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ATTACHMENT A  
STATEMENT OF WORK

The New Conservation Resource Center (CRC) development will become the long term headquarters for the Clackamas Soil and Water Conservation District staff and board members, public meeting space, ancillary areas, and a commercial kitchen totaling nearly 12,000 sf of high quality construction. The 15.15 acre site is to remain mostly undisturbed, with approximately 2 acres requiring site development for the CRC.

The CRC A&E team will provide the following engineering disciplines;

- Civil Engineering
- Structural Engineering
- Architectural
- Mechanical and Plumbing Engineering and
- Electrical Engineering.

The CRC Site Development includes the following:

- Removal of 6 (six) derelict farm structures,
- Restructuring the access roadway with gated access,
- Parking and circulation for 42 spaces,
- Approximately 25,000 sf of asphalt paving,
- Approximately 30,000 sf of structured gravel paving,
- Approximately 19,000 sf of concrete flat work including the 6,500 sf plaza.
- Utilities include stormwater facilities, domestic water and fire supply, underground power, underground fiber optics, and on-site septic system.

The CRC New Headquarters:

- A 12,000 sf one story wood framed structure, approximately 15,000 sf of gable and shed standing seam metal roofs with a solar component of about 800 sf,
- Equipped with an automatic fire suppression system,
- Vaulted ceilings within the office and boardrooms,
- Heated slab on grade and HVAC systems,
- Alarm systems; Fire and Security, access control and monitoring,
- Aluminum wrapped wood windows and storefronts,
- Exterior finishes include cedar lap siding, cedar shakes and cedar trim,
- Architectural concrete for the Plaza and retaining walls Interior finishes consist of a high quality drywall finish, Douglas fir trim and doors, casework, tile and quartz within the kitchen and restrooms and acoustical suspended ceiling in ancillary areas.

**ATTACHMENT B**

**PROPOSER CERTIFICATION SHEET**

The undersigned certifies that he/she has read, understands and agrees to abide by all terms and conditions of the Request for Proposal if awarded.

Acknowledgement of Addendum: None \_\_\_\_\_ 1. \_\_\_\_\_ 2. \_\_\_\_\_ 3. \_\_\_\_\_

Proposer further certifies as follows:

1. Proposal is FIRM for 180 days following the Closing.
2. All contents of the Proposal [including any other forms or documentation, if required under the RFP and this Proposal Certification Sheet], are truthful and accurate and have been prepared independently from all other Proposers, and without collusion, fraud or other dishonesty.
3. The Proposer certifies that it does not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, national origin, marital status, age or disability or other non-job-related factors as per ORS chapter 659 and 42 U.S.C. 2000e.
4. The Proposer certifies that it has not discriminated and will not discriminate against minority, women or emerging small business enterprises in obtaining any required subcontracts. Failure to do so shall be grounds for disqualification.
5. If awarded a contract, Proposer agrees to perform the scope of work and meet the performance standards set forth in the final negotiated contract and statement of work.
6. The proposer has submitted bid security in the amount of ten (10) percent of the total bid, as required by ORS 279C.365(5).
7. If awarded a contract, the Proposer agrees to be bound by and will comply with the provisions of ORS 279C.840 or 40 U.S.C. 276a.
8. The Proposer certifies that all subcontractors performing construction work described in ORS 701.005(2) will be registered with the Construction Contractors Board or licensed by the State Landscape Contractors Board in accordance with ORS 701.035 to 701.055 before the subcontractors commence work under the contract;

Company Name [DBA]: \_\_\_\_\_

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

Type of Organization [Circle One]: Sole Proprietor / Partnership / Corporation

If Corporation, State of Incorporation: \_\_\_\_\_

If Partnership, attach a list of the general and limited partners.

Is the Proposer an Oregon Resident Bidder as provided in ORS 279A.120 [i.e., paid unemployment taxes or income taxes in Oregon during the 12 calendar months immediately preceding submission of the proposal, and has a business address in Oregon]?: YES\_\_NO\_\_

BY: \_\_\_\_\_ TITLE: \_\_\_\_\_

Signature

BY: \_\_\_\_\_ TITLE: \_\_\_\_\_

Print / Type Name

CONTACT PERSON:

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

Email: \_\_\_\_\_ Fax: \_\_\_\_\_

**ATTACHMENT C**

*[COMPLETE ONLY IF APPLICABLE]*

**AFFIDAVIT OF TRADE SECRET**

\_\_\_\_\_ (Affiant), being first duly sworn under oath, and representing  
\_\_\_\_\_ [insert Proposer] (hereafter "Proposer"), hereby deposes and swears or  
affirms under penalty of perjury that:

1. I am the Proposer, I have knowledge of the Request for Proposals referenced herein, and I have full authority to submit this affidavit and accept the responsibilities stated herein.
2. I am aware that the Proposer has submitted a Proposal, dated on or about \_\_\_\_\_ [insert date] (the "Proposal"), to the Clackamas Soil and Water Conservation District in response to Request for Proposal \_\_\_\_\_ [insert proposal name or number], for and I am familiar with the contents of the RFP and Proposal.
3. I have read and am familiar with the provisions of Oregon's Public Records Law, Oregon Revised Statutes ("ORS") 192.410 through 192.505, and the Uniform Trade Secrets Act as adopted by the State of Oregon, which is set forth in ORS 646.461 through ORS 646.475. I understand that the Proposal is a public record held by a public body and is subject to disclosure under the Oregon Public Records Law unless specifically exempt from disclosure under that law.
4. I have reviewed the information contained in the Proposal. The Proposer believes the information listed in Exhibit A is exempt from public disclosure (collectively, the "Exempt Information"), which is incorporated herein by this reference. It is my opinion that the Exempt Information constitutes "Trade Secrets" under either the Oregon Public Records Law or the Uniform Trade Secrets Act as adopted in Oregon because that information is either:
  - a. A formula, plan, pattern, process, tool, mechanism, compound, procedure, production data, or compilation of information that:
    - i. is not patented,
    - ii. is known only to certain individuals within the Proposer's organization and that is used in a business the Proposer conducts,
    - iii. has actual or potential commercial value, and
    - iv. gives its user an opportunity to obtain a business advantage over competitors who do not know or use it.

- OR -

- b. Information, including a drawing, cost data, customer list, formula, pattern, compilation, program, device, method, technique or process that:
        - i. Derives independent economic value, actual or potential, from not being generally known to the public or to other persons who can obtain economic value from its disclosure or use; and



EXHIBIT A TO ATTACHMENT F, AFFIDAVIT OF TRADE SECRET

Proposer identifies the following information as exempt from public disclosure:

ATTACHMENT D

SAMPLE CONTRACT WITH GMP AMENDMENT (EXHIBIT B) AND CONTRACTOR INSURANCE  
REQUIREMENTS (EXHIBIT )

**CLACKAMAS SOIL AND WATER CONSERVATION DISTRICT**

**CONSERVATION RESOURCE CENTER**

**TERMS AND CONDITIONS**

**CM/GC CONSTRUCTION CONTRACT**

This Contract is entered into by and between the Clackamas Soil and Water Conservation District ('District') and \_\_\_\_\_ ('Contractor'). This Contract will become effective \_\_\_\_\_, 2018 ('Effective Date').

The parties agree as follows:

- 1. Definitions:** Terms not defined in this Section will have the meaning as set forth in the General Conditions.

Affiliate: Affiliate will mean 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 which controls the CM/GC).

Allowances: Allowances will mean the allowance amounts shown in the GMP Supporting Documents, together with such further allowances as may be developed by the Parties as the Project progresses.



Amendment: Amendment will mean a written modification of this Contract (including without limitation any agreed change to the GMP), identified as an Amendment, and executed by the CM/GC and the Owner's Authorized Representative.

Business Days: Business Days will mean every day except Saturday, Sunday, and legal holidays.

CM/GC Field Work: CM/GC Field Work will mean customary layout, clean-up, supervision, and portions of the Work of a minor nature and not feasibly part of the subcontracted work due to: exclusions by the Subcontractor not resolved through the process described in Section 11.c.iii, undeveloped design owing to deviations in Work performed or materials delivered by Subcontractor or suppliers that do not represent defective or nonconforming work, a breach or failure to perform by the Subcontractor or supplier, complexity of coordination of the Work, and other similar reasons typically providing cause for "pick-up" or GC Work under industry standards; provided, however, that (i) the CM/GC has reasonably determined that doing such portion of the Work itself is in the best interests of the Owner (ii) such Work is identified as CM/GC Field Work in monthly billings and (iii) the CM/GC receives prior approval of the Owners Authorized Representative as to the scope of such CM/GC Field Work.

CM Services: CM Services will have the meaning given in Section 3.c below.

Construction Manager/General Contractor ("CM/GC"): The Contractor selected to perform the work under this Contract.

Construction Phase: The Construction Phase will mean the period commencing on the Owner's execution of a GMP Amendment.

Construction Phase Services: Construction Phase Services will mean all of the Work other than the Preconstruction Phase Services.

Contract Documents: Contract Documents will have the meaning given in the General Conditions, as supplemented by Section 2 below.

Contractor: The term "Contractor" as used in this Contract and in the General Conditions means the CM/GC.

Design Development Documents: Design Development Documents will have the meaning given in the Professional Services Agreement with the Design Team for this Project.

Design Team: The professionals engaged by the Owner to provide Design Development Documents and to advise regarding the project design.

Early Work Amendment: Early Work Amendment means an amendment to this Contract to authorize preliminary construction work prior to the establishment of the GMP and execution of a GMP Amendment.

General Conditions: The Owner's General Conditions of the Contract, attached Exhibit A .

Fixed Cost for General Conditions Work: Fixed Cost for General Conditions Work or GC Work will mean that fixed sum identified in Section 8.h.

General Conditions Work: General Conditions Work (“GC Work”) will mean (i) that portion of the Work required to support construction operations that is not included within overhead or general expense but is called out as GC Work, and (ii) any other specific categories of Work approved in writing by the Owner's Authorized Representative as forming a part of the GC Work.

Guaranteed Maximum Price (“GMP”): GMP will mean the Guaranteed Maximum Price of this Contract, as stated in dollars within the GMP Amendment, as determined in accordance with Section 6, and as it may be adjusted from time to time pursuant to the provisions of this Contract.

