

Request for Proposal



# **CONSTRUCTION MANAGER/GENERAL CONTRACTOR SERVICES**

## **Transportation Training Buildings**

Redwood Campus and Table Rock Campus

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### **REQUEST FOR PROPOSAL (RFP) NO. P17926-2025-02-13**

RFP CLOSING (DUE) DATE: February 13, 2025, 2:00 PM, Local Time

**NO LATE RESPONSES WILL BE ACCEPTED**

**SUBMIT TO:**

Rogue Community College  
Attn: Contract and Procurement Director  
3345 Redwood Highway, JO Bldg., Rm 12  
Grants Pass, Oregon 97527

**Non-Mandatory Pre-Proposal Meeting**

Interested parties are invited to participate in a pre-proposal meeting on Friday, January 24, 2025 beginning at 2:00 pm at the Redwood Campus of Rogue Community College Building L Room 2, 3345 Redwood Highway, Grants Pass OR 97520. Please call (541)955-7576 to confirm your attendance and receive directions.

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## I. PROJECT OVERVIEW

### A. INTRODUCTION.

The Rogue Community College District is seeking design and construction proposals for constructing a new facility on the Redwood Campus and also renovation/expansion of existing facilities at the Table Rock Campus for instruction and training in transportation technology. The facilities will include inventory management, project storage, vehicle and equipment bays, lab preparation areas, faculty offices, student study areas, support staff offices and work areas. The project will also include purchase of instructional technology and technology infrastructure to enable connectivity to the existing technology network and expand the current capability for technology-based instruction to meet the projected growth of the community and the College through 2035.

### B. GENERAL EXPECTATIONS OF THE CM/GC.

The College is seeking a CM/GC firm to actively participate in coordinating and managing the building process as a member of a team with the College, Architect, and other project consultants. The CM/GC must be skilled in developing schedules, preparing construction estimates, performing value engineering and constructability reviews, analyzing alternative designs, studying labor conditions, understanding construction methods and techniques, monitoring and documenting costs, and coordinating and communicating with other team members through the design and construction phases. In addition, the CM/GC must be familiar with the local labor and subcontracting market, be capable of working with subcontractors to generate viable pricing alternatives, and be familiar with construction of public and college facilities.

The College intends to enter into a CM/GC Contract with the selected CM/GC firm that will include **Preconstruction Services** and identification of a **CM/GC Fee** and **Fixed Costs for General Conditions Work**, with provisions for adding **Construction Services** through acceptance of a **Guaranteed Maximum Price (GMP)** by contract amendment. The amendment would include construction services through completion of the Project. Alternatively, The College may, at its sole discretion, choose not to continue the CM/GC Contract beyond the completion of preconstruction activities and solicit bids from qualified contractors for the construction of the Project.

## II. PROJECT DESCRIPTION

### A. PROJECT BACKGROUND AND DESCRIPTION

Rogue Community College (RCC) received match-grant funding from the State of Oregon to assist in the construction of Transportation Training facilities, which are referred to in this RFQ as Transportation Training Buildings. The project will provide flexible facilities for RCC's Transportation programs and will be constructed on the RCC Redwood Campus

located in Grants Pass, Oregon and the Table Rock Campus located in White City, Oregon. The Rogue Community College Transportation Training program currently occupies approximately 11,525 square feet of total assignable building space at the Redwood Campus and approximately 9,000 square feet at the Table Rock Campus. Both locations have limited paved yard space for service vehicle parking.

## **B. ADDITIONAL INFORMATION**

This Request for Proposal, including Contract terms, Conditions, and any Specifications or Addenda will be made available on ORPIN the state of Oregon's procurement website and the College's Procurement website at <http://web.roguecc.edu/contract-and-procurement/vendor-opportunities>.

The estimated budget for construction costs and fees for this project is approximately 13M. In addition to new and renovated/expanded building space, this figure includes site preparations, infrastructure, parking, landscaping, irrigation, and other necessary site improvements. The estimated budget also includes preconstruction services and CMGC fee. The budget does not include A&E fees, furniture and equipment, owner contingency, and other "soft costs" associated with the project.

This project scope of work does not contain asbestos abatement work; thus the supplier/contractor/subcontractor(s) will not be required to be licensed under ORS 468A.720 to do asbestos abatement work. Any asbestos abatement work identified during the project will be the owner's responsibility.

This project is a CM/GC alternative procurement process and is Exempt from Competitive Bidding pursuant to the criteria set forth for alternative contracting methods as described in ORS 279C.335, according to state law. This project will be awarded based on a scored selection process and not based solely on low price quote. The scoring criteria will be based on weighted categories to determine the Most Advantageous Proposer to Rogue Community College District. Respondents may comment on any specifications which they feel limit competition.

## **C. INSTRUCTIONS TO PROPOSERS**

1. RFP CLOSING DATE, TIME AND PROCEDURE: Sealed proposals will be received by the College Contract and Procurement Director, at the Contract and Procurement Office, 3345 Redwood Hwy, Grants Pass, Oregon 97527, up to 2:00 P.M. on February 13, 2025. Proposers are solely responsible for ensuring that their Proposal is delivered to the College by the closing deadline.
2. METHOD OF SUBMISSION: All required text and numeric submissions shall be prepared by typewriter, computer, or in ink and shall have at least one signed original in ink by an authorized representative of the company. The person signing

the proposal shall initial alterations or erasures in ink.

3. INTERVIEWS: The College reserves the right to conduct interviews with one or more selected firms prior to the final decision on contract award, as detailed in Part VIII.
4. PROPOSAL FORMAT/COPIES: Please provide one (1) original copy of the proposal, plus one (1) thumb drive with a digital copy. The Original must bear an original signature in ink. All proposals (including the digital copy) must be complete. Under no circumstances shall the College be responsible for any costs or expenses incurred in the submission of responses to this solicitation.

Each proposal shall be sealed in an envelope or package(s) and mailed or delivered to:

Attn: Contract and Procurement Director  
Contract and Procurement Office  
3345 Redwood Hwy  
Grants Pass, Oregon 97527  
Marked: "CM/GC Proposal for Transportation Training Buildings"  
RFP No. P17926-2025-02-13

Email or Facsimile transmissions of proposals will be rejected as non-responsive. The name and address of the Proposer must appear on the outside of submission envelope(s)/package(s).

Failure to comply with any of these requirements may result in rejection of the proposal as non-responsive.

5. DURATION OF PROPOSALS: No Proposer may withdraw its proposal after the time set for the opening or before award of the Contract, unless said award is delayed for a period exceeding sixty (60) days.
6. CONFORMANCE TO LAW: In submitting a response, a Proposer certifies conformance to any applicable Federal Acts, and Oregon Statutes and Regulations, including equal employment opportunities. All information and reports required by federal or Oregon state governments, having responsibility for enforcement of such laws, shall be supplied to the College upon request for purposes of investigations to ascertain compliance with such acts, regulations, and orders. In particular, without limiting the foregoing, Proposer shall comply with all applicable provisions of ORS Chapter 279C governing public improvements and public works projects as set forth in Appendix A.
7. INDEPENDENT CONTRACTOR: The CM/GC shall be recognized by both parties as

an “independent contractor.” All persons employed by the CM/GC to furnish services in accordance with any contract resulting from this RFP will be employees (or subcontractors) of the CM/GC and not the College.

8. EQUAL EMPLOYMENT OPPORTUNITY REQUIREMENT: Proposal submittal certifies Proposer’s compliance with any applicable Federal Acts, Executive Orders and Oregon Statutes and regulations concerning equal employment opportunities.
  - (a) CONTRACT AND INSURANCE COVERAGE: Within ten (10) consecutive calendar days after receipt of notice of contract award, the chosen CM/GC shall execute the formal, written contract described in Part III, below, in the form attached as Appendices A and B, and shall furnish a certificate of insurance, naming Rogue Community College District as an additional insured under a Comprehensive General Liability Coverage policy with a combined single limit per occurrence per location in the amount of not less than two million dollars (\$2,000,000.00). Each annual aggregate limit shall be not less than four million dollars (\$4,000,000.00), when applicable. Proposal submittal indicates Proposer’s intent to be bound by this provision and the terms of the CM/GC Contract. Such insurance shall cover both ongoing operations and completed operations and shall name Owner, and each of their employees, officers, and agents as an additional insured for claims arising out of Contractor’s ongoing activities under this Contract as well as completed operations for a period of ten (10) years following the end of the contract term.
9. PERFORMANCE AND PAYMENT BONDS: The chosen CM/GC shall deliver to the College performance and payment bonds in the amount of one hundred percent (100%) of the Guaranteed Maximum Price for the Project or in the amount of any authorized early work at least three (3) days before the commencement of any work at the project site.
10. WORKER’S COMPENSATION COVERAGE: The CM/GC, its subcontractors, and all employees working under any contract that results from this RFP are subject employees under the Oregon Workers Compensation Law and shall comply with ORS 656.017, which requires contractors and subcontractors to provide Worker’s Compensation coverage for all their subject workers.
11. PREVAILING WAGE: All labor provided for construction under contracts resulting from this RFP shall comply with the Bureau of Labor and Industries wage standards as per ORS 279C.800 to 279C.870. No Proposal will be received or considered by The College unless the Proposal contains a statement by the Proposer as part of its Proposal that “Contractor agrees to be bound by and will comply with the provisions of ORS 279C.838, 279C.840 or 40 U.S.C. 3141 to 3148.”
12. NON-DISCLOSURE: Any pages of a proposal that have been marked, “This Material

is to be Held Confidential,” and separated will be kept confidential by the College only to the extent permissible under the law.

OAR 137-049-0330(3) Availability. Prior to issuance of a notice of intent to award, the opened Offers shall not be available for public inspection. Thereafter, except to the extent the Offeror designates trade secrets or other proprietary data as confidential, Offers shall be available for public inspection.

ORS 192.501(2); ORS 646.461 to 646.475. The College shall apply the Oregon Public Records Law to determine if the information claimed to be exempt is exempt from disclosure. The Offeror shall separate information designated as confidential from other non-confidential information at the time of submitting its offer. Prices, makes, models, or catalog numbers of items offered, scheduled delivery dates, and terms of payment shall not be confidential, but shall be publicly available regardless of any designation to the contrary.

13. DOCUMENT OWNERSHIP: All documents, reports, proposal submittals, working papers or other material submitted to the College from the CM/GC firm shall become the sole and exclusive property of the College, in the public domain (except for materials deemed to be excluded as trade secrets), and not the property of the CM/GC firm. The CM/GC firm shall not copyright, or cause to be copyrighted, any portion of any said documents submitted to the College as a result of this solicitation.

14. RESERVATIONS: The College expressly reserves the following rights:

- (1) To reject any or all proposals and to waive informalities in proposals.
- (2) To cancel or amend the solicitation.
- (3) To seek clarifications of each proposal from Proposers and other relevant sources.
- (4) To consider the competency and responsibilities of Proposers and of their proposed sub-consultants in making the award.
- (5) In the event any Proposer or Proposers to whom the contract is awarded shall default in executing said formal contract or in furnishing satisfactory insurance coverage within the time and in the manner specified herein, to re-award the contract to another Proposer or Proposers.
- (6) To make the award based upon College’s best judgment as to which proposal best meets the College’s needs, based upon the evaluation criteria, balancing the highest standards of quality, innovation and services with appropriate compensation.

- (7) To determine the number of firms to interview, if any.
- (8) To negotiate a final Contract that is in the best interest of the College. Should negotiations with the intended awardee be unsuccessful within a reasonable period of time, to terminate those negotiations and to begin negotiations with the second-ranked firm and so on until a satisfactory firm can be selected.

In addition to the above reservations, the cost of preparation, submission and presentation of each proposal and any related expenses, including travel, shall be entirely the responsibility of the Proposer.

15. PRIMARY RFP CONTACT: All contact regarding the CM/GC selection process and contracting for this project is to be directed to the Contract and Procurement Department, Email [bidquestions@roquecc.edu](mailto:bidquestions@roquecc.edu).

16. RESIDENT RESPONDENT

Respondents will be required to attest as to whether they are resident or nonresident Respondents in accordance with provision of ORS 279C.365. Please use College form.

**D. TENTATIVE SCHEDULE**

**CM/GC Proposal Schedule**

The following indicative timeline applies to this Project and illustrates a possible schedule to complete the construction. However, the construction schedule may be altered at the option of the College.

Solicitation Schedule	
Request for Proposal Posted	January 15, 2025
Pre-Proposal Meeting 2:00 P.M.	January 24, 2025
Deadline for Questions 5:00 P.M.	February 6, 2025
Proposal Due 2:00 P.M.	February 13, 2025
Selection Committee Review Complete**	February 20, 2025
Interviews Week of**	March 3, 2025
Notice of Intent to Award 12:00 P.M.**	March 21, 2025
Deadline for Protests of Award 12:00 P.M.**	March 28, 2025
Board of Education Approval**	April 15, 2025

*The above schedule is tentative\*\**



### **Anticipated Project Schedule**

TBD	End of Schematic and Design Development Phase
January 2026	End of Construction Documents Phase
February 2026	Establish a GMP
April 2026	Start Construction
March 2027	Project Substantial Completion
April 2027	Project Final Completion\Closure

Time is of the essence for this Contract. A key date schedule will be developed during the Preconstruction Service Phase. The CM/GC will be required to adhere to a strict completion schedule. Proposers that cannot perform within the above tentative timeframe will not be considered. The selected CM/GC will be contractually obligated to maintain the completion dates.

### **III. FORM OF AGREEMENT**

The College will use the *CM/GC Contract*, attached as Appendix A (Sample Agreement), and the *General Conditions for Construction Contracts* (General Conditions), which are incorporated into the Sample Agreement as Exhibit A (for ease of reference), as the basis for the final agreement (CM/GC Contract). The General Conditions, as may be modified by any *Supplemental General Conditions*, shall apply to the work of all subcontractors and to the work of the CM/GC to the extent that they do not conflict with the CM/GC Contract. Submittal of a proposal indicates a Proposer's intent to be bound by the CM/GC Contract terms.

The College reserves the right to negotiate a final contract, including but not limited to terms or conditions of the Sample Agreement, which is in the best interests of the College considering cost effectiveness and the level of CM/GC time and effort required for the Project per OAR 137-049-0640(3). Negotiated changes must be (1) within the general scope of work described herein, and (2) unlikely to affect the field of competition under this RFP. Proposers must submit as part of their proposal alternative terms and conditions in lieu of the terms and conditions the College has identified for them to be considered during negotiations.

Acceptance or rejection of the final construction cost estimate will constitute completion of preconstruction activities, and construction services may commence as outlined in Part V, below.

### **IV. SCOPE OF PRECONSTRUCTION SERVICES**

Preconstruction services will be provided generally under the terms contained in the Sample CM/GC Contract and paid for on a cost reimbursement basis up to a stated

maximum. The specific scope of preconstruction services will be negotiated prior to signing the final CM/GC Contract, based on the Proposer's input as well as the College's requirements. In general, services are anticipated to include the following:

1. Consultant will, advise, assist, and provide recommendations to the College and design team on all aspects of the planning and design of the work. Participate with College and Architect in regular project management and review meetings, and any such additional meeting as The College may request.
2. Provide a preliminary cost estimate with a value engineering (VE) proposal, simple life cycle analysis (LCA) for key building components, and cost information that addresses durability and maintenance of major materials for review by the Project Team at the same time as the final Schematic Design.
3. Provide information to include but not limited to cost estimates, strategies, and participation in decisions regarding construction materials, methods of construction, building systems, phasing of work, sustainability and alternative cost options to assist in determining a building that can be constructed using the most sustainable construction materials and best practices within the available budget and schedule.
4. Actively participate in value engineering studies. Provide recommended VE options with estimated costs.
5. Review in-progress design and construction documents and provide input and advice on construction feasibility, alternative materials, costs and availability. Review completed design and construction documents prior to bidding and suggest modifications to improve completeness and clarity and to eliminate construction change requests due to inconsistencies or omissions in the construction documents. Identify work the CM/GC proposes to self-perform, and how competitive solicitation for self-performed work will be accomplished.
6. Provide input to the College and the design team regarding the current construction market and bidding climate for the proposed timeline, status of key subcontract markets, and other local economic conditions. Recommend 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.
7. Provide input to the College and the design team regarding long lead time materials and equipment, impact on the construction schedule and strategies for mitigating the impact.
8. Prepare construction cost estimates for the Project at the schematic / design development and construction document design phases and, if appropriate, at other times throughout the project. Notify the College and design team immediately if

construction cost estimates appear to be exceeding the construction budget.

9. Furnish a final construction cost estimate for the College's review and approval.
10. Develop a preliminary construction schedule.
11. Prepare and submit a proposed safety plan.
12. Obtain no fewer than three bids per trade for the College's review, unless otherwise approved by The College, per the CM/GC Contract.
  - a. Self-performed work must be competitively bid per subcontractor bidding requirements as outlined in the CM/GC Contract.
  - b. Prepare a list of potential sub-contractors for bidding.
  - c. Make demonstrated effort to utilize local personnel.
13. Upon execution of an Early Work Amendment, undertake early material procurement, site preparation and advance construction work, per the CM/GC Contract.

The CM/GC agrees that all of the services and work performed by the CM/GC under this phase shall be performed expeditiously and in accordance with the industry standards of care, skill, and diligence normally and customarily performed by a CM/GC on a project of this size and nature.

If the initial GMP exceeds the College's established construction budget, the CM/GC shall notify the College and propose how to complete the work within the budget. If the College and the CM/GC cannot agree on a GMP, the College may terminate the Agreement and procure the work in an alternative manner as the College deems appropriate.

## **V. SCOPE OF CONSTRUCTION SERVICES DESIRED**

It is anticipated that the GMP will be requested at the 95% Construction Document (CD) phase or otherwise following completion of the CD phase if determined the most advantageous to the College. The established GMP will be the maximum amount paid for the construction of the facility, unless scope changes are requested by the College. Acceptance of the GMP by contract amendment will constitute completion of preconstruction services, and the GMP Amendment will initiate construction period services for the Project. At the time of execution of the GMP Amendment, the CM/GC will be required to submit a 100% performance bond and a 100% payment bond for the completion of the Project, using the forms included within the CM/GC Contract. In the event that the CM/GC is unable to furnish an acceptable GMP or bonding, the College retains the sole option to cancel the solicitation and start a new process for the construction of the Project, or terminate the contract and negotiate a replacement contract with the next highest rated Proposer from this solicitation. If so terminated, the CM/GC

compensation shall be limited to the preconstruction services maximum, not to exceed fee stated in the CM/GC Contract.

The College reserves the right to make whatever changes in the Sample CM/GC Contract that may be in its best interest, including the allowance of subcontracting by other than low bid and/or structuring joint ventures with such firms, and will incorporate that plan by reference in the resulting CM/GC Contract.

**The scope of the Construction Services will include, but not be limited to, the following items:**

1. Implement the contracting plan developed as part of Pre-Construction Services work; solicit and conduct competitive sub-Contractor bidding for project construction work; include all applicable legal provisions as required for the performance of construction work in the state of Oregon in each subcontract. The College's Project Manager/Owner's Representative shall be present during all bid openings.
2. Provide overall management and coordination for completion of construction; maintain a qualified, full-time Superintendent with necessary staff on the job site to coordinate and manage project construction; establish on-site organization to carry out overall plan of construction.
3. Establish effective quality control plan for all construction; inspect the work as it is being performed to assure that material furnished and quality of work performed are in accordance with the project plan and Construction Documents; establish processes to manage any sub-Contractor who is not performing in accordance with project requirements for budget control, on-time schedule performance, safety and/or quality control.
4. Monitor and maintain a current project construction schedule and provide to Owner's Representative and Architect; identify potential variances between scheduled and probable completion dates; recommend adjustments to the College; provide summary reports and document all adjustments to the schedule; keep the College and the Architect advised on Project construction work status.
5. Implement and monitor an effective system for project cost control; provide monthly reports of actual costs and work progress as compared to cost estimates and scheduled work progress. Provide supporting information for any variances as requested by the College and the Architect; maintain cost accounting records, provide College access to these records, and preserve for at least three (3) years after final payment.
6. Monitor work of sub-Contractors and coordinate project work with activities and responsibilities of The College, Architect and CM/GC to complete the project in accordance with the College's objectives of budget, schedule, and quality.

