



**OREGON INSTITUTE OF TECHNOLOGY  
CONSTRUCTION MANAGER/GENERAL CONTRACTOR (CM/GC) CONTRACT  
[PROJECT NAME]  
CONTRACT NUMBER [NUMBER]**

THIS CONSTRUCTION MANAGER/GENERAL CONTRACT ("Contract") is by and between [NAME], a [STATE OF INCORPORATION] [ENTITY TYPE], with a principal place of business located at [ADDRESS] (referred to as "Contractor" in the Oregon Institute of Technology General Conditions, and herein referred to as the "CM/GC") and the Oregon Institute of Technology, an Oregon public university with a principal campus located at 3201 Campus Drive, Klamath Falls, OR 97601 ("Owner").

Project: [NAME AND DESCRIPTION]

Architect: [NAME]  
[AUTHORIZED REPRESENTATIVE]  
[ADDRESS]  
[ADDRESS]

Owner's Authorized Representative: [NAME], Project Manager

Owner's Target GMP: \$[AMOUNT]

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The Owner and the Contractor, for the considerations hereinafter named, agree as follows:

## **ARTICLE 1**

### **DEFINITIONS**

Except as expressly defined or modified below or elsewhere in this agreement ("CM/GC Contract"), all capitalized terms shall have the meanings set forth in Section A of the Oregon Institute of Technology General Conditions for Public Improvement Contracts, March 1, 2016 attached as Exhibit A hereto (the "Oregon Tech General Conditions"). The terms below are expressly defined as follows:

- 1.1     Affiliate.** Affiliate shall mean any subsidiary of CM/GC, and any other entity in which CM/GC has a financial interest or which has a financial interest in CM/GC (including without limitation parent companies, related businesses under the same holding company, or any other business controlled by, under common control with, or which controls CM/GC).
  
- 1.2     Allowances.** Allowances shall mean the allowance amounts shown in the GMP Supporting Documents, together with such further allowances as may be developed by the parties as the Project progresses.
  
- 1.3     Amendment.** Amendment shall mean a written modification of the Contract (including without limitation any agreed change to the GMP), identified as an Amendment, and executed by CM/GC, the Owner's Authorized Representative, and, where required, approved in writing by the Owner.
  
- 1.4     Business Days.** Business Days shall mean every day except Saturday, Sunday, and legal holidays recognized for employees of the State of Oregon.
  
- 1.5     Change Order.** Change Order shall mean a written modification of the Contract under Section D.1 of the Oregon Tech General Conditions (including without limitation any agreed change to GMP), identified as a Change Order and executed by the Owner's Authorized Representative, CM/GC, where applicable.
  
- 1.6     CM/GC Field Work.** CM/GC Field Work shall mean customary layout, clean up, supervision, and portions of the Work of a minor nature and not feasibly part of the subcontracted work due to: exclusions by the Subcontractor not resolved through the process described in Article 11.3.3, undeveloped design owing to deviations in Work performed or materials delivered by Subcontractors or suppliers that do not represent defective or nonconforming work, a breach or failure to perform by the Subcontractor or supplier, complexity of coordination of the Work, 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 Owner, (ii) such Work is identified as CM/GC Field Work in monthly billings and (iii) CM/GC receives prior approval of Owner's Authorized Representative as to the scope of such CM/GC Field Work.
  
- 1.7     CM Services.** CM Services shall have the meaning given in Article 3.3 below.
  
- 1.8     Construction Documents.** Construction Documents shall have the meaning given in the State of Oregon Professional Services Agreement with the Architect for this Project.

- 1.9 Construction Phase.** The Construction Phase shall mean the period commencing on the earliest of the following: Owner's written notice to the CM/GC to proceed with the subcontractor solicitation process for Early Work or GMP Work prior to execution of an Early Work Amendment or GMP Amendment; Owner's execution of a GMP Amendment or Early Work Amendment, together with the earlier of (i) issuance by Owner of a Notice to Proceed with any on-site construction or (ii) execution of a subcontract or issuance of a purchase order for materials or equipment required for the Work.
- 1.10 Construction Phase Services.** Construction Phase Services shall mean all of the Work other than the Preconstruction Phase Services.
- 1.11 Contract Documents.** Contract Documents shall have the meaning given in Section A of the Oregon Tech General Conditions, as supplemented by Article 2.1 below.
- 1.12 Design Development Documents.** Design Development Documents shall have the meaning given in the State of Oregon Professional Services Agreement with the Architect for this Project.
- 1.13 Early Work.** Early Work shall mean Construction Phase Services authorized by Amendment that the parties agree should be performed in advance of establishment of the GMP. Permissible Early Work shall be limited to: early procurement of materials and supplies; early release of bid or proposal packages for site development and related activities; and any other advance work related to critical components of the Project for which performance prior to establishment of the GMP will materially affect the critical path schedule of the Project.
- 1.14 Early Work Amendment.** Early Work Amendment shall mean an Amendment to this CM/GC Contract executed by and between the parties to authorize Early Work.
- 1.15 Costs for General Conditions Work.** Costs for General Conditions Work shall mean those sums paid on a cost reimbursable maximum not-to-exceed price basis as described in Article 8.8 and as identified in Exhibit C, Direct Costs/General Conditions Work Costs Matrix.
- 1.16 General Conditions Work.** General Conditions Work ("GC Work") shall mean (i) that portion of the Work required to support construction operations that is not included within overhead or general expense but is called out as GC Work in Exhibit C, 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.
- 1.17 Guaranteed Maximum Price (GMP).** GMP shall mean the Guaranteed Maximum Price of the Contract, as stated in dollars within the GMP Amendment, as determined in accordance with Article 6, and as it may be adjusted from time to time pursuant to the provisions of this CM/GC Contract.
- 1.18 GMP Amendment.** GMP Amendment shall mean an Amendment to the Contract, issued in the form of Exhibit B and executed by and between the parties, to establish the GMP and identify the GMP Supporting Documents for Construction Phase Services.
- 1.19 GMP Supporting Documents.** GMP Supporting Documents shall mean the documents referenced in the GMP Amendment as the basis for establishing the GMP. The GMP Supporting Documents shall expressly identify the Plans and Specifications, assumptions, qualifications, exclusions, conditions, allowances, unit prices, and alternates that form the basis for the GMP.

- 1.20 Preconstruction Phase.** The Preconstruction Phase shall mean the period commencing on the date of this CM/GC Contract and ending upon commencement of the Construction Phase; provided that if the Owner and CM/GC agree, the Construction Phase may commence before the Preconstruction Phase is completed, in which case both phases shall proceed concurrently, subject to the terms and conditions of the Contract Documents.
- 1.21 Preconstruction Phase Services.** Preconstruction Phase Services shall mean all services described in Article 3.1, and any similar services described in the Request for Proposals, including such similar services as are described in the CM/GC's RFP proposal to the extent they are accepted by Owner, but excluding any Early Work. Early Work shall be considered part of Construction Phase Services.
- 1.22 Schematic Design Documents.** Schematic Design Documents shall have the meaning given in the State of Oregon Professional Services Agreement with the Architect for this Project.
- 1.23 Scope Change.** Scope Change shall mean only (i) changed site conditions not reasonably inferable from information available to CM/GC at the time of execution of the GMP Amendment, and (ii) significant Work modifications (including additions, substitutions, and deletions), application of Allowances, and selection of alternates, all as approved by the Owner under the 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 Owner of the Allowance items exceeds the total amount of the Allowances).

