. Disputes over audit findings or conclusions shall be subject to the process set forth in Article 14.4.

ARTICLE 13 **PROGRESS PAYMENTS**

13.1 Integration with Marion County General Conditions. The requirements of this Article 13 and Article 14 are in addition to, and not in lieu of, the requirements of Section E of the Marion County General Conditions. In the event of conflict between the provisions of Articles 13 and 14 and Section E, as amended, the provision more favorable to Owner shall control in the sole discretion of Owner's Authorized Representative. Without limitation, the provisions of Articles 13.3 and 13.4 shall control over the corresponding provisions of Section E.2.5 of the Marion County General Conditions.

13.2 Progress Payments. Based upon applications for payment submitted pursuant to Section E of the Marion County General Conditions (as amended by the Supplemental General Conditions), Owner shall make progress payments on account of the Preconstruction Fee, the Cost of the Work, and associated CM/GC Fee, less 5% retainage, to the CM/GC as provided below and elsewhere in the Contract Documents. A progress payment shall not be considered acceptance or approval of any Work or waiver of any defects therein.

13.3 Percentage of Completion. All applications for payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the application for payment. The percentage of completion shall be the lesser of (i) the percentage of that portion of the Work which has actually been completed; or (ii) the percentage obtained by dividing (a) the expense that has actually been incurred by the CM/GC on account of that portion of the Work for which the CM/GC has made or intends to make actual payment prior to the next application for payment by (b) the share of the GMP allocated to that portion of the Work in the Schedule of Values.

13.4 Calculation of Payment. Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

13.4.1 Pre-Construction Phase

- (a) The Preconstruction Fee will be billed on a cost reimbursable basis submitted monthly. Provide backup for each payment application that includes breakdowns of labor hours, materials, and all other items of expense to justify reimbursement being requested.

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- (b) These billings will not be subject to retainage described in the Marion County General Conditions.
- (c) If upon execution of an Early Work Amendment, the Preconstruction Services are not complete, the Contractor is to submit separate payment applications for Preconstruction Phase Services and Construction Phase Services.
- (d) The Preconstruction Fee for Preconstruction Phase Services shall not be included in the Construction Phase invoicing until the final application for payment. Include within the final application, a single line item for the final cost reimbursed value determined at the end of the Preconstruction Phase. In no event may the Preconstruction Fee and the cost of Construction Phase Services and all other costs and fees authorized under the Contract exceed the GMP.

13.4.2 Construction Phase

- (a) Take that portion of the 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 GMP allocated to that portion of the Work in the Schedule of Values. Pending final determination of cost to Owner of changes in the Work, any amounts in dispute shall not be included;
- (b) Add that portion of the GMP properly allocable to materials and equipment delivered and suitably stored and otherwise in compliance with Section E.2.3 of the Marion County General Conditions;
- (c) Add the CM/GC's Fee. The portion of the CM/GC's Fee payable shall be an amount that bears the same ratio to the CM/GC Fee as the sum of the amounts in Article 13.4.1 and 13.4.2 bears to the estimated probable Cost of the Work described in Article 6.1.2, but in no event causing total CM/GC Fee payments to exceed the total CM/GC Fee;
- (d) Subtract the aggregate of previous payments made by and retained by Owner;
- (e) Subtract the shortfall, if any, detailed by the documentation required to substantiate prior applications for payment, or resulting from errors subsequently discovered by Owner in such documentation;
- (f) Subtract any amounts for which Owner's Authorized Representative has withheld or denied payment as provided in the Contract Documents; and
- (g) Subtract 5% retainage on the entire progress payment.

ARTICLE 14
FINAL PAYMENT

14.1 Final Payment Accounting. The CM/GC shall submit to Owner a final detailed accounting of the Cost of the Work together with the CM/GC's final application for payment.

14.2 Calculation of Final Payment. The amount of the final payment shall be calculated as follows:

- 14.2.1** 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.
- 14.2.2** Subtract amounts, if any, for which Owner's Authorized Representative withholds, in whole or in part, approval of payment.
- 14.2.3** Subtract the aggregate of previous payments made by Owner to the CM/GC. If the aggregate of previous payments made by Owner exceeds the amount due the CM/GC, the CM/GC shall reimburse the difference to Owner within 30 days, with interest at the rate applicable to Owner payments under Section E.5.1.3 of the Marion County General Conditions.

14.3 Final Payment Review. Owner or its accountants will review and report in writing on the CM/GC's final accounting within 30 days after it is submitted to Owner by the CM/GC. Contingent upon the other conditions of the Contract having been met, Owner's Authorized Representative will, within 10 Business Days after receipt of the written report of Owner's accountants, either issue to Owner an approval of the CM/GC's final application for payment with a copy to the CM/GC, or notify the CM/GC and Owner in writing of Owner's Authorized Representative's reasons for withholding approval of any part of the application for payment, which disapproval shall include Owner's Authorized Representative's estimate of the amount that is due the CM/GC under the application for payment.

14.4 Payment Disputes. If 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 Owner's Authorized Representative declines to approve any duly submitted payment request by the CM/GC, or any portion thereof, the CM/GC shall be entitled to demand a review by Owner's Director of Business Services 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 or any portion thereof. Failure to demand review within this 30-day period shall result in a waiver of the CM/GC's right to demand review under this Article, and the substantiated amount as reported by Owner's accountants becoming binding on the CM/GC. In addition, if Owner or any other governmental agency performs a subsequent audit of the Cost of the Work and determines any item therein to have been unsubstantiated or that the CM/GC was otherwise overpaid, Owner may submit a request for reimbursement to the CM/GC for the amount of overpayment. The CM/GC shall have 30 days after delivery of the request for reimbursement by Owner to demand additional review by Owner's Director of Business Services. Failure to make such demand within this 30 day period shall

Sample Contract

result in waiver of the right to demand review under this Article, and the requested reimbursement becoming unconditionally due and payable by the CM/GC. If the CM/GC timely submits a demand for review to Owner's Director of Business Services, the CM/GC's claim shall be subject to the claims review process in Section D.3 of the Marion County General Conditions. Pending a final resolution, Owner shall pay the CM/GC any outstanding amounts of the application for payment approved by Owner's Authorized Representative.

14.5 Effect of Payment. Neither approval of an application for payment, a progress payment, release of retainage, final payment, or partial or entire use or occupancy of the Project by Owner shall constitute acceptance of Work not conforming to the Contract Documents, or waiver of the right to assert overpayment.

ARTICLE 15 **TERMINATION OR SUSPENSION**

15.1 Owner's Right to Terminate Prior to Execution of GMP Amendment. Prior to execution of the GMP Amendment by both parties, Owner may terminate the 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 Owner terminates for convenience during the Preconstruction Phase, Owner shall be entitled to copies of, and shall have the right to use, all work product of the CM/GC and its Subcontractors and suppliers performed to the date of termination, and the CM/GC shall deliver copies of the same to Owner on request.

15.2 Owner's Termination for Convenience after GMP Amendment. After the GMP Amendment is executed by both parties, the Contract may be terminated by Owner without penalty for convenience pursuant to Section J.5 of the Marion County General Conditions, in which case the CM/GC shall be entitled to payment of the amount stated in Article 15.1, together with the actual Cost of the Work completed, plus the CM/GC's Fee prorated based on the actual Cost of the Work completed prior to the date of termination, but in any event not in excess of the GMP.

15.3 Owner's Termination for Cause. In the event of termination of this Agreement by Owner for cause pursuant to Section J.4 of the Marion County General Conditions, the amount, if any, to be paid to the CM/GC, after application of the Marion County General Conditions as adjusted in the Supplemental General Conditions and of Owner's rights and remedies under the Contract, shall not exceed the amount the CM/GC would be entitled to receive under Article 15.2.

15.4 CM/GC Termination for Cause. The CM/GC acknowledges that disputes regarding payments and Change Orders may occur as part of the CM/GC process, and that Owner's declining to pay disputed amounts shall not be grounds for suspension of the Work or termination for cause by the CM/GC. If the CM/GC terminates the Contract for Owner's material breach, the amount to be paid to CM/GC shall not exceed the amount the CM/GC would have been entitled to receive under Article 13 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.

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15.5 Assignment of Subcontracts. In the event that Owner terminates the Contract with the CM/GC, each subcontract and supply contract for any portion of the Work is hereby irrevocably assigned by the CM/GC to Owner, effective from the date of termination. This assignment is effective only for those subcontracts and supply contracts that Owner accepts by notifying the Subcontractor/supplier and the CM/GC in writing. For those subcontracts and supply contracts accepted by 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. Such adjustments shall be subtracted from the amounts owed by Owner to the CM/GC. The CM/GC shall include a provision in each subcontract and supply agreement whereby the Subcontractor/supplier acknowledges Owner's rights under this Article 15.5. With respect to any subcontracts/supply contracts that are not accepted by Owner, the provisions of Section J.6.1 of the Marion County General Conditions shall apply, as adjusted in the Supplemental General Conditions.

ARTICLE 16

REPRESENTATIONS, WARRANTIES AND CERTIFICATIONS

16.1 Representations and Warranties. The CM/GC represents and warrants to Owner as of the effective date of the Contract:

- 16.1.1** The CM/GC 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;
- 16.1.2** The CM/GC has full corporate power and corporate authority to enter into and perform the Contract and to consummate the transactions contemplated hereby; the CM/GC has duly and validly executed and delivered this CM/GC Contract to Owner and the Contract constitutes the legal, valid and binding obligation of the CM/GC, enforceable against the 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);
- 16.1.3** The CM/GC's execution and delivery of this CM/GC 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) the 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 the CM/GC is a party or by which the CM/GC may be bound; or (iii) any statute, order, writ, injunction, decree, rule or regulation applicable to the CM/GC;
- 16.1.4** 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

Sample Contract

required for the valid execution, delivery and performance of the Contract by the CM/GC or its consummation of the transactions contemplated hereby;

- 16.1.5** 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
- 16.1.6** The CM/GC's Project Director and Project Manager identified in Article 4 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.

16.2 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" means a state tax imposed by ORS 401.792 to 401.816, ORS 320.005 to 320.150 and 403.200 to 403.250, and ORS chapters 118, 314, 316, 317, 318, 320, 321 and 323; the elderly rental assistance program under ORS 310.630 to 310.706, and local taxes administered by the Department of Revenue under ORS 305.620.

16.3 Federal and State Program Eligibility: The CM/GC represents and warrants that it is not excluded from participation, and is not otherwise ineligible to participate, in a "Federal health care program" as defined in 42 U.S.C. Section 1320a-7b(f) or in any other government payment program. In the event the CM/GC is excluded from participation, or becomes otherwise ineligible to participate in any such program during the term of the Contract, the CM/GC will notify Owner in writing within three (3) days after such event. Upon the occurrence of such event, whether or not such notice is given to Owner, Owner may immediately terminate this Contract for cause pursuant to Article 15.3 upon written notice to the CM/GC. Owner will not make any payments under this Contract during any period of the CM/GC's debarment, ineligibility or exclusion from participation.

ARTICLE 17 **MISCELLANEOUS**

17.1 Headings. The headings used in this CM/GC 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.

17.2 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 made 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. The 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.

Sample Contract

17.3 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, as authorized by the Legislative Assembly, acting by and through the Legislative Administrator under ORS 173.720, and by County's Board of Commissioners.

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

CM/GC:

Name of Firm: _____

Address: _____

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

Construction Contractor's Board Registration No.: _____

Signature of Authorized Representative of CM/GC

Title _____

Date _____

OWNER:

MARION COUNTY,
a political subdivision of the State of Oregon

BOARD OF COMMISSIONERS

Chair Date

Commissioner Date

Commissioner Date

Authorized Signature: _____
Department Director or designee Date

Reviewed by Signature: _____
Marion County Legal Counsel Date

Reviewed by Signature: _____

Sample Contract

Marion County Contracts & Procurement

Date

Sample Contract

EXHIBIT A

**MARION COUNTY
GENERAL CONDITIONS FOR PUBLIC IMPROVEMENT CONTRACTS
September 1, 2014 Edition**

EXHIBIT B

**MARION COUNTY
GMP AMENDMENT TO CONTRACT**

THIS AMENDMENT IS BETWEEN:

OWNER: **Marion County,**
an Oregon political subdivision

And

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

The Project is: Sheriff's Office – Central District Office and Parole & Probation Building

Date of Original CM/GC Contract: _____, 2016

Date of this Amendment: _____, 201_

Owner and the CM/GC hereby amend the Contract as set forth below. Capitalized terms used but not defined herein shall have the meanings given in the Contract Documents. 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 Preconstruction Fee, the Estimated Cost of the Work and the CM/GC Fee (stated as a fixed dollar lump sum amount), as follows:

Preconstruction Fee:	\$ _____
Estimated Cost of Work ("ECOW):	\$ _____
CM/GC Fee (___% of ECOW):	\$ _____
Bonds, Insurance (CCIP), Builder's Risk	\$ _____
GMP (Total of above categories):	\$ _____

For purposes of determining the GMP, the ECOW 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-F (___ pages) including the Allowances, assumptions, exclusions, unit prices, and alternates designated therein.

3. **Plans and Specifications.** The Plans and Specifications for the Project are as listed in the GMP Supporting Documents. The 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 is: *[Select one of the following (insert new date if different Substantial Completion date has been agreed upon): the date stated in the Contract / month xxx _____, 20XX_ .]*

5. **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" means a state tax imposed by ORS 401.792 to 401.816, ORS 320.005 to 320.150 and 403.200 to 403.250, and ORS chapters 118, 314, 316, 317, 318, 320, 321 and 323; the elderly rental assistance program under ORS 310.630 to 310.706, and local taxes administered by the Department of Revenue under ORS 305.620.

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

Sample Contract

CM/GC:

Name of Firm: _____

Address: _____

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

Construction Contractor's Board Registration No.: _____

Signature of Authorized Representative of CM/GC

Title _____

Date _____

OWNER:

Marion County, a political subdivision of the State of Oregon

BOARD OF COMMISSIONERS

Chair Date

Commissioner Date

Commissioner Date

Authorized Signature: _____
Department Director or designee Date

Reviewed by Signature: _____
Marion County Legal Counsel Date

Reviewed by Signature: _____
Marion County Contracts & Procurement Date

Sample Contract

Attachment A Plans, Specifications, Supplementary Conditions of the Contract, on which the Guaranteed Maximum Price is based, pages ____ through ____ dated _____.

Attachment B Allowance items, pages ____ through ____ dated _____.

Attachment C Assumptions and clarifications made in preparing the Guaranteed Maximum Price, pages ____ through _____, dated _____.

Attachment D Completion schedule, pages ____ through _____, dated _____.

Attachment E Alternate prices, pages ____ through _____, dated _____.

Attachment F Unit prices, pages ____ through _____, dated _____.