7. Review and process all applications for payments by sub-Contractors and material suppliers in accordance with terms of their contracts and maintain records of all payment requests as required by law. Review and resolve all sub-Contractors' and material suppliers' requests for additional costs.
8. Schedule and conduct job progress meetings; prepare minutes and distribute meeting records to the College and Architect through construction management software, such as but not limited to Procore.
9. Implement procedures for timely and accurate processing of shop drawings, submittals and other project documents.
10. Establish job-site safety program, which should include an alcohol and drug testing program.
11. Provide close-out services as construction work is completed including, but not limited to: (1) perform necessary work to satisfy The College that the Project is completed as designed before the project is deemed Substantially Complete; (2) resolve punch list items; (3) coordinate and expedite submittal of record documents; (4) provide final report of all construction costs, and assist the College in final audit of all costs and all supporting documentation; (5) Promptly provide all required project O&M manuals and as-built drawings.

## **VI. MINIMUM QUALIFICATIONS**

The College will initially review Proposals received to determine whether or not Proposers meet the following minimum qualifications: In the interest of fast tracking the contract award process, The College has identified the following pass/fail Minimum Qualifications in order to establish eligibility to propose on this procurement:

1. Licensed Contractor:

Proposer must be licensed with the Construction Contractor's Board as a general contractor in the State of Oregon for the scope of work for this Project. Proposer must include Oregon Construction Contractors Board Registration Number in the RFP response.

2. Bonding Capacity:

Provide proof of bonding capacity. The Proposer must be currently capable of providing a 100% performance bond and 100% payment bond for a project valued up to thirteen million (\$13,000,000) in construction costs, as documented by a letter or binder from the Surety, submitted with the RFP response.

3. Insurance:

(a) Provide proof of insurance coverage. Proposer must be currently capable of furnishing the College with a Certificate of Insurance, naming Rogue

Community College District as an additional insured under a comprehensive general liability coverage policy with a combined single limit per occurrence in the amount of not less than two million dollars (\$2,000,000.00). Each annual aggregate limit shall not be less than four million dollars (\$4,000,000.00), when applicable. Such insurance shall cover both ongoing operations and completed operations and shall name Owner, and each of their employees, officers, and agents as an additional insured for claims arising out of Contractor's ongoing activities under this Contract as well as completed operations for a period of ten (10) years following the end of the contract term.

In order to qualify for consideration, Proposers must meet these mandatory "MINIMUM QUALIFICATIONS". Proposals that do not provide the required documentation may be deemed nonresponsive and may be rejected.

## VII. PROPOSAL CONTENT AND CRITERIA

### A. PROJECT BACKGROUND AND DESCRIPTION

1. Proposals must:
  - a. Be signed by an officer or principal of your firm authorized to legally commit your firm to a contract.
  - b. Contain a statement acknowledging incorporation of all addenda. If no addenda were issued, so state.
  - c. Be contained in a document not to exceed fifteen (15) double-sided pages (thirty (30) pages total) including any pictures, charts, graphs, tables, and text the firm deems appropriate to be part of the review of the firm's qualifications. A separate transmittal letter and resumes of key individuals proposed to be involved in this Project are exempt from the BIM. Page size is limited to 8 1/2" x 11", with basic text information no smaller than 12-point type. The only exception to the page-size limitation is an 11" x 17" sheet for a Project schedule and/or budgets.
2. The following constitutes required Proposal content, in addition to the material required to meet the minimum qualifications laid out in Part VI. **Please respond to each using generally the following format.**

Proposals will be evaluated on the basis of the following areas:

#### Evaluation Criteria

Cover Letter  
Firm Experience  
CM/GC and Related Experience

Key Personnel Experience  
Overall Project Understanding / Approach  
Scheduling Approach  
Cost Control  
Fee  
References

## CONTRACTOR'S RESPONSE DOCUMENT

Proposers must reply to each of the following items. Responses must appear in the same order listed below. Concise and direct answers are encouraged.

1. **COVER LETTER:** A letter of introduction stating that the applicant wishes to be considered for the project. Include full name of firm or joint venture, RFP contact person, email address, mailing address, telephone and facsimile numbers. If a joint venture, the relationship of the two parties shall be indicated in terms of percentage participation in the work and in the fee.
2. **FIRM EXPERIENCE:**
  - 2.1 **Firm Description:** Provide a brief description of the firm's history, the type of work you have performed and the firm's capabilities. Include an Annual Volume of Figures for the past five (5) years and both current single project and aggregate bonding capacities. Provide a certified letter from the firm's bonding or surety company that certifies the firm's bond history, existing bonded contracts and current, total bonding capacity. If a joint venture, provide the information for each of the firms involved. List the sub-consulting firms that will be part of the Respondent's team during the Pre-Construction phase of the work. Provide a statement indicating whether your firm or sub-consulting firm has had bond claims or contract faults within the last ten (10) year period.
  - 2.2 **Project Experience:** Describe overall firm experience and provide a listing, in chronological order, of the firm's last five (5) completed College Transportation Training Facility or similar College facility of six and a half million dollars (\$6,500,000) or more performed within the last ten (10) years. Include completion date; name of owner; contact person; and current phone number; name of Architect, contact person and current phone number, name of contractor and construction manager; and contact person name and telephone number for each; location of job; description of job (i.e., College Facility Remodel or similar New College Training Facility Construction, etc.); final construction contract amount; total dollar amount of change orders.
    - a. **Specific Facility Experience:** Describe specific experience, and provide a listing as indicated above of the firm's experience in the following types of facilities, including all information indicated above:

- i. Public Agencies and Public Contracting: Describe the firm's experience on projects for public agencies and performed under public contracting statutes and requirements.
- ii. New building construction: Describe the firm's experience constructing College Transportation Training Facility for both new site construction and around existing operations.

3. **CMGC AND RELATED EXPERIENCE:**

- 3.1 Describe your firm's experience with CM/GC-GMP projects, with an emphasis on CM/GC with GMP projects for the public sector and College facilities. The listing should follow the format described above in the previous item, but should include both the original GMP and the final cost of the Work.

4. **KEY PERSONNEL EXPERIENCE:**

- 4.1 **Organization of Team:** Provide a project organization chart showing your proposed staff for this job, including all professional staff in the following areas: project management; estimating; pre-construction and construction phase services. Identify your Project Manager, Project Executive, and Site Superintendent.
- 4.2 **Team Member Resumes:** Include resumes for all individuals listed in the chart. Indicate the proposed percentage or full time equivalent (FTE) that each person will work on this project during the 1) Phase I — Pre-Construction Services, and 2) Phase II — Construction Phase Services. (100% = 1.0 FTE). The resumes shall include each individual's education, work history, length of tenure with your firm, and relevant prior experience.
- 4.3 **Additional Team Members:** For those individuals who are not full time describe how they will work on the project. If your proposal involves individuals from more than one firm, describe prior experience, if any, of the firms and individuals working with each other, and how the proposed team will work for this project.

By listing the individuals in the proposal, the firm assures that these individuals will work on the project at an approximate minimum of the percentages shown. Rogue Community College District reserves the right to request a substitution of personnel if deemed to be in the best interest of the College. If the contractor determines that substitutions are necessary for any reason, the College reserves the right to review and approve the alternate team members assigned to the project.

Should the firm be invited to an interview, the key personnel listed above will need to be in attendance and questions may be directed solely to them. At a minimum, the



Project Manager, Superintendent and Project Executive dedicated to the project shall attend any interview.

5. **OVERALL PROJECT UNDERSTANDING / APPROACH:**

- 5.1 **Organizing the Project:** Describe the firm's overall CM/GC plan for completing the project. Discuss the firm's approach to reviewing the program and services to be provided during design and managing construction. Within the parameters described in this RFP, how would you organize and monitor the work to ensure quality, function, timely completion and cost within or under budget? What will be done by your firm to guarantee the GMP will be achieved within the College budget?
- 5.2 **Communications:** Explain the firm's process and methodology of approach to maintain effective communications between your firm, architect, and owner.
- 5.3 **Phasing and Packaging:** Given the available project information, describe how the firm will develop phasing of work and bid packaging for the project.
- 5.4 **Project Management:** Describe how the firm will approach the project management and construction management aspects of this project. How will the firm ensure that the College's needs are met?
- 5.5 **Organizational Tools:** Discuss the firm's approach to providing successful CM/GC services based on prior experience and use of communication technology, including cost, schedule and quality effectiveness. Include specific examples of actual products, such as estimates, progress reports, schedules, constructability reviews, value engineering studies, forms, general conditions budgets, organizational structures, Building Information Modeling (BIM), etc.
- 5.6 **Problem Solving:** Describe the firm's approach to problem solving for this project. Describe the largest challenge your firm faced within the last five years working on similar projects, and how you resolved that challenge.

6. **SCHEDULING AND APPROACH:**

- 6.1 Describe how the firm will ensure the College's schedule requirements are met. Specifically, how will your firm organize your work, staffing, and coordination of team members in order to ensure that all schedule milestones are achieved?
- 6.2 Provide a list of tasks and when the contractor and subcontractors will complete said list of tasks. Include an explanation of how soil moisture levels and quality of soil for building foundation will be considered in this work schedule.

- 6.3 Explain the procedures used to select subcontractors and materials suppliers. The College reserves the right to review subcontractor selection.
  - 6.4 Describe the firm's experience and expectations for local labor and materials availability on this project.
  - 6.5 Provide a preliminary construction schedule. Describe the approach to managing the schedule, taking into consideration operational, regulatory, security, and access issues. Include a discussion on elements that put the schedule at risk and if appropriate, an approach to accelerate the schedule and if there is a premium cost to do so.
  - 6.6 How will the firm report progress and mitigate delays?
  - 6.7 Describe the firm's prior experience and approach with fast-track phased construction packages. What has been the firm's recent experience on fast-track phased construction in terms of completion of bid packages? Provide an example.
7. **COST CONTROL AND BONDING:**
- 7.1 Give a description of how the firm will manage the work to control costs and optimize savings during the pre-construction and construction phases.
  - 7.2 Provide the individual project and aggregate bonding capacity of the firm.
8. **FEES:** Provide a proposal of fees and costs as follows:
- 8.1 State the total Construction Management fee as a percentage for the cost of the construction as described in the RFP and attachments.
  - 8.2 State the general liability insurance costs, with coverages outlined in the RFP and attached, as a percentage of the cost of construction.
  - 8.3 State the cost of general contractor payment and performance bonds, as outlined in the RFP and attachments, as a percentage of the cost of construction.
  - 8.4 Provide a "Not to Exceed" cost for pre-construction services described in the RFP and attachments. In addition, provide the hourly rate at which pre-construction services will be billed.
  - 8.5 Provide general conditions costs using the worksheet provided in Appendix B of the RFP.

Please note: Estimates for fees and costs shall be accompanied with a detailed breakdown. This fee information, while a critical element of the evaluation/selection

process, will also be used in the negotiation of the final GMP agreement.

The fee criteria will be evaluated based on clarity of the cost breakdown, the cost itself, and what is included or excluded in the breakdown of cost.

9. **REFERENCES:** Provide at least five (5) references for projects of similar size and scope including client name, key contact's name, address, email, and phone number. Provide detailed examples of the following:

- 9.1 Project Schedule Examples
- 9.2 Change Request Examples
- 9.3 Payment Application Examples
- 9.4 Conference Report Examples
- 9.5 Bonding Letter

Reference checks or additional information obtained regarding Proposers will not be scored individually but may be used to supplement all categories above.

## VIII. PROPOSAL EVALUATION

The following process will be used to select the CM/GC(s):

A. Evaluation Committee:

An Evaluation Committee, which may but need not consist of individuals familiar with the design and construction process, will screen and rank the Proposals based on the criteria described in Part VII of this RFP and may identify finalists for interviews with the Evaluation Committee. Individual members may consist of selected College staff, consultants, and the project architect.

B. Interviews:

The Evaluation Committee may choose to interview one or more of the selected finalists. All finalists will be notified of the exact times and places of their interviews, if held.

The format of the interview, if held, will be left up to the proposing firm; however, questions by the Evaluation Committee should be anticipated. Members of the CM/GC's proposed on-site team must be present at the interview, although it is understood that this team might vary depending upon the decision as to the Project's final type of construction and schedule. The proposing firms must notify the College no less than two days prior to their interview of any audio/visual or

presentation support materials they may require.

C. Recommendation to the College's Board of Education:

The Evaluation Committee will recommend to the College's Board of Education the firm with whom the Committee proposes the College negotiate a contract. Should negotiation prove unsuccessful with the selected CM/GC, a second CM/GC will be chosen, and so forth, as necessary.

## **IX. REQUESTS FOR CHANGE AND PROTESTS/ ADDENDA**

### **A. SOLICITATION PROTESTS**

Protests of the solicitation process shall be governed by this provision and as otherwise set out in OAR 137-049-0260. Proposers may submit a protest of any Proposal requirement or of any provision, term, or condition of the exhibits attached to this RFP, in writing, no later than 5 (five) calendar days prior to the scheduled closing time for filing Proposals. Contents of a protest shall include the reasons for the protest and any proposed changes to the RFP. Envelopes containing protests regarding the content of the RFP shall be marked "RFP Content Protest" and shall include the RFP number and title, and delivered to Attn: Contract and Procurement Director, 3345 Redwood Hwy Grants Pass, Oregon 97527.

### **B. SELECTION PROTESTS**

Protests of contractor selection and contract award shall be governed by this provision and as otherwise set out in OAR 137-049-0450. An adversely affected or aggrieved Responsive Proposer must exhaust all avenues of administrative review and relief before seeking judicial review of the College's selection or Contract award decision. An aggrieved Responsive Proposer may protest the award, as provided below.

- a. If the College makes the award following interviews, only Proposers who were interviewed shall be considered "affected" and entitled to protest the award. An affected Responsive Proposer may submit a written protest of the College's award decision by 12:00 p.m. within seven (7) calendar days after issuance of the Notice of Intent to Award Contract.
- b. The protest shall be in writing and must specify the grounds upon which the protest is based, submitted to the Contract and Procurement Office at the address listed in Part IX.A of this RFP.
- c. A Proposer is adversely affected only if the Proposer submitted a responsive

proposal and is eligible for award as the best responsive and responsible Proposer and is next in line for award, (i.e., the protesting Proposer must claim that all higher-scored Proposers are ineligible for award because their proposals were non-responsive, or the College committed a material violation of a provision in the RFP or of an applicable procurement statute or administrative rule, and the protesting Proposer was unfairly evaluated and would have, but for such material violation, been the highest-ranked Proposer.)

### **C. INQUIRIES/ADDENDA**

All project questions and clarification requests must be submitted in writing via email ([bidquestions@roquecc.edu](mailto:bidquestions@roquecc.edu)), or regular US mail and answered by addenda so that all potential proposers may be equally apprised of project parameters and clarifications. Statements or interpretations made by The College's representatives are not binding on the College, unless confirmed by written Addendum.

Numbered Addenda (official changes/revisions/updates to the process or documentation), as issued, will be posted on the College's website and the state of Oregon's procurement page (OregonBuys). It is the proposing firm's responsibility to check regularly for updates.

### **X. ENCLOSURES**

The following documents are incorporated in this RFP by reference:

Appendix A: Sample CM/GC Contract

Appendix B: General Conditions Cost Worksheet

Appendix C: January 1, 2025 BOLI Prevailing Wage Rate Booklet

**END OF RFP**

Appendix A



**CM/GC CONTRACT**  
(CONSTRUCTION MANAGER/GENERAL CONTRACTOR)

**THIS CONTRACT IS BETWEEN:**

**OWNER/COLLEGE: ROGUE COMMUNITY COLLEGE DISTRICT**

**And**

**CONSTRUCTION MANAGER/  
GENERAL CONTRACTOR  
(referred to as Contractor in the  
General Conditions and herein  
referred to as "CM/GC")**

**<CONSTRUCTION CONTRACTOR>**

**The Project is:**

**TRANSPORTATION TRAINING BUILDINGS**

**Redwood Campus, Grants Pass, Oregon**

**Table Rock Campus, White City, Oregon**

**The Architect is:**

**< A & E CONTRACTOR >**

**College's Authorized Representative: Greg McKown  
Chief Facilities Management Officer**

The College's Target GMP Range is: \$

## **CM/GC CONTRACT**

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**The College and CM/GC agree as set forth below:**

**ARTICLE 1**  
**DEFINITIONS**

Except as expressly defined or modified below or elsewhere in this Contract, all capitalized terms shall have the meanings set forth in Section 1.B of the General Conditions for Construction Contracts, attached as Exhibit A hereto (the " 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 this Contract (including without limitation any agreed change to the GMP), identified as an Amendment, and executed by CM/GC and the College's Authorized Representative.
- 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 this Contract under Section of the General Conditions (including without limitation any agreed change to GMP), identified as a Change Order and executed by the College's Authorized Representative, CM/GC, where applicable, and, where required, approved in writing the Vice President of College Services.
- 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 the College, (ii) such Work is identified as CM/GC Field Work in monthly billings and (iii) CM/GC receives prior approval of College'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 Professional Services Agreement with the Architect for this Project.
- 1.9 Construction Phase.** The Construction Phase shall mean the period commencing on the College's execution of a GMP Amendment or Early Work Amendment, together with the earlier of (i) issuance by the College 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 1.B of the General Conditions, as supplemented by Article 2.1, below.
- 1.12 Design Development Documents.** Design Development Documents shall have the meaning given in the 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 Contract executed by and between the parties to authorize Early Work.
- 1.15 Fixed Cost for General Conditions Work.** Fixed Cost for General Conditions Work or GC Work shall mean that fixed sum identified in Article 8.8.
- 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, and (ii) any other specific categories of Work approved in writing by the College'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 this 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 Contract.
- 1.18 GMP Amendment.** GMP Amendment shall mean an Amendment to this 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 Contract and ending upon commencement of the Construction Phase; provided that if the College 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 Response to the extent they are accepted by College, 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 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 College 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 College 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, College and the CM/GC agree to the terms of the contract that are set forth in the Contract Documents. As used in the General Conditions, the "College Contract" shall mean this CM/GC Contract.
- 2.2 Effective Date.** This CM/GC Contract (hereafter the "Contract") shall become effective on the first date on which every party has signed this Contract and College has received all necessary approvals, including approval by the College's board of Education.
- 2.3 The Contract; Order of Precedence.** This Contract, together with the other Contract Documents, form the entire agreement between the parties. Except as expressly otherwise provided herein, the order of precedence of the Contract Documents is established in the General Conditions for Construction Contracts, if there are inconsistent or conflicting terms among the Contract Documents.

**ARTICLE 3**  
**WORK OF THIS 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 College'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 construction tasks:
- (a) The CM/GC shall consult with, advise, assist, and provide recommendations to the College 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 College's Authorized Representative. The CM/GC shall consult with the College and Architect and College'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 College's authorized Representative's review and the College's Authorized Representative's approval.
- (b) The CM/GC shall coordinate and integrate the preliminary Project schedule with the services and activities of the College, 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 College's occupancy requirements showing portions of the Project having occupancy priority, provided that the date(s) of Substantial Completion shall not be modified without College'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 College's Authorized Representative and Architect.

**3.1.4** The CM/GC shall make recommendations to Architect and College'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** Provide the following services relating to cost estimating:

- (a) The CM/GC shall prepare, for the review of the Architect and College's Authorized Representative and approval of the College, 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 College, the CM/GC shall prepare for the review of the Architect and College's Authorized Representative and approval of the College, 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 College, Architect and College's Authorized Representative and CM/GC.
- (c) When Design Development Documents have been prepared by the Architect and approved by the College, the CM/GC shall prepare a detailed estimate with supporting data for review by the Architect and College's Authorized Representative and approval by the College. During the preparation of the Construction Documents, the CM/GC shall update and refine this estimate at appropriate intervals agreed to by the College, Architect and College's Authorized Representative and CM/GC.
- (d) If any estimate submitted to the College exceeds previously approved estimates or the College's budget, the CM/GC shall make appropriate recommendations to the Architect and College's Authorized Representative.
- (e) CM/GC shall notify the College 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 College to develop a GMP within the Target GMP Range and within College's schedule.

**3.1.6** 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 College'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, subject to Article 11 of this Contract. Submission of such list is for information and discussion purposes only and not for prequalification. The receipt of such list shall not require the College, College's Authorized Representative or Architect to investigate the qualifications of proposed Subcontractors and suppliers, nor shall it waive the right of the College 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 College 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 College on subcontracting opportunities for minority/women/ESB firms.

- 3.1.7** The CM/GC shall recommend to the College'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 College'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 College in identifying critical elements of the Work that may require special procurement processes, such as prequalification of Offerors or alternative contracting methods.
- 3.1.9** The CM/GC shall work with the College and the design team to maximize energy efficiency in the Project, including without limitation providing estimating and value engineering support to the College's analysis and application for energy related incentive programs offered by local utilities.