## **ARTICLE 2**

### **CONTRACT DOCUMENTS**

- 2.1 Contract Documents.** For valuable consideration as stated below, Owner and the CM/GC agree to the terms of the Contract that are set forth in the Contract Documents. For purposes of this Project, the Contract Document identified as "Oregon Tech Public Improvement Agreement form" in the Oregon Tech General Conditions shall mean this CM/GC Contract. The CM/GC Contract shall include all exhibits attached hereto, which by this reference are incorporated herein.
- 2.2 Effective Date.** The Contract shall become effective on the first date on which every party has signed this CM/GC Contract and Owner has received all necessary approvals.
- 2.3 The Contract; Order of Precedence.** This CM/GC Contract, including all exhibits identified herein and by this reference incorporated in and made a part of this CM/GC Contract, together with the other Contract Documents, form the entire agreement between the parties. Except as expressly otherwise provided herein, the order of precedence of the Contract Documents is established in Section A.3 of the Oregon Tech General Conditions, if there are inconsistent or conflicting terms among the Contract Documents.

## **ARTICLE 3**

### **WORK OF THE CONTRACT**

- 3.1 Preconstruction Phase Services.** The CM/GC agrees to provide all of the Preconstruction Phase Services described below on an ongoing basis in support of, and in conformance with, the time frames described in the Request for Proposals. Commencement of the Construction Phase shall not excuse CM/GC from completion of the Preconstruction Phase Services, if such services have

not been fully performed at commencement of the Construction Phase. Preconstruction Phase Services shall include CM Services performed during the Preconstruction Phase.

**3.1.1** The CM/GC shall provide a preliminary evaluation of the Owner's program and budget requirements, each in terms of the other.

**3.1.2** The CM/GC shall provide the following services relating to design and preconstruction tasks:

- (a) The CM/GC shall consult with, advise, assist, and provide recommendations to the Owner and the design team on all aspects of the planning and design of the Work.
- (b) The CM/GC shall jointly schedule and attend regular meetings with the Architect and Owner's Authorized Representative. The CM/GC shall consult with the Owner and Architect and Owner's Authorized Representative regarding site use and improvements, and the selection of materials, building systems and equipment.
- (c) The CM/GC shall provide recommendations on construction feasibility; actions designed to minimize adverse effects of labor or material shortages; time requirements for procurement, installation and construction completion; and factors related to construction cost including estimates of alternative designs or materials, preliminary budgets and possible economies.
- (d) The CM/GC shall review in-progress design documents, including the documents generally described in the industry as Schematic Development Documents, Design Development Documents, and Construction Documents and provide input and advice on construction feasibility, alternative materials, and availability. CM/GC shall review these completed Schematic Development Documents, Design Development Documents, and Construction Documents and timely suggest modifications to improve completeness and clarity.

**3.1.3** The CM/GC shall provide the following services related to the Project schedule:

- (a) The CM/GC shall prepare, and periodically update, a preliminary Project schedule for the Architect's and Owner's Authorized Representative's review and the Owner's Authorized Representative's approval.
- (b) The CM/GC shall coordinate and integrate the preliminary Project schedule with the services and activities of the Owner, Architect, and CM/GC. As design proceeds, CM/GC shall update the preliminary Project schedule to indicate proposed activity sequences and durations, milestone dates for receipt and approval of pertinent information, submittal of a GMP proposal, preparation and processing of shop drawings and samples, delivery of materials or equipment requiring long-lead time procurement, and Owner's occupancy requirements showing portions of the Project having occupancy priority, provided that the date(s) of Substantial Completion shall not be modified without Owner's prior written approval. If preliminary Project schedule updates indicate that previously approved schedules may not be met, the CM/GC shall make appropriate recommendations to the Owner's Authorized Representative and Architect.

**3.1.4** The CM/GC shall make recommendations to Architect and Owner's Authorized Representative regarding the phased issuance of Plans and Specifications to facilitate phased construction of the Work, if such phased construction is appropriate for the Project, taking into consideration such

factors as economics, time of performance, availability of labor and materials, and provisions for temporary facilities.

**3.1.5** The CM/GC shall provide the following services relating to cost estimating:

- (a) The CM/GC shall prepare, for the review of the Architect and Owner's Authorized Representative and approval of the Owner, a preliminary cost estimate utilizing area, volume or similar conceptual estimating techniques.
- (b) When Schematic Design Documents have been prepared by the Architect and approved by the Owner, the CM/GC shall prepare for the review of the Architect and Owner's Authorized Representative and approval of the Owner, a more detailed estimate with supporting data. During the preparation of the Design Development Documents, the CM/GC shall update and refine this estimate at appropriate intervals agreed to by the Owner, Architect and Owner's Authorized Representative and CM/GC.
- (c) When Design Development Documents have been prepared by the Architect and approved by the Owner, the CM/GC shall prepare a detailed estimate with supporting data for review by the Architect and Owner's Authorized Representative and approval by the Owner. During the preparation of the Construction Documents, the CM/GC shall update and refine this estimate at appropriate intervals agreed to by the Owner, Architect and Owner's Authorized Representative and CM/GC.
- (d) If any estimate submitted to the Owner exceeds previously approved estimates or the Owner's budget, the CM/GC shall make appropriate recommendations to the Architect and Owner's Authorized Representative.
- (e) CM/GC shall notify the Owner and the design team immediately if any construction cost estimate appears to be exceeding the construction budget.
- (f) The CM/GC otherwise shall work with the Architect and Owner to develop a GMP within the Target GMP Range and within Owner's schedule.

**3.1.6** The CM/GC shall perform the following services relating to Subcontractors and suppliers:

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

accelerating construction completion, minimizing trade jurisdictional disputes, and related issues. CM/GC shall advise Owner on subcontracting opportunities for minority/women/ESB firms.

- 3.1.7** The CM/GC shall recommend to the Owner's Authorized Representative and Architect a schedule for procurement of long-lead time items which will constitute part of the Work as required to meet the Project schedule, which shall be procured by the CM/GC upon execution of either a GMP Amendment or Early Work Amendment covering such procurement, and approval of such schedule by the Owner's Authorized Representative. The CM/GC shall expedite the delivery of long-lead time items.
- 3.1.8** The CM/GC shall work with the Owner in identifying critical elements of the Work that may require special procurement processes, such as prequalification of Offerors or alternative contracting methods, and must receive written authorization by the Owner to proceed with the selected process.
- 3.1.9** The CM/GC shall 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.
- 3.1.10** The CM/GC shall work with the Owner and the design team to facilitate changes to the Project necessary to allow incorporation of works of art from the Project's 1% for Art program into the design and construction of the building. Owner's cost of the art objects is not included in the Cost of the Work or the GMP, but CM/GC's costs relating to facilitating changes to accommodate the handling and installation of the art are part of the Cost of the Work and are included in the GMP.

## **3.2 Construction Phase Services.**

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



CM/CG performs Early Work with a cost in excess of the Early Work Price the CM/GC shall pay such excess cost without reimbursement. If one or more Early Work Amendments are executed, the CM/GC shall diligently continue to work toward development of a GMP Amendment acceptable to Owner, which shall incorporate the Early Work Amendments. If Owner thereafter terminates the Contract prior to execution of a GMP Amendment, the provisions of Section J.5 of the Oregon Tech General Conditions for Public Improvement Contracts shall apply.