EXHIBIT C

SHERIFF'S OFFICE – CENTRAL DISTRICT OFFICE AND PAROLE & PROBATION BUILDINGS

GENERAL CONDITIONS WORK

The table below states the categories of General Conditions Work, applicable hourly labor rates, number of hours, and specific General Conditions Work costs that support the maximum Cost for General Conditions Work that will be payable under this CM/GC Contract. The total estimated Cost for General Conditions Work shown below, based on the categories of General Conditions Work below, shall be the maximum amount that will be payable to CM/GC for General Conditions Work, regardless of the final Project cost or the actual construction period required to complete the Project. All items of General Conditions Work listed by Owner in the table below will be compensated on a cost reimbursement basis as part of the ECOW. Any item of Work that might customarily be considered to be General Conditions Work by CM/GC but which Owner has not listed in the table below may be compensated on a cost reimbursement basis if it is described as Cost of the Work in Article 8. (Refer to RFP solicitation documentation Attachment 10 - A Fee /Price Proposal Form, and 10 – B Cost Allocation Matrix for allocation of General Conditions work Costs)

Exhibit A

Marion County

GENERAL CONDITIONS

FOR

PUBLIC IMPROVEMENT CONTRACTS



SEPTEMBER 1, 2014 Edition

Changes to the General Conditions (including any additions, deletions or substitutions) should only be made by Supplemental General Conditions, unless the General Conditions are specifically modified in the Public Improvement Agreement (which has a higher order of precedence under Section A.3 of the General Conditions). The text of these General Conditions should not otherwise be altered.

**MARION COUNTY
GENERAL CONDITIONS FOR PUBLIC IMPROVEMENT CONTRACTS
SEPTEMBER 1, 2014**

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**MARION COUNTY
GENERAL CONDITIONS FOR PUBLIC IMPROVEMENT CONTRACTS
("General Conditions")**

**SECTION A
GENERAL PROVISIONS**

A.1 DEFINITION OF TERMS

In the Contract Documents the following terms shall be as defined below:

ARCHITECT/ENGINEER, means the Person appointed by the Owner to make drawings and specifications and, to provide contract administration of the Work contemplated by the Contract to the extent provided herein or by supplemental instruction of Owner (under which Owner may delegate responsibilities of the Owner's Authorized Representative to the Architect/Engineer), in accordance with ORS Chapter 671 (Architects) or ORS Chapter 672 (Engineers) and administrative rules adopted thereunder.

CHANGE ORDER, means a written order issued by the Owner's Authorized Representative to the Contractor requiring a change in the Work within the general scope of the Contract Documents, issued under the changes provisions of Section D.1 including Owner's written change directives as well as changes reflected in a writing executed by the parties to this Contract and, if applicable, establishing a Contract Price or Contract Time adjustment for the changed Work.

CLAIM, means a demand by Contractor pursuant to Section D.3 for review of the denial of Contractor's initial request for an adjustment of Contract terms, payment of money, extension of Contract Time or other relief, submitted in accordance with the requirements and within the time limits established for review of Claims in these General Conditions.

CONTRACT, means the written agreement between the Owner and the Contractor comprised of the Contract Documents which describe the Work to be done and the obligations between the parties.

CONTRACT DOCUMENTS, means the Solicitation Document and addenda thereto, the Marion County Public Improvement Agreement Form, General Conditions, Supplemental General Conditions, if any, the accepted Offer, Plans, Specifications, amendments and Change Orders.

CONTRACT PERIOD, as set forth in the Contract Documents, means the total period of time beginning with the issuance of the Notice to Proceed and concluding upon Final Completion.

CONTRACT PRICE, means the total of the awarded Offer amount, as increased or decreased by the price of approved alternates and Change Orders.

CONTRACT TIME, means any incremental period of time allowed under the Contract to complete any portion of the Work as reflected in the project schedule.

CONTRACTOR, means the Person awarded the Contract for the Work contemplated.

DAYS, are calendar days, including weekdays, weekends and holidays, unless otherwise specified.

DIRECT COSTS, means, unless otherwise provided in the Contract Documents, the cost of materials, including sales tax, cost of delivery; cost of labor, including social security, old age and unemployment insurance, and fringe benefits required by agreement or custom; worker's compensation insurance; project specific insurance (including, without limitation, Builder's Risk Insurance and Builder's Risk Installation Floater); bond premiums, rental cost of equipment, and machinery required for execution of the work; and the additional costs of field personnel directly attributable to the Work.

FINAL COMPLETION, means the final completion of all requirements under the Contract, including Contract Closeout as described in Section K but excluding Warranty Work as described in Section I.2, and the final payment and release of all retainage, if any, released.

FORCE MAJEURE, means an act, event or occurrence caused by fire, riot, war, acts of God, nature, sovereign, or public enemy, strikes, freight embargoes or any other act, event or occurrence that is beyond the control of the party to this Contract who is asserting Force Majeure.

NOTICE TO PROCEED, means the official written notice from the Owner stating that the Contractor is to proceed with the Work defined in the Contract Documents. Notwithstanding the Notice to Proceed, Contractor shall not be authorized to proceed with the Work until all initial Contract requirements, including the Contract, performance bond and payment bond, and certificates of insurance, have been fully executed and submitted to Owner in a suitable form.

OFFER, means a bid in connection with an invitation to bid and a proposal in connection with a request for proposals.

OFFEROR, means a bidder in connection with an invitation to bid and a proposer in connection with a request for proposals.

OVERHEAD, means those items which may be included in the Contractor's markup (general and administrative expense and profit) and that shall not be charged as Direct Cost of the Work, including without limitation such Overhead expenses as wages or salary of personnel above the level of foreman (i.e., superintendents and project managers), expenses of Contractor's offices at the job site (e.g. job trailer) including expenses of personnel staffing the job site office, and Commercial General Liability Insurance and Automobile Liability Insurance.

OWNER, means Marion County acting by and through the governmental entity identified in the Solicitation Document.

OWNER'S AUTHORIZED REPRESENTATIVE, means those individuals identified in writing by the Owner to act on behalf of the Owner for this project. Owner may elect, by written notice to Contractor, to delegate certain duties of the Owner's Authorized Representative to more than one party, including without limitation, to an Architect/Engineer. However, nothing in these General Conditions is intended to abrogate the separate design professional responsibilities of Architects under ORS Chapter 671 or of Engineers under ORS Chapter 672.

PERSON, means an entity doing business as a sole proprietorship, a partnership, a joint venture, a corporation, a limited liability company or partnership, or any other entity possessing the legal capacity to contract.

PLANS, means the drawings which show the location, type, dimensions, and details of the Work to be done under the Contract.

PUNCHLIST, means the list of Work yet to be completed or deficiencies which need to be corrected in order to achieve Final Completion of the Contract.

RECORD DOCUMENT, means the as-built Plans, Specifications, testing and inspection records, product data, samples, manufacturer and distributor/supplier warranties evidencing transfer to Owner, operational and maintenance manuals, shop drawings, Change Orders, correspondence, certificate(s) of occupancy, and other documents listed in Subsection B.9.1 of these General Conditions, recording all Services performed.

SOLICITATION DOCUMENT, means an invitation to bid or request for proposal or request for quotes.

SPECIFICATION, means any description of the physical or functional characteristics of the Work, or of the nature of a supply, service or construction item. Specifications may include a description of any requirement for inspecting, testing or preparing a supply, service or construction item for delivery and the quantities or qualities of materials to be furnished under the Contract. Specifications generally will state the results or products to be obtained and may, on occasion, describe the method and manner of doing the work to be performed. Specifications may be incorporated by reference and/or may be attached to the Contract.

SUBCONTRACTOR, means a Person having a direct contract with the Contractor, or another Subcontractor, to perform one or more items of the Work.

SUBSTANTIAL COMPLETION, means the date when the Owner accepts in writing the construction, alteration or repair of the improvement to real property or any designated portion thereof as having reached that state of completion when it may be used or occupied for its intended purpose. Substantial Completion of facilities with operating systems occurs only after thirty (30) continuous Days of successful, trouble-free operation of the operating systems as provided in Section K.4.2.

SUBSTITUTIONS, means items that in function, performance, reliability, quality, and general configuration are the same or better than the product(s) specified. Approval of any substitute item shall be solely determined by the Owner's Authorized Representative. The decision of the Owner's Authorized Representative is final.

SUPPLEMENTAL GENERAL CONDITIONS, means those conditions that remove from, add to, or modify these General Conditions. Supplemental General Conditions may be

included in the Solicitation Document or may be a separate attachment to the Contract.

WORK, means the furnishing of all materials, equipment, labor, transportation, services and incidentals necessary to successfully complete any individual item or the entire Contract and the carrying out of duties and obligations imposed by the Contract Documents.

A.2 SCOPE OF WORK

The Work contemplated under this Contract includes all labor, materials, transportation, equipment and services for, and incidental to, the completion of all construction work in connection with the project described in the Contract Documents. The Contractor shall perform all Work necessary so that the project can be legally occupied and fully used for the intended use as set forth in the Contract Documents.

A.3 INTERPRETATION OF CONTRACT DOCUMENTS

A.3.1 Unless otherwise specifically defined in the Contract Documents, words which have well-known technical meanings or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings. Contract Documents are intended to be complementary. Whatever is called for in one, is interpreted to be called for in all. However, in the event of conflicts or discrepancies among the Contract Documents, interpretations will be based on the following descending order of precedence:

1. Contract amendments and Change Orders, with those of later date having precedence over those of an earlier date;
2. The Supplemental General Conditions;
3. The Marion County Public Improvement Agreement Form;
4. The General Conditions
5. The Plans and Specifications
6. The Solicitation Document and any addenda thereto;
7. The accepted Offer.

A.3.2 In the case of an inconsistency between Plans and Specifications or within either document not clarified by addendum, the better quality or greater quantity of Work shall be provided in accordance with the Owner or Owner's Authorized Representative's interpretation in writing.

A.3.3 If the Contractor finds discrepancies in, or omissions from the Contract Documents, or if the Contractor is in doubt as to their meaning, the Contractor shall at once notify the Owner or Owner's Authorized Representative. Matters concerning performance under, and interpretation of requirements of, the Contract Documents will be decided by the Owner's Authorized Representative, who may delegate that duty in some instances to the Architect/Engineer. Responses to Contractor's requests for interpretation of Contract Documents will be made in writing by Owner's Authorized Representative (or the Architect/Engineer) within any time limits agreed upon or otherwise with reasonable promptness.

Interpretations and decisions of the Owner's Authorized Representative (or Architect/Engineer) will be consistent with the intent of and reasonably inferable from the Contract Documents. Contractor shall not proceed without direction in writing from the Owner's Authorized Representative (or Architect/Engineer).

- A.3.4 References to standard specifications, manuals, codes of any technical society, organization or association, to the laws or regulations of any governmental authority, whether such reference be specific or by implication, shall mean the latest standard specification, manual, code, laws or regulations in effect in the jurisdiction where the project is occurring on the first published date of the Solicitation Document, except as may be otherwise specifically stated.

A.4 EXAMINATION OF PLANS, SPECIFICATIONS, AND SITE

- A.4.1 It is understood that the Contractor, before submitting an Offer, has made a careful examination of the Contract Documents; has become fully informed as to the quality and quantity of materials and the character of the Work required; and has made a careful examination of the location and conditions of the Work and the sources of supply for materials. The Owner will in no case be responsible for any loss or for any unanticipated costs that may be suffered by the Contractor as a result of the Contractor's failure to acquire full information in advance in regard to all conditions pertaining to the Work. No oral agreement or conversation with any officer, agent, or personnel of the Owner, or with the Architect/Engineer either before or after the execution of this Contract, shall affect or modify any of the terms or obligations herein contained.
- A.4.2 Should the Plans or Specifications fail to particularly describe the materials, kind of goods, or details of construction of any aspect of the Work, Contractor shall have the duty to make inquiry of the Owner and Architect/Engineer as to what is required prior to performance of the Work. Absent Specifications to the contrary, the materials or processes that would normally be used to produce first quality finished Work shall be considered a part of the Contract requirements.
- A.4.3 Any design errors or omissions noted by the Contractor shall be reported promptly to the Owner's Authorized Representative, including without limitation, any nonconformity with applicable laws, statutes, ordinances, building codes, rules and regulations.
- A.4.4 If the Contractor believes that additional cost or Contract Time is involved because of clarifications or instructions issued by the Owner's Authorized Representative (or Architect/Engineer) in response to the Contractor's notices or requests for information, the Contractor must submit a written request to the Owner's Authorized Representative, setting forth the nature and specific extent of the request, including all time and cost impacts against the Contract as soon as possible, but no later than thirty (30) Days after receipt by Contractor of the clarifications or instructions issued. If the Owner's Authorized Representative denies Contractor's request for additional compensation, additional Contract Time, or other relief that Contractor believes results from

the clarifications or instructions, the Contractor may proceed to file a Claim under Section D.3, Claims Review Process. If the Contractor fails to perform the obligations of Sections A.4.1 to A.4.3, the Contractor shall pay such costs and damages to the Owner as would have been avoided if the Contractor had performed such obligations.

A.5 INDEPENDENT CONTRACTOR STATUS

The service or services to be performed under this Contract are those of an independent contractor as defined in ORS 670.600. Contractor represents and warrants that it is not an officer, employee or agent of the Owner.

A.6 RETIREMENT SYSTEM STATUS AND TAXES

Contractor represents and warrants that it is not a contributing member of the Public Employees' Retirement System and will be responsible for any federal or state taxes applicable to payment received under this Contract. Contractor will not be eligible for any benefits from these Contract payments of federal Social Security, employment insurance, workers' compensation or the Public Employees' Retirement System, except as a self-employed individual. Unless the Contractor is subject to backup withholding, Owner will not withhold from such payments any amount(s) to cover Contractor's federal or state tax obligations.

A.7 GOVERNMENT EMPLOYMENT STATUS

- A.7.1 If this payment is to be charged against federal funds, Contractor represents and warrants that it is not currently employed by the Federal Government. This does not preclude the Contractor from holding another contract with the Federal Government.
- A.7.2 Contractor represents and warrants that Contractor is not an employee of the Marion County for purposes of performing Work under this Contract.

SECTION B ADMINISTRATION OF THE CONTRACT

B.1 OWNER'S ADMINISTRATION OF THE CONTRACT

- B.1.1 The Owner's Authorized Representative will provide administration of the Contract as described in the Contract Documents (1) during construction (2) until final payment is due and (3) during the one-year period for correction of Work. The Owner's Authorized Representative will act on behalf of the Owner to the extent provided in the Contract Documents, unless modified in writing in accordance with other provisions of the Contract. In performing these tasks, the Owner's Authorized Representative may rely on the Architect/Engineer or other consultants to perform some or all of these tasks.
- B.1.2 The Owner's Authorized Representative will visit the site at intervals appropriate to the stage of the Contractor's operations (1) to become generally familiar with and to keep the Owner informed about the progress and quality of the portion of the Work completed, (2) to endeavor to guard the Owner against defects and deficiencies in the Work, and (3) to determine in general if Work is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. The Owner's Authorized Representative

will not make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Owner's Authorized Representative will neither have control over or charge of, nor be responsible for the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work.