### **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 College 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 Contract, this Contract shall include Construction Phase Services only if (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 College, which shall incorporate the Early Work Amendments. If College thereafter terminates the Contract prior to execution of a GMP Amendment, the provisions of Section 10.E of the General Conditions 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 College a full performance bond and a payment security bond, in the form attached as Exhibit C, as required by Section 7 of the General Conditions 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. CM/GC shall provide to College 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 College 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 College, College'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 College, College's Authorized Representative, and the Architect to analyze the design, participate in decisions regarding construction materials, methods,

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systems, phasing, and costs, and suggest modifications to achieve the goals of providing the College 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 or deductions from the GMP, including detailed documentation to support such adjustments and shall submit such proposals to College 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 College with respect to cost reduction or life cycle of the Project;
- 3.3.6** Holding and conducting periodic meetings with the College and the Architect to coordinate, update and ensure progress of the Work;
- 3.3.7** Submitting monthly written report(s) to the College'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 College. Oral or written updates shall be provided to the College as deemed appropriate by the CM/GC or as requested by the College;
- 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 College may reasonably require. The log shall be available to the College and Architect on request;
- 3.3.9** Developing and implementing a system of cost control for the Work acceptable to College'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 College and Architect at regular intervals;
- 3.3.10** Co-operating with any and all consultants hired by College;
- 3.3.11** At College'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 College 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 College as those terms are used in ORS 30.265.
- 4.2 **Performance of Work.** The CM/CG covenants with College to cooperate with the Architect and College's Authorized Representative and utilize the CM/GC's professional skill, efforts and judgment in furthering the interests of College; 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 College.
- 4.3 **Design Consultants.** College has a separate contract with the Architect related to the Project. Both the CM/GC and the Architect shall be given direction by College through College's Authorized Representative. The CM/GC agrees to support College's efforts to create a collaborative and cooperative relationship among the CM/GC, Architect, other Project consultants, and College's Authorized Representative.
- 4.4 **Forms and Procedures.** The College 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 College. 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

College, \_\_\_\_\_ 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, shall be considered Key Persons and shall not be replaced during the Project without the written permission of College, which shall not be unreasonably withheld. If the CM/GC intends to substitute personnel, a request must be given to College at least thirty (30) Days (or such shorter period as permitted by College) prior to the intended time of substitution. When replacements have been approved by College, the CM/GC shall provide a transition period of at least ten (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 College.

## **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 College 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 \_\_\_\_\_, 2026. A separate Notice to Proceed shall be issued for any and every Early Work Amendment.
- 5.2 Completion of Project.** The CM/GC shall achieve Substantial Completion of the entire Work not later than \_\_\_\_\_, 2027 and shall achieve Final Completion not later than thirty Days (30) Days after the earlier of (i) Substantial Completion or (ii) the required date for Substantial Completion.
- 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 4 of the General Conditions, College 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.
- 5.5 Liquidated Damages.** The CM/GC acknowledges that the College 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, use of the Project, and costs associated with Contract administration and use of temporary facilities. The CM/GC and the College acknowledge that the actual amount of damages would be difficult or impossible to determine accurately and agree that that the following liquidated damages figure represents a reasonable estimate of such damages and is not a penalty:

- 5.5.1 Liquidated Damages shall be \$5,000.00 for each day that Substantial Completion exceeds the required date of Substantial Completion for avoidable delays caused by the contractor.
- 5.5.2 The CM/GC agrees to pay to the College the liquidated damage sums set forth above for each day of delay or any fraction thereof and further agrees that College may deduct such sums from payments the College otherwise owes to CM/GC under the Contract. If such deduction does not result in payment to College of the assessed liquidated damages in full, CM/GC shall promptly pay any and all remaining sums due to the College upon demand.

**ARTICLE 6**  
**CONTRACT SUM AND GMP**

- 6.1 **Contract Sum.** If a GMP Amendment or Early Work Amendment is executed, College shall pay the CM/GC, as payment for the Work, the "Contract Sum" which shall equal the sum of the Preconstruction Fee, the CM/GC Fee and the actual Cost of the 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 College. Changes to the GMP shall only be authorized by Amendment or Change Order.

<b><u>Preconstruction Fee</u></b>	<b>+</b>	<b><u>CM/GC Fee</u></b>	<b>+</b>	<b><u>Estimated Cost of the Work (Est. COW) = GMP</u></b>
Cost Reimbursement		_____% of Est. COW		Includes CM/GC's Contingency and the
\$ _____Maximum		Becomes Lump Sum		Fixed Cost for GC Work

- 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 based upon the Preconstruction Fee. College 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 College may direct instead that any applied portion of the maximum Preconstruction Fee be applied to Construction Phase Services, in which case the GMP shall not be reduced by the portion so applied. Except to the extent the parties may expressly agree to the contrary in the GMP Amendment, no Preconstruction Fee or other fee, compensation or reimbursement shall be payable to CM/GC with respect to Preconstruction Services performed after execution of the GMP Amendment.

### **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 for which this Contract states is not to be included in calculating the CM/GC Fee, but shall include Allowances, selected alternates, Fixed Cost for GC Work, and reasonable CM/GC contingencies as designated in the GMP Supporting Documents. The CM/GC Fee is inclusive of profit, overhead, and all other indirect or non-reimbursable costs. College 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 shall be expressed as a fixed amount and payments shall be credited against the CM/GC Fee fixed therein.
- 6.3.2** Notwithstanding any provision of Section 4.A of the General Conditions to the contrary, and unless the parties agree in writing to the contrary, any Amendment or Change Order that increases or decreases the GMP shall adjust the CM/GC Fee then in effect by multiplying the percentage shown in Article 6.3.1 by the change in the 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 College a proposed GMP and GMP Supporting Documents at a time designated by College 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 specific exclusions, if any.
  - (c) A list of allowances and a statement of their basis.
  - (d) 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.
  - (e) 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.
  - (f) 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 College and Architect to review the GMP proposal and the written statement of its basis. If the College 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 College'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 College 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 College, Architect and CM/GC. The CM/GC shall promptly notify the Architect and College if such revised Plans and Specifications are inconsistent with the agreed-upon assumptions and clarifications.
- 6.4.7** The GMP shall include in the 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 unforeseen costs 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 College to identify and confirm components and systems not specifically shown but required for a complete, fully functional Project. College 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 unforeseen elements 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 College within College's Target GMP Range, or if College determines at any time in its sole discretion that the parties may fail to reach a timely agreement on a GMP acceptable to College, College may terminate this Contract without liability, and the CM/GC shall not receive additional compensation beyond the Preconstruction Fee under this Contract and sums due under any Early Work Amendment. Termination under this provision shall proceed under Section 10.E of the General Conditions as a termination for College's convenience. CM/GC further agrees that College 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 College, the parties shall execute a GMP Amendment.
- 6.7 College 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 College.
- 6.8 Allowance Work.**
- 6.8.1** CM/GC shall not perform any Allowance Work without prior execution by College of a Change Order approving the Specifications for the Allowance Work and the price thereof.
- 6.8.2** College shall be entitled to apply any Allowance line items that are not 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 GMP Amendment is executed to increase the GMP by the excess cost of the Allowance work.
- 6.8.4** The Contract Sum shall not include any Allowance items not identified in the GMP Amendment or the GMP Supporting Documents until such allowance item is reduced to a fixed price by Change Order or Amendment.
- 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 Under-runs 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 College with a buy-out status report showing any projected cost under-run, 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 College 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 under-run to an College-controlled contingency fund to be held within the GMP to pay for additional costs arising from (a) any College-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 College of more expensive alternates than those used for calculation of the GMP, (e) College 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 under-run from CM/GC's contingency to the College-controlled contingency fund will not affect CM/GC's obligation to complete the Project within the GMP.

## **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 4 of the 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 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 Contract, instead of being based on CM/GC's Direct Costs as defined in the 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 4 of the General Conditions, and shall not be modified by Articles 8 and 9 of this 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 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 College'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 College's Authorized Representative and to Architect within the earlier of (a) thirty (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** College may, at any time, submit a GMP Change Request requesting a reduction of the GMP, which shall include College'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 (7) 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 identifies the reason for differences in the GMP Change Request and the Architect's position. CM/GC shall submit



the Reconciled GMP Change Request to College, 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 College, CM/GC agrees to work with the College and the Architect to provide a GMP Change Request that is acceptable to College;
- 7.2.7** CM/GC agrees to make all records, calculations, drawings and similar items relating to GMP Change Request available to College and to allow Architect and College access and opportunity to view such documents at CM/GC's offices. Upon College's reasonable notice, CM/GC shall deliver two copies of such documents to College 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 4 of the General Conditions.
- 7.3 Execution by College.** If Architect or CMGC Project Manager is not the College's Authorized Representative, then notwithstanding any provision in the Contract to the contrary, Architect or Project Manager has no authority to execute Change Orders or Amendments on behalf of College, and only duly authorized personnel of College 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** With College's prior written approval, and only for that portion of their time directly required for the Work, 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 College, or otherwise engaged and off the site when specifically related to the Project;

**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 College.

**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 College at the completion of the Work or, at College'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 fifteen (15) Days of the transaction. Net amounts realized, if any, from such sales shall be credited to College 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 College at College's option may require that CM/GC deliver to College (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 one hundred dollars (\$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 by the American Association of Equipment dealers in effect at the time of rental, shall not exceed acquisition costs, and for individual items exceeding ten thousand dollars (\$10,000), will be subject to College's prior approval. CM/GC shall deliver to College a list of published rates from time to time at College's request. For all items rented or leased, the CM/GC shall charge College 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 College. Efforts shall include, but not be limited to, providing College with a rent/buy analysis so that College 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 (6) 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** That portion of the travel and subsistence expenses of the CM/GC's personnel determined by College to be reasonable and necessary, at College approved rates, incurred while traveling in discharge of duties connected with the Work. Main office staff travel shall not be reimbursed unless approved in advance by College. These travel costs shall be reimbursed only to the extent allowed under the College's travel reimbursement guidelines applicable to College and only at approved travel rates. CM/GC personnel who are scheduled to work at the Project site for less than six (6) months may receive a subsistence per diem approved by the College in accordance with College Travel Rules if their place of residence is greater than one hundred (100) miles from the Project site; provided no such personnel shall be entitled to such per diem reimbursement beyond such six-month period.

## **8.6 Other Costs.**

**8.6.1** That portion of premiums for insurance directly attributable to this Contract, specifically, builders all/risk insurance, including the deductible (but excluding premiums for comprehensive/commercial general liability, automobile and worker's compensation coverage which the College does not consider Project specific), and payment and performance bonds as required by Section 7 of the General Conditions (but excluding premiums for Subcontractor bonds unless authorized by College);

- 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 lost for causes other than the CM/GC's fault or negligence;
- 8.6.5 Costs of drawings, Specifications and other documents required to complete the Work, except as provided by College 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 College.
- 8.7 **Repairs to Damaged, Defective or Nonconforming Work.** 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 **Fixed Cost For General Conditions Work.** CM/GC shall be paid a fixed sum of \$ \_\_\_\_\_ 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 above in this Article 8, CM/GC's compensation for the same is included in the Fixed Cost for GC Work and shall not otherwise be charged as Cost of the Work. The Fixed Cost for GC Work, less five percent (5%) retainage thereon, shall 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. However, no adjustment in the amount payable for General Conditions Work will be made if the actual construction period is shorter or longer than the number of months scheduled for the Construction Phase, unless the construction period is extended because of a College-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;
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- 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 8.6.5;
- 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 Fixed Cost 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 College. Trade discounts, rebates, refunds and net amounts received from sales of surplus materials and equipment shall accrue to College, and the CM/GC shall make provisions so that they can be secured.
- 10.2 **Amounts Credited to College.** Amounts which accrue to College in accordance with the provisions of Article 10.1 shall be credited to College 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 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 Administrative Rules (“OAR”) in all respects for the solicitation of Minority, Women and Emerging Small Business Enterprises. Compliance shall include pass-through requirements for Subcontractor demonstrations of good faith efforts for all subcontract Offer packages, for which set goals shall not be utilized;

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

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

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

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

**11.2.3 Retainage from Subcontractors.** Except with the College's prior approval, payments to Subcontractors shall be subject to retainage of no more than five percent (5%). The College 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 Chapters 279A, 279B, or 279C, the process shall conform to the following procedures, in general compliance with the open and competitive nature of public procurement, considering industry subcontracting practices;

**11.3.2** CM/GC shall submit to College'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 College comments regarding any proposed Offer packages. As Offers are received, CM/GC shall submit to the College an Offer comparison in a mutually agreeable form together with any specific back-up requested by College. The competitive process used to award subcontracts by the CM/GC may be monitored by the College'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 College's monitoring. The College'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 College'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 College 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 ten (10) Days prior to opening in the daily Journal of Commerce and at least one other 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 College, 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 College shall be required to accept the Offer.
- (d) CM/GC may develop and implement a prequalification process for particular solicitations; followed by selection of successful Offers among those Offerors that CM/GC determines meet the prequalification standards, with College'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) College may at its sole discretion, require CM/GC to re-solicit for Offers based on

the same or modified documents.

- (g) CM/GC shall review all Offers and shall work with Offerors to clarify Offers, reduce exclusions, verify scope and quantities, and seek to minimize work subsequently awarded via the Change Order process.
- (h) The CM/GC will document any and all discussions, questions and answers, modifications and responses to from any Offeror and ensure that the same are distributed to all Offerors, and College 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 College'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 College, Work may be subcontracted on other than a low-price basis, including without limitation, through competitive negotiation. As a condition to its authorization, College 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 College;

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

**11.3.6** Subject to the requirements or limitations of Oregon's public information laws, CM/GC's subcontracting records shall not be considered public records; provided, however, that College and other agencies of the State shall retain the right to audit and monitor the subcontracting process in order to protect the College'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 College'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 fifty percent (50%) of the labor by such work unit is performed by employees of the CM/GC or such Affiliate;

**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 College notified in writing. All Offers for this work shall be delivered to College and publicly opened by College 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 College. CM/GC shall be solely responsible for resolving the procurement protests of Subcontractors and suppliers. CM/GC shall indemnify, defend, protect and hold harmless College 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 College, in connection with any procurement protest. The provisions of this Article 11 are solely for the benefit of College, and do not grant any rights or remedies (including third party beneficiary rights) to any Offer or other protester, in connection with any procurement protest or claim.

**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 this Contract; the accounting and control systems shall be satisfactory to College. College and College's representatives, including the accountants and auditors, shall be afforded reasonable and regular access to the CM/GC's records, books, correspondence, instructions, drawings, receipts, subcontracts, purchase orders, vouchers, memoranda and other data relating to this Contract, and the CM/GC shall preserve these for a period of three (3) years after final payment, or for such longer period as may be required by law.

**12.2 Periodic and Final Audits.** College may, at its discretion, perform periodic audits of the Cost of the Work and any other reimbursable costs associated with the Project. College intends to conduct a final audit of reimbursable costs prior to the Contract closeout. The CM/GC shall cooperate fully with College 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 General Conditions.** The requirements of this Article 13 and Article 14 are in addition to, and not in lieu of, the requirements of Section 5 of the General Conditions. In the event of conflict between the provisions of Articles 13 and 14 and Section 5, the provision more favorable to College shall control. Without limitation, the provisions of Articles 13.3 and 13.4 shall control over the corresponding provisions of Section 5.B of the General Conditions.
- 13.2 Progress Payments.** Based upon applications for payment submitted pursuant to Section 5 of the General Conditions, College shall make progress payments on account of the Preconstruction Fee, Cost of the Work, and associated CM/GC Fee, less five percent (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 (1) the percentage of that portion of the Work which has actually been completed; or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the 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 College 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 5.B.3 of the 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 College;
- (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 College in such documentation;
- (f) Subtract any amounts for which the College's Authorized Representative has withheld or nullified payment as provided in the Contract Documents; and
- (g) Subtract five percent (5%) retainage on the entire progress payment.

**ARTICLE 14**  
**FINAL PAYMENT**

- 14.1 Final Payment Accounting.** CM/GC shall submit to College 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 College's Authorized Representative withholds, in whole or in part, approval of payment;
  - 14.2.3** Subtract the aggregate of previous payments made by College to CM/GC. If the aggregate of previous payments made by College exceeds the amount due the CM/GC, the CM/GC shall reimburse the difference to College within thirty (30) Days with interest at the rate applicable to College payments under the General Conditions.
- 14.3 Final Payment Review.** College or its accountants will review and report in writing on the CM/GC's final accounting within sixty (60) Days after delivery of the final accounting by the CM/GC. Based upon such Cost of the Work as College or College'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 College's Authorized Representative will, within ten ( 10) Days after receipt of the written report of College's accountants, either issue to College an approval of CM/GC's final application for payment with a copy to the CM/GC or notify the CM/GC and College in writing of the College's Authorized Representative's reasons for withholding approval of any part of the application for payment, which disapproval shall include College's Authorized Representative's estimate of the amount that is due Contractor under the application for payment.

- 14.4 Payment Disputes.** If College'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 College'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 College's highest contracting authority of the disputed amount. Such demand shall 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 shall result in the substantiated amount reported by College's accountants becoming binding on the CM/GC. In addition, If College 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 thirty (30) Days after delivery of request for reimbursement by College to demand additional review by College'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 4.C of the General Conditions. Pending a final resolution, College shall pay the CM/GC the amount of the application for payment approved by the College's Authorized Representative.
- 14.5 Effect of Payment.** Neither approval of an application for payment, a progress payment, release of retainage, of final payment, or partial or entire use or occupancy of the Project by the College 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 College's Right to Terminate Prior to Execution of GMP Amendment.** Prior to execution by both parties of the GMP Amendment, the College may terminate this Contract at any time without cause. Upon such termination, the amount to be paid to the CM/GC shall not exceed the Preconstruction Fee payable to the date of termination, together with amounts payable for Early Work if an Early Work Amendment has been executed. If College terminates for convenience during the Preconstruction Phase, College 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 College on request.
- 15.2 College's Termination for Convenience after GMP Amendment.** After the GMP Amendment is executed by both parties, the Contract may be terminated by College without penalty for convenience pursuant to Section 10.E of the 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, 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.

- 15.3 College's Termination for Cause.** In the event of termination of this Agreement by College for cause pursuant to Section 10.D of the General Conditions, the amount, if any, to be paid to the CM/GC after application of the General Conditions and College'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 College's declining to pay disputed amounts shall not be grounds for suspension of the Work or termination for cause by CM/GC. If CM/GC terminates this Contract for College'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 College, provided that such assignment is effective only after termination of this Contract by the College, and only for those subcontracts and supply contracts which the College accepts by notifying the Subcontractor/supplier and CM/GC in writing. For those subcontracts and supply contracts accepted by College, if the Work has been suspended for more than thirty (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 College's rights under this Article 15.5. With respect to any subcontracts/supply contracts that are not accepted by College, the provisions of Section 10.F.1 of the General Conditions shall apply.

## **ARTICLE 16** **REPRESENTATIONS AND WARRANTIES**

- 16.1 Representations.** CM/GC represents and warrants to College as of the effective date of this 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 the Contract to College 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 the Contract and the consummation of the transactions contemplated hereby will not conflict with or result in a material breach of any terms or provisions of, or constitute a material default under, (i) CM/GC's Articles of Incorporation or Bylaws; (ii) any note, bond, mortgage, indenture, license, lease, contract, commitment, agreement or other instrument or obligation to which CM/GC is a party or by which CM/GC may be bound; or (iii) any statute, order, writ, injunction, decree, rule or regulation applicable to CM/GC;
- 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 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.

WHEREFORE, the parties have caused this agreement to be executed as of the date and year first set forth below.

**CM/GC:**

**<Contractor>**

Address \_\_\_\_\_

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

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

\_\_\_\_\_  
Signature of CM/GC

Title \_\_\_\_\_

Date \_\_\_\_\_

**COLLEGE:**

**ROGUE COMMUNITY COLLEGE DISTRICT**

\_\_\_\_\_  
Lisa Stanton

Title Vice President of Operations and Finance

Date \_\_\_\_\_

# EXHIBIT A GENERAL CONDITIONS

## FOR CONSTRUCTION CONTRACTS

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## **1. GENERAL PROVISIONS**

### **A. CONVENTIONS**

- (1) Grammar in the General and Supplemental Conditions is written in the indicative mood, in which the subject is expressed. Technical specifications and beyond are generally written in the imperative mood, in which the subject is implied.
- (2) The subject, “the Contractor, the Owner, the College or this Contract, this Work” or similar conventions are implied.
- (3) “Shall” refers to action required of the Contractor, and is implied. “Will” refers to decisions or action of the Owner or Owner’s Authorized Representative, or Architect/Engineer.
- (4) The following words, or words of equivalent meaning, refer to the actions of the Owner and/or Architect/Engineer, unless otherwise stated: “directed”, “established”, “permitted”, “ordered”, “designated”, “prescribed”, “required”, “determined”.
- (5) The words “approved”, “acceptable”, “authorized”, “satisfactory”, “suitable”, “considered”, and “rejected”, “denied”, “disapproved”, “denied” or words of equivalent meaning, mean by or to the Owners Authorized Representative or Architect/Engineer.
- (6) The words “as shown”, “shown”, “as indicated”, or “indicated” or similar conventions mean as implied “as indicated in the Plans”.
- (7) Capitalized terms, other than titles, abbreviations and grammatical usage, sections, indicate they have been given a defined meaning as set forth in Section 1.B. Definition of Terms. Only punctuation that is part of the quoted matter is placed within quotation marks.