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

**3.3 Construction Management (CM) Services.** Throughout the Preconstruction Phase and Construction Phase of the Project, the CM/GC shall provide CM Services, generally consisting of coordinating and managing the building process as an independent contractor, in cooperation with the Owner, Owner's Authorized Representative, Architect and other designated Project consultants (the "Construction Principals"). CM Services shall include, but are not limited to:

**3.3.1** Providing all Preconstruction Phase Services described above;

**3.3.2** Developing and delivering schedules, preparing construction estimates, performing constructability review, analyzing alternative designs, studying labor conditions, coordinating and communicating the activities of the Construction Principals throughout the Construction Phase to all Construction Principals;

**3.3.3** Continuously monitoring the Project schedule and recommending adjustments to ensure completion of the Project in the most expeditious manner possible;

**3.3.4** Working with the Owner, Owner's Authorized Representative, and the Architect to analyze the design, participate in decisions regarding construction materials, methods, systems, phasing, and costs, and suggest modifications to achieve the goals of providing the Owner with the highest quality Project within the budget, GMP and schedule;

**3.3.5** Providing Value Engineering ("VE") services ongoing through the Project. CM/GC shall develop cost proposals, in the form of additions to or deductions from the GMP, including detailed documentation to support such adjustments and shall submit such proposals to Owner for its approval. CM/GC shall actively participate in a formal VE study anticipated to be held at the end of the Design Development phase. CM/GC acknowledges that VE services are intended to improve the value received by Owner with respect to cost reduction or life cycle of the Project;

**3.3.6** Holding and conducting periodic meetings with the Owner and the Architect to coordinate, update and ensure progress of the Work;

- 3.3.7 Submitting monthly written report(s) to the Owner's Authorized Representative. Each report shall include, but shall not be limited to, Project updates including (i) actual costs and progress for the reporting period as compared to the estimate of costs; (ii) explanations of significant variations; (iii) work completed; (iv) work in progress; (v) changes in the work; and (vi) other information as determined to be appropriate by the Owner. Oral or written updates shall be provided to the Owner as deemed appropriate by the CM/GC or as requested by the Owner;
- 3.3.8 Maintaining a daily log containing a record of weather, Subcontractors working on the site, number of workers, Work accomplished, problems encountered, safety violations and incidents of personal injury and property damage, and other similar relevant data as the Owner may reasonably require. The log shall be available to the Owner and Architect on request;
- 3.3.9 Developing and implementing a system of cost control for the Work acceptable to Owner's Authorized Representative, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The CM/GC shall identify variances between actual and estimated costs and report the variances to the Owner and Architect at regular intervals;
- 3.3.10 Cooperating with any and all consultants hired by Owner;
- 3.3.11 At Owner's request, cooperating and performing warranty and inspection Work for the Project through the expiration date of the applicable warranty period;
- 3.3.12 Assisting Owner with start-up of the Project. Such start-up may occur in phases due to phased occupancy;
- 3.3.13 Incorporating commissioning and inspection agents' activities into the Project schedule and coordinating Subcontractors required to participate in the commissioning and inspection process;
- 3.3.14 Performing all other obligations and providing all other services set forth in the Contract Documents; and performing all other acts and supplying all other things necessary to fully and properly perform and complete the Work as required by the Contract.

#### **ARTICLE 4**

#### **RELATIONSHIP AND ROLES OF THE PARTIES**

- 4.1 **Independent Contractor.** The CM/GC is an independent contractor and not an officer, employee, or agent of Owner as those terms are used in ORS 30.265.
- 4.2 **Performance of Work.** The CM/CG covenants with Owner to cooperate with the Architect and Owner's Authorized Representative and utilize the CM/GC's professional skill, efforts and judgment in furthering the interests of Owner; to furnish efficient business administration and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in conformance with the terms and conditions of the Contract Documents and in an expeditious and economical manner consistent with the interests of Owner.
- 4.3 **Design Consultants.** Owner has a separate contract with the Architect related to the Project. Both the CM/GC and the Architect shall be given direction by Owner through Owner's Authorized Representative. The CM/GC agrees to support Owner's efforts to create a

collaborative and cooperative relationship among the CM/GC, Architect, other Project consultants, and Owner's Authorized Representative.

- 4.4 Forms and Procedures.** The Owner has developed or may develop procedures and forms for the administration and tracking of the Contract. The CM/GC agrees to abide by those procedures and use those forms.
- 4.5 CM/GC's Project Staff.** The CM/GC's Project staff shall consist of the following personnel:
- 4.5.1** Project Manager and Assistant Project Manager: \_\_\_\_\_ shall be the CM/GC's Project Manager and \_\_\_\_\_ shall be CM/GC's Assistant Project Manager and one or both will supervise and coordinate all Construction Phase and Preconstruction Phase Services of CM/GC and participate in all meetings throughout the Project term unless otherwise directed by Owner. CM/GC represents that each of the Project Manager and Assistant Project Manager has authority to execute Change Orders and Contract Amendments on behalf of CM/GC.
- 4.5.2** Job Superintendent: If Construction Phase Services are requested and accepted by Owner, \_\_\_\_\_ shall be the CM/GC's on-site job superintendent throughout the Project term.
- 4.6 Key Persons.** The CM/GC's personnel identified in Article 4.5, and any other personnel identified by name in CM/GC's Proposal shall be considered Key Persons and shall not be replaced during the Project without the written permission of Owner, which shall not be unreasonably withheld. If the CM/GC intends to substitute personnel, a request must be given to Owner at least 30 Days (or such shorter period as permitted by Owner) prior to the intended time of substitution. When replacements have been approved by Owner, the CM/GC shall provide a transition period of at least 10 Business Days during which the original and replacement personnel shall be working on the Project concurrently. Once a replacement for any of these staff members is authorized, further replacement shall not occur without the written permission of Owner.

## **ARTICLE 5**

### **DATE OF COMMENCEMENT; SUBSTANTIAL AND FINAL COMPLETION**

- 5.1 Notice to Proceed.** If Construction Phase Services are added to the Contract as set forth in Article 3.2, then a notice to proceed will be issued by Owner to begin the designated or full Construction Phase Services ("Notice to Proceed"). It is anticipated that the Notice to Proceed will be issued on or about \_\_\_\_\_, 20\_\_\_. A separate Notice to Proceed shall be issued for any and every Early Work Amendment.
- 5.2 Completion of Project.** The CM/GC shall achieve Substantial Completion of the Work not later than \_\_\_\_\_, and shall achieve Final Completion not later than 90 Days after the earlier of (i) Substantial Completion or (ii) the required date for Substantial Completion. Owner shall have the right to take possession and occupancy of the Project in phases, and the CM/GC agrees that such partial occupancy shall not be grounds for adjustment of the GMP or the Substantial or Final Completion Dates.
- 5.3 Time is of the Essence.** All time limits stated in the Contract Documents are of the essence.
- 5.4 Time Extensions.** Notwithstanding provisions for Contract time extensions in Section D.2 of the Oregon Tech General Conditions, Owner and CM/GC agree that timely completion of the Work

is essential to the success of the Project, and that approval for time extension shall be granted only as a last resort. CM/GC agrees to make every effort to recover “lost” time.

## **ARTICLE 6**

### **FEES, CONTRACT SUM AND GMP**

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

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

The GMP shall be determined in accordance with the formula set forth below and as described in Article 6.3. The “Cost of the Work” is defined in Article 8. Costs in excess of the GMP shall be paid by the CM/GC without reimbursement by Owner. Changes to the GMP shall only be authorized by Amendment or Change Order that includes any necessary Oregon Tech or Oregon Tech General Counsel approvals.

**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	Maximum Cost for GC Work

\*Formula assumes no Early Work is performed.

- 6.2 Preconstruction Fee.** The Preconstruction Fee shall be payable to CM/GC on a cost reimbursement basis up to a maximum sum of \$ \_\_\_\_\_, which shall cover constructability review, value engineering, cost estimating, development of GMP, and all other Preconstruction Phase Services, as described in Article 3. If CM/GC’s costs for provision of Preconstruction Phase Services exceed the maximum Preconstruction Fee, CM/GC shall pay such additional cost without reimbursement. CM/GC shall not be entitled to any CM/GC Fee upon the Preconstruction Fee. Owner shall pay the Preconstruction Fee on a cost-reimbursement basis with each application for payment during the Preconstruction Phase. If the total actual Preconstruction Fee is less than the maximum Preconstruction Fee used for initial calculation of the GMP as provided above, the GMP shall be reduced by the difference; provided that Owner may direct instead that any unapplied portion of the maximum Preconstruction Fee be applied to Construction Phase Services, in which case the GMP shall not be reduced by the portion so applied. Except to the extent the parties may expressly agree to the contrary in the GMP Amendment, no Preconstruction Fee or other fee, compensation or reimbursement shall be payable to CM/GC with respect to Preconstruction Services performed after execution of the GMP Amendment.