GMP Amendment: GMP Amendment will mean an Amendment to this Contract, executed by and between the Parties, to establish the GMP, the Contract Time, and to identify the GMP Supporting Documents for Construction Phase Services.

GMP Supporting Documents: GMP Supporting Documents will mean the documents referenced in the GMP Amendment as the basis for establishing the GMP and the Contract Time. The GMP Supporting Documents are to expressly identify the Plans and Specifications, assumptions, qualifications, exclusions, conditions, allowances, unit prices, and alternates that form the basis for the GMP.

Owner: Clackamas Soil and Water Conservation District.

Owner’s Authorized Representative: The person or persons designated by the District’s Board of Directors to represent the District during design and construction of the Project.

Preconstruction Phase: The Preconstruction Phase will mean the period commencing on the date of this Contract and ending upon commencement of the Construction Phase; provided that if the Owner and the CM/GC agree, the Construction Phase may commence before the Preconstruction Phase is completed, in which case both phases will proceed concurrently, subject to the terms and conditions of the Contract Documents.

Preconstruction Phase Services: Preconstruction Phase Services will mean all services described in Section 3.a, and any similar services described in the Request for Proposals, including such similar services as are described in the CM/GC's RFP response to the extent they are accepted by the Owner.

Schematic Design Documents: Schematic Design Documents will have the meaning given in the Professional Services Agreements with the Design Team for this Project.

Scope Change: Scope Change will mean only (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 alternates, all as approved by the Owner under this Contract, beyond that identified or inferable from the GMP Supporting Documents (but in the case of Allowance items, the GMP will increase only if the cost to the Owner of the Allowance items exceeds the total amount of the Allowances).

2. **Contract Documents.** This Contract, together with the other Contract Documents, forms the entire agreement between the Parties. The Contract Documents consist of this Contract and the following exhibits to this Contract:

Exhibit A: General Conditions for Public Improvement Contracts (“General Conditions”).  
Exhibit B: Form of GMP/Early Work Amendment  
Exhibit C: Insurance Requirements  
Exhibit D: Certification Statement for Corporation or Independent Contractor.  
Exhibit E: Performance and Payment Bond Forms  
Exhibit F: Key Date Schedule

3. **Contract Work.**

A. Preconstruction Phase Services: The CM/GC agrees to provide all of the Preconstruction Phase Services described below on an ongoing basis in support of, and in conformance with, the time frames described in the Request for Proposals. Commencement of the Construction Phase will 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 are to include CM Services performed during the Preconstruction Phase.

- (1) Provide a preliminary evaluation of the Owner’s program and budget requirements, each in terms of the other.
- (2) Provide the following services related to design and construction tasks:
  - (a) Consult with, advise, assist, and provide recommendations to the Owner and the Design Team on all aspects of the planning and design of the Work.
  - (b) Jointly schedule and attend regular meetings with the Owner, the Owner's Authorized Representative, the Design Team, and other designated Project consultants (the "Project Team"). Consult with the Owner's Authorized Representative and other Project Team members regarding site use and improvements, and the selection of materials, building systems, and equipment.
  - (c) 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 factor related to construction cost including estimates of alternative designs or materials, preliminary budgets, and possible economies.

- (d) Review in-progress design documents, including the documents generally described in the industry as Schematic Development Documents, Design Development Documents, and Construction Documents, and provide input and advice on construction feasibility, alternative materials, and availability. Review these completed Schematic Development Documents, Design Development Documents, and Construction Documents and timely suggest modifications to improve completeness and clarity.

(3) Provide the following services related to the Project Schedule:

- (a) Prepare, and update monthly, a preliminary Project schedule for the Project Team's review and the Owner's Authorized Representative's approval.
- (b) Coordinate and integrate the preliminary Project schedule with the services and activities of the Owner and other Project Team members. As design proceeds, update the preliminary Project schedule to indicate proposed activity sequences and durations, milestone dates for receipt and approval of pertinent information, submittal of a GMP proposal, preparation and processing of shop drawings and samples, delivery of materials or equipment requiring long-lead time procurement, and the Owner's occupancy requirements showing portions of the Project having occupancy priority, provided that the date(s) of Substantial Completion will not be modified without the Owner's prior written approval. If preliminary Project schedule updates indicate that previously approved schedules may not be met, make appropriate recommendations to the Owner's Authorized Representative and other Project Team members.
- (c) Make all Project schedules available in electronic format as requested by the Owner.
- (d) Upon execution of the GMP Amendment, continue this scheduling activity throughout the Construction Phase.
- (e) Make recommendations to the Owner's Authorized Representative and other Project Team members regarding the phased issuance of Plans and Specifications to facilitate phased construction of the Work, if such phased construction is appropriate for the Project, taking into consideration such factors as economics, time of performance, availability of labor and materials, and provisions for temporary facilities.
- (f) Provide the following services relating to cost estimating.
  - Verify, for the review of the Owner's Authorized Representative and other Project Team members and approval of the Owner, any preliminary cost estimates during the design phases.

- When Construction Documents ("CD") at the 50 percent submittal level have been prepared by the Design Team and approved by the Owner, prepare a detailed cost estimate with supporting data for review by the Design Team and the Owner's Authorized Representative and approval by the Owner. During the preparation of the Construction Documents, update and refine this estimate at appropriate intervals agreed to by the Owner, the Design Team, the Owner's Authorized Representative, and the CM/GC.
- Reconcile the CM/GC's cost estimate, based on the 50 percent CD, with the Owner's Construction budget or the Design Team's cost estimate to within 3 percent, or as otherwise approved by the Owner, for the basis of the final GMP. If any estimate submitted to the Owner exceeds previously approved estimates or the Owner's budget, make appropriate recommendations to the Design Team and the Owner's Authorized Representative to reduce costs.
- Notify the Owner and the other Project Team members immediately if any construction cost estimate appears to be exceeding the construction budget.
- Otherwise work with the Design Team and the Owner to develop a GMP within the Target GMP Range and within the Owner's schedule.

(4) Perform the following services relating to Subcontractors and suppliers:

- (a) Seek to develop Subcontractor and supplier interest in the Project, consistent with applicable legal requirements, and furnish to the Owner's Authorized Representative and Design Team for their information a list of possible Subcontractors and suppliers, including suppliers who may furnish materials or equipment fabricated to a special design, from whom competitive bids, quotes, or proposals (collectively, "Offers") will be requested for each principal portion of the Work. Submission of such list is for information and discussion purposes only and not for prequalification. The receipt of such list will not require the Owner, the Owner's Authorized Representative, or the Design Team to investigate the qualifications of proposed Subcontractors and suppliers, nor will it waive the right of the Owner or Design Team to later object to or reject any proposed Subcontractor, supplier, or method of procurement.
- (b) Provide input to the Owner and the Design Team regarding current construction market bidding climate, status of key subcontract markets, and other local economic conditions. Determine the division of work to facilitate bidding and award of trade contracts, considering such factors as bidding climate, improving or accelerating construction completion, minimizing trade jurisdictional disputes, and related issues.
- (c) Recommend to the Owner's Authorized Representative and Design Team a

schedule for procurement of long-lead time items which will constitute part of the Work as required to meet the Project schedule, which will be procured by the CM/GC upon execution of a GMP Amendment covering such procurement, and approval of such schedule by the Owner's Authorized Representative. Expedite the delivery of long-lead time items.

- (d) Work with the Owner in identifying critical elements of the Work that may require special procurement processes, such as prequalification of subcontractors or alternative contracting methods.
- (e) Work with the Owner and the Design Team to maximize energy efficiency in the Project, including without limitation providing estimating and value engineering support to the Owner's analysis and application for energy-related incentive programs offered by local utilities.

B. Construction Phase Services:

- (1) Upon execution of the GMP Amendment or execution of an Early Work Amendment, provide Construction Phase Services as provided in the Contract Documents, including without limitation providing and paying for all materials, tools, equipment, labor, and professional and non-professional services, and performing all other acts and supplying all other things necessary to fully and properly perform and complete the Work, as required by the Contract Documents, to furnish to the Owner a complete, fully functional Project, capable of being legally occupied and fully used for its intended purposes upon completion of the Contract. Construction Phase Services will include CM Services performed during the Construction Phase.
- (2) Prior to commencement of the Construction Phase, and in any event not later than mutual execution of the GMP Amendment, provide to the Owner a full performance bond and a payment security bond, as required, in the amount of the GMP or of the Early Work Amendment. Provide to the Owner additional or replacement bonds at the time of execution of any subsequent Early Work or GMP Amendment, prior to execution of the Amendment and the supplying of any labor or materials for the prosecution of the Work covered by the Amendment, and in a sufficient amount so that the total bonded sum equals or exceeds the total amount of the Early Work or GMP. In the event of a Scope Change that increases the Early Work or GMP, provide to the Owner an additional or supplemental bond in the amount of such increase prior to performance of the additional Work.
- (3) Upon execution of the GMP Amendment, continue the scheduling activities started in the Preconstruction Phase and provide the Owner's Authorized Representative with monthly schedule updates.

C. Construction Management ("CM") Services: Throughout the Preconstruction Phase and Construction Phase of the Project, provide CM Services, generally consisting of coordinating and managing the building process as an independent

contractor, in cooperation with the Project Team. CM Services will include, but are not limited to, the following:

- (1) Provide all Preconstruction Phase Services described above.
- (2) Develop and deliver schedules, prepare construction estimates, perform constructability review, analyze alternative designs, study labor conditions, and coordinate and communicate the activities of the Project Team throughout the Construction Phase to all members of the Project Team.
- (3) Continuously monitor the Project schedule and recommending adjustments to ensure completion of the Project in the most expeditious manner possible.
- (4) Work with the Owner, the Owner's Authorized Representative, and the Design Team to analyze the design, participate in decisions regarding construction materials, methods, systems, phasing, and costs, and suggest modifications to achieve the goals of providing the Owner with the highest quality Project within the budget, GMP, and schedule.
- (5) Provide Value Engineering ("VE") services ongoing through the Project. Develop cost proposals, in the form of additions or deductions from the GMP, including detailed documentation to support such adjustments, and will submit such proposals to the Owner for its approval. Actively participate in a formal VE study anticipated to be held at the end of the Design Development phase or during Construction Document phase. The CM/GC acknowledges that VE services are intended to improve the value received by the Owner with respect to cost reduction or life cycle of the Project.
- (6) Hold and conduct periodic meetings with the Owner and the Design Team to coordinate, update and ensure progress of the Work.
- (7) Submit monthly written report(s) to the Owner's Authorized Representative. Each report will include, but will not be limited to, Project updates including (a) actual costs and progress for the reporting period as compared to the estimate of costs; (b) explanations of significant variations; (c) Work completed; (d) Work in progress; (e) Changes in the Work; and (f) other information as determined to be appropriate by the Owner. Oral or written updates will be provided to the Owner as deemed appropriate by the CM/GC or as requested by the Owner.
- (8) Maintain a daily log containing a record of weather, Subcontractors working on the site, number of workers, work accomplished, problems encountered, safety violations and incidents of personal injury and property damage, and other similar relevant data as the Owner may reasonably require. The log will be available to the Owner and Design Team on request.