### **B. DEFINITION OF TERMS**

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

- (1) **ARCHITECT/ENGINEER**, means the Person contracted by the Owner to make drawings and specifications and, to provide contract administration of the Work contemplated by the Contract to the extent provided herein or by supplemental instruction of Owner (under which Owner may delegate responsibilities of the Owner’s Authorized Representative to the Architect/Engineer), in accordance with ORS Chapter 671 (Architects) or ORS Chapter 672 (Engineers) and administrative rules adopted thereunder.
- (2) **CHANGE ORDER**, means a written statement signed by the Owner and the Contractor prior to the Contractor’s performance of certain Work, stating their agreement upon all or part of the following, subject to particular terms and conditions of the Contract: (a) a described change in the Work, if any; (b) the amount of the total adjustment in the original Contract Price, if any; (c) the extent of the total adjustment in the Work performance period; and (d) any changes to the drawings and technical specifications, or other changes to the Contract, if any.
- (3) **CLAIM**, means a demand by Contractor pursuant to Section 4.C for review of the denial of Contractor’s initial request for an adjustment of Contract terms, payment of money, extension of Contract Time or other relief, submitted in accordance with the requirements

and within the time limits established for review of Claims in these General Conditions.

- (4) **CONSTRUCTION CHANGE FIELD DIRECTIVE**: means, a written order given by the Owner to a Contractor directing a change in the Work or performance period and stating a proposed adjustment or methodology in adjustment to the Contract.
- (5) **CONTRACT**, means the written agreement that sets forth rights and obligations of the parties with respect to a particular transaction, including, but not limited to all general and special conditions, drawings, specifications, price terms and legal requirements.
- (6) **CONTRACT DOCUMENTS**, means the Solicitation and addenda thereto, the Owner Contract, any Amendments to the Contract, General Conditions, Supplemental General Conditions, if any, the accepted Offer, Plans, Specifications, Construction Change Field Directives and Change Orders.
- (7) **CONTRACT PRICE**, means the total amount paid or to be paid under a Contract including any approved Bid alternates, unit Bid prices, fully executed Change Orders, Contract Amendments and/or any, Construction Change Field Directives.
- (8) **CONTRACT TIME**, means any incremental period of time allowed under the Contract to complete any portion of the Work as reflected in the project schedule, as increased or decreased by Change Orders.
- (9) **CONTRACTOR**, means the Entity awarded a Contract.
- (10) **DAYS**, means calendar days unless otherwise specified.
- (11) **DEFECTIVE WORK**, means Work that a) is performed in an unsatisfactory, faulty, or deficient manner, b) does not conform to the Contract Documents, c) does not meet the requirements of any reference standard, test, or approval referred to or incorporated by the Contract Documents, or d) has been damaged by anyone other than the Owner prior to acceptance of the Work, whether or not such Work is in possession of Owner or in use by Owner.
- (12) **DIRECT COSTS**, means, unless otherwise provided in the Contract Documents, the cost of materials, including sales tax, cost of delivery; cost of labor, including social security, old age and unemployment insurance, and fringe benefits required by agreement or custom; worker's compensation insurance; project specific insurance (including Builder's Risk Insurance and Builder's Risk Installation Floater); bond premiums, rental cost of equipment, and machinery required for execution of the work; and the additional costs of field personnel directly attributable to the Work.
- (13) **ENTITY**, means a natural person capable of being legally bound, sole proprietorship, corporation, partnership, limited liability company or partnership, limited partnership, profit or nonprofit unincorporated association, business trust, two or more persons having a joint or common economic interest, or any other person with legal capacity to contract, or a government or governmental subdivision.
- (14) **EQUITABLE ADJUSTMENT**, means an adjustment to the Contract Price, Contract Time,

or both in consideration of costs or credits when the Contract authorizes such a change.

- (15) **FINAL COMPLETION**, means the final completion of all requirements under the Contract, including Contract Closeout as described in Section 11 but excluding Warranty Work as described in Section 9.B.
- (16) **FORCE MAJEURE**, means an act, event or occurrence caused by fire, riot, war, acts of God, nature, sovereign, or public enemy, strikes, freight embargoes or any other act, event or occurrence that is beyond the control of the party to this Contract who is asserting Force Majeure.
- (17) **NOTICE TO PROCEED**, means the official written notice from the Owner stating that the Contractor is to proceed with the Work defined in the Contract Documents. Notwithstanding the Notice to Proceed, Contractor shall not be authorized to proceed with the Work until all initial Contract requirements, including the Contract, performance bond and payment bond, and certificates of insurance, have been fully executed and submitted to Owner in a suitable form.
- (18) **OFFER**, means a Bid, Proposal, or Quotation, as applicable.
- (19) **OFFEROR**, means an Entity that offers to enter into a Contract by submitting a Bid, Quote or Proposal to the Owner.
- (20) **OVERHEAD**, means those items which may be included in the Contractor's markup (general and administrative expense and profit) and that shall not be charged as Direct Cost of the Work, including without limitation such Overhead expenses as wages or salary of personnel above the level of Superintendent (i.e., project engineers, project coordinators, project managers, cost estimators, detailers and other field and home office personnel including owners), and expenses of Contractor's offices at the job site (e.g. job trailer) including expenses of personnel staffing the job site office, and Commercial General Liability Insurance and Automobile Liability Insurance.
- (21) **OWNER**, means Rogue Community College District or College.
- (22) **OWNER'S AUTHORIZED REPRESENTATIVE**, means those individuals identified in writing by the Owner to act on behalf of the Owner for this project. Owner may elect, by written notice to Contractor, to delegate certain duties of the Owner's Authorized Representative to more than one party, including without limitation, to an Architect/Engineer. However, nothing in these General Conditions is intended to abrogate the separate design professional responsibilities of Architects under ORS Chapter 671 or of Engineers under ORS Chapter 672.
- (23) **PLANS**, means the drawings which show the location, type, dimensions, notes and details of the Work to be done under the Contract.
- (24) **PUNCHLIST**, means the list of Work yet to be completed or deficiencies which need to be corrected in order to achieve Final Completion of the Contract.
- (25) **RECORD DOCUMENT**, means the as-built Plans, Specifications, testing and inspection



substitute item shall be solely determined by the Owner's Authorized Representative. The decision of the Owner's Authorized Representative is final.

- (34) **SUPERINTENDENT** means a competent superintendent or project manager who shall represent the Contractor on the site and have overall field responsibility for the Work.
- (35) **SUPPLEMENTAL GENERAL CONDITIONS**, means those conditions that remove from, add to, or modify these General Conditions. Supplemental General Conditions may be included in the Solicitation or may be separate attachment to the Contract.
- (36) **UNFORESEEN CONDITIONS**, means those conditions which differ materially from what was represented in the Contract Documents or from conditions that would normally be expected to exist and be inherent to the construction activities defined in the Contract Documents.
- (37) **WARRANTY**, means the Contractor's guarantee that all work completed, including but not limited to workmanship, materials and equipment is free of defects for the period set forth in the Contract. Unless otherwise specified in the Contract, the Warranty period shall be for a one (1) year period commencing upon the date of Substantial Completion of all successfully completed Work.
- (38) **WORK**, means furnishing all materials, labor, equipment, services, subcontracts and/or incidentals according to the Statement of Work and Solicitation Documents necessary to successfully complete or carry out all the duties and obligations as set forth in the Contract.

### **C. SCOPE OF WORK**

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

### **D. INTERPRETATION OF CONTRACT DOCUMENTS**

- (1) Unless otherwise specifically defined in the Contract Documents, words which have well-known technical meanings or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings. Contract Documents are intended to be complementary. Whatever is called for in one, is interpreted to be called for in all. However, in the event of conflicts or discrepancies among the Contract Documents, interpretations will be based on the following descending order of precedence:
- (a) Contract amendments and Change Orders, with those of later date having precedence over those of an earlier date;
  - (b) The Contract;

- (c) Change Orders and Construction Change Field Directives, with those of later date having precedence over those of an earlier date;
  - (d) The Supplemental General Conditions;
  - (e) The General Conditions;
  - (f) The Plans and Specifications;
  - (g) The Solicitation and any addenda thereto; and
  - (h) The accepted Offer.
- (2) In the case of an inconsistency between Plans and Specifications or within either document not clarified by addendum or Change Order, the better quality or greater quantity of Work shall be provided in accordance with the Owner or Owner's Authorized Representative's interpretation in writing.
  - (3) If the Contractor finds discrepancies in, or omissions from the Contract Documents, or if the Contractor is in doubt as to their meaning, the Contractor shall at once notify the Owner or Owner's Authorized Representative in writing by submitting a Request for Information. Matters concerning performance under, and interpretation of requirements of, the Contract Documents will be decided by the Owner's Authorized Representative, who may delegate that duty in some instances to the Architect/Engineer. Responses to Contractor's requests for interpretation of Contract Documents will be made in writing by Owner's Authorized Representative (or the Architect/Engineer) within any time limits agreed upon or otherwise with reasonable promptness.
  - (4) Interpretations and decisions of the Owner's Authorized Representative (or Architect/Engineer) will be consistent with the intent of and reasonably inferable from the Contract Documents. Contractor shall not proceed without direction in writing from the Owner's Authorized Representative (or Architect/Engineer).
  - (5) References to standard specifications, manuals, codes of any technical society, organization or association, to the laws or regulations of any governmental authority, whether such reference be specific or by implication, shall mean the latest standard specification, manual, code, laws or regulations in effect in the jurisdiction where the project is occurring on the first published date of the Solicitation, except as may be otherwise specifically stated. Contractor shall comply with all referenced documents.

#### **E. EXAMINATION OF PLANS, SPECIFICATIONS, AND SITE**

- (1) It is understood that the Contractor, before submitting an Offer, has made a careful examination of the Contract Documents; has become fully informed as to the quality and quantity of materials and the character of the Work required; and has made a careful examination of the location and conditions of the Work, weather, permit requirements and the sources of supply for materials. The Owner will in no case be responsible for any loss or for any unanticipated costs that may be suffered by the Contractor as a result of the Contractor's failure to acquire full information in advance in regard to all conditions pertaining to the Work. No oral agreement or conversation with any officer, agent, or



personnel of the Owner, or with the Architect/Engineer either before or after the execution of this Contract, shall affect or modify any of the terms or obligations herein contained.

- (2) It is the Contractor's sole responsibility to understand the Work, the Plans and Specifications, determine what notes on the Plans apply to the Work and sequence the Work, coordinate all trade work to reduce and/or avoid conflicts with the Work.
- (3) Should the Plans or Specifications fail to particularly describe the materials, kind of goods, or details of construction of any aspect of the Work, Contractor shall have the duty to promptly, pursuant to Section 4.A.10, make inquiry in writing by Request for Information to the Owner's Authorized Representative and Architect/Engineer as to what is required prior to performance of the Work. Absent Specifications to the contrary, the materials or processes that would normally be used to produce first quality finished Work shall be considered a part of the Contract requirements.
- (4) Any design errors or omissions noted by the Contractor shall be reported in writing by Request for Information promptly, pursuant to Section 4.A.10, to the Owner's Authorized Representative and Architect/Engineer, including without limitation, any nonconformity with applicable laws, statutes, ordinances, building codes, rules and regulations.
- (5) If the Contractor believes that additional cost or Contract Time is involved because of clarifications or instructions issued by the Owner's Authorized Representative or Architect/Engineer in response to the Contractor's notices or Requests For Information, the Contractor must submit a written request to the Owner's Authorized Representative, setting forth the nature and specific extent of the request, including all time and cost impacts against the Contract according to Section 4.
- (6) If the Contractor fails to perform the obligations of Sections 1.E.1 to 1.E.5, the Contractor waives any right to submit a claim and shall pay such costs and damages to the Owner as would have been avoided if the Contractor had performed such obligations.

## **F. INTERPRETATION OF SPECIFICATIONS**

- (1) Reference in Specifications to an article, device or piece of equipment in the singular number shall apply to as many such articles as are shown on Plans or required to complete installation. Mention in Specifications or indication on Plans of articles, materials, operations, or methods requires the Contractor to provide and install such items including all necessary plant, labor and appurtenances.
- (2) Notes on the Plans are considered Specifications equal in force to those in the printed text.
- (3) When several materials are specified or approved for one use, select for use any of those so specified. For specified materials and brands, no substitutions are permitted other than as approved by addenda before the bid opening or otherwise approved by the Owner's Authorized Representative in writing by Substitution Request per Section 2.T.

## **G. INDEPENDENT CONTRACTOR STATUS**

The service or services to be performed under this Contract are those of an independent contractor as defined in ORS 670.600. Contractor represents and warrants that it is not an officer, employee or agent of the Owner, as those terms are used in ORS30.265.

## **H. RETIREMENT SYSTEM STATUS AND TAXES**

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

## **I. GOVERNMENT EMPLOYMENT STATUS**

- (1) If this payment is to be charged against federal funds, Contractor represents and warrants that it is not currently employed by the Federal Government. This does not preclude the Contractor from holding another contract with the Federal Government.
- (2) Contractor represents and warrants that Contractor is not an employee of the College, state, or other government agency for purposes of performing Work under this Contract.

## **2. ADMINISTRATION OF THE CONTRACT**

### **A. OWNER'S ADMINISTRATION OF THE CONTRACT**

- (1) The Owner's Authorized Representative will provide administration of the Contract as described in the Contract Documents from Notice to Proceed (1) during construction (2) during closeout issuance of final payment and retainage and (3) during and to the end of the warranty period for correction of Work. The Owner's Authorized Representative will act on behalf of the Owner to the extent provided in the Contract Documents, unless modified in writing in accordance with other provisions of the Contract. In performing these tasks, the Owner's Authorized Representative may rely on the Architect/Engineer or other consultants to perform some or all of these tasks.
- (2) The Owner's Authorized Representative will visit the site at intervals appropriate to the stage of the Contractor's operations (1) to become generally familiar with and to keep the Owner informed about the progress and quality of the portion of the Work completed, (2) to endeavor to guard the Owner against defects and deficiencies in the



## **B. CONTRACTOR'S MEANS AND METHODS**

- (1) The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences, scheduling and procedures and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences, scheduling or procedures, the Contractor shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences, scheduling or procedures.
- (2) The Contractor is responsible to protect and maintain the Work and work site, including any Owner provided staging areas and other work areas off-site, during the course of construction and to mitigate any adverse impacts to the project, including those caused by authorized changes, which may affect cost, schedule, or quality.
- (3) The Contractor is responsible for the actions of all its personnel, laborers, suppliers, and Subcontractors on the project. The Contractor shall enforce strict discipline and good order among Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of persons who are unfit or unskilled for the tasks assigned to them. The Contractor shall promptly comply with any order from the Owner's Authorized Representative to remove any unfit, unskilled or unsafe worker or Subcontractor.
- (4) The Contractor is responsible to safely and legally perform the work according to all state, federal and local laws, codes and regulations, including but not limited to earthwork shoring, confined space entry, hoisting and rigging, and other practices incidental to the normal prosecution of the Work. The Contractor is responsible for all compliance with OR-OSHA job safety requirements to include but not limited to job safety personnel protective equipment, preparing a health and safety plan and providing all safety measures as may be necessary or required.
- (5) The Work shall be subject to observation and approval by Owner, Owner's Authorized Representative, Architect/Engineer, special inspectors and representatives of governmental agencies with jurisdiction over the Project. Neither the supervision, inspection, testing, observation, nor approval of the Work by Owner or any of Owner's Authorized Representatives (including, but not limited to, Architect/Engineer and others separately retained by Owner) shall relieve Contractor from its obligation to perform the Work in strict accordance with the Contract Documents and industry standards.



## **E. COMPLIANCE WITH GOVERNMENT LAWS AND REGULATIONS**

- (1) Contractor shall become familiar with and comply with all federal, state and local laws, codes, regulations and ordinances applicable to the Work and the Contract.
- (2) Without limiting the generality of the foregoing Section 2.E.1, Contractor expressly agrees to comply with the following as applicable:
  - (a) Title VI and VII of Civil Rights Act of 1964, as amended;
  - (b) Section 503 and 504 of the Rehabilitation Act of 1973, as amended;
  - (c) The Health Insurance Portability and Accountability Act of 1996;
  - (d) The Americans with Disabilities Act of 1990, as amended;
  - (e) ORS Chapter 659A; as amended;
  - (f) All regulations and administrative rules established pursuant to the foregoing laws;
  - (g) All other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.
- (3) Contractor shall comply with the provisions of ORS 279C.505, 279C.510, 279C.515, 279C.520, and 279C.530, as set forth more specifically within these General and Supplementary Conditions.
- (4) Contractor shall comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations; and
  - (a) Contractor has not and shall not discriminate against Disadvantaged, Minority, Women or Emerging Small Business enterprises, as those terms are defined in ORS 200.005, or a business enterprise that is owned or controlled by or that employs a disabled veteran, as that term is defined in ORS 408.225, in the awarding of subcontracts (ORS 279A.110).
  - (b) Contractor shall maintain, in current and valid form, all licenses and certificates required by law, regulation, or this Contract when performing the Work.
- (5) Contractor's Employees and Subcontractors
  - (a) Employee Drug Testing Program. Contractor shall certify to Owner that Contractor has initiated, and shall maintain through the completion of the Work of the Project, an employee drug testing program.

- (b) Employee Notice. Contractor must give to employees who work on a public works contract, notice of the number of hours per day and days per week that the employees may be required to work as specified in ORS 279C.520, either:
  - (a) in writing, either at the time of hire or before commencement of work on the contract, or
  - (b) by posting.

(6) Licensed Contractors

- (a) Contractor and Subcontractors shall be licensed by the Oregon Construction Contractor’s Board, and others as required, to perform the Work. Such licenses shall be maintained in good standing throughout the duration of this Contract.
- (b) Unless contrary to federal law, Contractor certifies that it shall not accept a bid from Subcontractors to perform Work as described in ORS 701.005 under this Contract unless such Subcontractors are registered with the Construction Contractors Board in accordance with ORS 701.035 to 701.055 at the time they submit their bids to the Contractor.
- (c) Unless contrary to federal law, Contractor certifies that each landscape contractor, as defined in ORS 671.520(2), performing Work under this Contract holds a valid landscape contractor’s license issued pursuant to ORS 671.560.
- (d) Excavation Contractors: The following notice is applicable to Contractors who perform excavation Work. ATTENTION: Law requires you to follow rules adopted by the Oregon Utility Notification Center. Those rules are set forth in OAR 952-001-0010 through OAR 952-001-0090. You may obtain copies of the rules by calling the center at (503)232-1987.
- (e) Other Special Licensing Requirements: The Supplemental General Conditions set forth other special Contractor or Subcontractor licensing requirements including but not limited to Asbestos, Heating Oil, Lead Based Paint, etc. Contractor shall comply with any and all laws, rules or other requirements.

- (7) Authority to Transact. Corporations (for-profit and non-profit) and sole proprietors operating under an assumed business name (e.g., “John Coltrane d/b/a Coltrane Enterprises”) must register with the Oregon Secretary of State’s Corporation Division. Sole proprietors operating under their legal name are not required to register with the Secretary of State. Only officers or designees authorized to sign documents on behalf of the Contractor shall execute any application for payment, Change Order or submit any Claim.

- (8) Failure to comply with all requirements of Sections 2.E.1 for the duration of this Contract shall constitute a breach of Contract and shall be grounds for Contract termination pursuant to Section 10. Damages or costs resulting from such noncompliance shall be the sole responsibility of Contractor and may be deducted from the Contract Price.
- (9) The Contractor shall pay all royalties and license fees. The Contractor shall defend all suits or claims for infringement of any patent or other proprietary rights and save harmless and blameless from loss, on account thereof, the Owner, and its departments, divisions, members and employees.

## **F. SUPERINTENDENT**

- (1) Contractor shall keep on the site, during the progress of the Work, a competent Superintendent or project manager and any necessary assistants who shall be satisfactory to the Owner and who shall represent the Contractor on the site. Directions given to the Superintendent or project manager by the Owner's Authorized Representative shall be confirmed in writing and are binding on the Contractor.
- (2) Contractor's project manager and Superintendent shall not be removed from the Project by Contractor, temporarily or otherwise, without Owner's Authorized Representative advance written approval. If the project manager or Superintendent becomes ill, resigns or otherwise must terminate his/her position with Contractor, then Contractor shall appoint a substitute subject to Owner's Authorized Representative written approval.