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

- 6.3.1** The “CM/GC Fee” shall be a fixed dollar lump sum to be identified in the GMP Amendment, and shall be calculated as \_\_\_\_\_ % of the Estimated Cost of the Work at the time of establishment of the GMP. In making such calculation, the Estimated Cost of the Work shall exclude the

Preconstruction Fee, the CM/GC Fee itself, and any other cost or charge which this CM/GC Contract states is not to be included in calculating the CM/GC Fee, but shall include Allowances, selected alternates, Maximum Not-to-Exceed 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 nonreimbursable costs. No additional markup will be paid to the CM/GC for change order or force account work or for subcontracted labor or materials, notwithstanding anything to the contrary in the Oregon Tech General Conditions. Owner shall pay the CM/GC Fee ratably with each application for payment during the Construction Phase. In the case of Early Work, the CM/CG Fee shall be the above percentage multiplied by the actual Cost of the Early Work, until such time as a GMP Amendment is executed, at which time such CM/GC Fee payments shall be credited against the CM/GC Fee fixed therein.

- 6.3.2** Notwithstanding any provision of Section D.1.3 of the Oregon Tech General Conditions to the contrary, and unless the parties agree in writing to the contrary, any Amendment or Change Order that increases or decreases the GMP shall adjust the CM/GC Fee then in effect by the multiplying the percentage shown in Article 6.3.1 by the change in the Estimated Cost of the Work reflected in such approved Amendment or Change Order. In addition, if the Contract is terminated for any reason prior to full completion of the Work (including, without limitation, termination during or following performance of Early Work), the CM/GC Fee shall be limited to the total CM/GC Fee multiplied by the percentage of Work completed and accepted at the time of termination. The CM/GC Fee shall not be subject to adjustment for any other reason, including, without limitation, schedule extensions or adjustments, Project delays, unanticipated costs, or unforeseen conditions.

#### **6.4 Determination of GMP.**

- 6.4.1** CM/GC shall deliver to Owner a proposed GMP and GMP Supporting Documents at a time designated by Owner during the Preconstruction Phase. If any actual subcontract Offers are available at the time the GMP is being established, CM/GC shall use those subcontract Offers in establishing the GMP.
- 6.4.2** As the Plans and Specifications may not be developed to the stage of biddable design documents at the time the GMP proposal is prepared, the CM/GC shall provide in the GMP for further development of the Plans and Specifications by the Architect that is consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include such things as changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which, if required, shall be incorporated by Change Order or Amendment with a corresponding GMP adjustment.
- 6.4.3** The CM/GC shall include with its GMP proposal a written statement of its basis (the "GMP Supporting Documents"), which shall include:
- (a) A list of the Plans and Specifications, including all addenda thereto and the conditions of the Contract, which were used in preparation of the GMP proposal.
  - (b) A list of allowances and a statement of their basis.
  - (c) A list of the clarifications and assumptions made by the CM/GC in the preparation of the GMP proposal to supplement the information contained in the Plans and Specifications.

(d) 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.

(e) The Date of Substantial Completion upon which the proposed GMP is based, and a schedule of the Construction Documents issuance dates upon which the date of Substantial Completion is based.

- 6.4.4** The CM/GC shall meet with the Owner and Architect to review the GMP proposal and the written statement of its basis. If the Owner or Architect discovers any inconsistencies or inaccuracies in the information presented, they shall promptly notify the CM/GC, who shall make appropriate adjustments to the GMP proposal, its basis or both.
- 6.4.5** Prior to the Owner's acceptance of the CM/GC's GMP proposal and issuance of a Notice to Proceed, the CM/GC shall not incur any cost to be reimbursed as part of the Cost of the Work, except as specifically provided in an Early Work Amendment.
- 6.4.6** The Owner shall authorize and cause the Architect to revise the Plans and Specifications to the extent necessary to reflect the agreed-upon assumptions and clarifications contained in the GMP Amendment. Such revised Plans and Specifications shall be furnished to the CM/GC in accordance with schedules agreed to by the Owner, Architect and CM/GC. The CM/GC shall promptly notify the Architect and Owner if such revised Plans and Specifications are inconsistent with the agreed-upon assumptions and clarifications.
- 6.4.7** The GMP shall include in the Estimated Cost of the Work only those taxes which are enacted at the time the GMP is established.
- 6.4.8** The Estimated Cost of the Work shall include the CM/GC's contingency, a sum established by the CM/GC for the CM/GC's exclusive use to cover additional development of Plans and Specifications and unanticipated costs and unforeseen conditions which are properly reimbursable as Cost of the Work but which are not the basis for a Change Order.
- 6.4.9** The CM/GC shall work with the Architect and Owner to identify and confirm components and systems not specifically shown but required for a complete, fully functional Project. Owner will direct the Architect to complete the final Construction Documents in accordance with the Project scope agreed upon by all parties at the time the GMP is established.
- 6.4.10** Notwithstanding the level of detail represented in the GMP Supporting Documents, the CM/GC shall represent and warrant, at the time that it submits the GMP, that the GMP includes the entire cost of all components and systems required for a complete, fully functional facility.
- 6.4.11** In developing the GMP, the CM/GC shall include and identify such contingencies within the GMP as may be necessary to pay for unanticipated costs and unforeseen conditions that are required for a complete, fully functional facility.
- 6.5 Failure to Furnish an Acceptable GMP.** If the CM/GC does not furnish a GMP acceptable to Owner within Owner's Target GMP Range, or if Owner determines at any time in its sole discretion that the parties may fail to reach a timely agreement on a GMP acceptable to Owner, Owner may terminate the Contract without liability, and the CM/GC shall not receive additional compensation beyond the Preconstruction Fee under the Contract and sums due under any Early Work Amendment. Termination under this provision shall proceed under Section J.5 of the

Oregon Tech General Conditions as a termination for Owner's convenience. CM/GC further agrees that Owner shall not be liable for any damages whether actual, consequential or otherwise for termination of the Contract under this provision.

- 6.6 Acceptance of GMP.** Upon acceptance of the GMP by Owner, the parties shall execute a GMP Amendment.
- 6.7 Owner Savings.** If the sum of the Preconstruction Fee, plus the CM/GC Fee, plus the actual and final Cost of the Work (the Contract Sum as defined in Article 6.1), is less than the GMP, the savings shall accrue to the Owner.
- 6.8 Allowance Work.**
- 6.8.1** CM/GC shall not perform any Allowance Work without prior written authorization to proceed, followed by execution by Owner of a Change Order approving the Specifications for the Allowance Work and the price thereof.
- 6.8.2** Owner shall be entitled to apply any Allowance line items that are not been fully expended to other line item Allowances that have been fully expended, without any resulting increase in the GMP.
- 6.8.3** If the total Cost of the Allowance Work exceeds the total Allowances within the GMP, CM/GC shall not perform any Allowance Work in excess of such amount until either (i) the parties agree that the additional Allowance work will be performed within the then-current GMP or (ii) a Change Order is executed to increase the GMP by the excess cost of the Allowance work.
- 6.8.4** The Contract Sum shall not include any Allowance items not identified in the GMP Amendment or the GMP Supporting Documents until such allowance item is reduced to a fixed price by Change Order or Amendment.
- 6.8.5** If at the Final Completion of the Project, any portion of the Allowance funds remains unexpended, the GMP shall be reduced by a corresponding amount via a Change Order or Amendment.
- 6.9 Reallocating Projected Cost Underruns after Bid (Offer) Buyout.** As soon as possible after the awarding of the Work to the primary Subcontractors, CM/GC shall review projected costs and provide the Owner with a buy-out status report showing any projected cost underruns, reconciling accepted Offers and other reasonably anticipated costs, to the cost estimate used by CM/GC to establish the GMP. CM/GC shall include with its report any underlying documentation requested by Owner used to develop or support such report. CM/GC shall also consider the reduced risk associated with known subcontracting costs, and the impact that reduced risk has on the amount of the CM/GC's Contingency. The parties shall negotiate in good faith to execute a Change Order transferring an appropriate portion of any projected cost underruns to an Owner-controlled contingency fund to be held within the GMP to pay for additional costs arising from (a) any Owner-directed or approved change to the Work, (b) schedule changes that would otherwise entitle CM/GC to an increase in the GMP, (c) Allowance items after exhaustion of all Allowances, (d) selection by Owner of more expensive alternates than those used for calculation of the GMP, (e) Owner selection of substitutions that increase the Cost of the Work, or (f) any other costs which otherwise would entitle CM/GC to an increase in the GMP. Any transfer of projected cost underruns from CM/GC's contingency to the Owner-controlled contingency fund will not affect CM/GC's obligation to furnish Owner with a complete, fully functional facility