- B.1.3 Except as otherwise provided in the Contract Documents or when direct communications have been specifically authorized, the Owner and Contractor shall endeavor to communicate with each other through the Owner's Authorized Representative or designee about matters arising out of or relating to the Contract. Communications by and with the Architect/Engineer's consultants shall be through the Architect/Engineer. Communications by and with Subcontractors and material suppliers shall be through the Contractor. Communications by and with separate contractors shall be through the Owner's Authorized Representative.
- B.1.4 Based upon the Architect/Engineer's evaluations of the Contractor's Application for Payment, or unless otherwise stipulated by the Owner's Authorized Representative, the Architect/Engineer will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

B.2 CONTRACTOR'S MEANS AND METHODS: MITIGATION OF IMPACTS

- B.2.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures.
- B.2.2 The Contractor is responsible to protect and maintain the Work during the course of construction and to mitigate any adverse impacts to the project, including those caused by authorized changes, which may affect cost, schedule, or quality.
- B.2.3 The Contractor is responsible for the actions of all its personnel, laborers, suppliers, and Subcontractors on the project. The Contractor shall enforce strict discipline and good order among Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of persons who are unfit or unskilled for the tasks assigned to them.
- B.2.4 Contractor agrees that it will commence performance of the Work in a timely manner and will achieve the Contract Times in the Contract Documents.

B.3 MATERIALS AND WORKMANSHIP

- B.3.1 The intent of the Contract Documents is to provide for the construction and completion in every detail of the Work described. All Work shall be performed in a professional manner and unless the means or

methods of performing a task are specified elsewhere in the Contract Documents, Contractor shall employ methods that are generally accepted and used by the industry, in accordance with industry standards.

- B.3.2 The Contractor is responsible to perform the Work as required by the Contract Documents. Defective Work shall be corrected at the Contractor's expense.
- B.3.3 Work done and materials furnished shall be subject to inspection and/or observation and testing by the Owner's Authorized Representative to determine if they conform to the Contract Documents. Inspection of the Work by the Owner's Authorized Representative does not relieve the Contractor of responsibility for the Work in accordance with the Contract Documents.
- B.3.4 Contractor shall furnish adequate facilities, as required, for the Owner's Authorized Representative to have safe access to the Work including without limitation walkways, railings, ladders, tunnels, and platforms. Producers, suppliers, and fabricators shall also provide proper facilities and access to their facilities.
- B.3.5 The Contractor shall furnish Samples of materials for testing by the Owner's Authorized Representative and include the cost of the Samples in the Contract Price.

B.4 PERMITS

Contractor shall obtain and pay for all necessary permits and licenses, except for those specifically excluded in the Supplemental General Conditions, for the construction of the Work, for temporary obstructions, enclosures, opening of streets for pipes, walls, utilities, environmental Work, etc., as required for the project. Contractor shall be responsible for all violations of the law, in connection with the construction or caused by obstructing streets, sidewalks or otherwise. Contractor shall give all requisite notices to public authorities. The Contractor shall pay all royalties and license fees. The Contractor shall defend all suits or claims for infringement of any patent or other proprietary rights and save harmless and blameless from loss, on account thereof, the State of Oregon, and its departments, divisions, members and employees.

B.5 COMPLIANCE WITH GOVERNMENT LAWS AND REGULATIONS

- B.5.1 Contractor shall comply with all federal, state and local laws, codes, regulations and ordinances applicable to the Work and the Contract. Failure to comply with such requirements shall constitute a breach of Contract and shall be grounds for Contract termination. Without limiting the generality of the foregoing, Contractor expressly agrees to comply with the following as applicable: i) Title VI and VII of Civil Rights Act of 1964, as amended; (ii) Section 503 and 504 of the Rehabilitation Act of 1973, as amended; (iii) the Health Insurance Portability and Accountability Act of 1996; (iv) the Americans with Disabilities Act of 1990, as amended; (v) ORS Chapter 659A; as amended (vi) all regulations and administrative rules established pursuant to the foregoing laws; and (vii) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations. Owner's performance under the Contract is conditioned upon Contractor's compliance with the provisions of ORS 279C.505, 279C.510, 279C.515,

279C.520, and 279C.530, which are incorporated by reference herein.

- B.5.2 Contractor shall comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations; and
- (a) Contractor shall not discriminate against Disadvantaged, Minority, Women or Emerging Small Business enterprises, as those terms are defined in ORS 200.005, or a business enterprise that is owned or controlled by or that employs a disabled veteran, as that term is defined in ORS 408.225, in the awarding of subcontracts.
 - (b) Contractor shall maintain, in current and valid form, all licenses and certificates required by law, regulation, or this Contract when performing the Work.
- B.5.3 Unless contrary to federal law, Contractor shall certify that it shall not accept a bid from Subcontractors to perform Work as described in ORS 701.005 under this Contract unless such Subcontractors are registered with the Construction Contractors Board in accordance with ORS 701.035 to 701.055 at the time they submit their bids to the Contractor.
- B.5.4 Unless contrary to federal law, Contractor shall certify that each landscape contractor, as defined in ORS 671.520(2), performing Work under this Contract holds a valid landscape contractor's license issued pursuant to ORS 671.560.
- B.5.5 The following notice is applicable to Contractors who perform excavation Work. ATTENTION: Oregon law requires you to follow rules adopted by the Oregon Utility Notification Center. Those rules are set forth in OAR 952-001-0010 through OAR 952-001-0090. You may obtain copies of the rules by calling the center at (503)232-1987.
- B.5.6 Failure to comply with any or all of the requirements of B.5.1 through B.5.5 shall be a breach of Contract and constitute grounds for Contract termination. Damages or costs resulting from such noncompliance shall be the responsibility of Contractor.

B.6 SUPERINTENDENCE

Contractor shall keep on the site, during the progress of the Work, a competent superintendent and any necessary assistants who shall be satisfactory to the Owner and who shall represent the Contractor on the site. Directions given to the superintendent by the Owner's Authorized Representative shall be confirmed in writing to the Contractor.

B.7 INSPECTION

- B.7.1 Owner's Authorized Representative shall have access to the Work at all times.
- B.7.2 Inspection of the Work will be made by the Owner's Authorized Representative at its discretion. The Owner's Authorized Representative will have authority to reject Work that does not conform to the Contract Documents. Any Work found to be not in conformance with the Contract Documents, in the discretion of the Owner's Authorized Representative, shall be removed and replaced at the Contractor's

expense.

- B.7.3 Contractor shall make or obtain at the appropriate time all tests, inspections and approvals of portions of the Work required by the Contract Documents or by laws, ordinances, rules, regulations or orders of public authorities having jurisdiction. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work. The Contractor shall give the Owner's Authorized Representative timely notice of when and where tests and inspections are to be made so that the Owner's Authorized Representative may be present for such procedures. Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Owner's Authorized Representative.
- B.7.4 As required by the Contract Documents, Work done or material used without inspection or testing by the Owner's Authorized Representative may be ordered removed at the Contractor's expense.
- B.7.5 If directed to do so any time before the Work is accepted, the Contractor shall uncover portions of the completed Work for inspection. After inspection, the Contractor shall restore such portions of Work to the standard required by the Contract. If the Work uncovered is unacceptable or was done without sufficient notice to the Owner's Authorized Representative, the uncovering and restoration shall be done at the Contractor's expense. If the Work uncovered is acceptable and was done with sufficient notice to the Owner's Authorized Representative, the uncovering and restoration will be paid for as a Change Order.
- B.7.6 If any testing or inspection reveals failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure, including those of repeated procedures and compensation for the Owner's Authorized Representative's and Architect/Engineer's services and expenses, shall be at the Contractor's expense.
- B.7.7 When the United States government participates in the cost of the Work, or the Owner has an agreement with other public or private organizations, or if any portion of the Work is being performed for a third party or in close proximity to third party facilities, representatives of these organizations have the right to inspect the Work affecting their interests or property. Their right to inspect shall not make them a party to the Contract and shall not interfere with the rights of the parties of the Contract. Instructions or orders of such parties shall be transmitted to the Contractor, through the Owner's Authorized Representative.

B.8 SEVERABILITY

If any provision of this Contract is declared by a court to be illegal or in conflict with any law, 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

provision held to be invalid.

B.9 ACCESS TO RECORDS

B.9.1 Contractor shall keep, at all times on the Work site, one record copy of the complete Contract Documents, including the Plans, Specifications, Change Orders and addenda, in good order and marked currently to record field changes and selections made during construction, and one record copy of Shop Drawings, Product Data, Samples and similar submittals, and shall at all times give the Owner's Authorized Representative access thereto.

B.9.2 Contractor shall retain and the Owner and its duly authorized representatives shall have access to, for a period not less than ten (10) years, all Record Documents, financial and accounting records, and other books, documents, papers and records of Contractor which are pertinent to the Contract including records pertaining to Overhead and indirect costs, for the purpose of making audit, examination, excerpts and transcripts. If for any reason, any part of the Contract is involved in litigation, Contractor shall retain all such records until all litigation is resolved. The Owner and/or its agents shall continue to be provided full access to the records during litigation.

B.10 WAIVER

Failure of the Owner to enforce any provision of this Contract shall not constitute a waiver or relinquishment by the Owner of the right to such performance in the future nor of the right to enforce any other provision of this Contract.

B.11 SUBCONTRACTS AND ASSIGNMENT

B.11.1 Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound by the terms and conditions of these General Conditions, and to assume toward the Contractor all of the obligations and responsibilities which the Contractor assumes toward the Owner thereunder, unless (1) the same are clearly inapplicable to the subcontract at issue because of legal requirements or industry practices, or (2) specific exceptions are requested by Contractor and approved in writing by Owner. Where appropriate, Contractor shall require each Subcontractor to enter into similar agreements with sub-subcontractors at any level.

B.11.2 At Owner's request, Contractor shall submit to Owner prior to their execution either Contractor's form of subcontract, or the subcontract to be executed with any particular Subcontractor. If Owner disapproves such form, Contractor shall not execute the form until the matters disapproved are resolved to Owner's satisfaction. Owner's review, comment upon or approval of any such form shall not relieve Contractor of its obligations under this Agreement or be deemed a waiver of such obligations of Contractor.

B.11.3 Contractor shall not assign, sell, or transfer its rights, or delegate its responsibilities under this Contract, in whole or in part, without the prior written approval of the Owner. No such written approval shall relieve Contractor of any obligations of this Contract, and any transferee shall be considered the agent of the Contractor and bound to perform in accordance with

the Contract Documents. Contractor shall remain liable as between the original parties to the Contract as if no assignment had occurred.

B.12 SUCCESSORS IN INTEREST

The provisions of this Contract shall be binding upon and shall accrue to the benefit of the parties to the Contract and their respective permitted successors and assigns.

B.13 OWNER'S RIGHT TO DO WORK

Owner reserves the right to perform other or additional work at or near the project site with other forces than those of the Contractor. If such work takes place within or next to the project site, Contractor will coordinate work with the other contractors or forces, cooperate with all other contractors or forces, carry out the Work in a way that will minimize interference and delay for all forces involved, place and dispose of materials being used so as not to interfere with the operations of another, and join the Work with the work of the others in an acceptable manner and perform it in proper sequence to that of the others. The Owner's Authorized Representative will resolve any disagreements that may arise between or among Contractor and the other contractors over the method or order of doing all work (including the Work). In case of unavoidable interference, the Owner's Authorized Representative will establish work priority (including the Work) which generally will be in the sequence that the contracts were awarded.

B.14 OTHER CONTRACTS

In all cases and at any time, the Owner has the right to execute other contracts related to or unrelated to the Work of this Contract. The Contractor of this Contract will fully cooperate with any and all other contractors without additional cost to the Owner in the manner described in section B.13.

B.15 GOVERNING LAW

This Contract shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflict of laws.

B.16 LITIGATION

Any Claim between Owner and Contractor that arises from or relates to this Contract and that is not resolved through the Claims Review Process in Section D.3 shall be brought and conducted solely and exclusively within the Circuit Court of Marion County for the State of Oregon; provided, however, if a Claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. In no event shall this section be construed as a waiver by the Marion County on any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any claim or from the jurisdiction of any court.

CONTRACTOR BY EXECUTION OF THIS CONTRACT HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF THE COURTS REFERENCED IN THIS SECTION B.16.

B.17 ALLOWANCES

B.17.1 The Contractor shall include in the Contract Price all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such

amounts and by such persons or entities as the Owner may direct.

B.17.2 Unless otherwise provided in the Contract Documents:

- (a) when finally reconciled, allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- (b) Contractor's costs for unloading and handling at the site, labor, installation costs, Overhead, profit and other expenses contemplated for stated allowance amounts shall be included in the Contract Price but not in the allowances;
- (c) whenever costs are more than or less than allowances, the Contract Price shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (i) the difference between actual costs and the allowances under Section B.17.2(a) and (2) changes in Contractor's costs under Section B.17.2(b).
- (d) Unless Owner requests otherwise, Contractor shall provide to Owner a proposed fixed price for any allowance work prior to its performance.

B.18 SUBMITTALS, SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

B.18.1 The Contractor shall prepare and keep current, for the Architect's/Engineer's approval (or for the approval of Owner's Authorized Representative if approval authority has not been delegated to the Architect/Engineer), a schedule and list of submittals which is coordinated with the Contractor's construction schedule and allows the Architect/Engineer reasonable time to review submittals. Owner reserves the right to finally approve the schedule and list of submittals. Submittals include, without limitation, Shop Drawings, Product Data, and Samples which are described below:

- (a) Shop Drawings are drawings, diagrams, schedules and other data specially prepared for the Work by the Contractor or a Subcontractor (including any sub-subcontractor), manufacturer, supplier or distributor to illustrate some portion of the Work.
- (b) Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.
- (c) Samples are physical examples which illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

B.18.2 Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. The purpose of their submittal is to demonstrate for those portions of the Work for which submittals are required by the Contract Documents the way by which the Contractor proposes to conform to the information given and the design concept expressed

in the Contract Documents. Review of submittals by the Architect/Engineer is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, or for approval of safety precautions or, unless otherwise specifically stated by the Architect/Engineer, of any construction means, methods, techniques, sequences or procedures, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect/Engineer's review of the Contractor's submittals shall not relieve the Contractor of its obligations under the Contract Documents. The Architect/Engineer's approval of a specific item shall not indicate approval of an assembly of which the item is a component. Informational submittals upon which the Architect/Engineer is not expected to take responsive action may be so identified in the Contract Documents. Submittals which are not required by the Contract Documents may be returned by the Architect/Engineer without action.

B.18.3 The Contractor shall review for compliance with the Contract Documents, approve and submit to the Architect/Engineer Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of separate contractors. Submittals which are not marked as reviewed for compliance with the Contract Documents and approved by the Contractor may be returned by the Architect/Engineer without action.

B.18.4 By approving and submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents that the Contractor has determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and has checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

B.18.5 The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal has been approved by the Architect/Engineer.