## **G. INSPECTION OF WORK**

- (1) Owner's Authorized Representative and Architect/Engineer shall have access to the Work at all times. Contractor shall interlock all access gates with Owner's lock and/or provide duplicate access key(s) or lock combination to Owner's Authorized Representative.
- (2) Observation of the Work will be made by the Owner's Authorized Representative or Architect/Engineer at its discretion. The Owner's Authorized Representative will have authority to reject Work that does not conform to the Contract Documents. Any Work found to be not in conformance with the Contract Documents, in the discretion of the Owner's Authorized Representative, shall be removed and replaced at the Contractor's expense.
- (3) Contractor shall make or obtain at the appropriate time all tests, inspections and approvals of portions of the Work required by the Contract Documents or by laws, ordinances, rules, regulations or orders of public authorities having jurisdiction.



Unless otherwise set forth in the Specifications or Supplemental General Conditions, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner's Authorized Representative, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals as part of the Contract Price. Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work. The Contractor shall give the Owner's Authorized Representative timely notice of when and where tests and inspections are to be made so that the Owner's Authorized Representative may be present for such procedures. Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Owner's Authorized Representative.

- (4) As required by the Contract Documents or as directed by the Owner's Authorized Representative, Work done or material used without observation, inspection or testing by the Owner's Authorized Representative may be ordered removed and replaced at the Contractor's expense.
- (5) If directed to do so any time before the Work is accepted, the Contractor shall uncover portions of the completed Work for observation or inspection. After observation or inspection, the Contractor shall restore such portions of Work to the standard required by the Contract. If the Work uncovered is unacceptable or was done without sufficient notice to the Owner's Authorized Representative, the uncovering and restoration shall be done at the Contractor's expense. If the Work uncovered is acceptable and was done with sufficient notice to the Owner's Authorized Representative, the uncovering and restoration will be paid for by Owner as a Change Order.
- (6) If any testing or inspection reveals failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure, including those of repeated procedures and compensation for the Owner's Authorized Representative's, Special Inspector and Architect/Engineer's services and expenses, shall be at the Contractor's expense and deducted from the Contract Price.
- (7) When the United States government or State of Oregon participates in the cost of the Work, or the Owner has an agreement with other public or private organizations, or if any portion of the Work is being performed for a third party or in close proximity to third party facilities, representatives of these organizations have the right to inspect the Work affecting their interests or property. Their right to inspect shall not make them a party to the Contract and shall not interfere with the rights of the parties of the Contract. Instructions or orders of such parties shall be transmitted to the Contractor, through the Owner's Authorized Representative.



## **J. WAIVER**

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

## **K. SUBCONTRACTS AND ASSIGNMENT**

- (1) Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound by the terms and conditions of the Contract agreement, these General Conditions and the Supplemental General Conditions, if any, any Change Orders and to assume toward the Contractor all of the obligations and responsibilities which the Contractor assumes toward the Owner thereunder, unless (1) the same are clearly inapplicable to the subcontract at issue because of legal requirements or industry practices, or (2) specific exceptions are requested by Contractor and approved in writing by Owner. Where appropriate, Contractor shall require each Subcontractor to enter into similar agreements with sub-subcontractors at any level.
- (2) At Owner's request, Contractor shall submit to Owner prior to their execution either Contractor's form of subcontract, or the subcontract to be executed with any particular Subcontractor. If Owner disapproves such form, Contractor shall not execute the form until the matters disapproved are resolved to Owner's satisfaction. Owner's review, comment upon or approval of any such form shall not relieve Contractor of its obligations under this Contract or be deemed a waiver of such obligations of Contractor. Owner may request from the Contractor copies of any executed subcontract, material or supply contract for any Subcontractor at any level.
- (3) Owner reserves the right to approve and reject Subcontractors prior to performing any work.
- (4) Contractor shall not assign, sell, or transfer its rights, or delegate its responsibilities under this Contract, in whole or in part, without the prior written approval of the Owner. No such written approval shall relieve Contractor of any obligations of this Contract, and any transferee shall be considered the agent of the Contractor and bound to perform in accordance with the Contract Documents. Contractor shall remain liable as between the original parties to the Contract as if no assignment had occurred.
- (5) No Contractual Relationship between Owner and any Subcontractor, supplier or manufacturer. Nothing in this Contract shall be construed to establish a contractual relationship between Owner and any Subcontractor, supplier or manufacturer; provided, however, that nothing in this Contract shall prevent Owner from maintaining any third-party beneficiary claims against Subcontractors, suppliers or manufacturers.

**L. SUCCESSORS IN INTEREST**

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

**M. OWNER'S RIGHT TO DO WORK**

- (1) Owner reserves the right to perform other or additional work at or near the project site with other forces than those of the Contractor.
- (2) Contractor shall not be responsible for work performed by Owner's own forces or separate contractors nor shall Contractor be responsible for the acts or omissions of such parties.
- (3) Contractor agrees to cooperate with Owner and Owner's separate contractors, and Owner agrees to cooperate with Contractor and to require its separate contractors to do the same, with respect to scheduling, material and equipment deliveries, storage, security, cleanup, work activities and other aspects of the project.
  - (a) Owner shall be responsible for any avoidable interference in or delays to the Work caused by Owner's own forces or separate contractors.
  - (b) Contractor shall be responsible for any avoidable interference in or delays to the work on the Project performed by Owner's own forces or separate contractors caused by Contractor.
- (4) The Owner's Authorized Representative will resolve any disagreements that may arise between or among Contractor and the other contractors over the method or order of doing all work (including the Work). In case of unavoidable interference, the Owner's Authorized Representative will establish work priority (including the Work) which generally will be in the sequence that the contracts were awarded.
- (5) Any work performed by Owner's own forces or separate contractors shall not be covered by Contractor's warranties under this Contract. In the event Owner furnishes materials, equipment or components, Contractor's warranties under this Contract shall extend to the installation but not to the materials, equipment, or components per se.

**N. OTHER CONTRACTS**

In all cases and at any time without notice, the Owner has the right to execute other contracts related to or unrelated to the Work of this Contract. The Contractor of this Contract shall fully cooperate with any and all other contractors without additional cost to the Owner in the manner described in Section 2.M.

**O. GOVERNING LAW**

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

**P. LITIGATION**

Any Claim between Owner and Contractor that arises from or relates to this Contract and that is not resolved through the Claims Resolution Procedures in Section 4.C shall be brought and conducted solely and exclusively within the Circuit Court of Jackson County; provided, however, if a Claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. In no event shall this section be construed as a waiver by the Owner on any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any claim or from the jurisdiction of any court. CONTRACTOR BY EXECUTION OF THIS CONTRACT HEREBY CONSENTS TO THE IN PERSON JURISDICTION OF THE COURTS REFERENCED IN THIS SECTION 2.P.

**Q. ALLOWANCES**

- (1) The Contractor shall include in the Contract Price all allowances stated in the Contract Documents. Items covered by allowances shall be supplied by Contractor for such amounts and by such persons or entities as the Owner may direct.
  
- (2) Unless otherwise provided in the Contract Documents when finally reconciled, allowances shall cover all cost to the Contractor for the items covered by the allowance including, but not limited to:
  - (a) Materials and equipment;
  - (b) All required taxes, less applicable trade discounts;
  - (c) Contractor's costs for unloading and handling at the site;
  - (d) Labor and installation costs;
  - (e) Overhead, profit and other expenses contemplated for stated allowance amounts.
  
- (3) Whenever costs are more than or less than allowances, the Contract Price shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect the difference between actual costs and the allowances under Section 2.Q.2.
  
- (4) As may be required, the Contractor shall provide to the Owner's Authorized Representative a proposed not to exceed or fixed price for any allowance work prior to its performance.

## **R. UNIT PRICES**

- (1) The Contract will set forth any unit prices which shall be additive/deductive price unless otherwise set forth. Unless otherwise set forth in the Contract the unit price shall cover any and all costs related to that work to include but not limited to Direct Costs and Overhead.
- (2) The Owner may establish not to exceed costs for unit prices based on estimated quantities or volumes of work to be completed. Contractor shall track any and all unit costs and provide documentation to the Owner's Authorized Representative and give prompt notice if any not to exceed costs are likely to be exceeded prior to its performance.
- (3) A Change Order will be issued to make any adjustments to not to exceed unit costs.

## **S. SUBMITTALS, SHOP DRAWINGS, PRODUCT DATA AND SAMPLES**

- (1) The Owner may establish and the Contractor shall keep current, for the Architect's/Engineer's approval (or for the approval of Owner's Authorized Representative if approval authority has not been delegated to the Architect/Engineer), a schedule and list of Submittals which is coordinated with the Contractor's construction schedule and allows the Architect/Engineer reasonable time to review Submittals. Owner reserves the right to finally approve the schedule and list of Submittals. Submittals include, without limitation, Shop Drawings, Product Data, and Samples which are described below:
  - (a) Shop Drawings are drawings, diagrams, schedules and other data specially prepared for the Work by the Contractor or a Subcontractor (including any sub-subcontractor), manufacturer, supplier or distributor to illustrate some portion of the Work.
  - (b) Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.
  - (c) Samples are physical examples which illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.
- (2) Shop Drawings, Product Data, Samples and similar Submittals are not Contract Documents. The purpose of their Submittal is to demonstrate for those portions of the Work for which Submittals are required by the Contract Documents the way by which the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents. Review of Submittals by the Architect/Engineer is not conducted for the purpose of determining the accuracy and completeness of

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

- (3) Prior to submitting Shop Drawings, Product Data, Samples and similar Submittals, the Contractor shall review all components for compliance with the Contract Documents. By submitting the Submittal, Contractor represents that Contractor has determined and verified all materials, field measurements and field construction criteria related thereto, or will do so, and has checked and coordinated the information contained within such Submittals with the requirements of the Work and of the Contract Documents.
- (4) The Contractor shall submit to the Architect/Engineer Shop Drawings, Product Data, Samples and similar Submittals required by the Contract Documents with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of separate contractors. Submittals which are not marked as reviewed for compliance with the Contract Documents and approved by the Contractor may be returned by the Architect/Engineer without action.
- (5) The Contractor shall perform no portion of the Work for which the Contract Documents require Submittal and review of Shop Drawings, Product Data, Samples or similar Submittals until the respective Submittal has been approved by the Architect/Engineer.
- (6) The Work shall be in accordance with approved Submittals except that the Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Architect/Engineer's review or approval of Shop Drawings, Product Data, Samples or similar Submittals unless the Contractor has specifically informed the Architect/Engineer in writing of such deviation at the time of Submittal and (i) the Architect/Engineer has given written approval to the specific deviation as a minor change in the Work, or (ii) a Construction Change Field Directive or Change Order has been executed by Owner's Authorized Representative authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar Submittals by the Architect/Engineer's review or approval thereof.

(7) In the event that Owner elects not to have the obligations and duties described under this Section 2.S performed by the Architect/Engineer, or in the event no Architect/Engineer is employed by Owner on the project, all obligations and duties assigned to the Architect/Engineer hereunder shall be performed by the Owner's Authorized Representative.

## **T. SUBSTITUTIONS**

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

## **U. USE OF PLANS AND SPECIFICATIONS**

Plans, Specifications and related Contract Documents furnished to Contractor by Owner or Owner's Architect/Engineer shall be used solely for the performance of the Work under this Contract.

Contractor and its Subcontractors including but not limited to manufacturers and suppliers are authorized to use and reproduce applicable portions of such documents appropriate to the execution of the Work, but shall not claim any ownership or other interest in them beyond the scope of this Contract, and no such interest shall attach. Unless otherwise indicated, all common law, statutory and other reserved rights, in addition to copyrights, are retained by Owner.

## **V. FUNDS AVAILABLE AND AUTHORIZED**

The Owner reasonably believes at the time of entering into this Contract that sufficient funds are available and authorized for expenditure to finance the cost of this Contract within the Owners budget appropriation. Contractor understands and agrees that, to the extent that sufficient funds are not available and authorized for expenditure to finance the cost of this Contract, Owner's payment of amounts under this Contract attributable to work performed after the last day of the current budget period is contingent on the Owner receiving additional appropriations, limitations or other expenditure authority for this work sufficient to allow the Owner, in the exercise of its reasonable administrative discretion, to



continue to make payments under this Contract in the next budget period. If additional funds are not made available to finance the cost of this Contract, this Contract will be terminated according to Section 10.E.

## **W. NO THIRD PARTY BENEFICIARIES**

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

## **3. WAGES AND LABOR**

### **A. PREVAILING WAGE ON PUBLIC WORKS**

The provisions of ORS 279C.800 to ORS 279C.870, relating to Oregon’s prevailing wage rates, will be complied with.

- (a) The hourly rate of wage to be paid by Contractor or any Subcontractor to workers in each trade or occupation required for the public works employed in the performance of this Contract shall not be less than the specified minimum rate of wage in accordance with ORS 279C.838 and ORS 279C.840.
- (b) The latest prevailing wage rates for public works contracts in Oregon are contained in the following publications: The January 2025 Prevailing Wage Rates for Public Works Projects in Oregon, and the January 2025 PWR Apprenticeship Rates. Such publications can be reviewed electronically at: <http://www.oregon.gov/BOLI/WHD/PWR> and are hereby incorporated as part of the Contract.
- (c) Contractor and all Subcontractors shall keep the prevailing wage rates for this Project posted in a conspicuous and accessible place in or about the Project.
- (d) The Owner shall pay a fee to the Commissioner of the Oregon Bureau of Labor and Industries as provided in ORS 279C.825 (1). The fee shall be paid to the Commissioner under the administrative rule of the Commissioner.
- (e) If Contractor 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 shall post notice describing such plans in a conspicuous and accessible place in or about the Project. The notice shall contain information on how and where to make claims and where to obtain future information.

**Contract Fee.** The Owner is required to pay a fee to the Bureau of Labor and Industries pursuant to the provisions of ORS 279C.825 (1). The fee is one-tenth of one percent (.1 %) of the price of this contract, but not less than \$250 nor more than \$7,500, regardless of the

contract price. The fee shall be paid at the time owner enters into this contract. The fee is payable to the Commissioner of the Bureau of Labor and Industries and shall be mailed or otherwise delivered to the Bureau at the following address:

Bureau of Labor and Industries  
Wage and Hour Division Prevailing Wage Unit  
800 NE Oregon Street, #32  
Portland, OR 97232

## **B. BUSINESS AND WORKFORCE EQUITY POLICY**

Owner seeks to extend subcontracting opportunities to State of Oregon certified Minority-Owned, Women-Owned and Emerging Small businesses (collectively, “M/W/ESBS”) in order to promote their economic success and growth. Contractor is encouraged to make every effort to utilize M/W/ESB firms for any subcontracting opportunities under this contract and maintain a diverse workforce. See the Supplemental General Conditions for additional requirements, if any.

## **C. PAYROLL CERTIFICATION, APPRENTICE REQUIREMENT; SPECIAL RETAINAGE REQUIREMENTS**

Contractor or contractor’s surety and every subcontractor or subcontractor’s surety shall file certified payroll statements with the public contracting agency in writing, pursuant to ORS 279C.845.

If Contractor is required to file certified statements under ORS 279C.845, the public contracting agency shall retain twenty-five percent (25%) of any amount earned by the Contractor on the public works project until the Contractor has filed with the public agency certified statement as required by ORS 279C.845. The public contracting agency shall pay the Contractor the amount retained within fourteen (14) days after the Contractor files the required certified statements, regardless of whether a subcontractor has failed to file certified statements required by statute. The public contracting agency is not required to verify the truth of the contents of certified statements filed by the Contractor under this section and ORS 279C.845.

The Contractor shall retain twenty-five percent (25%) of any amount earned by a first-tier subcontractor on this public works contract until the subcontractor has filed with the public agency certified statements as required by ORS 279C.845. The Contractor shall verify that the first-tier subcontractor has filed the certified statements before the contractor may pay the subcontractor any amount retained. The Contractor shall pay the first-tier subcontractor the amount retained within fourteen (14) days after the subcontractor files the certified statements as required by ORS 279C.845. Neither the public agency nor the Contractor is required to verify the truth of the contents of certified statements filed by a first-tier subcontractor.

Consistent with ORS 279C.533 which was amended and added to and made a part of ORS chapter 279C by legislative action effective January 1, 2024, the following requirements shall be in effect as part of this solicitation and subsequent contract.

The College must include the provisions in any public improvement contract where the price exceeds \$3 million that the contractor shall:

1. Employ apprentices to perform a minimum of 12 percent of the work hours that workers in apprenticeable occupations perform under this project; and
2. Require in each subcontract with a contract price of \$750,000 or more that the subcontractor shall employ apprentices to perform 12 percent or more of the work hours in apprenticeable occupations under the subcontract.
3. A contractor or subcontractor shall pay an apprentice for work on the public improvement at the hourly rate to which the apprentice is entitled under an apprenticeship agreement or that the apprenticeship training program specifies.

The College must require as a material provision of the contract that the contractor establish and implement a plan for outreach for the recruitment and retention of women, minority individuals and veterans to perform work under the contract, with an aspirational target of having individuals in one or more of these groups to compose at least 15 percent of the total number of workers who perform work under the public improvement contract. A contractor’s plan for outreach, recruitment and retention must require the contractor to, at a minimum:

The contractor must demonstrate adequate good-faith efforts to comply with the requirements above.

The College must require the contractor to submit for each contract and subcontract the Certified Payroll reports to the College and to BOLI showing compliance to the apprentice usage requirement and shall include:

1. The name of or other identification for the public improvement project;
2. The city or county in which the public improvement project is located;
3. A detailed accounting of:

The total number of hours of work that workers performed under each contract and subcontract;

The total number of hours of work that workers performed in each apprenticeable trade or craft for each contract and subcontract on this project;

The total number of hours of work that apprentices performed for each contract and subcontract on this project and

The total number of hours of work that apprentices in each trade or craft performed for each contract and subcontract on the public improvement; and

4. The total number of workers who performed construction work and the total numbers of minority individuals, women and veterans who performed construction work under the contract. A report under this subparagraph must separately list for each worker the worker's race, ethnicity, gender, veteran status and, as applicable, trade, craft or job category.

At least 30 days before making any final payment to a contractor under this contract, the College shall determine the extent of the contractor's compliance with the requirements.

The College must calculate the actual number of work hours that workers in apprenticeable occupations performed for each contract and subcontract on the public improvement and the actual number of work hours that apprentices performed for each contract and subcontract on this project, as shown in the reports submitted.

The College is required to reduce the final payment due under this contract to a contractor that does not meet the requirements set forth under ORS 279C.533. The amount of the reduction must be equivalent to the difference between the total number of work hours that apprentices in apprenticeable occupations should have performed on the project to meet the less the total number of work hours that apprentices in apprenticeable occupations actually performed on the project, multiplied by \$15 per hour.

The College must pay the amount of the reduction to the State Treasury to the credit of the Bureau of Labor and Industries Account established under ORS 651.160, not later than 30 days after making a final payment to the contractor.

#### **D. PROMPT PAYMENT AND CONTRACT CONDITIONS**

- (1) Pursuant to ORS 279C.505 the Contractor shall:
  - (a) Promptly pay all of its obligations arising out of or in connection with the Work, including, but not limited to, to all persons supplying to Contractor labor, equipment or materials for the prosecution of the Work provided for in this Contract.
  - (b) Pay all contributions or amounts due the State Industrial Accident Fund from such Contractor or Subcontractor incurred in the performance of the Contract.
  - (c) Not permit any lien or claim to be filed or prosecuted against the Owner on account of any labor or material furnished. Contractor will not assign any claims that Contractor has against Owner, or assign any sums due by Owner, to Subcontractors, suppliers, or manufacturers, and will not make any agreement or act in any way to give Subcontractors a claim or standing to make a claim against

the Owner.

(d) Pay to the Department of Revenue all sums withheld from employees pursuant to ORS316.167.

(2) Pursuant to ORS 279C.515, Contractor agrees:

(a) If Contractor fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to the Contractor or a Subcontractor by any person in connection with the project as such claim becomes due, the proper officer(s) representing the Owner may pay the claim and charge the amount of the payment against funds due or to become due Contractor under this Contract. Payment of claims in this manner shall not relieve the Contractor or the Contractor's surety from obligation with respect to any unpaid claims.