within the GMP without use of the funds transferred to the Owner-controlled contingency fund unless such funds are released by Owner for the purposes set forth in (a) through (f) of this Article 6.9. Any transfer of funds to the Owner-controlled contingency fund will not reduce the CM/GC Fee, nor will any subsequent release and use of funds from the Owner-controlled contingency fund for the purposes set forth in (a) through (f) of this Article 6.9 increase the CM/GC Fee.

## **ARTICLE 7**

### **CHANGES IN THE WORK**

- 7.1 Price Adjustments.** Adjustments to the Estimated Cost of the Work required by changes in the Work shall be determined by any of the methods listed in Section D of the Oregon Tech General Conditions, except that, unless the adjustment is based upon fixed pricing or unit pricing:
- 7.1.1** The overhead and profit markup for the CM/GC shall be limited to the CM/GC Fee adjustment, if any, permitted under Article 6.3.2 of this CM/GC Contract;
  - 7.1.2** The increase or decrease in the Estimated Cost of the Work, other than for subcontract work, shall be calculated pursuant to Articles 8 and 9 of this CM/GC Contract, instead of being based on CM/GC's Direct Costs as defined in the Oregon Tech General Conditions; and
  - 7.1.3** In calculating adjustments to subcontracts, unless the parties agree otherwise, the change shall be limited to the Subcontractor's Direct Costs plus the supplemental mark-up provided in Section D of the Oregon Tech General Conditions, and shall not be modified by Articles 8 and 9 of this CM/GC Contract.
- 7.2 Adjustments to GMP.** Adjustments to the GMP after execution of the GMP Amendment may be made only (i) in the event of Scope Changes or (ii) as otherwise expressly provided in this CM/GC Contract, and then only in accordance with the following procedure:
- 7.2.1** CM/GC shall review subsequent iterations of the Plans and Specifications as they are prepared to determine whether, in the opinion of CM/GC, they result in a Scope Change so that it can be determined if an adjustment to the GMP is warranted.
  - 7.2.2** Changes to the GMP shall be initiated by written notice by one party to the other ("GMP Change Request"). CM/GC shall deliver any such GMP Change Request to Architect and Owner's Authorized Representative promptly after becoming aware of any Scope Change if, in CM/GC's opinion, it constitutes grounds for adjustment of the GMP. Any GMP Change Request shall include a proposal as to the appropriate GMP adjustment with respect to the Scope Change at issue.
  - 7.2.3** CM/GC shall submit its GMP Change Requests as soon as possible, and CM/GC shall not be entitled to claim a GMP increase unless CM/GC submitted a GMP Change Request to Owner's Authorized Representative and to Architect within the earlier of (a) 30 Days after CM/GC has received the information constituting the basis for the claim, or (b) as to Work not yet bid or proposed, prior to submission of solicitations for such Work and as to Work already solicited, prior to commencement of the portion of the Work for which CM/GC intends to claim a Scope Change; and (c) in any event, prior to CM/GC's signing of a Change Order for the Scope Change.



- 7.2.4** Owner may, at any time, submit a GMP Change Request requesting a reduction of the GMP, which shall include Owner's basis for such request, which may include, for example, reduction of the CM/GC's Contingency after further development of the Plans and Specifications that form the basis for the original GMP Amendment, and/or unused Allowances.
- 7.2.5** CM/GC shall work with Architect to reconcile all differences in its GMP Change Request with Architect within seven Days from the date of submission of the GMP Change Request. "Reconciled" means that the CM/GC and Architect have verified that their assumptions about the various categories are the same, and that they have identified the reason for differences in the GMP Change Request and the Architect's position. CM/GC shall submit the Reconciled GMP Change Request to Owner, which submission shall be a condition to any CM/GC claim for a GMP increase.
- 7.2.6** If the Reconciled GMP Change Request is not acceptable to Owner, CM/GC agrees to work with the Owner and the Architect to provide a GMP Change Request that is acceptable to Owner.
- 7.2.7** CM/GC agrees to make all records, calculations, drawings and similar items relating to GMP Change Request available to Owner and to allow Architect and Owner access and opportunity to view such documents at CM/GC's offices. Upon Owner's reasonable notice, CM/GC shall deliver two copies of such documents to Owner and Architect at any regular meeting or at the Site.
- 7.2.8** GMP increases, if any, shall not exceed the increased Cost of the Work arising from the Scope Change (whether based on agreed fixed pricing, or the estimated Cost of the Work increase based on cost-reimbursable pricing), reconciled in accordance with the above provisions, as arising from the incident justifying the GMP increase, plus or minus the CM/GC Fee applicable to such change in the Cost of the Work.
- 7.2.9** Except as provided in this Article 7.2, adjustments to the GMP shall be reconciled in accordance with Section D of the Oregon Tech General Conditions.
- 7.3** **Execution by Owner.** If Architect is not the Owner's Authorized Representative, then notwithstanding any provision in the Contract to the contrary, Architect has no authority to execute Change Orders or Amendments on behalf of Owner, and only duly authorized personnel of Owner may do so.

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

- 8.1** **Cost of the Work.** The term "Cost of the Work" shall mean the following costs. The Cost of the Work shall include only those items necessarily and reasonably incurred by CM/GC in the proper performance of the Work and specifically identified in this Article 8, and only to the extent that they are directly related to the Project.
- 8.2** **Labor Costs.**
- 8.2.1** Wages of construction workers directly employed by the CM/GC to perform the construction of the Work at the site.

**8.2.2** Wages and salaries of the CM/GC's supervisory and administrative personnel (i) stationed at the site, or (ii) engaged at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work with Owner, or otherwise engaged and off the site when specifically related to the Project, and (iii) under either clause (i) or (ii), only with Owner's prior written approval, and only for that portion of their time directly required for the Work.

**8.2.3** Fringe benefit costs paid or incurred by the CM/GC for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining contracts and, for personnel not covered by such contracts, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Articles 8.2.1 through 8.2.2.

### **8.3 Subcontract Costs.**

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

### **8.4 Costs of Materials and Equipment Incorporated in the Work or Stored On Site.**

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

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

### **8.5 Costs of Miscellaneous Equipment and Other Items; Equipment Rental Charges.**

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

**8.5.2** Rental charges for temporary facilities, machinery, equipment and hand tools not customarily owned by the construction workers, which are provided by the CM/GC at the site, whether rented from the CM/GC or others, and costs of transportation, installation, minor repairs and

replacements, dismantling and removal thereof. Rates and quantities of equipment rented shall be according to industry standards, shall not exceed 100% of the rental rates published from time to time in the Rental Rate Blue Book for Construction Equipment, prepared by Machinery Information Division of Primedia Information Incorporated in effect at the time of rental, shall not exceed acquisition costs, and for individual items exceeding \$10,000, will be subject to Owner's prior approval. CM/GC shall deliver to Owner a list of published rates from time to time at Owner's request. For all items rented or leased, the CM/GC shall charge Owner only the rental charge incurred by CM/GC with no additional administrative or other mark-up. CM/GC shall make efforts and use its best skills and judgment to procure equipment in the most expeditious and economical manner consistent with the interest of the Owner. Efforts shall include, but not be limited to, providing Owner with a rent/buy analysis so that Owner may elect for CM/GC to procure the item in lieu of rental if the facility at issue is expected to be rented for six months or longer. Such rent/buy analysis shall include, 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.