- (9) Develop and implement a system of cost control for the Work acceptable to the Owner's Authorized Representative, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. Identify variances between actual and estimated costs and report the variances to the Owner and Design Team at regular intervals.
- (10) Cooperate with any and all consultants hired by the Owner.
- (11) At the Owner's request, cooperate and perform warranty and inspection work for the Project through the expiration date of the applicable warranty period.
- (12) Assist the Owner with start-up of the Project. Such start-up may occur in phases due to phased occupancy.
- (13) Incorporate commissioning and inspection agents' activities into the Project schedule and coordinate Subcontractors required to participate in the commissioning and inspection process.
- (14) Perform all other obligations and providing all other services set forth in the Contract Documents, and perform all other acts and supply all other things necessary to fully and properly perform and complete the Work as required by the Contract.

#### **4. Relationship and Roles of the Parties.**

- A. Independent Contractor: The CM/GC is an independent contractor and not an officer, employee, or agent of the Owner as those terms are used in ORS 30.265.
- B. Performance of Work: The CM/GC covenants with the Owner to cooperate with the Design Team and the Owner's Authorized Representative and utilize the CM/GC's professional skills, efforts, and judgment in furthering the interests of the Owner; to furnish efficient business administration and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in conformance with the terms and conditions of the Contract Documents and in an expeditious and economical manner consistent with the interests of the Owner.
- C. Design Consultants: The Owner has a separate contract with the Design Team related to the Project. Both the CM/GC and the Design Team will be given direction by the Owner through the Owner's Authorized Representative. The CM/GC agrees to support the Owner's efforts to create a collaborative and cooperative relationship among the CM/GC, Design Team, other Project consultants, and the Owner's Authorized Representative.
- D. Forms and Procedures: The Owner has developed or may develop procedures and forms for the administration and tracking of the Contract. The CM/GC agrees to abide by those procedures and to use those forms.



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

- (1) Project Manager. XXX will be the CM/GC's Senior Project Manager and XXXX will be 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 the Owner. The CM/GC represents that the Senior Project Manager and Project Manager each has authority to execute Change Orders and Contract Amendments on behalf of the CM/GC.
- (2) Job Superintendent: XXXXXX will be the CM/GC's on-site job superintendent throughout the Project term.
- (3) Key Persons: The CM/GCs personnel identified in Section 4.e, and any other personnel identified by name in the CM/GC's Proposal, will be considered Key Persons and will not be replaced during the Project without the written permission of the Owner, which will not be unreasonably withheld. If the CM/GC intends to substitute personnel, a written request must be given to the Owner at least thirty (30) days prior to the intended time of substitution. When replacements have been approved by the Owner, the CM/GC will provide a transition period of at least ten (10) Business Days, during which the original and replacement personnel will be working on the Project concurrently. Once a replacement for any of these staff members is authorized, further replacement will not occur without the written permission of the Owner.

## **5. Date of Commencement, Substantial and Final Completion.**

- A. Notice to Proceed: When Construction Phase Services are authorized are set forth in Section 3.b, a Notice to Proceed will be issued by the Owner to begin the designated or full Construction Phase Services ("Notice to Proceed").
- B. Completion of Project: The CM/GC will achieve Substantial and Final Completion of the entire Work as required by the GMP Amendment. The Owner will have the right to take possession and occupancy of the Project in phases, and the CM/GC agrees that such partial occupancy will not be grounds for adjustment of the GMP or the Substantial or Final Completion Dates.
- C. Time Extensions: Notwithstanding provisions for Contract time extensions in Sections 104.04 and 109.17 of the General Conditions, the Owner and the CM/GC agree that timely completion of the Work is essential to the success of the Project, and that approval for time extension will be granted only as a last resort. The CM/GC agrees to make every effort to recover "lost" time.
- D. Liquidated Damages: The CM/GC acknowledges that the Owner will sustain damages as a result of the CM/GC's failure to substantially complete the Project in accordance with the

Contract Documents. These damages may include, but are not limited to, delays in completion and use of the Project, and costs associated with Contract administration, additional Project Team costs, and use of temporary facilities. The CM/GC and the Owner acknowledge that the actual amount of damages would be difficult to determinate accurately and agree that the following liquidated damages figure represents a reasonable estimate of such damages and is not a penalty.

Liquidated damages will be \$500.00 for each day that Substantial Completion exceeds the required date of Substantial Completion.

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

## 6. Contract Sum and GMP.

- A. Contract Sum: When a GMP Amendment is executed, the Owner will pay the CM/GC, as payment for the Work, the "Contract Sum," which will equal the sum of the Preconstruction Fee, the CM/GC Fee, and the actual Cost of the Work, but not sums that exceed the GMP.

The GMP will be determined in accordance with the formula set forth below and as described in Section 6.c. The "Cost of the Work" is defined in Section 8. Costs in excess of the GMP will be paid by the CM/GC without reimbursement by the Owner. Changes to the GMP will only be authorized by Amendment or Change Order.

Preconstruction Fee + CM/GC Fee + Estimated Cost of the Work (Est. COW) = GMP

Cost Reimbursement \_\_\_\_\_% of Est. COW Includes CM/GC's Contingency and the  
\$\_\_\_\_\_Maximum Becomes Lump Sum Fixed Cost for GC Work

- B. Preconstruction Fee: The Preconstruction Fee will be payable to the CM/GC on a cost-reimbursement basis up to a maximum sum of \$XXXXXX, which will cover constructability review, value engineering, cost estimating, development of GMP, and all other Preconstruction Phase Services, as described in Section 3. If the CM/GC's costs for provision of Preconstruction Phase Services exceed the maximum Preconstruction Fee, the CM/GC will pay such additional cost without reimbursement. The CM/GC will not be entitled to any CM/GC Fee upon the Preconstruction Fee. The Owner will 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 the initial calculation of the GMP as provided above, the GMP will be reduced by the difference; provided that the Owner may direct instead that any applied portion of the maximum Preconstruction Fee be applied to

Construction Phase Services, in which case the GMP will 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 will be payable to the CM/GC with respect to Preconstruction Services performed after execution of the GMP Amendment.

- C. Establishment of CM/GC Fee; Adjustments to CM/GC Fee: The “CM/GC Fee” will be a fixed-dollar lump sum to be identified in the GMP Amendment, and will be calculated as 1.95% of the Estimated Cost of the Work at the time of establishment of the GMP. In making such calculation, the Estimated Cost of the Work will exclude the Preconstruction Fee, the CM/GC Fee itself, and any other cost or charge for which this Contract states is not to be included in calculating the CM/GC Fee, but will include Allowances, selected alternates, Fixed Cost for GC Work, and reasonable CM/GC contingencies as designated in the GMP Supporting Documents. The CM/GC Fee is inclusive of profit, overhead, and all other indirect or non-reimbursable costs. The Owner will 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 will be the above percentage multiplied by the actual Cost of the Early Work, until such time as a GMP Amendment is executed, at which time such CM/GC Fee payments will be credited against the CM/GC Fee fixed therein.

Any Amendment or Change Order that increases or decreases the GMP will adjust the CM/GC Fee then in effect by multiplying the percentage shown in Section 6.c.i by the change in the Estimated Cost of the Work reflected in such approved Amendment or Change Order. In addition, if the Contract is terminated for any reason prior to full completion of the Work (including, without limitation, termination during or following performance of Early Work), the CM/GC Fee will 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 will not be subject to adjustment for any other reason, including, without limitation, schedule extensions or adjustments, Project delays, unanticipated costs, or unforeseen conditions.

- D. Determination of GMP: The CM/GC will deliver to the Owner a proposed GMP and GMP Supporting Documents at a time designated by the Owner during the Preconstruction Phase. If any actual subcontract Offers are available at the time the GMP is being established, the CM/GC will use those subcontract Offers in establishing the GMP.

As the Plans and Specifications may not be developed to the stage of biddable Design Documents at the time the GMP proposal is prepared, the CM/GC will provide in the GMP for further development of the Plans and Specifications by the Design Team 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, will be incorporated by Change Order or Amendment with a corresponding GMP adjustment.

The CM/GC will include with its GMP proposal a written statement of its basis (the “GMP Supporting Documents”), which will include:

- 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.
- A list of allowances and a statement of their basis.
- 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.
- The proposed GMP, including a statement of the estimated cost organized by trade categories, allowances, contingency, and other items and the associated fees that comprise the GMP.
- The Date of Substantial Completion upon which the proposed GMP is based, and a schedule of the Construction. The CM/GC will meet with the Owner and Design Team to review the GMP proposal and the written statement on which it is based.

The CM/GC will meet with the Owner and Design Team to review the GMP proposal and the written statement of its basis. If the Owner or Design Team discovers any inconsistencies or inaccuracies in the information presented, he or she will promptly notify the CM/GC, who will make appropriate adjustments to the GMP proposal, its basis, or both.

The CM/GC will not incur any cost to be reimbursed as part of the Cost of the Work prior to the Owner's acceptance of the CM/GC's GMP proposal and issuance of a Notice to Proceed.

The Owner will authorize and cause the Design Team 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 will be furnished to the CM/GC in accordance with schedules agreed to by the Owner, Design Team, and the CM/GC. The CM/GC will promptly notify the Design Team and the Owner if such revised Plans and Specifications are inconsistent with the agreed-upon assumptions and clarifications.

The GMP will include in the Cost of the Work only those taxes which are enacted at the time the GMP is established.