B.18.6 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Architect/Engineer's review or approval of Shop Drawings, Product Data, Samples or similar submittals unless the Contractor has specifically informed the Architect/Engineer in writing of such deviation at the time of submittal and (i) the Architect/Engineer has given written approval to the specific deviation as a minor change in the Work, or (ii) a Change Order has been executed by Owner authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar by the Architect/Engineer's review or approval thereof.

B.18.7 In the event that Owner elects not to have the obligations and duties described under this Section

B.18 performed by the Architect/Engineer, or in the event no Architect/Engineer is employed by Owner on the project, all obligations and duties assigned to the Architect/Engineer hereunder shall be performed by the Owner's Authorized Representative.

B.19 SUBSTITUTIONS

The Contractor may make Substitutions only with the consent of the Owner, after evaluation by the Owner's Authorized Representative and only in accordance with a Change Order. Substitutions shall be subject to the requirements of the bid documents. By making requests for Substitutions, the Contractor represents that the Contractor has personally investigated the proposed substitute product; represents that the Contractor will provide the same warranty for the Substitution that the Contractor would for the product originally specified unless approved otherwise; certifies that the cost data presented is complete and includes all related costs under this Contract including redesign costs, and waives all claims for additional costs related to the Substitution which subsequently become apparent; and will coordinate the installation of the accepted Substitution, making such changes as may be required for the Work to be completed in all respects.

B.20 USE OF PLANS AND SPECIFICATIONS

Plans, Specifications and related Contract Documents furnished to Contractor by Owner or Owner's Architect/Engineer shall be used solely for the performance of the Work under this Contract. Contractor and its Subcontractors and suppliers are authorized to use and reproduce applicable portions of such documents appropriate to the execution of the Work, but shall not claim any ownership or other interest in them beyond the scope of this Contract, and no such interest shall attach. Unless otherwise indicated, all common law, statutory and other reserved rights, in addition to copyrights, are retained by Owner.

B.21 FUNDS AVAILABLE AND AUTHORIZED

Owner reasonably believes at the time of entering into this Contract that sufficient funds are available and authorized for expenditure to finance the cost of this Contract within the Owner's appropriation or limitation. Contractor understands and agrees that, to the extent that in the event the Board of Commissioners of the County reduces, changes, eliminates or otherwise modifies the funding the cost of this contract, the CONTRACTOR agrees to abide by any such decision, including termination of this agreement.

B.22 NO THIRD PARTY BENEFICIARIES

Owner and Contractor are the only parties to this Contract and are the only parties entitled to enforce its terms. Nothing in this Contract gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly, or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Contract.

SECTION C WAGES AND LABOR

C.1 MINIMUM WAGE RATES ON PUBLIC WORKS

Contractor shall comply fully with the provisions of ORS 279C.800 through 279C.870. Documents establishing those conditions, as determined by the Commissioner of the Bureau of Labor and Industries (BOLI), are included as attachments to or are incorporated by reference in the Contract Documents. Contractor shall pay workers at not less than the specified minimum hourly rate of wage, and shall include that requirement in all subcontracts.

C.2 PAYROLL CERTIFICATION; ADDITIONAL RETAINAGE; FEE REQUIREMENTS

C.2.1 In accordance with ORS 279C.845, the Contractor and every Subcontractor shall submit written certified statements to the Owner's Authorized Representative, on the form prescribed by the Commissioner of the Bureau of Labor and Industries, certifying the hourly rate of wage paid each worker which the Contractor or the Subcontractor has employed on the project and further certifying that no worker employed on the project has been paid less than the prevailing rate of wage or less than the minimum hourly rate of wage specified in the Contract, which certificate and statement shall be verified by the oath of the Contractor or the Subcontractor that the Contractor or Subcontractor has read the certified statement, that the Contractor or Subcontractor knows the contents of the certified statement and that to the Contractor's or Subcontractor's best knowledge and belief the certified statement is true. The certified statements shall set out accurately and completely the payroll records for the prior week including the name and address of each worker, the worker's correct classification, rate of pay, daily and weekly number of hours worked, deductions made and actual wages paid. Certified statements for each week during which the Contractor or Subcontractor has employed a worker on the project shall be submitted once a month, by the fifth business day of the following month.

The Contractor and Subcontractors shall preserve the certified statements for a period of ten (10) years from the date of completion of the Contract.

C.2.2 Pursuant to ORS 279C.845(7), the Owner shall retain 25 percent of any amount earned by the Contractor on this public works project until the Contractor has filed the certified statements required by section C.2.1. The Owner shall pay to the Contractor the amount retained under this subsection within 14 days after the Contractor files the required certified statements, regardless of whether a Subcontractor has failed to file certified statements.

C.2.3 Pursuant to ORS 279C.845(8), the Contractor shall retain 25 percent of any amount earned by a first-tier Subcontractor on this public works project until the first-tier Subcontractor has filed with the Owner the certified statements required by C.2.1. Before paying any amount retained under this subsection, the Contractor shall verify that the first-tier Subcontractor has filed the certified statement. Within 14 days after the first-tier Subcontractor files the required certified statement the Contractor shall pay the first-tier Subcontractor any amount retained under this subsection.

C.2.4 In accordance with statutory requirements, and administrative rules promulgated by the Commissioner of the Bureau of Labor and Industries, the fee required by ORS 279C.825(1) will be paid by Owner to the Commissioner.

and represent and warrant to the Contractor that the Qualifying Employee Drug Testing Program is in place at the time of subcontract execution and will continue in full force and effect for the duration of the subcontract, or

C.3 PROMPT PAYMENT AND CONTRACT CONDITIONS

C.3.1 Pursuant to ORS 279C.505 and as a condition to Owner's performance hereunder, the Contractor shall:

(2) Require that the Subcontractor's Subject Employees participate in the Contractor's Qualifying Employee Drug Testing Program for the duration of the subcontract.

C.3.2 Pursuant to ORS 279C.515, and as a condition to Owner's performance hereunder, Contractor agrees:

C.3.1.1 Make payment promptly, as due, to all persons supplying to Contractor labor or materials for the prosecution of the Work provided for in this Contract.

C.3.2.1 If Contractor fails, neglects or refuses to pay promptly a person's claim for labor or services that the person provides to the Contractor or a Subcontractor in connection with the project as such claim becomes due, the proper officer that represents the Owner may pay the amount of the claim and charge the amount of the payment against funds due or to become due Contractor under this Contract. Paying a claim in this manner shall not relieve the Contractor or the Contractor's surety from obligation with respect to an unpaid claim.

C.3.1.2 Pay all contributions or amounts due the State Industrial Accident Fund from such Contractor or Subcontractor incurred in the performance of the Contract.

C.3.2.2 If the Contractor or a first-tier Subcontractor fails, neglects or refuses to pay a person that provides labor or materials in connection with the public contract for a public improvement within thirty (30) Days after receiving payment from Owner or a contractor, the contractor or first-tier Subcontractor owes the person the amount due plus interest charges that begin at the end of the 10-Day period within which payment is due under ORS 279C.580(4) and that end upon final payment, unless payment is subject to a good faith dispute as defined in ORS 279C.580. The rate of interest on the amount due is nine percent per annum. The amount of interest may not be waived.

C.3.1.3 Not permit any lien or claim to be filed or prosecuted against the Owner on account of any labor or material furnished. Contractor will not assign any claims that Contractor has against Owner, or assign any sums due by Owner, to Subcontractors, suppliers, or manufacturers, and will not make any agreement or act in any way to give Subcontractors a claim or standing to make a claim against the Owner.

C.3.2.3 If the Contractor or a Subcontractor fails, neglects or refuses to pay a person that provides labor or materials in connection with the Contract, the person may file a complaint with the Construction Contractors Board, unless payment is subject to a good faith dispute as defined in ORS 279C.580. Every contract related to this Contract must contain a similar clause.

C.3.1.4 Pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.

C.3.1.5 Demonstrate that an employee drug testing program is in place as follows:

C.3.3 Pursuant to ORS 279C.580, Contractor shall include in each subcontract for property or services the Contractor enters into with a first-tier Subcontractor, including a material supplier, for the purpose of performing a construction contract:

(a) Contractor represents and warrants that Contractor has in place at the time of the execution of this Contract, and shall maintain during the term of this Contract, a Qualifying Employee Drug Testing Program for its employees that includes, at a minimum, the following:

(a) A payment clause that obligates the Contractor to pay the first-tier Subcontractor for satisfactory performance under the subcontract within ten (10) Days out of amounts the Owner pays to the Contractor under the Contract;

- (1) A written employee drug testing policy,
- (2) Required drug testing for all new Subject Employees or, alternatively, required testing of all Subject Employees every 12 months on a random selection basis, and
- (3) Required testing of a Subject Employee when the Contractor has reasonable cause to believe the Subject Employee is under the influence of drugs.

(b) A clause that requires the Contractor to provide the first-tier Subcontractor with a standard form that the first-tier Subcontractor may use as an application for payment or as another method by which the Subcontractor may claim a payment due from the Contractor;

A drug testing program that meets the above requirements will be deemed a "Qualifying Employee Drug Testing Program." For the purposes of this section, an employee is a "Subject Employee" only if that employee will be working on the project job site.

- (b) Contractor shall require each Subcontractor providing labor for the project to:
 - (1) Demonstrate to the Contractor that it has a Qualifying Employee Drug Testing Program for the Subcontractor's Subject Employees,

- (c) A clause that requires the Contractor, except as otherwise provided in this paragraph, to use the same form and regular administrative procedures for processing payments during the entire term of the subcontract. The Contractor may change the form or the regular administrative procedures the Contractor uses for processing payments if the Contractor:
 - (1) Notifies the Subcontractor in writing at least 45 days before the date on which the Contractor makes the change; and
 - (2) Includes with the written notice a copy of the new or changed form or a description of the new or changed procedure.
- (d) An interest penalty clause that obligates the Contractor, if the Contractor does not pay the first-tier Subcontractor within thirty (30) Days after receiving payment from Owner, to pay the first-tier Subcontractor an interest penalty on amounts due in each payment the Contractor does not make in accordance with the payment clause included in the subcontract under paragraph (a) of this subsection. Contractor or first-tier Subcontractor is not obligated to pay an interest penalty if the only reason that the Contractor or first-tier Subcontractor did not make payment when payment was due is that the Contractor or first-tier Subcontractor did not receive payment from Owner or Contractor when payment was due. The interest penalty applies to the period that begins on the day after the required payment date and that ends on the date on which the amount due is paid; and is computed at the rate specified in ORS 279C.515(2).
- (e) A clause which requires each of Contractor's Subcontractors to include, in each of their contracts with lower-tier Subcontractors or suppliers, provisions to the effect that the first-tier Subcontractor shall pay its lower-tier Subcontractors and suppliers in accordance with the provisions of paragraphs (a) through (d) above and requiring each of their Subcontractors and suppliers to include such clauses in their subcontracts and supply contracts.

C.3.4 All employers, including Contractor, that employ subject workers who work under this contract in the Marion County 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.

C.4 PAYMENT FOR MEDICAL CARE

Pursuant to ORS 279C.530, and as a condition to Owner's performance hereunder, Contractor shall promptly, as due, make payment to any person, partnership, association or corporation furnishing medical, surgical, and hospital care or other needed care and attention, incident to sickness or injury, to the employees of such Contractor, all sums of which the Contractor agrees to pay for such services and all moneys and sums which the Contractor has collected or deducted from the wages of personnel pursuant to any law, contract or agreement for the purpose of providing or paying for such services.

C.5 HOURS OF LABOR

As a condition to Owner's performance hereunder, Contractor shall comply with ORS 279C.520, as amended from time to time and incorporated herein by this reference:

Pursuant to ORS 279C.520 and as a condition to Owner's performance hereunder, no person shall be employed to perform Work under this Contract for more than ten (10) hours in any one day or forty (40) hours in any one week, except in cases of necessity, emergency or where public policy absolutely requires it. In such instances, Contractor shall pay the employee at least time and a half pay:

- (a) For all overtime in excess of eight (8) hours a day or forty (40) hours in any one week when the work week is five consecutive Days, Monday through Friday; or
- (b) For all overtime in excess of ten (10) hours a day or forty (40) hours in any one week when the work week is four consecutive Days, Monday through Friday; and
- (c) For all Work performed on Saturday and on any legal holiday specified in ORS 279C.540.

This section C.5 will not apply to Contractor's Work under this Contract if Contractor is currently a party to a collective bargaining agreement with any labor organization.

This Section C.5 shall not excuse Contractor from completion of the Work within the time required under this Contract.

**SECTION D
CHANGES IN THE WORK**

D.1 CHANGES IN WORK

D.1.1 The terms of this Contract shall not be waived, altered, modified, supplemented or amended in any manner whatsoever without prior written approval of the Owner's Authorized Representative, and then only in a manner consistent with the Change Order provisions of this Section D.1 and after any necessary approvals required by public contracting laws have been obtained. Otherwise, a formal contract amendment is required, which shall not be effective until its execution by the parties to this Contract and all approvals required by public contracting laws have been obtained.

D.1.2 It is mutually agreed that changes in Plans, quantities, or details of construction are inherent in the nature of construction and may be necessary or desirable during the course of construction. Within the general scope of this Contract, the Owner's Authorized Representative may at any time, without notice to the sureties and without impairing the Contract, require changes consistent with this Section D.1. All Change Order Work shall be executed under the conditions of the Contract Documents. Such changes may include, but are not limited to:

- (a) Modification of specifications and design.
- (b) Increases or decreases in quantities.
- (c) Increases or decreases to the amount of Work.

- (d) Addition or elimination of any Work item.
- (e) Change in the duration of the project.
- (f) Acceleration or delay in performance of Work.
- (g) Deductive changes.

Deductive changes are those that reduce the scope of the Work, and shall be made by mutual agreement whenever feasible, as determined by Owner. In cases of suspension or partial termination under Section J, Owner reserves the right to unilaterally impose a deductive change and to self-perform such Work, for which the provisions of B.13 (Owner's Right to Do Work) shall then apply.

Adjustments in compensation shall be made under the provisions of D.1.3, in which costs for deductive changes shall be based upon a Direct Costs adjustment together with the related percentage markup specified for profit, Overhead and other indirect costs, unless otherwise agreed to by Owner.

D.1.3 The Owner and Contractor agree that Change Order Work shall be administered and compensated according to the following:

- (a) *Unit pricing* may be utilized at the Owner's option when unit prices or solicitation alternates were provided that established the cost for additional Work, and a binding obligation exists under the Contract on the parties covering the terms and conditions of the additional Work.
- (b) If the Owner elects not to utilize unit pricing, or in the event that unit pricing is not available or appropriate, *fixed pricing* may be used for Change Order Work. In fixed pricing the basis of payments or total price shall be agreed upon in writing between the parties to the Contract, and shall be established before the Work is done whenever feasible. The mark-ups set forth in D.1.3(c) shall be utilized by the parties as a guide in establishing fixed pricing, and will not be exceeded by Owner without adequate justification. Cost and price data relating to Change Orders shall be supplied by Contractor to Owner upon request, but Owner shall be under no obligation to make such requests.
- (c) In the event that unit pricing and fixed pricing are not utilized, then Change Order Work shall be performed on a *cost reimbursement* basis for Direct Costs. Such Work shall be compensated on the basis of the actual, reasonable and allowable cost of labor, equipment, and material furnished on the Work performed. In addition, the following markups shall be added to the Contractor's or Subcontractor's Direct Costs as full compensation for profit, Overhead and other indirect costs for Work directly performed with the Contractor's or Subcontractor's own forces:

On Labor.....	15%
On Equipment.....	10%
On Materials.....	10%

When Change Order Work under D.1.3(c) is invoiced by an authorized Subcontractor at any level, each ascending

tier Subcontractor or Contractor will be allowed a 5% supplemental mark-up on each piece of subcontract Work covered by such Change Order.