**8.5.3** Costs of removal of debris from the site.

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

**8.5.5** That portion of the travel and per diem subsistence expenses of the CM/GC's personnel determined by Owner to be reasonable and necessary, at Owner approved rates, incurred while traveling in discharge of duties connected with the Work. These costs do not include daily travel to and from the job site. Main office staff travel shall not be reimbursed unless approved in advance by Owner. These travel expenses shall be reimbursed at cost, but not exceeding the rates stated in Exhibit E.

**8.6 Other Costs.**

**8.6.1** That portion of premiums for insurance directly attributable to the Contract, including the deductible for builders all/risk insurance, and payment and performance bond premiums as required by Section G of the Oregon Tech General Conditions (but excluding premiums for Subcontractor bonds unless authorized by Owner).

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

**8.6.3** Fees and assessments for the building permit and for other permits, licenses and inspections for which the CM/GC is required by the Contract Documents to pay.

**8.6.4** CM/GC deposits when the loss is caused by Owner's fault or negligence.

**8.6.5** Costs of drawings, Specifications and other documents required to complete the Work, except as provided by Owner or Architect.

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

- 8.7 Costs to Prevent Damage or Injury in Emergencies.** The Cost of the Work shall also include costs which are incurred by the CM/GC in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property.
- 8.8 Cost For General Conditions Work.** CM/GC shall be paid on a cost reimbursable maximum not-to-exceed price basis as payment for the GC Work, including all labor, materials, and direct and indirect costs thereof. The maximum not-to-exceed amount for GC Work shall be established in each Early Work Amendment or the GMP Amendment, as applicable. To the extent any GC Work is otherwise described above in this Article 8, CM/GC's compensation for the same is included in the Cost for GC Work and shall not otherwise be charged as Cost of the Work. (See Exhibit C). The Cost for GC Work, less 5% retainage thereon, shall be paid monthly on a reimbursable basis over the number of months of the scheduled Construction Phase, including any period of Early Work, commencing with the first progress billing after commencement of the scheduled Construction Phase or Early Work Period. However, no adjustment in the maximum amount payable for General Conditions Work will be made if the actual construction period or Early Work period is shorter or longer than the number of months scheduled for the Construction Phase or Early Work period, unless such period is extended because of an Owner-requested delay.

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

- 9.1 Costs Excluded from Cost of Work.** The following shall not be included in the Cost of the Work:
- 9.1.1** Salaries and other compensation of the CM/GC's personnel stationed at the CM/GC's principal office or offices other than the site office except as allowed under Articles 8.2.2 and 8.2.3.
- 9.1.2** Expenses of the CM/GC's principal office and offices other than the site office.
- 9.1.3** Any overhead and general expenses, except as may be expressly included in Article 8.
- 9.1.4** CM/GC's capital expenses, including interest on the CM/GC's capital employed for the Work.
- 9.1.5** Rental cost of machinery and equipment, except as provided in Article 8.5.2
- 9.1.6** Any cost associated with the Project not specifically and expressly described in Article 8.
- 9.1.7** Costs due to the fault or negligence of the CM/GC, Subcontractors, suppliers, anyone directly or indirectly employed by any of them, or for whose acts any of them may be liable.
- 9.1.8** The cost of correction of any repair work, nonconforming or defective work or warranty work.
- 9.1.9** Merit, safety, or other incentive payments, bonuses or awards, or any expenses in connection therewith, except as provided in Article 8.
- 9.1.10** Fines and penalties.
- 9.1.11** Except for Early Work, the cost of Preconstruction Phase Services.

**9.1.12** The Cost of the Work for GC Work in excess of the maximum not-to-exceed cost established for GC Work.

**9.1.13** Any costs in excess of the GMP.

## **ARTICLE 10**

### **DISCOUNTS, REBATES AND REFUNDS**

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

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

## **ARTICLE 11**

### **SUBCONTRACTS AND OTHER CONTRACTS**

**11.1 General Subcontracting Requirements.**

**11.1.1** Other than Work performed pursuant to Articles 11.4 or 11.5 of this CM/GC Contract, CM/GC shall subcontract the Work to Subcontractors other than the CM/GC and its Affiliates.

**11.1.2** The CM/GC shall comply with Oregon Tech Policy ("Oregon Tech Policy") 580-061-0030 and Oregon Tech Policy 580-061-0035 in all respects for the solicitation of Minority, Women and Emerging Small Business Enterprises.

**11.2 CM/GC's Obligations under Subcontracts.**

**11.2.1** No use of a Subcontractor or supplier shall relieve the CM/GC of any of its obligations or liabilities under the Contract. Except as may expressly otherwise be provided in the Contract, the CM/GC shall be fully responsible and liable for the acts or omissions of all Subcontractors and suppliers including persons directly or indirectly employed by them. The CM/GC shall have sole responsibility for managing and coordinating the operations of its Subcontractors and suppliers, including the settlement of disputes with or between the CM/GC and any such Subcontractor or supplier.

**11.2.2** The CM/GC shall include in each subcontract and require each Subcontractor to include in any lower tier subcontract, all provisions necessary to make all of the provisions of the Contract Documents, including the Oregon Tech General Conditions, fully effective as applied to Subcontractors. CM/GC shall indemnify Owner for any additional cost based on a subcontractor claim which results from the failure of CM/GC to incorporate the provisions of this CM/GC Contract in each subcontract. The CM/GC shall provide all necessary Plans, Specifications, and instructions to its suppliers and Subcontractors to enable them to properly perform their work.

**11.2.3 Retainage from Subcontractors.** Except with the Owner's prior approval, payments to Subcontractors shall be subject to retainage of no more than 5%. The Owner and the CM/GC shall agree upon a mutually acceptable procedure for review and approval of payments and retainage for Subcontractors.

### **11.3 Subcontractor Selection.**

**11.3.1** Unless otherwise provided under this Article 11, the selection of all Subcontractors and suppliers shall be made by competitive Offers in a manner that will not encourage favoritism or substantially diminish competition. While not subject to the competitive procurement requirements of ORS Chapter 279C, the process shall conform to the following procedures, in general compliance with the open and competitive nature of public procurement, taking into account industry subcontracting practices.

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

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

- (a) Solicitations will be advertised at least 10 Days prior to opening in the Daily Journal of Commerce and at least one other newspaper specifically targeted to reach the Minority, Women and Emerging Small Business audience. CM/GC also agrees to advertise in a local community newspaper in the area in which the Project is located, in order to allow for local participation in the solicitation process.
- (b) Unless specific other prior arrangement has been made with Owner, all Offers will be written, and submitted to a specific location at a specific time. CM/GC shall time-stamp all Offers as received. Subcontractors must be qualified to perform the Work for this Project by being appropriately registered with the State of Oregon Construction Contractors Board.
- (c) If fewer than three (3) Offers are submitted in response to any solicitation (inclusive of any Offer submitted by CM/GC), prior written approval by Owner shall be required to accept an Offer.
- (d) CM/GC may develop and implement a prequalification process for particular solicitations, followed by selection of successful Offers among those Offerors that CM/GC determines meet the prequalification standards, with Owner's prior written approval of such prequalification process.