The Estimated Cost of the Work will 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 unforeseen costs which are properly reimbursable as Cost of the Work but which are not the basis for a Change Order.

The CM/GC will work with the Design Team and the Owner to identify and confirm components and systems not specifically shown but required for a complete, fully functional Project. The Owner will direct the Design Team to complete the final

Construction Documents in accordance with the Project scope agreed upon by all Parties at the time the GMP is established.

Notwithstanding the level of detail represented in the GMP Supporting Documents, the CM/GC will 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 facility.

In developing the GMP, the CM/GC will include and identify such contingencies within the GMP as may be necessary to pay for unforeseen elements that are required for a complete, fully functional facility.

- E. Failure to Furnish an Acceptable GMP: If the CM/GC does not furnish a GMP acceptable to the Owner within the Owner's target GMP range, or if the Owner determines at any time in its sole discretion that the Parties may fail to reach a timely agreement on a GMP acceptable to the Owner, the Owner may terminate this Contract without liability, and the CM/GC will not receive additional compensation beyond the Preconstruction Fee under this Contract. Termination under this provision will proceed under Section 108.12 of the General Conditions as a termination for the Owner's convenience. The CM/GC further agrees that the Owner will not be liable for any damages whether actual, consequential, or otherwise for termination of the Contract under this provision.
- F. Acceptance of GMP: Upon acceptance of the GMP by the Owner, the Parties will execute a GMP Amendment.
- G. 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 Section 6.a), is less than the GMP, the savings will be accrued to the Owner.
- H. Allowance Work: The CM/GC will not perform any Allowance Work without prior execution by the Owner of a Change Order approving the Specifications for the Allowance Work and the price thereof.

The Owner will 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.

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

The Contract Sum will 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.

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

- I. Adjusting the CM/GC's Contingency after Bid ("Offer") Buyout: As soon as possible after the awarding of the Work to the primary Subcontractors, the CM/GC will review projected costs and provide the Owner with a buy-out status report showing any projected cost under-runs, reconciling accepted Offers and other reasonably anticipated costs, to the cost estimate used by the CM/GC to establish the GMP. The CM/GC will include with its report any underlying documentation requested by the Owner used to develop or support such report. The CM/GC will 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 will negotiate in good faith to execute a Change Order moving some or all of any projected under-run to an Owner-controlled contingency fund to be held within the GMP to pay for additional costs arising from (i) any Owner-directed or approved Change to the Work, (ii) schedule changes that would otherwise entitle the CM/GC to an increase in the GMP, (iii) allowance items after exhaustion of all Allowances, (iv) selection by the Owner of more expensive alternates than those used for calculation of the GMP, (v) Owner selection of substitutions that increase the Cost of the Work, or (vi) any other costs which otherwise would entitle the CM/GC to an increase in the GMP.

## **7. Changes in the Work.**

- A. Price Adjustments: Adjustments to the Estimated Cost of the Work required by changes in the Work will be determined by any of the methods listed in Section 109.17 of the General Conditions, except that, unless the adjustment is based upon fixed pricing or unit pricing:
  - (1) The overhead and profit markup for the CM/GC will be limited to the CM/GC Fee adjustment, if any, permitted under Section 6.c.ii of this Contract;
  - (2) The increase or decrease in the Estimated Cost of the Work, other than for subcontract work, will be calculated pursuant to Sections 8 and 9 of this Contract, instead of being based on the CM/GC's Direct Costs as defined in the General Conditions; and
  - (3) In calculating adjustments to subcontracts, unless the Parties agree otherwise, the change will be limited to the Subcontractor's Direct Costs plus the supplemental markup provided in the General Conditions, and will not be modified by Sections 8 and 9 of this Contract.
- B. Adjustments to GMP: Adjustments to the GMP after execution of the GMP Amendment may be made only (i) in the event of Scope Changes, or (ii) as otherwise expressly provided in this Contract, and then only in accordance with the following procedure:

The CM/GC will 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.

Changes to the GMP will be initiated by written notice by one Party to the other ("GMP Change Request"). The CM/GC will deliver any such GMP Change Request to Design Team and the 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 will include a proposal as to the appropriate GMP adjustment with respect to the Scope Change at issue.

The CM/GC will submit its GMP Change Requests as soon as possible, and the CM/GC will not be entitled to claim a GMP increase unless the CM/GC submitted a GMP Change Request to the Owner's Authorized Representative and to Design Team within the earlier of (a) 30 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.

The Owner may, at any time, submit a GMP Change Request requesting a reduction of the GMP, which will include the Owner's basis for such request, and 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.

The CM/GC will work with Design Team to reconcile all differences in its GMP Change Request with Design Team within seven days from the date of submission of the GMP Change Request. "Reconciled" means that the CM/GC and Design Team have verified that their assumptions about the various categories are the same, and have identified the reason for differences in the GMP Change Request and the Design Team's position. The CM/GC will submit the Reconciled GMP Change Request to the Owner, which submission will be a condition to any CM/GC claim for a GMP increase.

If the Reconciled GMP Change Request is not acceptable to the Owner, the CM/GC agrees to work with the Owner and the Design Team to provide a GMP Change Request that is acceptable to the Owner.

The CM/GC agrees to make all records, calculations, drawings, and similar items relating to the GMP Change Request available to the Owner and to allow Design Team and the Owner access and opportunity to view such documents at the CM/GC's offices. Upon the Owner's reasonable notice, the CM/GC will deliver two copies of such documents to the Owner and Design Team at any regular meeting or at the site.

GMP increases, if any, will 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.

- C. Execution by Owner: If a member of the Design Team is the Owner's Authorized Representative, then notwithstanding any provision in the Contract to the contrary, Design Team has no authority to execute Change Orders or Amendments on behalf of the Owner, and only duly authorized personnel of the Owner may do so.

## 8. Cost of the Work (To Be Reimbursed).

- A. Cost of the Work: The Cost of the Work will include only those items necessarily and reasonably incurred by the CM/GC in the proper performance of the Work and specifically identified in this Section 8, and only to the extent that they are directly related to the Project.

B. Labor Costs:

- (1) Wages of construction workers directly employed by the CM/GC to perform the Construction of the Work at the site.
- (2) Wages and salaries of the CM/GC's supervisory and administrative personnel (a) stationed at the site, or (b) engaged at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work with the Owner, or otherwise engaged and off the site when specifically related to the Project, in each case under this clause (c) only with the Owner's prior written approval, and only for that portion of their time directly required for the Work.
- (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 Sections 8.b.i through 8.b.ii.

- C. Subcontract Costs: 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 will be included in the Cost of the Work, unless otherwise approved in writing by the Owner.

D. Costs of Materials and Equipment incorporated in the Work or Stored on Site:

- (1) Costs, including transportation, of materials and equipment incorporated or to be incorporated in the completed Work.



- (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, will be delivered to the Owner at the completion of the Work or, at the Owner's option, will be sold by the CM/GC. Any sale will be commercially reasonable and the CM/GC will provide accounting for such a sale within fifteen (15) days of the transaction. Net amounts, if any, realized from such sales will be credited to the Owner as a deduction from the Cost of the Work.

E. Costs of Miscellaneous Equipment and Other Items; Equipment Rental Charges:

- (1) Costs, including transportation, installation, maintenance, dismantling, and removal, of materials, supplier, 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 other or retained by the CM/GC, provided that the Owner at the Owner's option may require that the CM/GC deliver to the Owner (at no charge) at the end of the Project any of such items procured for this Project. Cost for items previously used by the CM/GC means fair market value. The CM/GC will charge no additional administrative or other mark-up for purchased items. The CM/GC will document all small tools purchased for the Project via invoices in monthly billing, and will document the disposition of small tools which have an individual price that exceeds \$100. A copy of such disposition log will accompany the payment application whenever these items are included in the application.
- (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 will be according to industry standards, will not exceed one hundred (100) percent of the rental rates published from time to time by the American Association of Equipment dealers in effect at the time of rental, and will not exceed acquisition costs, and for individual items exceeding \$5,000, will be subject to the Owner's prior approval. The CM/GC will deliver to the Owner a list of published rates from time to time at the Owner's request. For all items rented or leased, the CM/GC will charge the Owner only the rental charge incurred by the CM/GC with no additional administrative or other mark-up. The CM/GC will make efforts and use its best skills and judgment to procure equipment in the most expeditious and economical manner consistent with the interest of the Owner. Efforts will include, but not be limited to, providing the Owner with a rent/buy analysis so that the Owner may elect for the CM/GC to procure the item in lieu of rental if the facility at issue is expected to be rented for six months or longer. Such rent/buy analysis will include, where available, a leasing rate commensurate with the expected term of rental of the facility at issue. Inclusions to and exclusions from rental rates will be made in accordance with American Association of Equipment Dealer standards.
- (3) Costs of removal of debris from the site.

- (4) That portion of the reasonable travel and subsistence expenses of the CM/GC's personnel, at the Owner-approved rates, incurred while traveling in discharge of duties connected with the Work. Main office staff travel will not be reimbursed unless approved in advance by the Owner. These travel costs will be reimbursed only to the extent allowed under the Owner's travel reimbursement guidelines ("District Travel Rules") applicable to the Owner and only at Owner-approved travel rates.

F. Other Costs:

- (1) Portion of premiums for insurance directly attributable to this Contract, including deductible for builders all/risk insurance (but excluding premiums for comprehensive general liability, automobile, and workers' compensation coverage that is not directly attributable to this Contract), and payment and performance bonds as required by the General Conditions (but excluding premiums for Subcontractor bonds unless authorized by the Owner).
- (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.
- (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.
- (4) CM/GC deposits lost for causes other than the CM/GC's fault or negligence.
- (5) Costs of drawings, Specifications, and other documents required to complete the Work, except as provided by the Owner or Design Team.
- (6) Other costs incurred in the performance of the Work if and to the extent approved in advance in writing by the Owner.

G. Costs to Prevent Damage, Injury or Loss: The Cost of the Work will also include costs which are incurred by the CM/GC in taking action to prevent threatened damage, injury, or loss in case of an emergency affecting the safety of persons and property.