Payments made to the Contractor shall be complete compensation for Overhead, profit, and all costs that were incurred by the Contractor or by other forces furnished by the Contractor, including Subcontractors, for Change Order Work. Owner may establish a maximum cost for Change Order Work under this Section D.1.3(c), which shall not be exceeded for reimbursement without additional written authorization from Owner. Contractor shall not be required to complete such Change Order Work without additional authorization.

D.1.4 Any necessary adjustment of Contract Time that may be required as a result of a Change Order must be agreed upon by the parties before the start of the Change Order Work unless Owner's Authorized Representative authorizes Contractor to start the Work before agreement on Contract Time adjustment. Contractor shall submit any request for additional compensation (and additional Contract Time if Contractor was authorized to start Work before an adjustment of Contract Time was approved) as soon as possible but no later than thirty (30) Days after receipt of the Change Order. If Contractor's request for additional compensation or adjustment of Contract Time is not made within the thirty (30) day time limit, Contractor's requests pertaining to that Change Order are barred. The thirty (30) day time limit for making requests shall not be extended for any reason, including without limitation Contractor's claimed inability to determine the amount of additional compensation or adjustment of Contract Time, unless an extension is granted in writing by Owner. If the Owner's Authorized Representative denies Contractor's request for additional compensation or adjustment of Contract Time, Contractor may proceed to file a Claim under Section D.3, Claims Review Process. No other reimbursement, compensation, or payment will be made, except as provided in Section D.1.5 for impact claims.

D.1.5 If any Change Order Work under Section D.1.3 causes an increase or decrease in the Contractor's cost of, or the Contract Time required for the performance of, any other part of the Work under this Contract, the Contractor must submit a written request to the Owner's Authorized Representative, setting forth the nature and specific extent of the request, including all time and cost impacts against the Contract as soon as possible, but no later than thirty (30) Days after receipt of the Change Order by Contractor.

The thirty (30) day time limit applies to claims of Subcontractors, suppliers, or manufacturers that may be affected by the Change Order and that request additional compensation or an extension of Contract Time to perform; Contractor has responsibility for contacting its Subcontractors, suppliers, or manufacturers within the thirty (30) day time limit, and including their requests with Contractor's requests. If the request involves Work to be completed by Subcontractors, or materials to be furnished by suppliers or manufacturers, such requests shall be submitted to the Contractor in writing with full analysis and justification for the compensation and additional Contract Time

requested. The Contractor will analyze and evaluate the merits of the requests submitted by Subcontractors, suppliers, and manufacturers to Contractor prior to including those requests and Contractor's analysis and evaluation of those requests with Contractor's requests for additional compensation or Contract Time that Contractor submits to the Owner's Authorized Representative. Failure of Subcontractors, suppliers, manufacturers or others to submit their requests to Contractor for inclusion with Contractor's requests submitted to Owner's Authorized Representative within the time period and by the means described in this section shall constitute a waiver of these Subcontractor claims. The Owner's Authorized Representative and the Owner will not consider direct requests or claims from Subcontractors, suppliers, manufacturers or others not a party to this Contract. The consideration of such requests and claims under this section does not give any person, not a party to the Contract the right to bring a claim against the Marion County, whether in this claims process, in litigation, or in any dispute resolution process.

If the Owner's Authorized Representative denies the Contractor's request for additional compensation or an extension of Contract Time, the Contractor may proceed to file a Claim under Section D.3, Claims Review Process.

D.1.6 No request or Claim by the Contractor for additional costs or an extension of Contract Time shall be allowed if made after receipt of final payment application under this Contract. Contractor agrees to submit its final payment application within ninety (90) days after Substantial Completion, unless written extension is granted by Owner. Contractor shall not delay final payment application for any reason, including without limitation nonpayment of Subcontractors, suppliers, manufacturers or others not a party to this Contract, or lack of resolution of a dispute with Owner or any other person of matters arising out of or relating to the Contract. If Contractor fails to submit its final payment application within ninety (90) days after Substantial Completion, and Contractor has not obtained written extension by Owner, all requests or Claims for additional costs or an extension of Contract Time shall be waived.

D.1.7 It is understood that changes in the Work are inherent in construction of this type. The number of changes, the scope of those changes, and the effect they have on the progress of the original Work cannot be defined at this time. The Contractor is notified that numerous changes may be required and that there will be no compensation made to the Contractor directly related to the number of changes. Each change will be evaluated for extension of Contract Time and increase or decrease in compensation based on its own merit.

D.2 DELAYS

D.2.1 Delays in construction include "Avoidable Delays", which are defined in Section D.2.1.1, and "Unavoidable Delays", which are defined in Section D.2.1.2. The effect of Avoidable Delays is described in Section D.2.2 and the effect of Unavoidable Delays is described in Section D.2.3.

D.2.1.1 Avoidable Delays include any delays other than Unavoidable Delays, and include delays that

otherwise would be considered Unavoidable Delays but that:

- (a) Could have been avoided by the exercise of care, prudence, foresight, and diligence on the part of the Contractor or its Subcontractors.
- (b) Affect only a portion of the Work and do not necessarily prevent or delay the prosecution of other parts of the Work nor the completion of the whole Work within the Contract Time.
- (c) Do not impact activities on the accepted critical path schedule.
- (d) Are associated with the reasonable interference of other contractors employed by the Owner that do not necessarily prevent the completion of the whole Work within the Contract Time.

D.2.1.2 Unavoidable Delays include delays other than Avoidable Delays that are:

- (a) Caused by any actions of the Owner, Owner's Authorized Representative, or any other employee or agent of the Owner, or by separate contractor employed by the Owner.
- (b) Caused by any site conditions which differ materially from what was represented in the Contract Documents or from conditions that would normally be expected to exist and be inherent to the construction activities defined in the Contract Documents. The Contractor shall notify the Owner's Authorized Representative immediately of differing site conditions before the area has been disturbed, but not more than fourteen (14) days after the condition has been encountered. The Owner's Authorized Representative will investigate the area and make a determination as to whether or not the conditions differ materially from either the conditions stated in the Contract Documents or those which could reasonably be expected in execution of this particular Contract. If Contractor and the Owner's Authorized Representative agree that a differing site condition exists, any additional compensation or additional Contract Time will be determined based on the process set forth in Section D.1.5 for Change Order Work. If the Owner's Authorized Representative disagrees that a differing site condition exists and denies Contractor's request for additional compensation or Contract Time, Contractor may proceed to file a Claim under Section D.3, Claims Review Process.
- (c) Caused by Force Majeure acts, events or occurrences that could not have been avoided by the exercise of care, prudence, foresight, and diligence on the part of the Contractor or its Subcontractors.
- (d) Caused by adverse weather conditions. Any adverse weather conditions must be substantiated by documentary evidence that weather conditions were abnormal for the specific time period claimed, could not have been anticipated by the Contractor, and adversely impacted the project in a manner that could not be avoided by rescheduling the Work or by implementing measures to protect against the weather so that the Work could proceed. A

rain, windstorm, high water, or other natural phenomenon for the specific locality of the Work, which might reasonably have been anticipated from the previous 10-year historical records of the general locality of the Work, shall not be construed as abnormal. The parties agree that rainfall greater than the following levels cannot be reasonably anticipated:

- (i) Daily rainfall equal to, or greater than, 0.50 inch during a month when the monthly rainfall exceeds the normal monthly average by twenty-five percent (25 %) or more.
- (ii) daily rainfall equal to, or greater than, 0.75 inch at any time.

The Office of the Environmental Data Service of the National Oceanic and Atmospheric Administration of the U.S. Department of Commerce nearest the project site shall be considered the official agency of record for weather information.

D.2.2 Except as otherwise provided in ORS 279C.315, Contractor shall not be entitled to additional compensation or additional Contract Time for Avoidable Delays.

D.2.3 In the event of Unavoidable Delays, based on principles of equitable adjustment, Contractor may be entitled to the following:

- (a) Contractor may be entitled to additional compensation or additional Contract Time, or both, for Unavoidable Delays described in Section D.2.1.2 (a) and (b).
- (b) Contractor may be entitled to additional Contract Time for Unavoidable Delays described in Section D.2.1.2(c) and (d).

In the event of any requests for additional compensation or additional Contract Time, or both, as applicable, arising under this Section D.2.3 for Unavoidable Delays, other than requests for additional compensation or additional Contract Time for differing site conditions for which a review process is established under Section D.2.1.2 (b), Contractor shall submit a written notification of the delay to the Owner's Authorized Representative within two (2) Days of the occurrence of the cause of the delay. This written notification shall state the cause of the potential delay, the project components impacted by the delay, and the anticipated additional Contract Time or the additional compensation, or both, as applicable, resulting from the delay. Within seven (7) Days after the cause of the delay has been mitigated, or in no case more than thirty (30) Days after the initial written notification, the Contractor shall submit to the Owner's Authorized Representative, a complete and detailed request for additional compensation or additional Contract Time, or both, as applicable, resulting from the delay. If the Owner's Authorized Representative denies Contractor's request for additional compensation or adjustment of Contract Time, the Contractor may proceed to file a Claim under Section D.3, Claims Review Process.

If Contractor does not timely submit the notices required under this Section D.2., then unless otherwise prohibited by law, Contractor's Claim shall be barred.

D.3 CLAIMS REVIEW PROCESS

D.3.1 All Contractor Claims shall be referred to the Owner's Authorized Representative for review. Contractor's Claims, including Claims for additional compensation or additional Contract Time, shall be submitted in writing by Contractor to the Owner's Authorized Representative within five (5) Days after a denial of Contractor's initial request for an adjustment of Contract terms, payment of money, extension of Contract Time or other relief, provided that such initial request has been submitted in accordance with the requirements and within the time limits established in these General Conditions. Within thirty (30) Days after the initial Claim, Contractor shall submit to the Owner's Authorized Representative, a complete and detailed description of the Claim (the "Detailed Notice") that includes all information required by Section D.3.2. Unless the Claim is made in accordance with these time requirements, it shall be waived.

D.3.2 The Detailed Notice of the Claim shall be submitted in writing by Contractor and shall include a detailed, factual statement of the basis of the Claim, pertinent dates, Contract provisions which support or allow the Claim, reference to or copies of any documents which support the Claim, the dollar value of the Claim, and the Contract Time extension requested for the Claim. If the Claim involves Work to be completed by Subcontractors, the Contractor will analyze and evaluate the merits of the Subcontractor claim prior to forwarding it and that analysis and evaluation to the Owner's Authorized Representative. The Owner's Authorized Representative and the Owner will not consider direct claims from Subcontractors, suppliers, manufacturers, or others not a party to this Contract. Contractor agrees that it will make no agreement, covenant, or assignment, nor will it commit any other act that will permit or assist any Subcontractor, supplier, manufacturer, or other to directly or indirectly make a claim against Owner.

D.3.3 The Owner's Authorized Representative will review all Claims and take one or more of the following preliminary actions within ten (10) Days of receipt of the Detailed Notice of a Claim: (1) request additional supporting information from the Contractor; (2) inform the Contractor and Owner in writing of the time required for adequate review and response; (3) reject the Claim in whole or in part and identify the reasons for rejection; (4) based on principles of equitable adjustment, recommend approval of all or part of the Claim; or (5) propose an alternate resolution.

D.3.4 The Owner's Authorized Representative's decision shall be final and binding on the Contractor unless appealed by written notice to the Owner within fifteen (15) Days of receipt of the decision. The Contractor must present written documentation supporting the Claim within fifteen (15) Days of the notice of appeal. After receiving the appeal documentation, the Owner, through its Chief Administrative Officer (CAO), shall review the materials and render a decision within thirty (30) Days after receiving the appeal documents.

D.3.5 The decision of the Owner shall be final and binding unless the Contractor delivers to the Owner its requests for mediation, which shall be a non-binding process, within fifteen (15) Days of the date of the Owner's decision.

D.3.6 The parties are fully committed to working with each other throughout the Project and agree to communicate regularly with each other at all times so as to avoid or minimize disputes or disagreements. If disputes or disagreements do arise, Contractor and Owner each commit to resolving such disputes or disagreements in an amicable, professional and expeditious manner so as to avoid unnecessary losses, delays and disruptions to the Work.

D.3.7 The mediation process will be considered to have commenced as of the date the Contractor delivers the request. Both parties acknowledge and agree that participation in mediation is a prerequisite to commencement of litigation of any disputes relating to the Contract. Both parties further agree to exercise their best efforts in good faith to resolve all disputes within sixty (60) Days of the commencement of the mediation through the mediation process set forth herein.

In the event that a lawsuit must be filed within this sixty (60) day period in order to preserve a cause of action, the parties agree that notwithstanding the filing, they shall proceed diligently with the mediation to its conclusion prior to actively prosecuting the lawsuit, and shall seek from the Court in which the lawsuit is pending such stays or extensions, including the filing of an answer, as may be necessary to facilitate the mediation process. Further, in the event settlements are reached on any issues through mediation, the parties agree to promptly submit the appropriate motions and orders documenting the settlement to the Court for its signature and filing.

D.3.6 The mediator shall be an individual mutually acceptable to both parties, but in the absence of agreement each party shall select a temporary mediator and the temporary mediators shall jointly select the permanent mediator. Each party shall pay its own costs for the time and effort involved in mediation. The cost of the mediator shall be split equally between the two parties. Both parties agree to exercise their best effort in good faith to resolve all disputes in mediation. Participation in mediation is a mandatory requirement of both the Owner and the Contractor. The schedule, time and place for mediation will be mutually acceptable, or, failing mutual agreement, shall be as established by the mediator. The parties agree to maintain the confidentiality of mediation, if any, and shall execute all necessary documents to give effect to such confidentiality to the extent allowed by law. In any event, the parties shall not subpoena the mediator or otherwise require the mediator to produce records, notes or work product, or to testify in any future proceedings as to information disclosed or representations made in the course of mediation, except to the extent disclosure is required by law.