(b) If the Contractor or a first-tier Subcontractor fails, neglects or refuses to make payment to a person furnishing labor or materials in connection with the public contract for a public improvement within thirty (30) days after receipt of payment from Owner or a contractor, the contractor or first-tier Subcontractor shall owe the person the amount due plus interest charges commencing at the end of the ten (10)-day period that payment is due under ORS 279C.580(3) and ending upon final payment, unless payment is subject to a good faith dispute as defined in ORS 279C.580. The rate of interest charged to the Contractor or first-tier Subcontractor on the amount due shall equal three times the discount rate on ninety (90)-day commercial paper in effect at the Federal Reserve Bank in the Federal Reserve district that includes Oregon on the date that is thirty (30) days after the date when payment was received from Owner or from the Contractor, but the rate of interest shall not exceed thirty percent (30%). The amount of interest may not be waived.

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

(3) Pursuant to ORS 279C.580, Contractor shall include in each subcontract for property or services entered into by the Contractor and a first-tier Subcontractor, including a material supplier, for the purpose of performing a construction contract:

(a) A payment clause that obligates the Contractor to pay the first-tier Subcontractor for satisfactory performance under its subcontract within ten (10) days out of such amounts as are paid to the Contractor by Owner under the Contract;

- (b) An interest penalty clause that obligates the Contractor if payment is not made within thirty (30) days after receipt of payment from Owner, to pay to the first-tier Subcontractor an interest penalty on amounts due in the case of each payment not made in accordance with the payment clause included in the subcontract pursuant to paragraph 3.D.3.a of this subsection. Contractor or first-tier Subcontractor shall not be obligated to pay an interest penalty if the only reason that the Contractor or first-tier Subcontractor did not make payment when payment was due is that the Contractor or first-tier Subcontractor did not receive payment from Owner or Contractor when payment was due. The interest penalty shall be for the period beginning on the day after the required payment date and ending on the date on which payment of the amount due is made; and shall be computed at the rate specified in ORS 279C.515(2).
  - (c) A clause which requires each of Contractor's Subcontractors to include, in each of their contracts with lower-tier Subcontractors or suppliers, provisions to the effect that the first-tier Subcontractor shall pay its lower-tier Subcontractors and suppliers in accordance with the provisions of subsections (a) and (b), above and requiring each of their Subcontractors and suppliers to include such clauses in their subcontracts and supply contracts.
- (4) All employers, including Contractor, that employ subject workers who work under this contract in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage, unless such employers are exempt under ORS 656.126. Contractor shall ensure that each of its Subcontractors complies with these requirements.

**E. HOURS OF LABOR**

- (1) Contractor shall comply with ORS 279C.520, as set forth more specifically within these General and Supplementary Conditions.
- (2) Pursuant to ORS 279C.520, no person shall be employed to perform Work under this Contract for more than ten (10) hours in any one day or forty (40) hours in any one week, except in cases of necessity, emergency or where public policy absolutely requires it. In such instances, Contractor shall pay the employee at least time and a half pay:
  - (a) For all overtime in excess of eight (8) hours a day or forty (40) hours in any one week when the work week is five consecutive days, Monday through Friday; or
  - (b) For all overtime in excess of ten (10) hours a day or forty (40) hours in any one week when the work week is four consecutive days, Monday through Friday; and

- (c) For all Work performed on Saturday and on any legal holiday specified in ORS 279C.540.
- (3) This Section 3.E will not apply to Contractor's Work under this Contract if Contractor is currently a party to a collective bargaining agreement with any labor organization.
- (4) This Section 3.E shall not excuse Contractor from completion of the Work within the time required under this Contract.

#### **4. CHANGES IN THE WORK**

##### **A. CHANGES IN WORK**

- (1) It is mutually agreed that changes in Plans, Specifications, quantities, or details of construction are inherent in the nature of construction and may be necessary or desirable during the course of construction.
- (2) Contractor and Owner further agree that it is inherent in any construction project that minor deviations and conflicts occur between the Plans, Specifications and other design documents and that minor unforeseen issues may be found at the project site. The Owner's Authorized Representative reserves the right to reasonably determine what are minor deviations, conflicts and/or unforeseen conditions. These minor deviations, conflicts and/or unforeseen conditions are not changes in the Work.
- (3) Contractor must have the Owner's Authorized Representative's written authorization prior to proceeding with any changes in the Work. Beginning any changes in the Work without such authorization, unless otherwise provided for in the Contract Documents, will be considered as within the scope of the Work of the Contract with no change to the Contract Price or Contract Time.
- (4) All changes to the Contract, including changes to the Work, Contract Price, Contract Time, changes to Plans and Specifications, shall be made by Change Order executed by the parties and shall be signed by a person legally authorized by the Contractor.
- (5) The terms of this Contract shall not be waived, altered, modified, supplemented or amended in any manner whatsoever without prior written approval of the Owner's Authorized Representative, and then only in a manner consistent with the Construction Change Field Directive and /or Change Order provisions of this Section 4.A and after any necessary approvals required by public contracting laws have been obtained. Otherwise, a formal contract amendment is required which shall not be effective until its execution by the parties to this Contract and all approvals required by public contracting laws have been obtained.





not to exceed cost which shall not be exceeded without additional authorization by the Owner's Authorized Representative.

- (b) **Fixed pricing.** If the Owner elects not to utilize unit pricing, or in the event that unit pricing is not available or appropriate as determined by Owner's Authorized Representative, fixed pricing may be used for Change Order Work. In fixed pricing the basis of payments or total price shall be agreed upon in writing between the parties to the Contract, and shall be established before the Work is done whenever feasible. The mark-ups set forth in Section 4.A.8.c shall be utilized by the parties as a guide in establishing fixed pricing, and will not be exceeded without adequate justification. Detailed cost and price data relating to fixed pricing shall be supplied by Contractor to Owner upon request, but Owner shall be under no obligation to make such requests.
- (c) **Direct cost reimbursement.** In the event the Owner's Authorized Representative determines that unit pricing and fixed pricing will not be utilized, then Change Order Work shall be performed on a cost reimbursement basis for Direct Costs. Such Work shall be compensated on the basis of the actual, reasonable and allowable cost of labor, equipment, and material furnished on the Work performed. In addition, the following markups shall be added to the Contractor's Direct Costs as full compensation for profit, Overhead and other indirect costs for Work directly performed with the Contractor's own forces:

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

When Change Order Work under Section 4.A.8.c is invoiced by an authorized Subcontractor at any level, each ascending tier Subcontractor will be allowed a supplemental twelve percent (12%) mark-up on each piece of subcontract Work covered by such Change Order. The total aggregate markup (including all Contractor and Subcontractors from all tiers) for any Change Order Work shall not exceed the maximum of forty-five percent (45%) on the direct cost of the work of Subcontractor(s) who actually performed the work.

Owner may establish a maximum not-to-exceed cost for Change Order Work which shall not be exceeded for reimbursement without additional written authorization from Owner. Contractor shall not be required to complete such Change Order Work without additional authorization.

- (d) **Determination of Price by Owner.** Upon review and approval of Changes in Work, the Owner's Authorized Representative shall issue a Construction Change Field Directive or Change Order for determining the proposed adjustment in the

Contract Price or Contract Time. Upon receipt of a Construction Change Field Directive or Change Order, Contractor shall promptly advise the Owner's Authorized Representative in writing of Contractor's agreement or disagreement with the method. If Contractor does not respond promptly or disagrees with the method for adjustment, and Owner makes a written request for the work to proceed anyway, the method and the adjustment shall be determined by Owner as set forth in Section 4.A.8.c direct cost reimbursement. In such case, Contractor shall keep and present (and at all times allow Owner to audit as provided in Section 2.1 above) an itemized accounting of costs together with appropriate supporting data.

(9) Any necessary adjustment of Contract Time that may be required as a result of a Change Order must be agreed upon by the parties before the start of the Change Order Work unless Owner's Authorized Representative authorizes Contractor to start the Work before agreement on Contract Time adjustment.

#### (10) Notification

(a) Contractor shall submit in writing any request for additional compensation and /or additional Contract Time to Owner's Authorized Representative as soon as possible but no later than ten (10) days after Contractor first knows or reasonably should have known of the event alleged to have given rise to the changed condition. If Contractor's request for additional compensation or adjustment of Contract Time is not made within the ten (10) day time limit, Contractor's requests pertaining to that Change Order are barred. The ten (10) day time limit for making requests shall not be extended for any reason, including without limitation Contractor's claimed inability to determine the amount of additional compensation or adjustment of Contract Time, unless an extension is granted in writing by Owner.

(b) The ten (10) day time limit applies to claims of Subcontractors, suppliers, or manufacturers that may be affected by the Change Order and that request additional compensation or an extension of Contract Time to perform.

1. Contractor has responsibility for contacting its Subcontractors, suppliers, or manufacturers within the ten (10) day time limit, and including their requests with Contractor's requests.

2. If the request involves Work to be completed by Subcontractors, or materials to be furnished by suppliers or manufacturers, such requests shall be submitted to the Contractor in writing with full analysis and justification for the compensation and additional Contract Time requested. The Contractor will analyze and evaluate the merits of the requests submitted by Subcontractors, suppliers, and manufacturers to Contractor prior to including those requests and Contractor's analysis and evaluation of those requests with Contractor's

requests for additional compensation or Contract Time that Contractor submits to the Owner's Authorized Representative.

3. The Owner will not consider direct requests or claims from Subcontractors, suppliers, manufacturers or others not a party to this Contract.

(c) Unforeseen Conditions. The Contractor shall notify in writing the Owner's Authorized Representative immediately but no later than ten (10) days after Contractor first knows or reasonably should have known of differing site conditions. Contractor shall to the extent possible without further disturbance of the specific area, perform other work while the unforeseen conditions are being investigated. The Owner's Authorized Representative will investigate the area and make a determination as to whether or not the conditions differ materially from either the conditions stated in the Contract Documents or those which could reasonably be expected in execution of this particular Contract. If Contractor and the Owner's Authorized Representative agree that a differing site condition exists, any additional compensation or additional Contract Time will be determined based on the process set forth in Section 4.A.8 for Change Order Work. If the Owner's Authorized Representative disagrees that a differing site condition exists and denies Contractor's request for additional compensation or Contract Time, Contractor may proceed to file a Claim under Section 4.C, Claims Resolution Procedures.

(11) If the Owner's Authorized Representative denies the Contractor's request for additional compensation or an extension of Contract Time, the Contractor may proceed to file a Claim under Section 4.C, Claims Resolution Procedures (these procedures are limited only to Section 4 of this agreement).

(12) The consideration of such requests and claims under this section does not give any person, not a party to the Contract the right to bring a claim against the Owner, whether in this claims process, in litigation, or in any dispute resolution process.

## **B. DELAYS**

(1) Delays in construction include "Avoidable Delays", which are defined in Section 4.B.1.a, and "Unavoidable Delays", which are defined in Section 4.B.1.b. The effect of Avoidable Delays is described in Section 4.B.2 and the effect of Unavoidable Delays is described in Section 4.B.3.

(a) **Avoidable Delays** include any delays other than Unavoidable Delays, and include delays that otherwise would be considered Unavoidable Delays but that:

1. Materially affect or delay the Contractor proceeding with the Work and could have been avoided by the exercise of care, prudence, foresight, and diligence on the part of the Contractor or its Subcontractors.

2. Affect only a portion of the Work and do not necessarily prevent or delay the prosecution of other parts of the Work or the completion of the whole Work within the Contract Time.
3. Do not impact activities on the Owner approved baseline critical path schedule.
4. Caused by Contractor or Subcontractor in sequencing of work, delay in fabrication, obtaining trade permits and any permit inspections, equipment failure, material shipment delay or other related actions not caused by Force Majeure acts, events or occurrences.
5. Are associated with the reasonable interference of other contractors employed by the Owner that do not necessarily prevent the completion of the whole Work within the Contract Time.

(b) **Unavoidable Delays** include delays other than Avoidable Delays that are:

1. Caused by any actions of the Owner, Owner's Authorized Representative, or any other employee or agent of the Owner, or by separate contractor employed by the Owner that materially affect or delay the Contractor proceeding with the Work.
2. Caused by or resulting from any Unforeseen Conditions if the Owner's Authorized Representative determines such conditions differ materially from either the conditions stated in the Contract Documents or those which could reasonably be expected in execution of this particular Contract.
3. Caused by Force Majeure acts, events or occurrences that could not have been avoided by the exercise of care, prudence, foresight, and diligence on the part of the Contractor or its Subcontractors.
4. Caused by adverse weather conditions. Any adverse weather conditions must be substantiated by documentary evidence that weather conditions were abnormal for the specific time period claimed, could not have been anticipated by the Contractor, and adversely impacted the project in a manner that could not be avoided by rescheduling the Work or by implementing measures to protect against the weather so that the Work could proceed. A rain, windstorm, high water, snow or other natural phenomenon for the specific locality of the Work, which might reasonably have been anticipated from the previous 10-year historical records of the general locality of the Work, shall not be construed as abnormal. The parties agree that rainfall greater than the following levels cannot be reasonably anticipated:

- (1) Daily rainfall equal to, or greater than, 0.50 inch during a month when the monthly rainfall exceeds the normal monthly average by twenty-five percent (25 %) or more.
  - (2) Daily rainfall equal to, or greater than, 0.75 inch at any time.
- (2) Except as otherwise provided in ORS 279C.315, Contractor shall not be entitled to additional compensation or additional Contract Time for Avoidable Delays.
- (3) In the event of Unavoidable Delays, based on principles of Equitable Adjustment, Contractor may be entitled to the following:
- (a) Contractor may be entitled to additional Contract Price or additional Contract Time, or both, for Unavoidable Delays described in Sections 4.B.1.b.1 and 4.B.1.b.2.
  - (b) Contractor may be entitled to additional Contract Time for Unavoidable Delays described in Sections 4.B.1.b.3 and 4.B.1.b.4.
  - (c) In the event of any requests for additional compensation or additional Contract Time, or both, as applicable, arising under this Section 4.B.3 for Unavoidable Delays, other than requests for additional compensation or additional Contract Time for unforeseen site conditions for which a review process is established under Section 4.B.1.b.2, Contractor shall submit a written notification of the delay to the Owner's Authorized Representative within two (2) days of the occurrence of the cause of the delay. This written notification shall state the cause of the potential delay, the project components impacted by the delay, and the anticipated additional Contract Time or the additional compensation, or both, as applicable, resulting from the delay. Within ten (10) days after the cause of the delay has been mitigated, the Contractor shall submit to the Owner's Authorized Representative, a complete and detailed request for additional compensation or additional Contract Time, or both, as applicable, resulting from the delay. If the Owner's Authorized Representative denies Contractor's request for additional compensation or adjustment of Contract Time, the Contractor may proceed to file a Claim under Section 4.C, Claims Resolution Procedures. If Contractor does not timely submit the notices required under this Section 4.B, then unless otherwise prohibited by law, Contractor's Claim shall be barred.

**C. CLAIMS RESOLUTION PROCEDURES**

- (1) This section outlines the exclusive procedure to be followed if the Contractor believes that it is entitled to additional compensation, additional Contract Time or both. This section applies to all Claims for additional compensation and all requests for additional Contract Time, regardless of whether the basis for the Claim for additional

compensation, or request for additional Contract Time, or both, stems from the performance of extra work, changed work, disputes, excusable delays of any nature, suspension of Contract work, or any other reason whatsoever.

- (2) When the Contractor believes it is entitled to be paid more than the Contract Amount, the Contractor shall notify the Owner's Authorized Representative in writing before beginning any work for which additional compensation is sought. The written Notice shall include:
  - (a) A description of the event that requires additional compensation;
  - (b) The estimated amount of the additional cost to the Owner; and
  - (c) Any Contract provision(s) that support the Claim.
  
- (3) When an event occurs that the Contractor believes entitles it to more time to complete the Work than Contract Time permits, the Contractor shall notify the Owner's Authorized Representative in writing when the event occurs. The written Notice shall include:
  - (a) A description of the event that requires additional compensation;
  - (b) The estimated amount of the additional cost to the Owner; and
  - (c) Any Contract provision(s) that support the Claim.
  
- (4) If the Contractor does not provide written Notice of a Claim for additional compensation or additional Contract Time in the time required, the Claim for additional compensation, additional Contract Time, or both, is waived.
  
- (5) If the Owner agrees with the Contractor's request for additional compensation or Contract Time the parties shall negotiate a Change Order setting forth their agreement. If the Owner disagrees, the Contractor shall do the following:
  - (a) Continue promptly with the work, including any extra work required by the Owner so the Project is not delayed;
  - (b) Keep complete records of its costs in the manner set forth under Section 4.A.8.c direct cost reimbursement provisions. The Owner also may elect to keep such records to eliminate later confusion. The keeping of such records by either Contractor or Owner does not mean that any Claim is valid; and
  - (c) Submit documentation supporting the request for additional compensation, additional time or both.

- (6) The Contractor's request for additional compensation shall be supported by all documentation substantiating the amount of additional compensation to which it is entitled. The documentation shall include all information required under Section 4.A.8.c direct cost reimbursement and other relevant documentation, such as payroll records, purchase orders, quotations, invoices, estimates, profit and loss statements, daily logs, ledgers and journals.
  - (a) The documentation shall be submitted within thirty (30) days following completion of any work for which a Claim of additional compensation has been made.
  - (b) If the Contractor contends that it will incur costs beyond the thirty (30) day time period that should be included in the Claim, the Contractor shall notify the Owner's Authorized Representative of this fact in writing and provide an estimate of that cost. Thereafter the Contractor shall provide the Owner with additional documentation when the remainder of its additional costs is known.
  - (c) The Owner will rely on the accuracy of the Claim to make decisions regarding future expenditures. Failure to submit the Claim for Contract Price within thirty (30) days is a conclusive waiver of the Contractor's right to additional compensation.
  - (d) The Owner may request additional documentation from the Contractor at any time regarding a Claim. Failure to provide additional documentation when requested and when such documentation exists constitutes a waiver of that portion of the Contractor's Claim to which the additional documentation relates.
- (7) Any request for additional Contract Time shall be supported by documentation that includes a) a description of the event on which the request is based, and b) all information, including a schedule analysis, that shows that the event delayed completion of the Project as a whole.
  - (a) The Contractor shall submit the documentation within thirty (30) days following the completion of the event that caused the delay and for which additional Contract Time is sought.
  - (b) The Owner will rely on the accuracy of the Claim to make decisions regarding future expenditures. Failure to submit the Claim for Contract Time within 30 (thirty) days is a conclusive waiver of the Contractor's right to additional compensation.
  - (c) The Owner may request additional documentation from the Contractor at any time regarding a Claim. Failure to provide additional documentation when requested and when such documentation exists constitutes a waiver of that portion of the Contractor's Claim to which the additional documentation relates.
- (8) Following receipt of all required documentation, and after the Owner's Authorized

Representative has had sufficient period of time to review it in light of work responsibilities, the Owner's Authorized Representative and the Contractor's Superintendent or project manager shall meet to attempt to resolve the matter if either party requests it. The parties mutually agree to share all relevant information, clearly define issues and exchange proposed methods of resolution in efforts to reasonably resolve and settle the matter. It is the expressed desire of both parties to attempt to reasonably and equitably resolve any and all issues at this step. The parties may agree to convene follow-up discussions as may be reasonable and necessary to reach a proposed solution or range of solutions. If Owner determines that the Contractor has not provided required documentation, the Owner may still meet with Contractor to discuss any claim without waiver of the Owner's right to later assert that the Contractor's claim has been waived for failure to submit documentation.

(9) If the Claim cannot be resolved, it shall be referred to persons with higher authority on the part of the Contractor and the Owner, who also shall have the authority to resolve the Claim. Those persons shall meet for negotiations at a mutually agreed upon time and place after having had a sufficient time to review the Claim. The Owner's or designee's decision shall be final and shall exhaust the Contractor's administrative remedies for resolution of any and all Claims.

(10) Not used

(11) The procedures specified in this Section shall be the sole and exclusive procedures for the resolution for disputes between the Owner and Contractor arising out of or relating to this agreement, except that either may seek preliminary judicial relief or an injunction to avoid irreparable damage. Despite any injunctive relief, the procedures specified in this Contract for the resolution of Claims shall remain applicable.

(12) The Owner is not obligated under the Contract to provide additional Contract Time or additional compensation unless documentation submitted by the Contractor establishes its entitlement to additional compensation, additional Contract Time, or both. The parties agree that it is not a breach of contract to deny a request for additional compensation or request for additional Contract Time if the Contractor fails to submit adequate documentation substantiating its Claim or request for time.

(13) The Owner will not consider and shall reject any and all Claims to include cost, schedule and/or Work submitted from subcontractors, suppliers, manufacturers or others not a party to the contract. All Claims shall be submitted by the General Contractor or entity named on the Contract documents.