H. Fixed Cost For General Conditions Work: The CM/GC will be paid a fixed sum of \$XXXXXX as payment for the GC Work, including all labor, materials, and direct and indirect costs thereof. To the extent any GC Work is otherwise described in this Section 8, the CM/GC's compensation for the same is included in the Fixed Cost for GC Work and will not otherwise be charged as Cost of the Work. The Fixed Cost for GC Work, less five (5) percent retainage thereon, will be paid in equal installments monthly over the number of months of the scheduled Construction Phase, commencing with the first progress billing after commencement of the scheduled Construction Phase.

**9. Costs Excluded From the Cost of Work (Not To Be Reimbursed).**

A. Costs Excluded from Cost of Work: The following will not be included in the Cost of the Work:

- (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 Sections 8(B)(1) and 8(B)(2).
- (2) Expenses of the CM/GC's principal office and offices other than the site office.
- (3) Any overhead and general expenses, except as may be expressly included in Section 8.
- (4) The CM/GC's capital expenses, including interest on the CM/GC's capital employed for the Work.
- (5) Rental cost of machinery and equipment, except as provided in Section 8(E)(2).
- (6) Any cost associated with the Project not specifically and expressly described in Section 8.
- (7) Costs due to the fault or negligence of the CM/GC, Subcontractors, suppliers, anyone directly or indirectly employed by any of them, or for whose acts any of them may be liable.
- (8) The cost of correction of any repair work, nonconforming or defective work, or warranty work.
- (9) Merit, safety, or other incentive payments, bonuses, or awards, or any expenses in connection therewith, except as provided in Section 8(F)(5).
- (10) Fines and penalties.
- (11) Except for Early Work, the cost of Preconstruction Phase Services.
- (12) The Cost of the Work for GC Work in excess of the Fixed Cost for GC Work.
- (13) Any costs in excess of the GMP.

**10. Discounts, Rebates, and Refunds.**

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

B. Amounts Credited to the Owner: Amounts which accrue to the Owner in

accordance with the provisions of Section 10.a will be credited to the Owner as a deduction from the Cost of the Work.

## **11. Subcontracts and Other Contracts.**

A. General Subcontracting Requirements: Other than Work performed pursuant to Sections 11.d or 11.e of this Contract, the CM/GC will subcontract the Work to Subcontractors other than the CM/GC and its Affiliates.

B. CM/GC's Obligations under Subcontracts:

(1) No use of a Subcontractor or supplier will relieve the CM/GC of any of its obligations or liabilities under the Contract. Except as may expressly otherwise be provided in this Contract, the CM/GC will 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 will 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.

(2) The CM/GC will include in each subcontract and require each Subcontractor to include in any lower-tier subcontract, any provisions necessary to make all of the provisions of the Contract Documents, including the General Conditions, fully effective as applied to Subcontractors. The CM/GC will indemnify the 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 Contract in each subcontract. The CM/GC will provide all necessary Plans, Specifications, and instructions to its suppliers and Subcontractors to enable them to properly perform their work.

(3) Retainage from Subcontractors: Except with the Owner's prior approval, payments to Subcontractors will be subject to retainage of no more than five (5) percent. The Owner and the CM/GC will agree upon a mutually acceptable procedure for review and approval of payments and retainage for Subcontractors.

C. Subcontractor Selection:

(1) Unless otherwise provided under this Section 11, the selection of all Subcontractors and suppliers will 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 will conform to the following procedures, in general compliance with the open and competitive nature of public procurement, taking into account industry subcontracting practices.

(2) The CM/GC will submit to the Owner's Authorized Representative its proposed procurement documents for review and comment before they are issued for solicitation. The CM/GC will consider and respond to all Owner comments regarding any proposed Offer packages. As Offers are received, the CM/GC will submit to the Owner an Offer comparison in a mutually agreeable form together with any specific back up requested by the Owner. The competitive process used to award subcontracts by the CM/GC may be monitored by the Owner's Authorized Representative, provided that such monitoring will not excuse the CM/GC from compliance with the subcontracting requirements of this Contract. The CM/GC will cooperate in all respects with the Owner's monitoring. The Owner's Authorized Representative will be advised in advance of and be given the opportunity to be present at Offer openings, and the CM/GC will provide him or her with a summary or abstract of all Offers in a form acceptable to the Owner's Authorized Representative, and copies of particular Offers if requested, prior to the CM/GC's selection of Offerors. Prior to opening Offers, the CM/GC agrees to disclose in writing to the Owner any financial interest it has in any such Subcontractor, supplier, or other contracting party whenever such Subcontractor, supplier, or contracting party intends to compete on any Project work, directly or indirectly, including whether such party is an Affiliate of the CM/GC.

(3) The following minimum requirements apply to the subcontract solicitation process:

- Unless other prior arrangement has specifically been made with the Owner, all Offers will be written and submitted to a specific location at a specific time. The CM/GC will time-stamp all Offers as received. Subcontractors must be qualified to perform the Work for this Project by being appropriately registered with the Construction Contractors Board.
- 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 the Owner will be required to accept the Offer.
- The CM/GC may 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 the Owner's prior written approval of such prequalification process.
- The CM/GC will comply, and require Subcontractor compliance with, State of Oregon Bureau of Labor & Industries prevailing wage rates as specified in the RFP.
- The Owner may, at its sole discretion, require the CM/GC to re-solicit for Offers based on the same or modified documents.
- The CM/GC will review all Offers and will work with Offerors to clarify Offers,

reduce exclusions, verify scope and quantities, and seek to minimize work subsequently awarded via the Change Order process.

- The CM/GC will document any and all discussions, questions and answers, modifications, and responses to any Offeror and ensure that the same are distributed to all Offeror, and the Owner will be entitled to inspect such documentation on request.
- The CM/GC will determine the lowest qualified 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 the Owner's prior approval, execute a subcontract with the second-lowest Offeror pursuant to Section 11(C)(4) below.
- Under special circumstances and only with prior written authorization by the Owner, Work may be subcontracted on other than a low-price basis, including without limitation, through competitive negotiation. As a condition to its authorization, the Owner may require the CM/GC's agreement to establish and implement qualification and performance criteria for Offerors, including a scoring system within requests for proposals; for example, when there are single fabricators of materials, special packaging requirements for Subcontractor
- The CM/GC will notify the Owner in writing in advance before award of any proposed subcontract, which notice will include summaries in a form acceptable to the Owner of all Offers received for the subcontract at issue. The Owner reserves the right to disapprove any proposed Subcontractor, suppliers, and subcontract or supply contract awards, based on legal standards of responsibility. The Owner will not unreasonably disapprove any proposed Subcontractor or supplier, and increased costs due to the Owner's disapproval will be cause for an increase in the GMP.
- The CM/GC's subcontracting records will not be considered public records, provided, however, that the Owner and other agencies of the State will retain the right to audit and monitor the subcontracting process in order to protect the Owner's interests.

D. CM/GC Field Work:

- (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.
- (2) Except as provided in Section 11(D)(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, will be subject to the

provisions of Section 11(E).

E. Subcontracting by CM/GC:

- (1) The CM/GC or its Affiliates may submit an Offer in accordance with Section 11.c to do Work with its own forces.
- (2) For those items for which the CM/GC or any of its Affiliates intends to submit an Offer, such intent must be publicly announced with the solicitation for Offers required by Section 11(C)(1) and the Owner notified in writing. ALL Offers for this work will be delivered to the Owner and publicly opened by the Owner at an announced time, date, and place.

- F. Protests: The CM/GC, acting as an independent contractor, will include in the competitive process to award all subcontracts, a protest process for Subcontractors and suppliers that are competing Offerors, which process will be subject to approval by the Owner. The CM/GC will be solely responsible for resolving the procurement protests of Subcontractors and suppliers. The CM/GC will indemnify, defend, protect, and hold harmless the Owner from and against any such procurement protests and resulting claims or litigation. The CM/GC will act as an independent contractor and not an agent of the Owner, in connection with any procurement protest. The provisions of this Section 11 are solely for the benefit of the 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.

**12. Accounting Records.**

- A. Accounting; Audit Access: The CM/GC will keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under this Contract, and the accounting and control systems will be satisfactory to the Owner. The Owner will be afforded reasonable and regular access to the CM/GC's records, books, correspondence, instructions, drawings, receipts, subcontracts, purchase orders, vouchers, memoranda, and other data relating to this Contract, and the CM/GC will preserve these for a period of three years after final payment, or for such longer period as may be required by law.
- B. Periodic and Final Audits: The Owner may, at its discretion, perform periodic audits of the Cost of the Work and any other reimbursable costs associated with the Project. The Owner intends to conduct a final audit of reimbursable costs prior to the Contract closeout. The CM/GC will cooperate fully with the Owner in the performance of such audits. Disputes over audit findings or conclusions will be subject to the process set forth in Section 14.d.

**13. Progress Payments.**

- A. Integration with the General Conditions: The requirements of this Section 13 and Section

14 are in addition to, and not in lieu of, the requirements of Section 109.20 of the General Conditions. In the event of conflict among the provisions of Sections 13 and 14, and Section 109.20 of the General Conditions, the provision more favorable to the Owner will control.

- B. Progress Payments: Progress payments will be made as provided in the General Conditions.
- C. Percentage of Completion: Applications for payment will 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 will 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.
- D. Calculation of Payment: Subject to other provisions of the Contract Documents, the amount of each progress payment will be computed as follows:
- 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 the Owner of Changes in the Work, amounts not in dispute will be included;
  - Add that portion of the GMP properly allocable to materials and equipment delivered and suitably stored and otherwise in compliance with the General Conditions;
  - Add the CM/GC's Fee. The portion of the CM/GC's Fee payable will be an amount that bears the same ratio to the CM/GC Fee as the sum of the amounts in the two preceding Clauses bears to the estimated probable Cost of the Work described in Section 6.a.ii, but in no event causing total CM/GC Fee payments to exceed the total CM/GC Fee;
  - Subtract the aggregate of previous payments made by and retained by the Owner;
  - Subtract the shortfall, if any, indicated by the documentation required to substantiate prior applications for payment, or resulting from errors subsequently discovered by the Owner in such documentation;
  - Subtract any amounts for which the Owner's Authorized Representative has withheld or nullified payment as provided in the Contract Documents; and
  - Subtract five (5) percent retainage on the entire progress payment.