D.3.7 Owner may at any time and at its discretion issue a construction change directive adding to, modifying or reducing the scope of Work. Contractor and Owner shall negotiate the need for any additional compensation or additional Contract Time related to the change, subject to the procedures for submitting requests or Claims for additional compensation or additional Contract Time established in this Section D. Unless otherwise directed by Owner's Authorized Representative, Contractor shall proceed with the Work while any request or Claim is pending, including but not limited to, a request or Claim for additional compensation or additional Contract Time

resulting from Work under a Change Order or construction change directive. Regardless of the review period or the final decision of the Owner's Authorized Representative, the Contractor shall continue to diligently pursue the Work as identified in the Contract Documents. In no case is the Contractor justified or allowed to cease Work without a written stop work order from the Owner or Owner's Authorized Representative.

SECTION E PAYMENTS

E.1 SCHEDULE OF VALUES

The Contractor shall submit, at least ten (10) Days prior to submission of its first application for progress payment, a schedule of values ("Schedule of Values") for the contracted Work. This schedule will provide a breakdown of values for the contracted Work and will be the basis for progress payments. The breakdown will demonstrate reasonable, identifiable, and measurable components of the Work. Unless objected to by the Owner's Authorized Representative, this schedule shall be used as the basis for reviewing Contractor's applications for payment. If objected to by Owner's Authorized Representative, Contractor shall revise the schedule of values and resubmit the same for approval of Owner's Authorized Representative.

E.2 APPLICATIONS FOR PAYMENT

E.2.1 Owner shall make progress payments on the Contract monthly as Work progresses. Payments shall be based upon estimates of Work completed and the Schedule of Values. All payments shall be approved by the Owner's Authorized Representative. A progress payment shall not be considered acceptance or approval of any Work or waiver of any defects therein. Owner shall pay to Contractor interest on the progress payment, not including retainage, due the Contractor. The interest shall commence thirty (30) Days after the receipt of invoice ("application for payment") from the Contractor or fifteen (15) Days after the payment is approved by the Owner's Authorized Representative, whichever is the earlier date. The rate of interest shall equal three times the discount rate on 90-day commercial paper in effect at the Federal Reserve Bank in the Federal Reserve district that includes Oregon on the date that is thirty (30) Days after receipt of the application for payment from the Contractor or fifteen (15) Days after the payment is approved by the Owner, whichever is the earlier date, but the rate of interest shall not exceed thirty (30) percent. Notwithstanding the foregoing, in instances when an application for payment is filled out incorrectly, or when there is any defect or impropriety in any submitted application or when there is a good faith dispute, Owner shall so notify the Contractor within fifteen (15) Days stating the reason or reasons the application for payment is defective or improper or the reasons for the dispute. A defective or improper application for payment, if corrected by the Contractor within seven (7) Days of being notified by the Owner, shall not cause a payment to be made later than specified in this section unless interest is also paid. Accrual of interest will be postponed when payment on the principal is delayed because of disagreement between the Owner and the Contractor.

Owner reserves the right, instead of requiring the Contractor to correct or resubmit a defective or improper application for payment, to reject the

defective or improper portion of the application for payment and pay the remainder of the application for payment that is correct and proper. Owner makes this election, the Contractor will be required to arrange to receive EFT/ACH payments.

E.2.2 Contractor shall submit to the Owner's Authorized Representative, an application for each payment and, if required, receipts or other vouchers showing payments for materials and labor, including payments to Subcontractors. Contractor shall include, in its application for payment, a schedule of the percentages of the various parts of the Work completed, based on the Schedule of Values which shall aggregate to the payment application total, and shall include, on the face of each copy thereof, a certificate in substantially the following form:

"I, the undersigned, hereby certify that the above bill is true and correct, and the payment therefore, has not been received.

Signed: _____"

E.2.3 Generally, applications for payment will be accepted only for materials that have been installed. Under special conditions, applications for payment for stored materials will be accepted at Owner's sole discretion. Such a payment, if made, will be subject to the following conditions:

- (a) The request for stored material shall be submitted at least thirty (30) Days in advance of the application for payment on which it appears. Applications for payment shall be entertained for major equipment, components or expenditures only.
- (b) The Contractor shall submit applications for payment showing the quantity and cost of the material stored.
- (c) The material shall be stored in a bonded warehouse and Owner's Authorized Representative shall be granted the right to access the material for the purpose of removal or inspection at any time during the Contract Period.
- (d) The Contractor shall name the Owner as co-insured on the insurance policy covering the full value of the property while in the care and custody of the Contractor until it is installed. A certificate noting this coverage shall be issued to the Owner.
- (e) Payments shall be made for materials only. The submitted amount of the application for payment shall be reduced by the cost of transportation and for the cost of an inspector to check the delivery at out of town storage sites. The cost of said inspection shall be borne solely by the Contractor.
- (f) Within sixty (60) Days of the application for payment, the Contractor shall submit evidence of payment covering the material stored.
- (g) Payment for stored materials shall in no way indicate acceptance of the materials or waive any rights under this Contract for the rejection of the Work or materials not in conformance with the Contract Documents.

(h) All required documentation must be submitted with the respective application for payment.

E.2.4 The Owner reserves the right to withhold all or part of a payment, or may nullify in whole or part any payment previously made, to such extent as may be necessary in the Owner's opinion to protect the Owner from loss because of:

- (a) Work that is defective and not remedied, or that has been demonstrated or identified as failing to conform with the Contract Documents,
- (b) third party claims filed or evidence reasonably indicating that such claims will likely be filed unless security acceptable to the Owner is provided by the Contractor;
- (c) failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment (in which case Owner may issue checks made payable jointly to Owner and such unpaid persons under this provision, or directly to Subcontractors and suppliers at any level under Section C.3.2.1);
- (d) reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Price;
- (e) damage to the Owner or another contractor;
- (f) reasonable evidence that the Work will not be completed within the Contract Time required by the Contract, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;
- (g) failure to carry out the Work in accordance with the Contract Documents; or
- (h) assessment of liquidated damages, when withholding is made for offset purposes.

E.2.5 Subject to the provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

- (a) Take that portion of the Contract Price properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the total Contract Price allocated to that portion of the Work in the Schedule of Values, less retainage as provided in Section E.5. Pending final determination of cost to the Owner of changes in the Work, no amounts for changes in the Work can be included in application for payment until the Contract Price has been adjusted by Change Order;
- (b) Add that portion of the Contract Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction (or, if approved in advance by the Owner pursuant to Section E.2.3, suitably stored off the site at a location agreed upon in writing), less retainage as provided in Section E.5;
- (c) Subtract the aggregate of previous payments made by the Owner; and

- (d) Subtract any amounts for which the Owner's Authorized Representative has withheld or nullified payment as provided in the Contract Documents.

E.2.6 Contractor's applications for payment may not include requests for payment for portions of the Work for which the Contractor does not intend to pay to a Subcontractor or material supplier.

E.2.7 The Contractor warrants to Owner that title to all Work covered by an application for payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an application for payment all Work for which payments are received from the Owner shall be free and clear of liens, claims, security interests or encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

E.2.8 If Contractor disputes any determination by Owner's Authorized Representative with regard to any application for payment, Contractor nevertheless shall continue to prosecute expeditiously the Work. No payment made hereunder shall be or be construed to be final acceptance or approval of that portion of the Work to which such partial payment relates or shall relieve Contractor of any of its obligations hereunder.

E.3 PAYROLL CERTIFICATION REQUIREMENT

Payroll certification is required before payments are made on the Contract. Refer to Section C.2 for this information.

E.4 DUAL PAYMENT SOURCES

Contractor shall not be compensated for Work performed under this Contract from any state agency other than the agency that is a party to this Contract.

E.5 RETAINAGE

E.5.1 Retainage shall be withheld and released in accordance with ORS 279C.550 to 279C.580:

E.5.1.1 Owner may reserve as retainage from any progress payment an amount not to exceed five percent of the payment. As Work progresses, Owner may reduce the amount of the retainage and may eliminate retainage on any remaining monthly Contract payments after 50 percent of the Work under the Contract is completed if, in the Owner's opinion, such Work is progressing satisfactorily. Elimination or reduction of retainage shall be allowed only upon written application by the Contractor, which application shall include written approval of Contractor's surety; except that when the Work is 97-1/2 percent completed the Owner may, at its discretion and without application by the Contractor, reduce the retained amount to 100 percent of the value of the Work remaining to be done. Upon receipt of written application by the Contractor, Owner shall respond in writing

within a reasonable time.

E.5.1.2 Alternatives to cash retainage are available to Contractor as provided in ORS 279C.560

E.5.1.3 The retainage held by Owner shall be included in and paid to the Contractor as part of the final payment of the Contract Price. The Owner shall pay to Contractor interest at the rate of one and one-half percent per month on the final payment due Contractor, interest to commence thirty (30) Days after the Work under the Contract has been completed and accepted and to run until the date Contractor shall notify Owner in writing when the Contractor considers the Work complete and Owner shall, within fifteen (15) Days after receiving the written notice, either accept the Work or notify the Contractor of Work yet to be performed on the Contract. If Owner does not within the time allowed notify the Contractor of Work yet to be performed to fulfill contractual obligations, the interest provided by this subsection shall commence to run thirty (30) Days after the end of the 15-Day period.

E.5.1.4 In accordance with the provisions of ORS

279C.560, if the Owner accepts bonds, securities or other instruments deposited as provided in paragraphs (a) and (c) of subsection E.5.1.2, the Owner shall reduce the moneys held as retainage in an amount equal to the value of the bonds, securities and other instruments and pay the amount of the reduction to the Contractor in accordance with ORS 279C .570.

E.5.1.5 Contractor agrees that if Contractor elects to reserve a retainage from any progress payment due to any Subcontractor or supplier, such retainage shall not exceed five percent of the payment, and such retainage withheld from Subcontractors and suppliers shall be subject to the same terms and conditions stated in Subsection E.5 as apply to Owner's retainage from any progress payment due to Contractor. Provided, however, if in accordance with the provisions of ORS 279C.560 the Contractor has deposited bonds, securities or other instruments or has elected to have the Owner deposit accumulated retainage in an interest-bearing account, the Contractor shall comply with the provisions of ORS 701.435 respecting the deposit of bonds, securities or other instruments by Subcontractors and suppliers and the sharing of interest earnings with Subcontractors and suppliers.

E.5.2 As provided in subsections C.2.2 and C.2.3, additional retainage in the amount of 25% of amounts earned shall be withheld and released in accordance with ORS 279C.845(7) when the Contractor fails to file

certified statements as required by section C.2.1.

unsettled at the time of final application for payment.

E.6 FINAL PAYMENT

E.6.1 Upon completion of all the Work under this Contract, the Contractor shall notify the Owner's Authorized Representative, in writing, that Contractor has completed Contractor's part of the Contract and shall request final payment. Upon receipt of such notice the Owner's Authorized Representative will inspect the Work, and if acceptable, submit to the Owner a recommendation as to acceptance of the completed Work and the final estimate of the amount due the Contractor. If the Work is not acceptable, Owner will notify Contractor within fifteen (15) Days of Contractor's request for final payment. Upon approval of this final estimate by the Owner and compliance by the Contractor with provisions in Section K. 3 AFFIDAVIT/RELEASE OF LIENS AND CLAIMS, and other provisions as may be applicable, the Owner shall pay to the Contractor all monies due under the provisions of these Contract Documents.

E.6.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Owner's Authorized Representative (1) a notarized affidavit/release of liens and claims in a form satisfactory to Owner that states that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least thirty (30) Days' prior written notice has been given to the Owner, (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment and (5), if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

E.6.3 Acceptance of final payment by the Contractor, a Subcontractor or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as

SECTION F JOB SITE CONDITIONS

F.1 USE OF PREMISES

Contractor shall confine equipment, storage of materials and operation of Work to the limits indicated by Contract Documents, law, ordinances, permits or directions of the Owner's Authorized Representative. Contractor shall follow the Owner's Authorized Representative's instructions regarding use of premises, if any.

F.2 PROTECTION OF WORKERS, PROPERTY, AND THE PUBLIC

F.2.1 Contractor shall maintain continuous and adequate protection of all of the Work from damage, and shall protect the Owner's Authorized Representative, workers and property from injury or loss arising in connection with this Contract. Contractor shall remedy acceptably to the Owner, any damage, injury, or loss, except such as may be directly due to errors in the Contract Documents or caused by authorized representatives or personnel of the Owner. Contractor shall adequately protect adjacent property as provided by law and the Contract Documents.

F.2.2 Contractor shall take all necessary precautions for the safety of all personnel on the job site, and shall comply with the Contract Documents and all applicable provisions of federal, state and municipal safety laws and building codes to prevent accidents or injury to persons on, about or adjacent to the premises where the Work is being performed. Contractor shall erect and properly maintain at all times, as required by the conditions and progress of the Work, all necessary safeguards for protection of workers and the public against any hazards created by construction. Contractor shall designate a responsible employee or associate on the Work site, whose duty shall be the prevention of accidents. The name and position of the person designated shall be reported to the Owner's Authorized Representative. The Owner's Authorized Representative has no responsibility for Work site safety. Work site safety is the responsibility of the Contractor.

F.2.3 Contractor shall not enter upon private property without first obtaining permission from the property owner or its duly authorized representative. Contractor shall be responsible for the preservation of all public and private property along and adjacent to the Work contemplated under the Contract and shall use every precaution necessary to prevent damage thereto. In the event the Contractor damages any property, the Contractor shall at once notify the property owner and make, or arrange to make, full restitution. Contractor shall immediately and in writing, report to the Owner's Authorized Representative, all pertinent facts relating to such property damage and the ultimate disposition of the claim for damage.

F.2.4 Contractor is responsible for protection of adjacent work areas including impacts brought about by activities, equipment, labor, utilities, and materials on the site.

F.2.5 Contractor shall at all times direct its activities in such a manner as to minimize adverse effects on the environment. Handling of all materials will be conducted so no release will occur that may pollute or become hazardous.

F.2.6 In an emergency affecting the safety of life or of the Work or of adjoining property, the Contractor, without special instruction or authorization from the Owner's Authorized Representative, shall act reasonably to prevent threatened loss or injury, and shall so act, without appeal, if instructed by the Owner's Authorized Representative. Any compensation claimed by the Contractor on account of emergency work shall be determined in accordance with Section D.

F.3 CUTTING AND PATCHING

F.3.1 Contractor shall be responsible for coordinating all cutting, fitting, or patching of the Work to make its several parts come together properly and fit to receive or be received by work of other contractors or Subcontractors shown upon, or reasonably implied by, the Contract Documents.

F.3.2 Contractor shall be responsible for restoring all cut, fitted, or patched surfaces to an original condition; provided, however, that if a different condition is specified in the Contract Documents, then Contractor shall be responsible for restoring such surfaces to the condition specified in the Contract Documents.

F.4 CLEANING UP

From time to time as may be ordered by the Owner the Contractor shall, at its own expense, clean up and remove all refuse and unused materials of any kind resulting from the Work. If Contractor fails to do so within twenty-four hours after notification by the Owner the work may be done by others and the cost charged to the Contractor and deducted from payment due the Contractor.