- (e) CM/GC shall comply, and require Subcontractor compliance with, State of Oregon Bureau of Labor & Industries prevailing wage rates as specified in the RFP.
- (f) Owner may, at its sole discretion, require CM/GC to re-solicit for Offers based on the same or modified documents.
- (g) CM/GC shall review all Offers and shall work with Offerors to clarify Offers, reduce exclusions, verify scope and quantities, and seek to minimize work subsequently awarded via the Change Order process.
- (h) The CM/GC will document any and all discussions with, questions received from, or answers and responses given to, any Offeror prior to the receipt of Offers, and will ensure that any information provided by CM/GC to any Offeror that might affect Offers submitted by other Offerors is shared with all Offerors prior to the Offer submittal date, and Owner shall be entitled to inspect such documentation on request.
- (i) CM/GC shall determine the lowest Offer for each solicitation that meets CM/GC's reasonable performance standards for the components of the Work at issue; provided that if CM/GC determines it is unable to execute a suitable subcontract with such Offeror, CM/GC may, with Owner's prior approval, execute a subcontract with the second-lowest Offeror pursuant to Article 11.3.4 below.

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

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

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

#### **11.4 CM/GC Field Work.**

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

**11.4.2** Except as provided in Article 11.4.1, any other portion of the Work proposed to be performed by CM/GC or any Affiliate, including without limitation provision of any materials, equipment, or supplies, shall be subject to the provisions of Article 11.5.

## **11.5 Subcontracting by CM/GC.**

- 11.5.1** Except to the extent otherwise approved in advance in writing by Owner's Authorized Representative, the CM/GC or its Affiliates may submit an Offer in accordance with Article 11.3 to do Work with its own forces, provided at least 50% of the labor by such work unit is performed by employees of the CM/GC or such Affiliate. If CM/GC is selected to perform the work, the overhead and markup paid to CM/GC shall be limited to its CM/GC Fee percentage, and the markups applicable to Change Order Work set forth in the Oregon Tech General Conditions shall not apply.
- 11.5.2** For those items for which the CM/GC or any of its subsidiaries intends to submit an Offer, such intent must be publicly announced with the solicitation for Offers required by Article 11.3.1, and Owner notified in writing. All Offers for this work shall be delivered to Owner and publicly opened by Owner at an announced time, date, and place.
- 11.6 Protests.** CM/GC, acting as an independent contractor, shall include in the competitive process to award all subcontracts, a protest process for Subcontractors and suppliers that are competing Offerors, which process shall be subject to approval by Owner. CM/GC shall be solely responsible for resolving the procurement protests of Subcontractors and suppliers. CM/GC shall indemnify, defend, protect and hold harmless Owner from and against any such procurement protests and resulting claims or litigation. CM/GC shall act as an independent contractor, and not an agent of Owner, in connection with any procurement protest. The provisions of this Article 11 are solely for the benefit of Owner, and do not grant any rights or remedies (including third party beneficiary rights) to any Offeror or other protester, in connection with any procurement protest or claim.

## **ARTICLE 12** **ACCOUNTING RECORDS**

- 12.1 Accounting; Audit Access.** The CM/GC shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under the Contract; the accounting and control systems shall be satisfactory to Owner. Owner and Owner's representatives, including the Oregon Secretary of State accountants and auditors, shall be afforded reasonable and regular access to the CM/GC's records, books, correspondence, instructions, drawings, receipts, subcontracts, purchase orders, vouchers, memoranda and other data relating to the Contract, and the CM/GC shall preserve these for a period of three years after final payment, or for such longer period as may be required by law.
- 12.2 Periodic and Final Audits.** Owner may, at its discretion, perform periodic audits of the Cost of the Work and any other reimbursable costs associated with the Project. Owner intends to conduct a final audit of reimbursable costs prior to the Contract closeout. The CM/GC shall cooperate fully with Owner in the performance of such audits. Disputes over audit findings or conclusions shall be subject to the process set forth in Article 14.4.

## **ARTICLE 13** **PROGRESS PAYMENTS**

- 13.1 Integration with Oregon Tech General Conditions.** The requirements of this Article 13 and Article 14 are in addition to, and not in lieu of, the requirements of Section E of the Oregon Tech General Conditions for Public Improvement Projects. In the event of conflict between the



provisions of Articles 13 and 14 and Section E, the provision more favorable to Owner shall control. Without limitation, the provisions of Articles 13.3 and 13.4 shall control over the corresponding provisions of Section E.2.5 of the Oregon Tech General Conditions for Public Improvement Projects.

- 13.2 Progress Payments.** Based upon applications for payment submitted pursuant to Section E of the Oregon Tech General Conditions for Public Improvement Projects, Owner shall make progress payments on account of the Preconstruction Fee, Cost of the Work, and associated CM/GC Fee, less 5% retainage, to the CM/GC as provided below and elsewhere in the Contract Documents. A progress payment shall not be considered acceptance or approval of any Work or waiver of any defects therein.
- 13.3 Percentage of Completion.** Applications for payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the application for payment. The percentage of completion shall be the lesser of (i) the percentage of that portion of the Work which has actually been completed; or (ii) the percentage obtained by dividing (a) the expense that has actually been incurred by the CM/GC on account of that portion of the Work for which the CM/GC has made or intends to make actual payment prior to the next application for payment by (b) the share of the GMP allocated to that portion of the Work in the Schedule of Values.
- 13.4 Calculation of Payment.** Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:
- (a) Take that portion of the GMP properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work under the Schedule of Values by the share of the GMP allocated to that portion of the Work in the Schedule of Values. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included;
  - (b) Add that portion of the GMP properly allocable to materials and equipment delivered and suitably stored and otherwise in compliance with Section E.2.3 of the Oregon Tech General Conditions;
  - (c) Add the CM/GC's Fee. The portion of the CM/GC's Fee payable shall be an amount that bears the same ratio to CM/GC Fee as sum of the amounts in the two preceding Clauses bears to the estimated probable Cost of the Work described in Article 6.1.2, but in no event causing total CM/GC Fee payments to exceed the total CM/GC Fee;
  - (d) Subtract the aggregate of previous payments made by and retained by the Owner;
  - (e) 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;
  - (f) Subtract any amounts for which the Owner's Authorized Representative has withheld or denied payment as provided in the Contract Documents; and
  - (g) Subtract 5% retainage on the entire progress payment.