(14) Completion of Work During Claims Review

(a) Unless otherwise directed by Owner's Authorized Representative, Contractor









- (h) All required documentation must be submitted with the respective application for payment.
- (4) The Owner reserves the right to withhold all or part of a payment, or may nullify in whole or part any payment previously made, to such extent as may be necessary in the Owner’s opinion to protect the Owner from loss, including withholding from a progress payment or final payment up to two hundred percent (200%) of the potential or actual costs, because of:
- (a) Work that is defective and not remedied, or that has been demonstrated or identified as failing to conform with the Contract Documents,
  - (b) Work has not been approved by special inspections, permit inspections or by field observation by Owner’s Authorized Representative or Architect/Engineer;
  - (c) Third party claims filed or evidence reasonably indicating that such claims will likely be filed unless security acceptable to the Owner is provided by the Contractor;
  - (d) Failure of the Contractor to:
    - 1. submit certified payroll reports, in increments, as required,
    - 2. submit claim waivers and releases,
    - 3. make payments properly to Subcontractors or suppliers for labor, materials or equipment in which case Owner may issue checks made payable jointly to Contractor and such unpaid persons under this provision, or directly to Subcontractors and suppliers at any level under Section 3.D.2;
  - (e) Reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Price;
  - (f) Damage to the Owner or another party;
  - (g) Reasonable evidence that the Work will not be completed within the Contract Time required by the Contract, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;
  - (h) Failure to carry out the Work in accordance with the Contract Documents; or
  - (i) Assessment of liquidated damages, when withholding is made for offset purposes.
- (5) Subject to the provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

- (a) Take that portion of the Contract Price properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the total Contract Price allocated to that portion of the Work in the Schedule of Values, less retainage as provided in Section 5.E.
  - (b) Include that portion of work completed under an approved Change Order; less retainage as provided in Section 5.E
  - (c) Add that portion of the Contract Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction (or, if approved in advance by the Owner pursuant to Section 5.B.3, suitably stored off the site at a location agreed upon in writing), less retainage as provided in Section 5.E;
  - (d) Subtract the aggregate of previous payments made by the Owner; and
  - (e) Subtract any amounts for which the Owner's Authorized Representative has withheld or nullified payment as provided in the Contract Documents.
- (6) Contractor's applications for payment may not include requests for payment for portions of the Work for which the Contractor does not intend to pay to a Subcontractor or material supplier.
  - (7) The Contractor shall provide in each progress application for payment a 'conditional release' that warrants that upon submittal of an application for payment all Work for which payments are received from the Owner shall be free and clear of liens, claims, security interests or encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.
  - (8) If Contractor disputes any determination by Owner's Authorized Representative with regard to any application for payment, Contractor nevertheless shall continue to prosecute expeditiously the Work. No payment made hereunder shall be or be construed to be final acceptance or approval of that portion of the Work to which such partial payment relates or shall relieve Contractor of any of its obligations hereunder.

### **C. PAYROLL CERTIFICATION REQUIREMENT**

See General Conditions 3C.

### **D. DUAL PAYMENT SOURCES**

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

#### **E. RETAINAGE**

(1) Retainage shall be withheld and released in accordance with ORS 279C.550 to 279C.580 and OAR 137-049-0820.

(a) Owner may reserve as retainage from any progress payment an amount not to exceed five percent (5%) of the payment. As Work progresses, Owner may reduce the amount of the retainage and may eliminate retainage on any remaining monthly Contract payments after fifty percent (50%) of the Work under the Contract is completed if, in the Owner's opinion, such Work is progressing satisfactorily. Elimination or reduction of retainage shall be allowed only upon written application by the Contractor, which application shall include written approval of Contractor's surety; except that when the Work is ninety seven and one half percent (97.5%) completed the Owner may, at its discretion and without application by the Contractor, reduce the retained amount to one hundred percent (100%) of the value of the Work remaining to be done. Upon receipt of written application by the Contractor, Owner shall respond in writing within a reasonable time.

(b) In accordance with the provisions of ORS 279C.560 and further set forth under AG Model Rule, unless the Owner finds in writing that accepting a bond, security or other instrument described in options 5.E.1.b.1 or 5.E.1.b.3 below poses an extraordinary risk that is not typically associated with the bond, security or instrument, the Owner will approve the Contractor's written request:

1. To be paid amounts which would otherwise have been retained from progress payments where Contractor has deposited acceptable bonds, securities or other instruments of equal value with Owner or in a custodial account or other mutually-agreed account satisfactory to Owner, with an approved bank or trust company to be held in lieu of the cash retainage for the benefit of Owner. Interest or earnings on the bonds, securities or other instruments shall accrue to the Contractor. The Contractor shall execute and provide such documentation and instructions respecting the bonds, securities and other instruments as the Owner may require to protect its interests. To be permissible the bonds, securities and other instruments must be of a character approved by the Owner, including but not limited to:

a. Bills, certificates, notes or bonds of the United States.

b. Other obligations of the United States or agencies of the United States.



- (2) The Owner reserves the right to deduct from the final release of retainage all costs for outstanding defective work and/or failure to comply with Contract and permit requirements.

#### **F. FINAL PAYMENT**

- (1) Upon reaching Substantial Completion and approval of the Owner's Authorized Representative that all punch list work and all field work is complete, the Contractor shall make written request for final payment.
  - (a) Upon receipt of such notice the Owner's Authorized Representative will inspect the work, and if acceptable, submit to the Owner a recommendation as to acceptance of the completed Work and as to the final estimate of the amount due the Contractor. If the Work is not acceptable, Owner will notify Contractor within fifteen (15) days of Contractor's request for final payment.
  - (b) Upon approval by the Owner of this final estimate of the amount due the Contractor and compliance by the Contractor with provisions in Section 11.C, and other provisions as may be applicable, the Owner shall release all retainage and any accrued interest if applicable and pay to the Contractor all monies due under the provisions of these Contract Documents.
  - (c) The Owner's Authorized Representative will issue an acceptance letter to Contractor indicating all obligations of the Contract (except warranty provisions) have been completed.
- (2) Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Owner's Authorized Representative:
  - (a) A notarized affidavit/release of liens and claims in a form satisfactory to Owner that states that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied;
  - (b) A certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least thirty (30) days' prior written notice has been given to the Owner;
  - (c) Consent of surety, if any, to final payment; and





shall accrue to Owner, and Contractor shall make provisions so that they can be secured. Amounts which accrue to Owner in accordance with this provision shall be credited to Owner as a deduction from the Contract Price. It is the responsibility of the Contractor to promptly notify the Owner of any savings and discounts that are realized, including any through Subcontractors.

## **6. JOB SITE CONDITIONS**

### **A. USE OF PREMISES**

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

### **B. PROTECTION OF WORKERS, PROPERTY, AND THE PUBLIC**

- (1) Contractor shall maintain continuous and adequate protection of all of the Work from damage, and shall protect the public, Owner's Authorized Representative, Owner's workers and property from injury or loss arising in connection with this Contract. Contractor shall remedy acceptably to the Owner, any damage, injury, or loss, except such as may be directly due to errors in the Contract Documents or caused by authorized representatives or personnel of the Owner. Contractor shall adequately protect adjacent property as provided by law and the Contract Documents.
- (2) Contractor shall take all necessary precautions for the safety of the public and all personnel on the job site, and shall comply with the Contract Documents and all applicable provisions of federal, state and municipal safety laws and building codes to prevent accidents or injury to persons on, about or adjacent to the premises where the Work is being performed. Contractor shall erect and properly maintain at all times, as required by the conditions and progress of the Work, all necessary safeguards for protection of workers and the public against any hazards created by construction. Contractor shall designate a responsible employee or associate on the Work site, whose duty shall be the prevention of accidents. The name and position of the person designated shall be reported to the Owner's Authorized Representative. The Owner's Authorized Representative has no responsibility for Work site safety. Work site safety is the sole responsibility of the Contractor.
- (3) Contractor shall not enter upon private property without first obtaining permission from the property owner or its duly authorized representative. Contractor shall be responsible for the preservation of all public and private property along and adjacent to the Work contemplated under the Contract and shall use every precaution necessary to prevent damage thereto. In the event the Contractor damages any

property, the Contractor shall at once notify the property owner and make, or arrange to make, full restitution. Contractor shall report, immediately in writing, to the Owner's Authorized Representative, all pertinent facts relating to such property damage and the ultimate disposition of the claim for damage.

- (4) Contractor is responsible for protection of adjacent work areas including impacts brought about by activities, equipment, labor, utilities, and materials on the site.
- (5) Contractor shall at all times direct its activities in such a manner as to minimize adverse effects on the environment. Handling of all materials will be conducted so no release will occur that may pollute or become hazardous.
- (6) In an emergency affecting the safety of life or of the Work or of adjoining property, the Contractor, without special instruction or authorization from the Owner's Authorized Representative, shall act reasonably to prevent threatened loss or injury, and shall so act, without appeal, if instructed by the Owner's Authorized Representative. Any compensation claimed by the Contractor on account of emergency work shall be determined in accordance with Section 4.
- (7) Explosives are not permitted without specific written approval from the Owner.

#### **C. CUTTING AND PATCHING**

- (1) Contractor shall be responsible for coordinating all cutting, fitting, or patching of the Work to make its several parts come together properly and fit to receive or be received by work of other contractors or Subcontractors shown upon, or reasonably implied by, the Contract Documents.
- (2) Contractor shall be responsible for restoring all cut, fitted, or patched surfaces to an original condition; provided, however, that if a different condition is specified in the Contract Documents, then Contractor shall be responsible for restoring such surfaces to the condition specified in the Contract Documents. Reference specific project requirements in the Plans and Specifications.

#### **D. SHORING, SLOUGHING AND SCAFFOLDING**

- (1) Contractor shall be responsible as part of the Contract Price for any and all shoring, cribbing, scaffolding and staging as may be necessary and/or required for excavation trenching or other means to perform the Work. Unless determined to be an Unforeseen Condition, Contractor is further responsible as part of the Contract Price for all open cut trenching or excavation sidewall sloughing including replacement with specified backfill. Reference specific project requirements in the Plans and Specifications.





regulation, or ordinance, including without limitation asbestos, polychlorinated biphenyl (PCB), or petroleum, and any substances, materials or wastes regulated in 40 CFR, Part 261 and defined as hazardous in 40 CFR S 261.3. In addition to notifying Owner of any hazardous substance(s) discovered or encountered, Contractor shall immediately cease working in any particular area of the project where a hazardous substance(s) has been discovered or encountered if continued work in such area would present a risk or danger to the health or wellbeing of Contractor's or any Subcontractor's work force.

- (2) Upon being notified by Contractor of the presence of any unforeseen hazardous substance(s) on the project site, Owner shall arrange for the proper investigation, handling and disposition of such hazardous substance(s).

## **H. FORCE MAJEURE**

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

## **7. INDEMNITY, BONDING, AND INSURANCE**

### **A. RESPONSIBILITY FOR DAMAGES / INDEMNITY**

- (1) Contractor shall be responsible for all damage to property, injury to persons, and loss, expense, inconvenience, and delay that may be caused by, or result from, the carrying out of the Work to be done under this Contract, or from any act, omission or neglect of the Contractor, its Subcontractors, personnel, or agents.
- (2) To the fullest extent permitted by law, the Contractor shall indemnify, hold harmless, and defend the Owner, its officers, employees and agents from any and all claims, losses, damages, attorney fees, costs and liabilities arising out of accidents, unforeseen difficulties, or intentional, reckless or negligent acts or omissions of the Contractor, its Subcontractors, suppliers, employees, or agents in performance of the Work. Claims include any assertion of a right to monetary damages or equitable relief or any combination thereof.
- (3) Owner shall notify Contractor of any claim of which it is aware that requires Contractor to defend, indemnify and hold Owner harmless. Thereafter, Contractor shall notify Owner in writing within thirty (30) days that it will defend, indemnify and hold Owner harmless. Contractor's failure to provide such notification is a breach of Contract. In the event the Contractor fails to give notice within thirty (30) days, Owner may defend



Unless public contracting agency has been notified of any applicable exemptions under ORS 279C.836(4), (7), (8), or (9), the public works bond requirement above is in addition to any other bond contractors or subcontractors may be required to obtain under this contract.

**C. INSURANCE**

- (1) **Primary Coverage:** Insurance carried by Contractor under this Contract shall be the primary coverage, and the Owner's insurance is excess and solely for damages or losses for which the Owner is responsible. The coverages indicated in Section 7.C are minimums unless otherwise specified in the Supplemental General Conditions.
  
- (2) **Workers' Compensation and Employer's Liability Insurance:** All employers, including Contractor, that employ subject workers who work under this contract in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage, unless such employers are exempt under ORS 656.126. This shall include Employer's Liability Insurance with coverage limits of not less than those provided below. Contractors who perform the Work without the assistance or labor of any employee need not obtain such coverage if the Contractor certifies so in writing. Contractor shall ensure that each of its Subcontractors complies with these requirements. The Contractor shall require proof of such Workers' Compensation by receiving and keeping on file a certificate of insurance from each Subcontractor or anyone else directly employed by either the Contractor or its Subcontractors.

\$1,000,000	Each Accident	Bodily Injury by Accident
\$1,000,000	Policy Limit	Bodily Injury by Disease
\$1,000,000	Each Employee	Bodily Injury by Disease

- (a) Those Contractors who are self-insured and are not required to carry Worker's Compensation per ORS 656.027 must indicate so and certify they are exempt on the agreement.

**(3) Liability Insurance:**

- (a) **Commercial General Liability:** Contractor will at all times carry Commercial General Liability Insurance written on an occurrence basis with limits of not less than two million dollars (\$2,000,000) per occurrence and four million dollars (\$4,000,000) in the annual aggregate for bodily injury, property damage and personal injury, with the general aggregate limit applying on a per project basis. Such insurance shall cover both ongoing operations and completed operations and shall name Owner, and each of their employees, officers, and agents as an additional insured for claims arising out of Contractor's ongoing activities under this Contract as well as completed operations for a period of ten (10) years following the end of the contract term.



(b) **Automobile Liability:** Contractor shall obtain, at Contractor's expense, and keep in effect during the term of this Contract, Automobile Liability Insurance covering owned, non-owned and/or hired vehicles, as applicable. The coverage may be written in combination with the Commercial General Liability Insurance. Contractor shall provide proof of insurance of not less than the following amounts:

Two million dollars (\$2,000,000)/Each Accident/Bodily Injury and Property Damage (Combined Single Limit)

(4) **Additional Insured:** The liability insurance coverage required for performance of this Contract shall include the Owner and its officers, agents and employees, as Additional Insureds but only with respect to the Contractor's activities to be performed under this Contract.

(5) **Notice of Cancellation or Change:** There shall be no cancellation, material change, potential exhaustion of aggregate limits or intent not to renew insurance coverages without thirty (30) days written notice from the Contractor or its insurer(s) to the Owner. Any failure to comply with the reporting provisions of this insurance, except for the potential exhaustion of aggregate limits, shall not affect the coverages provided to the Owner and its officers, agents and employees.

(6) **Certificate(s) of Insurance:** As evidence of the insurance coverage required by this Contract, the Contractor shall furnish certificate(s) of insurance to the Owner prior to its issuance of a Notice to Proceed. The certificate(s) will specify all of the parties who are Additional Insureds or Loss Payees.

(a) Insurance coverage required under this Contract shall be obtained from insurance companies or entities acceptable to the Owner that are allowed to provide such insurance under Oregon law. Eligible insurers include admitted insurers that have been issued a certificate of authority from the Oregon Department of Consumer and Business Services authorizing them to do an insurance business in the state of Oregon, and certain non-admitted surplus lines insurers that satisfy the requirements of applicable Oregon law and are approved by the Owner.

(b) To the extent Certificates of Insurance contain words to the effect that Contractor shall "endeavor to send notice of cancellation" or similar language, Contractor shall require its insurer to send such notice by making sure that the words "endeavor to" or similar words are removed from the Certificate.

(c) The Contractor shall be financially responsible for all deductibles, self-insured retentions and/or self-insurance included hereunder. Any deductible, self-insured retention and/or self-insurance in excess of fifty thousand dollars (\$50,000) shall be approved by the Owner in writing prior to issuance of a Notice to Proceed and is subject



- (2) Unless otherwise approved by the Owner's Authorized Representative, each schedule item shall account for no greater than the proportion of the monetary value of the project or of the available Contract Time as provided in the table below.

If Contract Price is:

\$0 – \$100,000	20%
\$100,000 - \$500,000	15%
\$500,000 - \$1,000,000	10%
Over \$1,000,000	5%

Schedules with activities of less than one day, or valued at less than one percent (1%) of the Contract, will be considered too detailed and will not be accepted. Schedules lacking adequate detail, or unreasonably detailed, will be rejected. Schedules must be updated at least monthly, or more frequently if required in the Specifications.

- (3) When requested by Owner's Authorized Representative, Contractor shall update the schedule to account for any approved changes in the Work and/or changed conditions.
- (4) Acceptance of the Schedule by the Owner does not constitute agreement by the Owner, as to the Contractor's sequencing, means, methods, or allocated Contract Time. Any positive difference between the Contractor's scheduled completion and the Contract completion date is float owned by the Owner. Owner reserves the right to negotiate the float if it is deemed to be in Owner's best interest to do so. In no case shall the Contractor make a request for additional compensation for delays if the Work is completed within the Contract Time but after Contractor's scheduled completion.

**C. PARTIAL OCCUPANCY OR USE**

- (1) The Owner may occupy or use any completed or partially completed portion of the Work at any stage, provided such occupancy or use is consented to by public authorities having jurisdiction over the Work. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have reasonably accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, insurance or self-insurance, maintenance, heat, utilities, and damage to the Work, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents with respect to such portion of the Work.
- (2) Approval by the Contractor to partial Owner occupancy or use shall not be unreasonably withheld. Immediately prior to such partial occupancy or use, the Owner and Contractor shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work. Partial Owner occupancy or use of a portion or portions of the Work shall not constitute

acceptance of Work not complying with the requirements of the Contract Documents.

## **9. CORRECTION OF WORK**

### **A. CORRECTION OF WORK BEFORE FINAL PAYMENT**

The Contractor warrants to the Owner that materials and equipment furnished under the Contract will be of good quality and new unless otherwise required or permitted by the Contract Documents, that the Work will be free from defects, and that the Work will conform to the requirements of the Contract Documents. Work failing to conform to these requirements shall be deemed defective. Contractor shall promptly remove from the premises and replace all defective materials and equipment as determined by the Owner's Authorized Representative, whether incorporated in the Work or not. Removal and replacement shall be without loss or expense to the Owner, and Contractor shall bear the cost of repairing all Work destroyed or damaged by such removal or replacement. The Contract shall stipulate the allowed period for defective corrective (punch list) work. At the end of that period, or earlier if requested by the Contractor, Owner shall arrange for inspection of the Work by the Owner's Authorized Representative and Architect/Engineer. Should the Work not be complete, and all corrections made, the costs for all subsequent re-inspections shall be borne by the Contractor. If Contractor fails to complete the punch list work within the stipulated period by the owner's representative, without affecting Contractor's obligations Owner may perform such work and Contractor shall reimburse Owner for all costs by a reduction in Contract Price and/or withholding of release of retainage.

### **B. WARRANTY WORK**

- (1) Contractor shall perform the Work in a workmanlike manner and in strict accordance with the Contract Documents and industry standards. The following are the minimum warranty requirements.
- (2) 9.B.2. Contractor shall promptly correct, at no cost to Owner, all Work rejected by Owner and all Work rejected by such government representatives. Contractor warrants to Owner that the materials and equipment furnished under this Contract will be of good quality and new, unless otherwise required by the Contract Documents, that the Work will be free of defects, and that the Work will strictly conform to the Contract Documents and industry standards.
- (3) 9.B.3. Neither the final certificate of payment nor any provision of the Contract Documents shall relieve the Contractor from responsibility for defective Work and, unless a longer period is specified, Contractor shall correct all defects that appear in the Work within a period of one (1) year from the date of issuance of the written notice

of Substantial Completion by the Owner except for latent defects which will be remedied by the Contractor at any time they become apparent.

The Owner shall give Contractor notice of defects with reasonable promptness. Contractor shall perform such warranty work within a reasonable time after Owner's demand. Contractor shall perform warranty work with least impact to Owner use / operations. Contractor shall obtain and pay for any and all permits required for warranty work. If Contractor fails to complete the warranty work within such period as Owner determines reasonable, or at any time in the event of warranty work consisting of emergency repairs, without affecting Contractor's obligations, Owner may perform such work and Contractor shall reimburse Owner all costs of the same within thirty (30) days after demand.