F.5 ENVIRONMENTAL CONTAMINATION

F.5.1 Contractor will be held responsible for and shall indemnify, defend (with counsel of Owner's choice) and hold harmless Owner from and against any costs, expenses, damages, claims, and causes of action, (including attorney fees), or any of them, resulting from all spills, releases, discharges, leaks and disposal of environmental pollution, including storage, transportation, and handling during the performance of the Contract which occur as a result of, or are contributed by, the negligence or actions of Contractor or its personnel, agents, or Subcontractors or any failure to

perform in accordance with the Contract Documents (except to the extent otherwise void under ORS 30.140). Nothing in this section F.5.1 shall limit Contractor's responsibility for obtaining insurance coverages required under Section G.3 of these General Conditions, and Contractor shall take no action that would void or impair such coverages

F.5.1.1 Contractor agrees to promptly dispose of such spills, releases, discharge or leaks to the satisfaction of Owner and proper regulatory agencies in a manner that complies with applicable federal, state, and local laws and regulations. Cleanup shall be at no cost to the Owner and be performed by properly qualified personnel.

F.5.1.2 Contractor shall obtain the Owner's written consent prior to bringing onto the Work site any (i) environmental pollutants or (ii) hazardous substances or materials, as the same or reasonably similar terms are used in any applicable federal, state, or local statutes, rules or ordinances. Notwithstanding such written consent from the Owner, the Contractor, at all times, shall:

- (a) properly handle, use and dispose of all environmental pollutants and hazardous substances or materials brought onto the Work site, in accordance with all applicable federal, state, or local statutes, rules, or ordinances;
- (b) be responsible for any and all spills, releases, discharges, or leaks of (or from) environmental pollutants or hazardous substances or materials which Contractor has brought onto the Work site; and
- (c) promptly clean up, without cost to the Owner, such spills, releases, discharges, or leaks to the Owner's satisfaction and in compliance with all applicable federal, state, or local statutes, rules or ordinances.

F.5.2 Contractor shall report all reportable quantity releases to applicable federal, state, and local regulatory and emergency response agencies. Reportable quantities are found in 40 CFR Part 302, Table 302.4 for hazardous substances and in OAR 340-142-0050 for all products addressed therein. Upon discovery, regardless of quantity, Contractor must telephonically report all releases to the Owner. A written follow-up report shall be submitted to Owner within 48 hours of the telephonic report. Such written report shall contain, as a minimum:

- (a) Description of items released (identity, quantity, manifest no., and all other documentation required by law.)
- (b) Whether amount of items released is EPA/DEQ reportable, and, if so, when it was reported.
- (c) Exact time and location of release, including a description of the area involved.

- (d) Containment procedures initiated.
- (e) Summary of communications about the release Contractor has had with members of the press or State officials other than Owner.
- (f) Description of cleanup procedures employed or to be employed at the site, including disposal location of spill residue.
- (g) Personnel injuries, if any, resulting from, or aggravated by, the release.

F.6 ENVIRONMENTAL CLEAN-UP

F.6.1 Unless disposition of environmental pollution is specifically a part of this Contract, or was caused by the Contractor (reference F.5 Environmental Contamination), Contractor shall immediately notify Owner of any hazardous substance(s) which Contractor discovers or encounters during performance of the Work required by this Contract. "Hazardous substance(s)" means any hazardous, toxic and radioactive materials and those substances defined as "hazardous substances," "hazardous materials," "hazardous wastes," "toxic substances," or other similar designations in any federal, state, or local law, regulation, or ordinance, including without limitation asbestos, polychlorinated biphenyl (PCB), or petroleum, and any substances, materials or wastes regulated in 40 CFR, Part 261 and defined as hazardous in 40 CFR S 261.3. In addition to notifying Owner of any hazardous substance(s) discovered or encountered, Contractor shall immediately cease working in any particular area of the project where a hazardous substance(s) has been discovered or encountered if continued work in such area would present a risk or danger to the health or well being of Contractor's or any Subcontractor's work force.

F.6.2 Upon being notified by Contractor of the presence of hazardous substance(s) on the project site, Owner shall arrange for the proper disposition of such hazardous substance(s).

F.7 FORCE MAJEURE

A party to this Contract shall not be held responsible for delay or default due to Force Majeure acts, events or occurrences unless they could have been avoided by the exercise of reasonable care, prudence, foresight, and diligence by that party. The Owner may terminate this Contract upon written notice after determining that delay or default caused by Force Majeure acts, events or occurrences will reasonably prevent successful performance of the Contract.

**SECTION G
INDEMNITY, BONDING, AND
INSURANCE**

G.1 RESPONSIBILITY FOR DAMAGES / INDEMNITY

G.1.1 Contractor shall be responsible for all damage to property, injury to persons, and loss, expense, inconvenience, and delay that may be caused by, or result from, the carrying out of the Work to be done under this Contract, or from any act, omission or neglect of the Contractor, its

Subcontractors, personnel, or agents.

G.1.2 Design-Builder agrees to indemnify, defend (with counsel approved by Owners), reimburse and hold harmless Owners, their partners, owners, board members, officers, employees, agents and volunteers (the "Indemnified Parties") for, from and against any and all threatened, alleged or actual all claims, suits, allegations, damages, liabilities, costs, expenses, losses and judgments, including, but not limited to, those which relate to personal or real property damage (including to the Project itself or otherwise), personal injury or death, attorney and expert/consultant fees and costs, and both economic and non-economic losses, to the extent caused by the negligence, breach of contract, breach of warranty (express or implied), or other act or omission of Design-Builder, its employees, Design Consultant and SubContractors, or anyone for whose acts Design-Builder is responsible (the Indemnitor). If claims are asserted against any of the Indemnified Parties by an employee of the Indemnitor, the Design-Builder's indemnification obligation and other obligations under this section shall not be limited by any limitation on the amount or type of damages, compensation, or benefits payable to the employee by or for the Indemnitor under workers' compensation acts, disability benefit acts, or other employee benefit acts.

G.2 PERFORMANCE AND PAYMENT SECURITY: PUBLIC WORKS BOND

G.2.1 When the Contract Price is \$100,000 or more (or \$50,000 or more in the case of Contracts for highways, bridges and other transportation projects) the Contractor shall furnish and maintain in effect at all times during the Contract Period, a performance bond in a sum equal to the Contract Price, and a separate payment bond also in a sum equal to the Contract Price. The bonds may be required if the Contract Price is less than the above thresholds, if required by the Contract Documents.

G.2.2 Bond forms furnished by the Owner and notarized by awarded Contractor's surety company authorized to do business in Oregon are the only acceptable forms of performance and payment security, unless otherwise specified in the Contract Documents.

G.2.3 Before execution of the Contract Contractor shall file with the Construction Contractors Board, and maintain in full force and effect, the separate public works bond required by Oregon Laws 2005, Chapter 360, and OAR 839-025-0015, unless otherwise exempt under those provisions. The Contractor shall also include in every subcontract a provision requiring the Subcontractor to have a public works bond filed with the Construction Contractors Board before starting Work, unless otherwise exempt, and shall verify that the Subcontractor has filed a public works bond before permitting the Subcontractor to start Work.

G.3 INSURANCE

G.3.1 Primary Coverage: Insurance carried by Contractor under this Contract shall be the primary coverage and non-contributory with any other insurance and self-insurance, and the Owner's insurance is excess and solely for damages or losses for which the Owner is responsible. The coverages indicated are minimums unless otherwise specified in the Contract Documents.

G.3.2 Workers' Compensation: 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. This shall include Employer's Liability Insurance with coverage limits of not less than \$100,000 for each accident. Contractors who perform the Work without the assistance or labor of any employee need not obtain such coverage if the Contractor certifies so in writing. Contractor shall ensure that each of its Subcontractors complies with these requirements. The Contractor shall require proof of such Workers' Compensation by receiving and keeping on file a certificate of insurance from each Subcontractor or anyone else directly employed by either the Contractor or its Subcontractors.

G.3.3 Builder's Risk Insurance:

G.3.3.1 Builder's Risk: During the term of this Contract, for new construction the Contractor shall obtain and keep in effect Builder's Risk insurance on an all risk form, including earthquake and flood, for an amount equal to the full amount of the Contract. Any deductible shall not exceed \$50,000 for each loss, except the earthquake and flood deductible shall not exceed 2 percent of each loss or \$50,000, whichever is more. The policy will include as loss payees the Owner, the Contractor and its Subcontractors as their interests may appear.

G.3.3.2 Builder's Risk Installation Floater: For other than new construction the Contractor shall obtain and keep in effect during the term of this Contract, a Builder's Risk Installation Floater for coverage of the Contractor's labor, materials and equipment to be used for completion of the Work performed under this Contract. The minimum amount of coverage to be carried shall be equal to the full amount of the Contract. This insurance shall include as loss payees the Owner, the Contractor and its Subcontractors as their interests may appear.

G.3.3.3 Such insurance shall be maintained until Owner has occupied the facility.

G.3.3.4 A loss insured under the Builder's Risk insurance shall be adjusted by the Owner and made payable to the Owner for the insureds, as their interests may appear. The Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub-subcontractors in similar manner. The Owner

shall have power to adjust and settle a loss with insurers.

G.3.4 Liability Insurance:

G.3.4.1 Commercial General Liability: Contractor shall obtain, at Contractor's expense, and keep in effect during the term of this Contract, Commercial General Liability Insurance covering bodily injury and property damage in a form and with coverages that are satisfactory to the State. This insurance shall include personal injury liability, products and completed operations, and contractual liability coverage for the indemnity provided under this Contract (to the extent contractual liability coverage for the indemnity is available in the marketplace), and shall be issued on an occurrence basis. Contractor shall provide proof of insurance of not less than combined single limit, or the equivalent, of not less than: \$200,000; \$500,000; \$1,000,000; \$2,000,000 each occurrence for Bodily Injury and Property Damage. The policy, or an endorsement or amendment to the policy, must provide that the County and its agents, board members, officers, employees and volunteers are "additional insureds", but only with respect to the Contractor's Services to be provided under this Contract.

G.3.4.2 Automobile Liability: Contractor shall obtain, at Contractor's expense, and keep in effect during the term of this Contract, Automobile Liability Insurance covering owned, non-owned and/or hired vehicles, as applicable. The coverage may be written in combination with the Commercial General Liability Insurance. Contractor shall provide proof of insurance of not less than the amounts Minimum amounts required by the Oregon Financial Responsibility Law (ORS 806.060 and 806.070); \$200,000; \$500,000; or \$1,000,000 per occurrence, for Bodily Injury and Property Damage, including coverage for all owned, hired or non-owned vehicles, as applicable. The policy, or an endorsement or amendment to the policy, must provide that the County and its board members, officers, agents, employees and volunteers are "additional insureds", but only with respect to the Consultant's Services to be provided under this Contract.

G.3.4.3 "Tail" Coverage: If any of the required liability insurance is arranged on a "claims made" basis, "tail" coverage will be required at the completion of this Contract for a duration of 24 months or the maximum time period available in the marketplace if less than 24 months. Contractor will be responsible for furnishing certification of "tail" coverage as described or continuous "claims made" liability coverage for 24 months following Final Completion. Continuous "claims made" coverage will be acceptable in lieu of "tail" coverage, provided its retroactive date is on or before the effective date of this Contract. This will be a condition of the final acceptance of Work or services and related warranty (if any).

G.3.5 Excess/Umbrella Insurance: A combination of primary and excess/umbrella insurance is acceptable to meet the minimum coverage requirements for Commercial General Liability and Automobile Liability Insurance. In such case, the insurance certificate must

include a list of the policies that fall under the excess/umbrella insurance. Sample wording is "The Excess/Umbrella policy is excess over primary Commercial General Liability and primary Automobile Liability Insurance."

G.3.6 Additional Insured: The liability insurance coverage, except Professional Liability if included, required for performance of this Contract shall include the Marion County, its departments, divisions, officers, and employees, as Additional Insureds but only with respect to the Contractor's activities to be performed under this Contract.

If Contractor cannot obtain an insurer to name the Marion County, its departments, divisions, officers and employees as Additional Insureds, Contractor shall obtain at Contractor's expense, and keep in effect during the term of this Contract, Owners and Contractors Protective Liability Insurance, naming the Marion County, its departments, divisions, officers and employees as Named Insureds with not less than a \$1,500,000.00 limit per occurrence. This policy must be kept in effect for 12 months following Final Completion. As evidence of coverage, Contractor shall furnish the actual policy to Owner prior to execution of the Contract.

G.3.7 Certificate(s) of Insurance: As evidence of the insurance coverage required by this Contract, the Contractor shall furnish certificate(s) of insurance to the Owner prior to execution of the Contract. The certificate(s) will specify all of the parties who are Additional Insureds or Loss Payees. Insurance coverage required under this Contract shall be obtained from insurance companies or entities acceptable to the Owner that are allowed to provide such insurance under Oregon law. Eligible insurers include admitted insurers that have been issued a certificate of authority from the Oregon Department of Consumer and Business Services authorizing them to do an insurance business in the state of Oregon, and certain non-admitted surplus lines insurers that satisfy the requirements of applicable Oregon law and are approved by the Owner. The Contractor shall be financially responsible for all deductibles, self-insured retentions and/or self-insurance included hereunder. Any deductible, self-insured retention and/or self-insurance in excess of \$50,000 shall be approved by the Owner in writing prior execution of the Contract and is subject to Owner's approval. The Contractor shall immediately notify the Owner's Authorized Representative in writing of any change in insurance coverage.

SECTION H SCHEDULE OF WORK

H.1 CONTRACT PERIOD

H.1.1 **Time is of the essence on this Contract.** The Contractor shall at all times carry on the Work diligently, without delay and punctually fulfill all requirements herein. Contractor shall commence Work on the site within fifteen (15) Days of Notice to Proceed, unless directed otherwise.

H.1.2 Unless specifically extended by Change Order, all Work shall be complete by the date contained in the Contract Documents. The Owner shall have the right to accelerate the completion date of the Work, which may require the use of overtime. Such accelerated Work schedule shall be an acceleration in performance of Work under Section D.1.2 (f) and shall be subject to the Change Order process of Section D.1.

H.1.3 The Owner shall not waive any rights under the Contract by permitting the Contractor to continue or complete in whole or in part the Work after the date described in Section H.1.2 above.

H.2 SCHEDULE

H.2.1 Contractor shall provide, by or before the pre-construction conference, a detailed schedule for review and acceptance by the Owner. The submitted schedule must illustrate Work by significant project components, significant labor trades, long lead items, broken down by building and/or floor where applicable. Each schedule item shall account for no greater than 5 % of the monetary value of the project or 5 % of the available Contract Time. Schedules with activities of less than one day or valued at less than 1% of the Contract will be considered too detailed and will not be accepted. Schedules lacking adequate detail, or unreasonably detailed, will be rejected. Included within the schedule are the following: Notice to Proceed, Substantial Completion, and Final Completion. Schedules will be updated monthly and submitted with the monthly payment application. Acceptance of the Schedule by the Owner does not constitute agreement by the Owner, as to the Contractor's sequencing, means, methods, or allocated Contract Time. Any positive difference between the Contractor's scheduled completion and the Contract completion date is float owned by the Owner. Owner reserves the right to negotiate the float if it is deemed to be in Owner's best interest to do so. In no case shall the Contractor make a request for additional compensation for delays if the Work is completed within the Contract Time but after Contractor's scheduled completion.