#### **14. Final Payment.**



- A. Final Payment Accounting: The CM/GC will submit to the Owner a final detailed accounting of the Cost of the Work together with the CM/GC's final application for payment.
- B. Calculation of Final Payment: The amount of the final payment will be calculated as follows:
- 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 will not exceed the GMP.
  - 2) Subtract amounts, if any, for which the Owner's Authorized Representative withholds, in whole or in part, approval of payment.
  - 3) Subtract the aggregate of previous payments made by the Owner to the CM/GC. If the aggregate of previous payments made by the Owner exceeds the amount due the CM/GC, the CM/GC will reimburse the difference to the Owner within thirty (30) days with interest at the rate applicable to the Owner payments under the General Conditions.
- C. Final Payment Review: The Owner or its accountants will review and report in writing on the CM/GC's final accounting within fifteen (15) Business Days after delivery of the final accounting by the CM/GC. Based on such Cost of the Work as the Owner or the Owner's accountants report to be substantiated by the CM/GC's final accounting, and provided the other conditions of this Contract have been met, the Owner's Authorized Representative will, within five Business Days after receipt of the written report of the Owner's accountants, either issue to the 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 the Owner in writing of the Owner's Authorized Representative's reasons for withholding approval of any part of the application for payment, which disapproval will include the Owner's Authorized Representative's estimate of the amount that is due Contractor under the application for payment.
- D. Payment Disputes: If the Owner's accountants report the Cost of the Work as substantiated by the CM/GC's final accounting to be less than claimed by the CM/GC or if the Owner's Authorized Representative declines to approve any duly submitted payment request by the CM/GC, the CM/GC will be entitled to demand a review of the disputed amount by the Owner's highest contracting authority. Such demand will be made by the CM/GC within thirty (30) days after the CM/GC's receipt of a copy of the rejection of the application for payment. Failure to demand additional review within this 30-day period will result in the substantiated amount reported by the Owner's accountants becoming binding on the CM/GC. In addition, if the Owner 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, the CM/GC will have 30 days after delivery of the request for reimbursement by the Owner to demand additional review by the Owner's highest contracting authority. Failure to

make such demand within this 30-day period will result in the requested reimbursement becoming unconditionally due and payable by the CM/GC. If the CM/GC timely submits a protest to the District's highest contracting authority, the CM/GC's Claim will be subject to the claims review process in the General Conditions. Pending a final resolution, the Owner will pay the CM/GC the amount of the application for payment approved by the Owner's Authorized Representative.

- E. Effect of Payment: Approval of an application for payment or a progress payment, release of retainage, final payment, or partial or entire use or occupancy of the Project by the Owner does not constitute acceptance of Work not conforming to the Contract Documents, or waiver of the right to assert overpayment.

## **15. Termination or Suspension.**

- A. Owner's Right to Terminate Prior to Execution of GMP Amendment: Prior to execution by both Parties of the GMP Amendment, the Owner may terminate this Contract at any time without cause. Upon such termination, the amount to be paid to the CM/GC will not exceed the Preconstruction Fee payable to the date of termination. If the Owner terminates for convenience during the Preconstruction Phase, the Owner will be entitled to copies of, and will have the right to use, all Work product of the CM/GC and its Subcontractors performed to the date of termination, and the CM/GC will deliver copies of the same to the Owner on request.
- B. Owner's Right to Terminate after GMP Amendment: Notwithstanding the General Conditions, the provisions of this Section prevail in the event of termination by the Owner. After the GMP Amendment is executed by both Parties and upon seven days' written notice, the Owner may terminate the Contract without penalty, in which case the CM/GC will be entitled to payment of the amount stated in Section 15A, together with the actual Cost of the Work, plus the CM/GC's Fee prorated based on the actual Cost of the Work to the date of termination, but in any event not in excess of the GMP.
- C. Owner's Termination for Cause: In the event of termination of this Contract by the Owner for default pursuant to the General Conditions, the amount, if any, to be paid to the CM/GC after application of the General Conditions and the Owner's rights at law will not exceed the amount the CM/GC would be entitled to receive under Section 15(B).
- D. 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 the Owner's declining to pay disputed amounts will not be grounds for suspension of the Work or termination for cause by the CM/GC. If the CM/GC terminates this Contract for the Owner's material breach, the amount to be paid to the CM/GC will not exceed the amount the CM/GC would have been entitled to receive under Section 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.

- E. Assignment of Subcontracts: Each subcontract and supply contract for any portion of the Work is hereby irrevocably assigned by the CM/GC to the Owner, provided that such assignment is effective only after termination of this Contract by the Owner, and only for those subcontracts and supply contracts which the Owner accepts by notifying the Subcontractor/supplier and the CM/GC in writing. For those subcontracts and supply contracts accepted by the Owner, if the Work has been suspended for more than thirty (30) days, the Subcontractor's/supplier's compensation will be equitably adjusted for increases in cost resulting from the suspension. The CM/GC will include a provision in each subcontract and supply agreement whereby the Subcontractor/supplier acknowledges the Owner's rights under this Section 15.E. With respect to any subcontracts/supply contracts that are not accepted by the Owner, the provisions of the General Conditions will apply.

## **16. Representations and Warranties.**

- A. Representations: The CM/GC represents and warrants to the Owner as of the effective date of this Contract that:
- 1) It is qualified to do business as a licensed general contractor under the laws of the State of Oregon, and has all requisite corporate power and corporate authority to carry on its business as now being conducted.
  - 2) It 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 the Contract to the 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);
  - 3) The CM/GC's execution and delivery of the Contract and the consummation of the transactions contemplated hereby will not conflict with or result in a material breach of any terms or provisions of, or constitute a material default under, (a) the CM/GC's Articles of Incorporation or Bylaws; (b) 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 (c) any statute, order, writ, injunction, decree, rule, or regulation applicable to the CM/GC;
  - 4) No material consent, approval, authorization, declaration, or other order of, or registration or filing with, any court or regulatory authority or any third person is required for the valid execution, delivery, and performance of the Contract by the CM/GC or its consummation of the transactions contemplated hereby;

- 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
- 6) The CM/GC's Project Manager and Assistant Project Manager identified in Section 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.

## 17. Miscellaneous.

- A. Headings: The headings used in the Contract are solely for convenience of reference, are not part of the Contract, and are not to be considered in construing or interpreting the Contract.
- B. Merger: The Contract Documents constitute the entire contract between the Parties. No waiver, consent, modification, or change of terms of the Contract will bind either Party unless in writing and signed by both Parties. Such waiver, consent, modification, or change, if made, will 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.
- C. Coordination and Communications:
  - 1) The CM/GC will work jointly with the Owner's Authorized Representative and Project Manager to review the roles and responsibilities of the Parties related to the Project, and assist in developing procedures so that each Party has a clear understanding of the roles of the CM/GC and the members of the Owner's Project Team.
  - 2) The CM/GC will work with the Owner to establish electronic communications, including but not limited to an e-mail system network for the Project. The CM/GC will utilize electronic formats for all practical facets of the Project and Project-related communications, and provide, as requested by the Owner, any applicable deliverables in electronic format to support an Owner goal of "reduced paper projects."
  - 3) At the Owner's option, the CM/GC will attend meetings with the Owner and the Project Manager to assure integration of changes brought about by RFI's/Change Order(s) applicable to the overall site-approved design documents, or for other similar reasons.
- D. Owner's Commissioning Plan: The CM/GC will coordinate commissioning activities when requested of the Work and sequence Subcontractor commissioning deliverables with the

Owner's Commissioning Agent. In conjunction with other scheduled design and construction meetings, the CM/GC will attend and participate in meetings with the Commissioning Agent to review the CM/GC's design decisions concerning systems options, systems testing requirements, and systems specifications during design development phases. The CM/GC will observe commissioning activities during "start up and performance runs" of each type of equipment, mechanical, electrical and low voltage. The CM/GC will provide for regular on-site attendance to confer with the Project Team during "start-up and performance runs" to evaluate performance of equipment, to accomplish equipment adjustments, and to review re-runs of "start-up and performance testing," etc., in concert with the Project Team to meet the commissioning schedule.

E. Closeout Guidelines for the Project:

- 1) The CM/GC will assist the Owner with the development of a Project closeout plan in accordance with the Owner's procedures. The CM/GC will incorporate a formal Project closeout plan (including but not limited to, the CM/GC's participation in Project closeout planning meetings), into Project schedules prior to the Construction Phase.
- 2) The CM/GC will jointly develop and assist the Owner in coordination of the use of an Owner-approved Project closeout plan utilizing tracking logs and check1ist(s) in a form approved by the Owner.
- 3) The CM/GC acknowledges and will comply with the Owner's expectations relating to the requirements of the General Conditions related to Closeout as more fully defined in the Project Closeout planning meetings.

F. Special Studies and Research: The CM/GC will assist in obtaining, coordinating, and managing services for investigation, research, and analysis of the Owner's special requirement(s) for the Project and provide documentation of findings, conclusions, and recommendations.

G. Energy Efficiency: The Owner places special emphasis on minimizing the long-term operating costs of the facility. The CM/GC will assist the Design Team to ensure that design decisions will incorporate analysis of energy and operating cost impacts.

H. Recyclable Products: Vendors will use recyclable products to the maximum extent economically feasible in the performance of the Contract Work set forth in this document.

I. Equal Opportunity Employer: The CM/GC will endeavor to achieve a workforce that represents the diversity of Oregon and strive to be a leader in providing fair and equal employment opportunity for all interested applicants and employees.