- (4) This provision does not negate guarantees or warranties for periods longer than one (1) year including without limitation such guarantees or warranties required by other sections of the Contract Documents for specific installations, materials, processes, equipment or fixtures.
- (5) In addition to Contractor's warranty, manufacturer's warranties shall pass to the Owner and shall not take effect until affected Work has been accepted in writing by the Owner's Authorized Representative. Contractor shall collect and submit to Owner, as a condition to Final Payment, all standard and special warranties from Subcontractors, distributors, and manufacturers, and assign to Owner all rights under such warranties. All of the warranties above are in addition to, and not in lieu of, other remedies Owner may have, all of which are fully reserved by Owner.
- (6) The one (1) year period for correction of Work shall be extended with respect to portions of Work performed after Substantial Completion by the period of time between Substantial Completion and the actual performance of the Work, and shall be extended by corrective Work performed by the Contractor pursuant to this Section, as to the Work corrected. The Contractor shall remove from the site portions of the Work which are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.
- (7) Nothing contained in this Section 9.B shall be construed to establish a period of limitation with respect to other obligations which the Contractor might have under the Contract Documents. Establishment of the period for correction of Work as described in this Section 9.B relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.
- (8) If the Owner prefers to accept Work which is not in accordance with the requirements

of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Price will be reduced as appropriate and equitable as set forth by Change Order Section 4.

## **10. SUSPENSION AND/OR TERMINATION OF THE WORK**

### **A. OWNER'S RIGHT TO SUSPEND OR STOP THE WORK**

- (1) The Owner and/or the Owner's Authorized Representative have the authority to suspend portions or stop all of the Work due to any of the following causes:
  - (a) Failure of the Contractor to correct unsafe conditions;
  - (b) Failure of the Contractor to carry out any provision of the Contract;
  - (c) Failure of the Contractor to carry out orders;
  - (d) Failure to comply with permit requirements and inspections;
  - (e) Conditions, in the opinion of the Owner's Authorized Representative, which are unsuitable for performing the Work;
  - (f) Time required to investigate differing site conditions, perform any environmental investigation or work; or
  - (g) Any reason considered to be in the public interest.
- (2) The Owner shall notify Contractor and the Contractor's surety in writing of the effective date and time of the suspension or stop work and shall notify Contractor and its surety in writing to resume Work.

### **B. CONTRACTOR'S RESPONSIBILITIES**

- (1) During the period of the suspension or stop work, Contractor is responsible to continue maintenance at the project just as if the Work were in progress. This includes, but is not limited to, protection of completed Work, maintenance of access, protection of stored materials, temporary facilities, and clean-up.
- (2) When the Work is recommenced after the suspension or stop work, the Contractor shall replace or renew any Work damaged during the suspension, remove any materials or facilities used as part of temporary maintenance, and complete the project in every respect as though its prosecution had been continuous and without suspension.

### **C. COMPENSATION FOR SUSPENSION OR STOP WORK**

Depending on the reason for suspension or stop Work, the Contractor or the Owner may be due compensation by the other party. If the suspension or stop work was required due

to acts or omissions of Contractor, the Owner may assess the Contractor actual costs of the suspension or stop work in terms of administration, remedial work by the Owner's forces or another contractor to correct the problem associated with the suspension or stop work. If the suspension or stop work was caused by acts or omissions of the Owner, the Contractor shall be due compensation as set forth in Section 4.A.6.c as direct cost reimbursement. If the suspension or stop work was required through no fault of the Contractor or the Owner, neither party owes the other for the impact.

**D. OWNER'S RIGHT TO TERMINATE CONTRACT**

- (1) The Owner may, without prejudice to any other right or remedy, and after giving Contractor seven (7) days written notice and an opportunity to cure, terminate the Contract in whole or in part under the following conditions:
- (a) If Contractor should, voluntarily or involuntarily, seek protection under the United States Bankruptcy Code and Contractor as debtor-in- possession or the Trustee for the estate fails to assume the Contract within a reasonable time;
  - (b) If Contractor should make a general assignment for the benefit of Contractor's creditors;
  - (c) If a receiver should be appointed on account of Contractor's insolvency;
  - (d) If Contractor should repeatedly refuse or fail to supply an adequate number of skilled workers or proper materials to carry on the Work as required by the Contract Documents, or otherwise fail to perform the Work in a timely manner;
  - (e) If Contractor should repeatedly fail to make prompt payment to Subcontractors or for material or labor, or should disregard laws, ordinances or the instructions of the Owner or the Owner's Authorized Representative; or
  - (f) If Contractor is otherwise in material breach of any part of the Contract.
- (2) At any time that any of the above occurs, Owner may exercise all rights and remedies available to Owner at law or in equity, and in addition, Owner may take possession of the premises and of all materials and appliances and finish the Work by whatever method it may deem expedient. In such case, the Contractor shall not be entitled to receive further payment until the Work is completed. If the Owner's cost of finishing the Work exceeds the unpaid balance of the Contract Price, Contractor or surety shall pay the difference to the Owner.

## **E. TERMINATION FOR CONVENIENCE**

- (1) Owner may terminate the Contract in whole or in part whenever Owner determines that termination of the Contract is in the best interest of the College.
- (2) The Owner will provide the Contractor with seven (7) days prior written notice of a termination for public convenience. After such notice, the Contractor shall provide the Owner with immediate and peaceful possession of the premises and materials located on and off the premises for which the Contractor received progress payment under Section 5. Compensation for Work terminated by the Owner under this provision will be according to Section 5. In no circumstance shall Contractor be entitled to lost profits, administration costs, general conditions costs or other Work not performed due to termination of convenience.

## **F. ACTION UPON TERMINATION**

- (1) Upon receiving a notice of termination, and except as directed otherwise by the Owner, Contractor shall immediately cease placing further subcontracts or orders for materials, services, or facilities. In addition, Contractor shall terminate all subcontracts or orders to the extent they relate to the Work terminated and, with the prior written approval of the Owner, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts and orders.
- (2) As directed by the Owner, Contractor shall upon termination transfer title and deliver to the Owner all Record Documents, information, and other property that, if the Contract had been completed, would have been required to be furnished to the Owner.
- (3) Contractor and all Subcontractors shall promptly quit all Work, demobilize and vacate the project site.
- (4) Contractor shall reach binding agreement with the Subcontractors before the Contractor may submit to the Owner final pay application along with supporting detail per Section 5. 10. F.5. The Owner is only liable for reasonable settlement costs between Contractor and subcontractors. Reasonable settlement costs do not include the Subcontractor's anticipated (c) Profits on unperformed work, any loss of work or consequential damages or other similar costs. 10.F.6. Contractor shall abide with all other instructions by Owner.

## **11. CONTRACT CLOSE OUT**

As a condition of final payment and final release of retainage (refer to Section 5.F), Contractor shall comply with the minimum requirements as set forth below. See Technical Specifications for additional details and requirements.



## **A. RECORD DOCUMENTS**

Contractor shall maintain during the progress of the Work record drawings indicating the current status of the Work as performed. Upon Substantial Completion of the Work, Contractor shall prepare a final version of such record drawings and submit them to Owner's Authorized Representative. Record Documents shall depict the project as constructed and shall reflect each and every change, modification, and deletion made during the construction. Record Documents are part of the Work and shall be provided prior to the Owner's issuance of final payment. Record Documents include all modifications to the Contract Documents unless otherwise directed. See Technical Specifications for additional details.

## **B. OPERATION AND MAINTENANCE MANUALS**

(1) As part of the Work for any operating systems, Contractor shall submit two (2) completed operation and maintenance manuals ("O&M Manuals") for review by the Owner's Authorized Representative and Architect Engineer as part of project closeout. The O&M Manuals shall contain a complete set of all Submittals, all product data as required by the specifications, training information, phone list of consultants, manufacturers, installer and suppliers, manufacturer's printed data, record and shop drawings, schematic diagrams of systems, appropriate equipment indices, warranties, etc. See Technical Specifications for additional details.

(2) The Owner's Authorized Representative and Architect Engineer shall review and return one O&M Manual for any modifications or additions required. Prior to submission of its final pay request and release of retainage, Contractor shall deliver three (3) complete and approved sets of O&M Manuals to the Owner's Authorized Representative.

## **C. AFFIDAVIT/RELEASE OF LIENS AND CLAIMS**

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

## **D. COMPLETION NOTICES**

- (1) Contractor shall provide written request to Owner to issue notice of both Substantial Completion and Final Completion of Field Work. Both completion notices must be signed by the Contractor and the Owner to be valid. The Owner shall provide the final signature on the notices. The notices shall take effect on the date set forth on the notices.
  
- (2) Substantial Completion
  - (a) The certificate of Substantial Completion shall state the date of Substantial Completion, list of defective punch list items, the responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and the time within which the Contractor shall finish all items on the punch list accompanying the Certificate will be prepared by the Owner and signed by the Contractor and Owner.
  
  - (b) Substantial Completion of a facility with operating systems (e.g., mechanical, electrical, HVAC) shall be that degree of completion that has provided a minimum of thirty (30) continuous Days of successful, trouble-free operation, which period shall begin after all performance and acceptance testing has been successfully demonstrated to the College's Authorized Representative. All equipment contained in the Work, plus all other components necessary to enable the College to operate the facility in the manner that was intended, shall be complete on the Substantial Completion date. The Contractor may request that a punch list be prepared by the College's Authorized Representative with submission of the request for the Substantial Completion notice.
  
  - (c) The certification of Substantial Completion shall not amount to a waiver of any claims by Owner.
  
- (3) Final Field Work Completion. Contractor will provide written notice to Owner's Authorized Representative that all punch list items have been corrected and are ready for final inspection. Upon inspection and determination of satisfactory completion of all Work the Owner will issue a Certificate of Final Field Work Completion.
  
- (4) Final Acceptance. Upon approval of all closeout requirements, final payment for the Work and release of retainage, the Owner will issue a Certificate of Final Acceptance.

## **E. TRAINING**

As part of the Work, and prior to submission of the request for final payment, the Contractor shall schedule with the Owner's Authorized Representative, training sessions for all equipment and systems, as required in Technical Specifications. Contractor shall

schedule training sessions at least two (2) weeks in advance of the date of training to allow Owner personnel adequate notice. The O&M Manual shall be used as a basis for training. Training shall be a formal session, held after the equipment and/or system is completely installed and operational in its normal operating environment.

**F. EXTRA MATERIALS**

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

**G. ENVIRONMENTAL CLEAN-UP**

As part of the Final Field Work Completion the Contractor shall notify the Owner that all environmental pollution clean-up which was performed as a part of this Contract has been disposed of in accordance with all applicable rules, regulations, laws, and statutes of all agencies having jurisdiction over such environmental pollution. The notice shall reaffirm the indemnification given under Section 6.F.1 above.

**H. APPROVAL OF ALL PERMITS/CERTIFICATE OF OCCUPANCY**

The Contractor shall not be granted Final Field Work Completion, receive final payment or release of retainage if the Owner has not received evidence that all permits have been satisfactorily completed and if required, either a temporary or certificate of occupancy is issued from the appropriate state and/or local building officials.

**I. OTHER CONTRACTOR RESPONSIBILITIES**

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

**J. SURVIVAL**

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

**12. LEGAL RELATIONS & RESPONSIBILITIES**

**A. LAWS TO BE OBSERVED**

(1) All sums due the State Unemployment Compensation Fund from the Contractor or any

Subcontractor in connection with the performance of the Contract shall be promptly so paid.

- (2) Contractor certifies its compliance with the Oregon tax laws, in accordance with ORS 305.385.
- (3) Contractor must comply with all tax laws of this state and all applicable tax laws for any political subdivision throughout the duration of this Agreement including any extension. Any violation of state tax law and/or applicable tax law for any political subdivision shall constitute a material breach of this agreement and shall entitle the College to terminate this Agreement and pursue and recover any and all damages that arise from the breach and the termination of the Agreement, and to pursue any or all of the remedies available by law.
- (4) In the performance of this Contract, the Contractor shall use, to the maximum extent economically feasible, recycled paper, materials and supplies.
- (5) In compliance with ORS 279C.525, Sections 12.B through 12.D contain lists of federal, state and local agencies of which the College has knowledge that have enacted ordinances or regulations relating to environmental pollution and the preservation of natural resources that may or may not affect the performance of the Contract.

#### **B. FEDERAL AGENCIES**

- (1) Department of Energy
- (2) Federal Energy Regulatory Commission
- (3) Environmental Protection Agency
- (4) Health and Human Services
- (5) Department of Housing and Urban Development
- (6) Department of Solar Energy and Energy Conservation Bank
- (7) Bureau of Land Management
- (8) Department of Transportation
- (9) Occupation Safety and Health Administration
- (10) Water Resources Council

#### **C. STATE AGENCIES**

- (1) Department of Administrative Services

- (2) Soil and Water Conservation Commission
- (3) Department of Energy
- (4) Department of Environmental Quality
- (5) Department of Consumer and Business Services
- (6) Land Conservation and Development Commission

**D. LOCAL AGENCIES**

- (1) City Councils
- (2) County Courts
- (3) Board of County Commissioner
- (4) Design Commissions
- (5) Historical Preservation Commission
- (6) Planning Commissions

End of  
GENERAL CONDITIONS FOR CONSTRUCTION CONTRACT



**GMP AMENDMENT TO CM/GC CONTRACT**

**THIS AMENDMENT IS BETWEEN:**

**OWNER/COLLEGE: ROGUE COMMUNITY COLLEGE DISTRICT**

**And**

**CONSTRUCTION MANAGER/  
GENERAL CONTRACTOR  
(Referred to as Contractor in the  
General Conditions and herein  
Referred to as "CM/GC")**

**<CONSTRUCTION CONTRACTOR>**

**The Project is: TRANSPORTATION TRAINING BUILDINGS  
Redwood Campus, Grants Pass, Oregon  
Table Rock Campus, White City, Oregon**

**Date of Original CM/GC Contract**

**("Contract"): Date of this Amendment:**

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

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

**Preconstruction Fee:** \$ \_\_\_\_\_

**Estimated Cost of Work (Est. COW):** \$ \_\_\_\_\_

**CM/GC Fee ( % of Est. COW):** \$ \_\_\_\_\_

**GMP (Total of above categories):** \$ \_\_\_\_\_

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

2. **Basis of GMP.** The GMP is based on the GMP Supporting Documents attached as Attachments A-F (\_\_\_\_pages) including the Allowances, assumptions, exclusions, unit prices, and alternates designated therein.
3. **Plans and Specifications.** The Plans and Specifications for the Project are as listed in the GMP Supporting Documents. CM/GC shall perform Construction Phase Services in accordance with the Plans and Specifications and the other Contract Documents.
4. **Substantial Completion Date.** Notwithstanding any provision in the GMP Supporting Documents to the contrary, the required date for Substantial Completion shall (*NOTE-SELECT ONE*): remain that stated in the Contract/ Insert if different Substantial Completion Date has been agreed:\_\_\_\_\_ ,

**THIS CONTRACT** is executed electronically with copies to be delivered to the CM/GC, and to the Owner.

**CM/GC:**

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

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

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

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

\_\_\_\_\_  
Signature of Authorized Representative of CM/GC

**ROGUE COMMUNITY COLLEGE DISTRICT**

\_\_\_\_\_  
Lisa Stanton

Title Vice President of Operations and Finance

Date \_\_\_\_\_

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

Attachment B: Allowance items, pages \_\_\_\_ through \_\_\_\_ dated \_\_\_\_\_.

Attachment C: Assumptions and clarifications made in preparing the Guaranteed Maximum Price, pages \_\_\_\_ through \_\_\_\_\_, dated \_\_\_\_\_.

Attachment D: Completion schedule, pages \_\_\_\_ through \_\_\_\_\_, dated \_\_\_\_\_ .

Attachment E: Alternate prices, pages \_\_\_\_ through \_\_\_\_\_, dated \_\_\_\_\_ .

Attachment F: Unit prices, pages \_\_\_\_ through \_\_\_\_\_, dated \_\_\_\_\_ .



**Exhibit C**

**PAYMENT BOND**

Any singular reference to Contractor, Surety, Owner, or other party shall be considered plural where applicable.

CONTRACTOR (Name and Address):

SURETY (Name and Address of Principal Place of Business):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**CONTRACT**

Effective Date of Agreement:

\_\_\_\_\_

Amount:

\_\_\_\_\_

Description (Name and Location):

\_\_\_\_\_

**BOND**

Bond Number:

\_\_\_\_\_

Date (Not earlier than Effective Date of Agreement):

\_\_\_\_\_

Amount:

\_\_\_\_\_

Modifications to this Bond Form:

Surety and Contractor, intending to be legally bound hereby, subject to the terms set forth below, do each cause this Payment Bond to be duly executed by an authorized officer, agent, or representative.

CONTRACTOR AS PRINCIPAL

SURETY

\_\_\_\_\_  
Contractor's Name and Corporate Seal (Seal)

\_\_\_\_\_  
Surety's Name and Corporate Seal (Seal)

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

By: \_\_\_\_\_  
Signature (Attach Power of Attorney)

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

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

ATTEST: \_\_\_\_\_  
Signature

ATTEST: \_\_\_\_\_  
Signature



7. Surety's total obligation shall not exceed the amount of this Bond, and the amount of this Bond shall be credited for any payments made in good faith by Surety.
8. Amounts owed by Owner to Contractor under the Contract shall be used for the performance of the Contract and to satisfy claims, if any, under any performance bond. By Contractor furnishing and Owner accepting this Bond, they agree that all funds earned by Contractor in the performance of the Contract are dedicated to satisfy obligations of Contractor and Surety under this Bond, subject to Owner's priority to use the funds for the completion of the Work.
9. Surety shall not be liable to Owner, Claimants, or others for obligations of Contractor that are unrelated to the Contract. Owner shall not be liable for payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligations to make payments to, give notices on behalf of, or otherwise have obligations to Claimants under this Bond.
10. Surety hereby waives notice of any change, including changes of time, to the Contract or to related subcontracts, purchase orders, and other obligations.
11. No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the location in which the Work or part of the Work is located or after the expiration of one year from the date (1) on which the Claimant gave the notice required by Paragraph 4.1 or Paragraph 4.2.3, or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Contract, whichever of (1) or (2) first occurs. If the provisions of this paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.
12. Notice to Surety, Owner, or Contractor shall be mailed or delivered to the addresses shown on the signature page. Actual receipt of notice by Surety, Owner, or Contractor, however accomplished shall be sufficient compliance as of the date received at the address shown on the signature page.
13. When this Bond has been furnished to comply with a statutory requirement in the location where the Contract was to be performed, any provision in this Bond conflicting with said statutory requirement shall be deemed deleted herefrom and provisions conforming to such statutory requirement shall be deemed incorporated herein. The intent is that this Bond shall be construed as a statutory Bond and not as a common law bond.
14. Upon request of any person or entity appearing to be a potential beneficiary of this Bond, Contractor shall promptly furnish a copy of this Bond or shall permit a copy to be made.
15. Definitions
  - 15.1 Claimant: An individual or entity having a direct contract with Contractor, or with a first-tier subcontractor of Contractor, to furnish labor, materials, or equipment for use in the performance of the Contract. The intent of this Bond shall be to include without limitation in the terms "labor, materials or equipment" that part of water, gas, power, light, heat, oil, gasoline, telephone service, or rental equipment that





## APPENDIX B

### GC General Conditions Cost Worksheet

Request for Proposals  
**TRANSPORTATION TRAINING BUILDINGS**  
**Rogue Community College District**

#### Content of Construction General Conditions

The Construction Management General Condition is to include the following elements, as a minimum:

Superintendent	\$	General Foreman	\$
Labor Foreman	\$	Other Foreman	\$
Field Engineer	\$	Field Coordination	\$
Field Supervision	\$	Field Layout	\$
Quality Control	\$	Clean Up	\$
Material Handling	\$	Safety	\$
Project Engineering	\$	Project Coordination	\$
Trade Coordination	\$	Clerical/Secretarial	\$
Temporary Office	\$	Office Equipment & Supplies	\$
Office Clean-up	\$	Office Furniture	\$
Office Security	\$	Drinking Water	\$
Postage/Delivery	\$	Printing/Reproduction	\$
Temporary Toilets	\$	First Aid Supplies	\$
Phones/Radios/Pagers	\$	Vehicles	\$
Fuel/Maintenance	\$	Barricades and Temporary Partitions, Construction Signage	\$
Substance Abuse Testing	\$	Permits <sup>1</sup>	\$
Incidental small tools and repairs/storage/ maintenance of.	\$	Scheduling	\$
Weather Protection	\$	Temp Storage	\$
Temporary Power	\$	Close Out	\$
Temporary Heat	\$	Close Out	\$
Total Cost	\$		

The building permit is paid by the College and is excluded here

**APPENDIX C**  
**January 1, 2025 BOLI Prevailing Wage Rate Booklet**

**This information can be obtained from:**

<http://www.oregon.gov/BOLI/WHD/PWR>

**and is contained herein by reference.**