## **ARTICLE 14**

### **FINAL PAYMENT**

- 14.1 Final Payment Accounting.** CM/GC shall submit to Owner a final detailed accounting of the Cost of the Work together with CM/GC's final application for payment.
- 14.2 Calculation of Final Payment.** The amount of the final payment shall be calculated as follows:
- 14.2.1** Take the sum of the CM/GC Fee, plus the Preconstruction Fee, plus the actual Cost of the Work substantiated by the CM/GC's final accounting. Said sum shall not exceed the GMP.
- 14.2.2** Subtract amounts, if any, for which the Owner's Authorized Representative withholds, in whole or in part, approval of payment.
- 14.2.3** Subtract the aggregate of previous payments made by Owner to CM/GC. If the aggregate of previous payments made by Owner exceeds the amount due the CM/GC, the CM/GC shall reimburse the difference to Owner within 30 Days with interest at the rate applicable to Owner payments under the Oregon Tech General Conditions.
- 14.3 Final Payment Review.** Owner or its accountants will review and report in writing on the CM/GC's final accounting within 30 Days after delivery of the final accounting by the CM/GC. Based upon such Cost of the Work as Owner or Owner's accountants report to be substantiated by the CM/GC's final accounting, and provided the other conditions of the Contract have been met, the Owner's Authorized Representative will, within 10 Days after receipt of the written report of Owner's accountants, either issue to Owner an approval of CM/GC's final application for payment with a copy to the CM/GC or notify the CM/GC and Owner in writing of the Owner's Authorized Representative's reasons for withholding approval of any part of the application for payment, which disapproval shall include Owner's Authorized Representative's estimate of the amount that is due CM/GC under the application for payment.
- 14.4 Payment Disputes.** If Owner's accountants report the Cost of the Work as substantiated by the CM/GC's final accounting to be less than claimed by the CM/GC or if Owner's Authorized Representative declines to approve any duly submitted payment request by CM/GC, the CM/GC shall be entitled to demand a review by the Owner's highest contracting authority of the disputed amount. Such demand shall be made by the CM/GC within 30 Days after the CM/GC's receipt of a copy of the rejection of the application for payment; failure to demand additional review within this 30-Day period shall result in the substantiated amount reported by Owner's accountants becoming binding on the CM/GC. In addition, If Owner or any other state agency performs a subsequent audit of the Cost of the Work and determines any item therein to have been unsubstantiated or that CM/GC was otherwise overpaid, CM/GC shall have 30 Days after delivery of request for reimbursement by Owner to demand additional review by Owner's highest contracting authority; failure to make such demand within this 30 Day period shall result in the requested reimbursement becoming unconditionally due and payable by CM/GC. If CM/GC timely submits a protest to the Agency's highest contracting authority, CM/GC's Claim shall be subject to the claims review process in Section D.3 of the Oregon Tech General Conditions. Pending a final resolution, Owner shall pay the CM/GC the amount of the application for payment approved by the Owner's Authorized Representative.
- 14.5 Effect of Payment.** Neither approval of an application for payment, a progress payment, release of retainage, final payment, or partial or entire use or occupancy of the Project by the Owner shall

constitute acceptance of work not conforming to the Contract Documents, or waiver of the right to assert overpayment.

## **ARTICLE 15**

### **TERMINATION OR SUSPENSION**

- 15.1 Owner's Right to Terminate Prior to Execution of GMP Amendment.** Prior to execution by both parties of the GMP Amendment, the Owner may terminate the Contract at any time without cause. Upon such termination, the amount to be paid to the CM/GC shall not exceed the Preconstruction Fee payable to the date of termination, together with amounts payable for Early Work if an Early Work Amendment has been executed. If Owner terminates for convenience during the Preconstruction Phase, Owner shall be entitled to copies of, and shall have the right to use, all work product of CM/GC and its Subcontractors performed to the date of termination, and CM/GC shall deliver copies of the same to Owner on request.
- 15.2 Owner's Termination for Convenience after GMP Amendment.** After the GMP Amendment is executed by both parties, the Contract may be terminated by Owner without penalty for convenience pursuant to Section J.5 of the Oregon Tech General Conditions in which case CM/GC shall be entitled to payment of the amount stated in Article 15.1, together with the actual Cost of the Work completed, plus the CM/GC's Fee prorated based on the actual Cost of the Work completed prior to the date of termination, but in any event not in excess of the GMP.
- 15.3 Owner's Termination for Cause.** In the event of termination of this Agreement by Owner for cause pursuant to Section J.4 of the Oregon Tech General Conditions, the amount, if any, to be paid to the CM/GC after application of the Oregon Tech General Conditions and Owner's rights at law shall not exceed the amount the CM/GC would be entitled to receive under Article 15.2.
- 15.4 CM/GC Termination for Cause.** CM/GC acknowledges that disputes regarding payments and Change Orders may occur as part of the CM/GC process, and that Owner's declining to pay disputed amounts shall not be grounds for suspension of the Work or termination for cause by CM/GC. If CM/GC terminates the Contract for Owner's material breach, the amount to be paid to CM/GC shall not exceed the amount CM/GC would have been entitled to receive under Article 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.
- 15.5 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 the Contract by the Owner, and only for those subcontracts and supply contracts which the Owner accepts by notifying the Subcontractor/supplier and CM/GC in writing. For those subcontracts and supply contracts accepted by Owner, if the Work has been suspended for more than 30 Days, the Subcontractor's/supplier's compensation shall be equitably adjusted for increases in cost resulting from the suspension. CM/GC shall include a provision in each subcontract and supply agreement whereby the Subcontractor/supplier acknowledges Owner's rights under this Article 15.5. With respect to any subcontracts/supply contracts that are not accepted by Owner, the provisions of Section J.6.1 of the Oregon Tech General Conditions shall apply.

**ARTICLE 16**  
**REPRESENTATIONS, WARRANTIES AND CERTIFICATIONS**

- 16.1 Representations and Warranties.** CM/GC represents and warrants to Owner as of the effective date of the Contract:
- 16.1.1** it is qualified to do business as a licensed general contractor under the laws of the State of Oregon, and has all requisite corporate power and corporate authority to carry on its business as now being conducted;
- 16.1.2** it has full corporate power and corporate authority to enter into and perform the Contract and to consummate the transactions contemplated hereby; CM/GC has duly and validly executed and delivered this CM/GC Contract to Owner and that the Contract constitutes the legal, valid and binding obligation of CM/GC, enforceable against CM/GC in accordance with its terms, except as enforceability may be limited or affected by applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting creditors' rights generally and by general principles of equity (regardless of whether enforceability is considered in a proceeding in equity or at law);
- 16.1.3** CM/GC's execution and delivery of this CM/GC Contract and the consummation of the transactions contemplated hereby will not conflict with or result in a material breach of any terms or provisions of, or constitute a material default under, (i) CM/GC's Articles of Incorporation or Bylaws; (ii) any note, bond, mortgage, indenture, license, lease, contract, commitment, agreement or other instrument or obligation to which CM/GC is a party or by which CM/GC may be bound; or (iii) any statute, order, writ, injunction, decree, rule or regulation applicable to CM/GC;
- 16.1.4** no material consent, approval, authorization, declaration or other order of, or registration or filing with, any court or regulatory authority or any third person is required for the valid execution, delivery and performance of the Contract by CM/GC or its consummation of the transactions contemplated hereby;
- 16.1.5** there is no action, proceeding, suit, investigation or inquiry pending that questions the validity of the Contract or that would prevent or hinder the consummation of the transactions contemplated hereby; and
- 16.1.6** the CM/GC's Project Manager and Assistant Project Manager identified in Article 4 are duly appointed representatives and each has the authority to bind the CM/GC to any and all duties, obligations and liabilities under the Contract Documents and any Amendments thereto.

**ARTICLE 17**  
**MISCELLANEOUS**

- 17.1 Headings.** The headings used in the CM/GC Contract are solely for convenience of reference, are not part of the Contract and are not to be considered in construing or interpreting the Contract.
- 17.2 Merger.** The Contract Documents constitute the entire contract between the parties. No waiver, consent, modification or change of terms of the Contract shall bind either party unless in writing and signed by both parties. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. There are no understandings, agreements, or representations, oral or written, not specified herein regarding the

Contract. CM/GC, by signature of its representative, hereby acknowledges that it has read the Contract, understands it and agrees to be bound by its terms and conditions.

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

**CM/GC:**

Name of Firm: \_\_\_\_\_

Address: \_\_\_\_\_

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

Construction Contractor's Board Registration No.: \_\_\_\_\_

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

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

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

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

**OWNER:**

Oregon Institute of Technology

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

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

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

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

**EXHIBIT A**

**OREGON INSTITUTE OF TECHNOLOGY  
GENERAL CONDITIONS FOR PUBLIC IMPROVEMENT CONTRACTS  
MARCH 1, 2016**

[Please see attached]

**EXHIBIT B**

**OREGON INSTITUTE OF TECHNOLOGY  
GMP AMENDMENT TO CONTRACT**

[Please see attached]

## **EXHIBIT C**

### **DIRECT COSTS/GC WORK COSTS MATRIX**

[Please see attached]



**EXHIBIT D**

**OREGON INSTITUTE OF TECHNOLOGY  
SUPPLEMENTAL GENERAL CONDITIONS**

[Please see attached]