- J. Owner's Security Precautions: The CM/GC will at all times have access to the Work, subject to the Owner's security provisions.
- K. Requirements for all Reports and Deliverables:
- 1) The CM/GC will deliver all reports and other items to be delivered by the CM/GC pursuant to this Contract, and other procedures developed by the Owner, in writing and in the form required by the Owner. Any itemization of deliverables in this Contract is nonexclusive, and the CM/GC acknowledges that the required deliverables include all documents and/or tasks necessary or appropriate for full performance of the Work. If requested by the Owner, the CM/GC will deliver all Deliverables to the Owner in draft form for the Owner's prior comment. ALL deliverables will be subject to the Owner's comment and final acceptance. The CM/GC will correct any deficient deliverable at no additional charge to the Owner. The Owner's comment upon or acceptance of a deliverable will not be considered a waiver of defects in the deliverable or relieve the CM/GC from its obligations regarding such deliverable.
  - 2) The CM/GC will note in writing any limitations on the reliability and scope of any deliverable. The CM/GC will clearly identify its opinions as such. Each deliverable, regardless of the format in which it is presented, will clearly identify qualifications to its conclusions. The CM/GC will prepare all deliverables in accordance with industry standards, except to the extent superior performance specifications are stated herein or in subsequent Owner-developed procedures.
- L. Compliance With Law: CM/GC will comply with all federal, state, and local laws applicable to the Work under this Contract, and all regulations and administrative rules established pursuant to those laws, including without limitation, the following requirements of the Oregon Public Contract Code:
- 1) ORS 279A.110 (Non-discrimination certification): CM/GC will certify that CM/GC has not discriminated and will not discriminate against a Subcontractor in the awarding of a subcontract because the Subcontractor is a minority, women, or emerging small business enterprise certified under ORS 200.055.
  - 2) ORS 279C.380 (Performance and Payment Bonds): Unless exempted by the Owner in writing pursuant to the Owner's local public contracting rules, prior to starting work under this Contract, CM/GC or its Subcontractor will execute and deliver to the Owner a good and sufficient performance bond, in a form acceptable to the Owner, in a sum equal to 100 percent of the construction portion of the Contract Price, and CM/GC or its Subcontractor will execute and deliver to the Owner a good and sufficient payment bond, in a form acceptable to the Owner, in a sum equal to 100 percent of the construction portion of the Contract Price, solely for the protection of claimants under ORS 279C.600.

- 3) ORS 279C.505 (Prompt Pay Requirement, Liens, Taxes, and Drug Testing): CM/GC will make payment promptly, as due, to all persons supplying to such CM/GC labor or material for the performance of the Work provided for in such Contract; pay all contributions or amounts due the Industrial Accident Fund from such CM/GC or Subcontractor incurred in the performance of the Contract; not permit any lien or claim to be filed or prosecuted against the state or a county, school district, municipality, municipal corporation or subdivision thereof, on account of any labor or material furnished; and pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167. CM/GC will further demonstrate that an employee drug testing program is in place.
- 4) ORS 279C.510 (Recycling/Composting): If this Contract includes demolition work, the CM/GC will salvage or recycle construction and demolition debris, if feasible and cost-effective. If this Contract includes lawn or landscape maintenance, the CM/GC will compost or mulch yard waste material at an approved site, if feasible and cost-effective.
- 5) ORS 279C.515 (Failure to Pay Promptly): If CM/GC fails, neglects, or refuses to make prompt payment of any claim for labor or services furnished to the CM/GC or a Subcontractor by any person in connection with this Contract as such claim becomes due, the Owner may pay such claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due the CM/GC by reason of this Contract. The payment of a claim in the manner authorized in this section will not relieve the CM/GC or the CM/GC's surety from any obligation with respect to any unpaid claims.
- 6) Unless the payment is subject to a good faith dispute as defined in ORS 279C.580, if CM/GC or any first-tier Subcontractor fails to pay any claim for materials or labor furnished under this Contract within 30 days after being paid by the Owner, interest will be due on such claim as specified in ORS 279C.515(2) at the end of the 10-day period that payment is due under ORS 279C.580(4). A person with any such unpaid claim may file a complaint with the Construction Contractor's Board unless the complaint is subject to a good faith dispute as defined in ORS 279C.580.
- 7) vi. ORS 279C.520 and 279C.540 (Hours of Labor, Holidays, and Overtime): Except as otherwise provided in an applicable collective bargaining agreement with a labor organization, CM/GC will not employ and will require that its Subcontractors not employ any person to perform construction work for more than ten hours in any one day, or 40 hours in any one week, except in cases of necessity, emergency, or where the public policy absolutely requires it, and in such cases, except in cases of Contracts for personal services as defined in ORS 279A.055, the laborer will be paid at least time and a half pay:
  - (a) For all overtime in excess of eight hours a day or 40 hours in any one week when the work week is five consecutive days, Monday through Friday; and
  - (b) For all overtime in excess of ten hours a day or 40 hours in any one week

when the work week is four consecutive days, Monday through Friday; and

- (c) For work performed on Saturday and on any legal holiday specified in any applicable collective bargaining agreement or ORS 279C.540(1)(b).
  - (d) The requirement to pay at least time and a half for all overtime worked in excess of 40 hours in any one week will not apply to individuals who are excluded under ORS 653.010 to 653.261 or under 29 U.S.C. Section 201 to 209 from receiving overtime.
  - (e) CM/GC will and will require its Subcontractors to give notice in writing to their employees who work under this Contract, either at the time of hire or before commencement of work on the Contract, or by posting a notice in a location frequented by employees, of the number of hours per day and days per week that the employees may be required to work.
- 8) ORS 279C.525 (Notice of Environmental Regulations): State law requires that solicitation documents for a public improvement contract make specific reference to federal, state, and local agencies that have enacted ordinances, rules, or regulations dealing with the prevention of environmental pollution or the preservation of natural resources that may affect the performance of this Contract. These agencies include, but are not limited to:
- (a) Federal Agencies: Department of Agriculture, Forest Service, Soil and Water Conservation Service, Coast Guard, Department of Defense, Army Corps of Engineers, Department of Emergency, Federal Energy Regulatory Commission, Environmental Protection Agency, Department of Health and Human Services, Department of Housing and Urban Development, Solar Energy and Energy Conservation Bank, Department of Interior, 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, Department of Labor, Mine Safety and Health Administration, Occupation Safety and Health Administration, Department of Transportation, Federal Highway Administration, Water Resources Council.
  - (b) State Agencies: Department of Administrative Services, Department of Agriculture, Soil and Water Conservation Commission, Columbia River Gorge Commission, Department of 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, Land Conservation and Development Commission, Department of Parks and Recreation, Division of State Lands, Department of Water Resources.



(c) Local Agencies: City councils, county courts, county boards of commissioners, metropolitan service district councils, design commissions, historic preservation commissions, planning commissions, development review commissions, special district boards of directors, and other special districts and special governmental agencies such as Tri-Met, urban renewal agencies, and Port Districts.

(d) Tribal Governments.

- 9) ORS 279C.530 (Payment for Medical Care and Workers' Compensation): CM/GC will promptly, as due, make payments to any person, co-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 CM/GC, of all sums which the CM/GC agrees to pay for such services and all moneys and sums which the CM/GC collected or deducted from the wages of employees pursuant to any law, contract, or agreement for the purpose of providing or paying for such service.
- 10) All employers, including the CM/GC, that employ subject workers who work under this Contract in the State of Oregon will comply with ORS 656.017 and provide the required workers' compensation coverage, unless such employers are exempt under ORS 656.126. CM/GC will ensure that each of its Subcontractors complies with these requirements.
- 11) ORS 279C.545 (Time Limitations on Claims for Overtime): Construction workers employed by the CM/GC or its Subcontractor will be foreclosed from the right to collect for any overtime under this Contract unless a claim for payment is filed with the CM/GC or Subcontractor within ninety (90) days from the completion of the Contract, providing the CM/GC or Subcontractor has:
- (a) Caused a circular clearly printed in blackface pica type and containing a copy of this section to be posted in a prominent place alongside the door of the timekeeper's office or in a similar place which is readily available and freely visible to any or all workers employed on the Work, and
  - (b) Maintained such circular continuously posted from the inception to the completion of the Contract on which workers are or have been employed.
- 12) ORS 279C.580(3) (Prompt Payment of First-Tier Subcontractors): CM/GC will include in each subcontract for properly or services with a first-tier Subcontractor a clause that obligates the CM/GC to pay the first-tier Subcontractor for satisfactory performance under its subcontract within ten days out of such amounts as are paid to the CM/GC by the Owner. CM/GC will also include in each subcontract a clause that states that if the CM/GC fails to pay any claim for materials or labor furnished under

this Contract within 30 days after being paid by the Owner, interest will be due on such claim as specified in ORS 279C.515(2) at the end of the ten-day period that payment is due under ORS 279C.580(3). CM/GC will require each first-tier Subcontractor to include a payment clause and interest clause conforming to the requirements of ORS 279C.580 in each of its subcontracts, and to require each of its Subcontractors to include a similar clause in each contract with a lower-tiered Subcontractor or supplier.

13) ORS 279C.605 (Notice of Claim on Bond): Any person claiming a right of action under ORS 279C.600 must file a notice of claim as provided in ORS 279C.605.

14) ORS 279C.800 to 279C.870 (Payment of Prevailing Wage Required):

- (a) This Contract is subject to payment of prevailing wages under the federal Davis-Bacon Act (40 U.S.C. 3141 et seq.). Notwithstanding Section 17.1.xii.a of this Section, if this Contract is also subject to payment of prevailing wages under the Davis-Bacon Act, Contractor and any subcontractor must pay the higher of the federal prevailing wage rate or the state prevailing wage. The latest federal prevailing wage rates can be reviewed electronically at <http://www.wdo1.gov/Index.aspx>. Contractors shall follow all prevailing wage rules including posting the Davis Bacon Poster at the worksite and submitting certified payroll records. The poster is available at <http://www.do1.gov/whd/regs/compliance/posters/fedprojc.pdf>. The payroll form is at <http://www.do1.gov/whd/forms/wh347instr.htm>.
- (b) The applicable prevailing wages under subsection 17.i.xii.a will be those in effect on the start of the Construction Phase as described in Section 3.b of this Contract, and shall be incorporated in the GMP Amendment or, if applicable, the Early Work Amendment.
- (c) CM/GC and all Subcontractors will keep the prevailing wage rates for this Project posted in a conspicuous and accessible place in or about the Project.
- (d) The Owner will pay a fee to the Commissioner of the Oregon Bureau of Labor and Industries as provided in ORS 279C.825. The fee will be paid to the Commissioner under the administrative rule of the Commissioner.
- (e) If CM/GC or any Subcontractor also provides for or contributes to a health and welfare plan or a pension plan, or both, for its employees on the Project, it will post notice describing such plans in a conspicuous and accessible place in or about the Project. The notice will contain information on how and where to make claims and where to obtain future information.