H.3 PARTIAL OCCUPANCY OR USE

H.3.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage, provided such occupancy or use is consented to by public authorities having jurisdiction over the Work. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have reasonably accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, insurance or self-insurance, maintenance, heat, utilities, and damage to the Work, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents with respect to such portion of the Work. Approval by the Contractor to partial occupancy or use shall not be unreasonably

withheld. Immediately prior to such partial occupancy or use, the Owner and Contractor shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work. Partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

SECTION I CORRECTION OF WORK

I.1 CORRECTION OF WORK BEFORE FINAL PAYMENT

The Contractor warrants to the Owner that materials and equipment furnished under the Contract will be of good quality and new unless otherwise required or permitted by the Contract Documents, that the Work will be free from defects, and that the Work will conform to the requirements of the Contract Documents. Work failing to conform to these requirements shall be deemed defective. Contractor shall promptly remove from the premises and replace all defective materials and equipment as determined by the Owner's Authorized Representative, whether incorporated in the Work or not. Removal and replacement shall be without loss or expense to the Owner, and Contractor shall bear the cost of repairing all Work destroyed or damaged by such removal or replacement. Contractor shall be allowed a period of no longer than thirty (30) Days after Substantial Completion for completion of defective (punch list) work, unless otherwise agreed. At the end of that period, or earlier if requested by the Contractor, Owner shall arrange for inspection of the Work by the Architect/Engineer. Should the Work not be complete, and all corrections made, the costs for all subsequent re-inspections shall be borne by the Contractor. If Contractor fails to complete the punch list work within the above time period, Owner may perform such work and Contractor shall reimburse Owner all costs of the same within ten (10) days after demand without affecting Contractor's obligations.

I.2 WARRANTY WORK

I.2.1 Neither the final certificate of payment nor any provision of the Contract Documents shall relieve the Contractor from responsibility for defective Work and, unless a longer period is specified, Contractor shall correct all defects that appear in the Work within a period of one year from the date of issuance of the written notice of Substantial Completion by the Owner except for latent defects which will be remedied by the Contractor at any time they become apparent.

The Owner shall give Contractor notice of defects with reasonable promptness. Contractor shall perform such warranty work within a reasonable time after Owner's demand. If Contractor fails to complete the warranty work within such period as Owner determines reasonable, or at any time in the event of warranty work consisting of emergency repairs, Owner may perform such work and Contractor shall reimburse Owner all costs of the same within ten (10) Days after demand without affecting

Contractor's obligations.

I.2.2 This provision does not negate guarantees or warranties for periods longer than one year including without limitation such guarantees or warranties required by other sections of the Contract Documents for specific installations, materials, processes, equipment or fixtures.

I.2.3 In addition to Contractor's warranty, manufacturer's warranties shall pass to the Owner and shall not take effect until affected Work has been accepted in writing by the Owner's Authorized Representative.

I.2.4 The one-year period for correction of Work shall be extended with respect to portions of Work performed after Substantial Completion by the period of time between Substantial Completion and the actual performance of the Work, and shall be extended by corrective Work performed by the Contractor pursuant to this Section, as to the Work corrected. The Contractor shall remove from the site portions of the Work which are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

I.2.5 Nothing contained in this Section I.2 shall be construed to establish a period of limitation with respect to other obligations which the Contractor might have under the Contract Documents. Establishment of the period for correction of Work as described in this Section I.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

I.2.6 If the Owner prefers to accept Work which is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Price will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

SECTION J SUSPENSION AND/OR TERMINATION OF THE WORK

J.1 OWNER'S RIGHT TO SUSPEND THE WORK

J.1.1 The Owner and/or the Owner's Authorized Representative has the authority to suspend portions or all of the Work due to the following causes:

- (a) Failure of the Contractor to correct unsafe conditions;
- (b) Failure of the Contractor to carry out any provision of the Contract;

- (c) Failure of the Contractor to carry out orders;
- (d) Conditions, in the opinion of the Owner's Authorized Representative, which are unsuitable for performing the Work;
- (e) Time required to investigate differing site conditions;
- (f) Any reason considered to be in the public interest.

J.1.2 The Owner shall notify Contractor and the Contractor's Surety in writing of the effective date and time of the suspension and Owner shall notify Contractor and Contractor's surety in writing to resume Work.

J.2 CONTRACTOR'S RESPONSIBILITIES

J.2.1 During the period of the suspension, Contractor is responsible to continue maintenance at the project just as if the Work were in progress. This includes, but is not limited to, protection of completed Work, maintenance of access, protection of stored materials, temporary facilities, and clean-up.

J.2.2 When the Work is recommenced after the suspension, the Contractor shall replace or renew any Work damaged during the suspension, remove any materials or facilities used as part of temporary maintenance, and complete the project in every respect as though its prosecution had been continuous and without suspension.

J.3 COMPENSATION FOR SUSPENSION

J.3.1 Depending on the reason for suspension of the Work, the Contractor or the Owner may be due compensation by the other party. If the suspension was required due to acts or omissions of Contractor, the Owner may assess the Contractor actual costs of the suspension in terms of administration, remedial work by the Owner's forces or another contractor to correct the problem associated with the suspension, rent of temporary facilities, and other actual costs related to the suspension. If the suspension was caused by acts or omissions of the Owner, the Contractor shall be due compensation which shall be defined using Section D, Changes in Work. If the suspension was required through no fault of the Contractor or the Owner, neither party owes the other for the impact.

J.4 OWNER'S RIGHT TO TERMINATE CONTRACT

J.4.1 The Owner may, without prejudice to any other right or remedy, and after giving Contractor seven (7) Days' written notice and an opportunity to cure, terminate the Contract in whole or in part under the following conditions:

- (a) If Contractor should voluntarily or involuntarily, seek protection under the United States Bankruptcy Code and Contractor as debtor-in- possession or the Trustee for the estate fails to assume the Contract within a reasonable time;

- (b) If Contractor should make a general assignment for the benefit of Contractor's creditors;

- (c) If a receiver should be appointed on account of Contractor's insolvency;

- (d) If Contractor should repeatedly refuse or fail to supply an adequate number of skilled workers or proper materials to carry on the Work as required by the Contract Documents, or otherwise fail to perform the Work in a timely manner;

- (e) If Contractor should repeatedly fail to make prompt payment to Subcontractors or for material or labor, or should disregard laws, ordinances or the instructions of the Owner or its Authorized Representative; or

- (f) If Contractor is otherwise in material breach of any part of the Contract.

J.4.2 At any time that any of the above occurs, Owner may exercise all rights and remedies available to Owner at law or in equity, and in addition, Owner may take possession of the premises and of all materials and appliances and finish the Work by whatever method it may deem expedient. In such case, the Contractor shall not be entitled to receive further payment until the Work is completed. If the Owner's cost of finishing the Work exceeds the unpaid balance of the Contract Price, Contractor shall pay the difference to the Owner.

J.5 TERMINATION FOR CONVENIENCE

J.5.1 Owner may terminate the Contract in whole or in part whenever Owner determines that termination of the Contract is in the best interest of the public.

J.5.2 The Owner will provide the Contractor with seven (7) Days' prior written notice of a termination for public convenience. After such notice, the Contractor shall provide the Owner with immediate and peaceful possession of the premises and materials located on and off the premises for which the Contractor received progress payment under Section E. Compensation for Work terminated by the Owner under this provision will be according to Section E. In no circumstance shall Contractor be entitled to lost profits for Work not performed due to termination.

J.6 ACTION UPON TERMINATION

J.6.1 Upon receiving a notice of termination, and except as directed otherwise by the Owner, Contractor shall immediately cease placing further subcontracts or orders for materials, services, or facilities. In addition, Contractor shall terminate all subcontracts or orders to the extent they relate to the Work terminated and, with the prior written approval of the Owner, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts and orders.

J.6.2 As directed by the Owner, Contractor shall upon termination transfer title and deliver to the Owner all Record Documents, information, and other property that, if the Contract had been completed, would have been required to be furnished to the Owner.

SECTION K CONTRACT CLOSE OUT

K.1 RECORD DOCUMENTS

As a condition of final payment (refer also to section E.6), Contractor shall comply with the following: Contractor shall provide to Owner's Authorized Representative, two sets of Record Documents of the entire project. Record Documents shall depict the project as constructed and shall reflect each and every change, modification, and deletion made during the construction. Record Documents are part of the Work and shall be provided prior to the Owner's issuance of final payment. Record Documents include all modifications to the Contract Documents unless otherwise directed.

K.2 OPERATION AND MAINTENANCE MANUALS

As part of the Work, Contractor shall submit two completed operation and maintenance manuals ("O & M Manuals") and one (1) digital copy for review by the Owner's Authorized Representative prior to submission of any pay request for more than 75% of the Work. No payments beyond 75% will be made by the Owner until the O & M Manuals have been received. The O & M Manuals shall contain a complete set of all submittals, all product data as required by the specifications, training information, phone list of consultants, manufacturers, installer and suppliers, manufacturer's printed data, record and shop drawings, schematic diagrams of systems, appropriate equipment indices, warranties and bonds. The Owner's Authorized Representative shall review and return one O & M Manual for any modifications or additions required. Prior to submission of its final pay request, Contractor shall deliver two (2) complete and approved sets and one (1) digital copy of O & M Manuals to the Owner's Authorized Representative.

K.3 AFFIDAVIT/RELEASE OF LIENS AND CLAIMS

As a condition of final payment, the Contractor shall submit to the Owner's Authorized Representative a notarized affidavit/release of liens and claims form, in a form satisfactory to Owner, which states that all Subcontractors and suppliers have been paid in full, all disputes with property owners have been resolved, all obligations on the project have been satisfied, all monetary claims and indebtedness have been paid, and that, to the best of the Contractor's knowledge, there are no claims of any kind outstanding against the project. The Contractor shall indemnify, defend (with counsel of Owner's choice) and hold harmless the Owner from all claims for labor and materials finished under this Contract. The Contractor shall furnish complete and valid releases or waivers, satisfactory to the Owner, of all liens arising out of or filed in connection with the Work.

K.4 COMPLETION NOTICES

K.4.1 Contractor shall provide Owner notice of both
MC General Conditions (8/2014)

Substantial and Final Completion. The certificate of Substantial Completion shall state the date of Substantial Completion, the responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and the time within which the Contractor shall finish all items on the punchlist accompanying the Certificate. Both completion notices must be signed by the Contractor and the Owner to be valid. The Owner shall provide the final signature on the notices. The notices shall take effect on the date they are signed by the Owner.

K.4.2 Substantial Completion of a facility with operating systems (e.g., mechanical, electrical, HVAC) shall be that degree of completion that has provided a minimum of thirty (30) continuous Days of successful, trouble-free operation, which period shall begin after all performance and acceptance testing has been successfully demonstrated to the Owner's Authorized Representative. All equipment contained in the Work, plus all other components necessary to enable the Owner to operate the facility in the manner that was intended, shall be complete on the Substantial Completion date. The Contractor may request that a punch list be prepared by the Owner's Authorized Representative with submission of the request for the Substantial Completion notice.

K.5 TRAINING

As part of the Work, and prior to submission of the request for final payment, the Contractor shall schedule with the Owner's Authorized Representative, training sessions for all equipment and systems, as required in the individual specifications sections. Contractor shall schedule training sessions at least four weeks in advance of the date of training to allow Owner personnel adequate notice. The O & M Manual shall be used as a basis for training. Training shall be a formal session, held after the equipment and/or system is completely installed and operational in its normal operating environment.

K.6 EXTRA MATERIALS

As part of the Work, Contractor shall provide spare parts, extra maintenance materials, and other materials or products in the quantities specified in the specifications, prior to final payment. Delivery point for extra materials shall be designated by the Owner's Authorized Representative.

K.7 ENVIRONMENTAL CLEAN-UP

As part of the Final Completion notice, or as a separate written notice submitted with or before the notice of Final Completion, the Contractor shall notify the Owner that all environmental pollution clean-up performed as a part of this Contract has been disposed of in accordance with all applicable rules, regulations, laws, and statutes of all agencies having jurisdiction over such environmental pollution. The notice shall reaffirm the indemnification given under Section F.5.1 above.

K.8 CERTIFICATE OF OCCUPANCY

The Contractor shall not be granted Final

Completion or receive final payment if the Owner has not received an unconditioned certificate of occupancy from the appropriate state and/or local building officials, unless failure to obtain an unconditional certificate of occupancy is due to the fault or neglect of Owner.

K.9 OTHER CONTRACTOR RESPONSIBILITIES

The Contractor shall be responsible for returning to the Owner all items issued during construction such as keys, security passes, site admittance badges, and all other pertinent items. The Contractor shall be responsible for notifying the appropriate utility companies to transfer utility charges from the Contractor to the Owner. The utility transfer date shall not be before Substantial Completion and may not be until Final Completion, if the Owner does not take beneficial use of the facility and the Contractor's forces continue with the Work.

K.10 SURVIVAL

All warranty and indemnification provisions of this Contract, and all of Contractor's other obligations under this Contract that are not fully performed by the time of Final Completion or termination, shall survive Final Completion or any termination of the Contract

SECTION L LEGAL RELATIONS & RESPONSIBILITIES

L.1 LAWS TO BE OBSERVED

In compliance with ORS 279C.525, Sections L.2 through L.4 contain lists of federal, state and local agencies of which the Owner has knowledge that have enacted ordinances or regulations relating to environmental pollution and the preservation of natural resources that may affect the performance of the Contract:

L.2 FEDERAL AGENCIES

Agriculture, Department of Forest Service
Soil Conservation Service
Coast Guard
Defense,
Department of
Army Corps of
Engineers Energy,
Department of
Federal Energy Regulatory Commission
Environmental Protection Agency
Health and Human Services, Department of
Housing and Urban Development,
Department of Solar Energy and Energy
Conservation Bank Interior, Department of
Bureau of Land
Management Bureau of
Indian Affairs Bureau of
Mines
Bureau of Reclamation
Geological Survey
Minerals Management
Service U.S. Fish and
Wildlife Service Labor,
Department of
Mine Safety and Health Administration
Occupation Safety and Health
Administration Transportation,
Department of
Federal Highway Administration
Water Resources Council

L.3 STATE AGENCIES

Administrative Services, Department of
Agriculture, Department of
Soil and Water Conservation Commission
Columbia River Gorge Commission
Energy, Department of
Environmental Quality, Department of
Fish and Wildlife, Department of
Forestry, Department of
Geology and Mineral Industries, Department of
Human Resources, Department of
Consumer and Business Services, Department of
Land Conservation and Development Commission
Parks and Recreation, Department of
State Lands, Division of
Water Resources Department of

L.4 LOCAL AGENCIES

City Councils
County Courts
County Commissioner, Board of
Design Commissions
Historical Preservation Commission
Planning Commissions