15) ORS 279C.836 (Public Works Bond Required): The CM/GC will:

- (a) File a public works bond with the Construction Contractor Board pursuant to ORS 279C.836 before starting work on the Project, unless exempt under ORS 279C.836(2) (7) or (8).
- (b) Include in every subcontract a provision requiring the Subcontractor to file a public works bond with the Construction Contractors Board pursuant to ORS 279C.836 before starting work on the Project, unless exempt under ORS 279C.836(2), (7) or (8).

16) ORS 279C.845 (Prevailing Wage Certification; Additional Retainage):

- (a) CM/GC and every Subcontractor will file certified statements with the Owner in writing in the forms prescribed by the Commissioner of the Bureau of Labor and Industries, certifying the hourly rate of wage paid each worker whom CM/GC or Subcontractor has employed upon such public work, and further certifying that no worker employed upon such public work 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 will be verified by the oath of CM/GC or CM/GC's surety or Subcontractor or Subcontractor's surety that CM/GC and any Subcontractor has read such statement and certificate and knows the contents thereof, and that the same is true to CM/GC or Subcontractor's knowledge. The certified statements will 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.
- (b) The certified statement will be delivered or mailed by CM/GC or Subcontractor to the Owner. Certified statements for each week during which the CM/GC or Subcontractor employs a worker upon the public work will be submitted once a month, by the fifth business day of the following month. Information submitted on certified statements may be used only to ensure compliance with the provisions of ORS 279C.800 to 279C.870. Notwithstanding any other provision of this Contract and in addition to any other retainage required under this Contract, the Owner will retain twenty-five (25) percent of any amount earned by the CM/GC until the CM/GC has filed the certified statements with the Owner as required by this Section. The Owner will pay the retainage required under this Section within fourteen (14) days after the CM/GC files the certified statements required by this Section.
- (c) CM/GC and each Subcontractor will preserve the certified statements for a period of three (3) years from the date of completion of the Contract.

17) ORS 671.560, 701.026 (Landscape/Construction Contractors License)

Required): If CM/GC is performing work as a landscape contractor as defined in ORS 671.520(2), CM/GC must have a current, valid landscape contractor's license issued under ORS 671.560. If CM/GC is performing work as a Contractor as defined in ORS 701.005(2), CM/GC must have a current, valid construction contractor's license issued under ORS 701.026. CM/GC will further certify that all Subcontractors performing Work described in ORS 701.005(2) are registered with the Construction Contractors Board or licensed by the State Landscaping Contractor's Board as required by the above noted statutes before they commence Work under this Contract. CM/GC will maintain in effect all licenses, permits, and certifications required for the performance of the Work. CM/GC will notify the Owner immediately if any license, permit, or certification required for performance of this Contract will cease to be in effect for any reason.

EXHIBIT B to CM/GC Contract

GMP /EARLY WORK  AMENDMENT

AMENDMENT NO. \_\_\_ TO AGREEMENT BETWEEN OWNER AND  
CONSTRUCTION CONTRACTOR FOR

**CONSERVATION RESOURCE CENTER**

Pursuant to Sections 3.b of the Agreement, dated \_\_\_\_\_, 2018, between The Clackamas Soil and Water Conservation District ("Owner") and \_\_\_\_\_ ("Construction Contractor"), with respect to construction of the Owner's CONSERVATION RESOURCE CENTER ("Project"), the Owner and Construction Contractor hereby agree to amend and modify the Agreement by this Amendment and establish a Guaranteed Maximum Price and Contract Time for all the Work as set forth below:

ARTICLE 1

SCOPE OF WORK

The scope of the Work consists of construction services as described the Agreement.

ARTICLE 2

GUARANTEED MAXIMUM PRICE

2.1 Construction Contractor's Guaranteed Maximum Price ("GMP") for the Work, including the estimated Cost of the Work as defined in Section 3 of the Agreement and Construction Contractor's Fee as defined in Section 6 of the Agreement, is GMP AMOUNT (TEXT) dollars (\$X,XXX,XXX).

2.2 The GMP includes material that may be purchased directly by the Owner ("Owner Direct Purchases"). The estimated value of materials that may be purchased directly by the Owner is ESTIMATED DIRECT PURCHASE AMOUNT (TEXT) dollars (\$XXX,XXX). Construction Contractor will initially process one (1) deductive Change Order under this Agreement for the entire estimated amount of Owner Direct Purchases, inclusive of sales taxes. Prior to final payment, a final reconciliation of the Owner Direct Purchases against the GMP will be performed and such deductive Change Order will be prepared for the Owner's review and execution.

2.3 The Construction Contractor's Fee for the entire Work anticipated on this Project is hereby established as a lump sum amount of CM FEE (TEXT) dollars (\$XXX,XXX), said lump sum amount is included within the above noted GMP.

2.4 The General Condition expenses for the entire Work anticipated on this Project are hereby established as a not to exceed amount of GENERAL CONDITIONS ALLOWANCE (TEXT) dollars (\$XXX,XXX), said amount is included within the above noted GMP. The items included as General Condition expenses are listed in the List of Itemized General Conditions attached hereto and incorporated herein as Attachment No. 5. Except as said not to exceed amount for General Condition expenses may be expressly adjusted by Change Order or Construction Change Directive, Construction Contractor acknowledges and agrees that Owner shall have no liability for any General Condition expenses beyond

payment of the above noted amount and Construction Contractor agrees that it shall not be entitled to receive any additional compensation from Owner for the General Conditions beyond the above amount. Construction Contractor shall provide an accounting of funds allocated for General Condition expenses at the completion of the project as a precedent to final payment. Construction Contractor shall return to the Owner any amounts paid for General Condition expenses that exceed the amount of actual General Condition expenses accounted for by Construction Contractor, and amounts returned shall be credited from the guaranteed maximum price.

2.5 Monthly installment payment of the Construction Contractor's Fee and the General Condition expenses shall be based upon the percent completion of the designated portion of the Work for each particular month.

ARTICLE 3

CONTRACT TIME

The Construction Phase Commencement Date for the Work is CONSTRUCTION COMMENCEMENT DATE. The total period of time beginning with the Construction Phase Commencement Date through the date required for Substantial Completion of the Work is CALENDAR DAYS FOR COMPLETION (TEXT) (XXX) calendar days ("Contract Time"). THE SUBSTANTIAL COMPLETION DATE IS THEREFORE ESTABLISHED AS SUBSTANTIAL COMPLETION DATE.

ARTICLE 4

MISCELLANEOUS

Except as expressly modified herein, the terms and conditions of the Agreement remain unchanged. In the event of a conflict between the terms of this Amendment and those of the Agreement, Owner and Construction Contractor agree that the terms of this Amendment shall prevail and control.

OWNER:

CONTRACTOR:

Beaver Slough Drainage District

West Coast Contractors, Inc.

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

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

Board Chair

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

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

## ATTACHMENT C to CM/GC CONTRACT

### CONTRACTOR INSURANCE REQUIREMENTS

**1** The Contractor agrees to furnish OWNER evidence of commercial general liability insurance in the amount of not less than \$1,000,000 combined single limit per occurrence \$2,000,000 general annual aggregate for personal injury and property damage for the protection of OWNER, its officers, commissioners and employees against liability for damages because of personal injury, bodily injury, death or damage to property, including loss of use thereof in any way related to this contract. The general aggregate shall apply separately to this project/location. OWNER, at its option, may require a complete copy of the above policy.

**2** The Contractor is solely liable for, and shall maintain in minimum amounts required by law, any Workers' Compensation coverage provided under this Contract. If the Contractor has assistance of other persons in the performance of this contract, the Contractor agrees to qualify and remain qualified for the term of this contract as an insured employer under ORS 656.407. Contractor shall maintain employer's liability insurance with limits of \$100,000 each accident, \$100,000 disease each employee, and \$500,000 each policy limit.

**3** If any other 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 thirty-six (36) months or the maximum time period the Contractor's insurer will provide "tail" coverage as described, or continuous "claims made" liability coverage for thirty-six (36) months following the contract 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.

**4** The Contractor agrees to furnish OWNER evidence of business automobile liability insurance in the amount of not less than \$1,000,000 combined single limit for bodily injury and property damage for the protection of OWNER, its officers, Board of Directors and employees against liability for damages because of bodily injury, death or damage to property, including loss of use thereof in any way related to this contract. OWNER, at its option, may require a complete copy of the above policy.

**5** The certificate of insurance, other than the Pollution Liability insurance, shall include OWNER as an additional insured. A blanket endorsement or automatic endorsement is not sufficient to meet this requirement. Proof of insurance must include a copy of the endorsement showing OWNER as a scheduled insured. Such insurance shall provide sixty (60) days written notice to OWNER in the event of a cancellation or material change and include a statement that no act on the part of the insured shall affect the coverage afforded to OWNER under this insurance. This policy(s) shall be primary insurance with respect to OWNER. Any insurance or self-insurance maintained by OWNER shall be excess and shall not contribute to it.

**6** The Contractor shall obtain at the Contractor's expense, and keep in effect during the term of the contract, Contractor's Pollution Liability insurance covering the Contractor's liability for a third party bodily injury and property damage arising from pollution conditions caused by the Contractor while performing their operations under the contract. The insurance coverage shall apply to sudden and accidental pollution events. Any coverage restriction as to time limit for discovery of a pollution incident and/or a time limit for notice to the insurer must be accepted by OWNER. The insurance coverage shall

also cover cleanup costs. This coverage may be written in combination with the commercial general liability insurance or professional liability insurance. The policy's limits shall not be less than \$1,000,000 each loss / \$2,000,000 aggregate. The policy shall be endorsed to state that the general aggregate limit of liability shall apply separately to this Contract. Any self-insured retention /deductible amount shall be submitted to OWNER for review and approval.

**7** Unless otherwise provided, the Contractor agrees to furnish OWNER evidence of property insurance (Builders Risk/Direct Risk) upon the entire work at the site to the full insurable value thereof. This policy shall insure against the perils of fire and extended coverage and shall include all risk insurance for physical loss or damage including without duplication of coverage, theft, vandalism and malicious mischief (and earthquake and flood). The policy shall be extended to include extra expense coverage (including but not limited to legal / professional fees, debt service payments, insurance premiums, etc.) and with limit equal to 5% of the building value but not less than \$50,000. This policy shall be extended to covered property stored off the site or in transit when OWNER is to be responsible for the cost of that identified property. OWNER, at its option, may require a complete copy of the above policy.