

**CITY OF LEBANON, OREGON
CONTRACT DOCUMENTS**

**CONSTRUCTION MANAGER/GENERAL CM/GC
for the Construction of**

**WATER TREATMENT PLANT PROJECT
Intake, Raw Water Pump Station, and Water Treatment Plant**

THIS CONTRACT is between the City of Lebanon, an Oregon municipal corporation ("Owner" or "City"), and Slayden Constructors, Inc., an Oregon corporation ("CM/GC"). The parties may be referred to individually as a "party" and collectively as "the parties".

RECITALS:

- A. The City Council has approved construction of the Water Treatment Plant, Bid Package 2 - Intake, Raw Water Pump Station, and Water Treatment Plant project.
- B. On August 15, 2016, the City Council adopted findings and determined that the Construction Manager/General CM/GC ("CM/GC") process was appropriate for contracting for the construction of the project.
- C. City engaged in a Request for Proposal (RFP) process based on qualifications and a scoring process to select the entity that would serve as the CM/GC for the project.
- D. City selected CM/GC as the best responsive and responsible proposer.

DEFINITIONS

The following definitions apply in this Contract:

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

Allowances mean the amounts included in the GMP for items included in the Contract Documents that cannot be fully priced out when the GMP is negotiated. Allowances shall be paid in accordance with Section 5.9 of this Contract. Any amounts expended over the stated Allowance Amount shall be agreed upon by Change Order as defined herein.

Amendment means a written modification of this Contract (including without limitation any agreed change to the GMP) executed by the CM/GC and Owner.

Business Days means every day except Saturday, Sunday, and legal holidays recognized for employees of the City of Lebanon, Oregon.

Change Order means a written modification of the Contract under Article 6 of the Agreement including without limitation any agreed change to GMP or Contract Time, identified as a Change Order and executed by the Owner's Authorized Representative, CM/GC, where applicable, and, where required, approved in writing by the Owner.

Claim means a demand by CM/GC pursuant to Section D.3 of Exhibit A for review of the denial of CM/GC'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 Exhibit A. A demand for money or services by a third party is not a Claim.

CM/GC Field Work means 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 9.3.3, undeveloped design owing to deviations in Work performed or materials delivered by Subcontractors or suppliers

that do not represent defective or nonconforming work, a breach or failure to perform by the Subcontractor or supplier, complexity of coordination of the Work, and other similar reasons typically providing cause for “pick-up” or GC Work under industry standards; provided, however, that (i) the CM/GC has reasonably determined that doing such portion of the Work itself is in the best interests of Owner, (ii) such Work is identified as CM/GC Field Work in monthly billings and (iii) CM/GC receives prior approval of Owner’s Authorized Representative as to the scope of such CM/GC Field Work.

Contingency CM/GC - The GMP shall include a Contingency as a percentage of the GMP, which shall be established as part of the GMP. This Contingency is available, upon notification to the Owner, for items which are not included as an Allowance, or those items otherwise covered by a change in scope. The Owner may at any time confirm the amount and nature of payments, except if the GMP is converted to a lump sum price. The Contingency is for the sole and exclusive use by the CM/GC. By way of example, without limitation, such costs include trade buy-out differentials, overtime and acceleration costs (if deemed necessary to accelerate the project), subcontractor defaults, material price increases, material defects, additional mobilization/demobilization of subcontractors, items included in design documents but absent from the GMP and those risks allocated to the CM/GC pursuant to this Agreement.

Contingency Owner – The Owner, under the GMP, shall have an Owner controlled contingency (excluding CM/GC’s Contingency and Allowances), as established by the GMP, which is available for the sole and exclusive use of the Owner. By way of example, such costs include Change Orders and additions in Scope. The Owner’s Contingency shall be excluded from the GMP. Any unspent Owner Contingency shall remain with the Owner.

Contract means the written agreement between the Owner and the CM/GC comprised of the Contract Documents which describe the Work to be done and the obligations between the parties.

Contract Documents means this Contract and all Exhibits and addenda, including any Amendments and Change Orders.

Contract Period means the total period of time beginning with the issuance of the Notice to Proceed and concluding with Final Completion of the Project.

Contract Price means the total amount of this Contract as increased or decreased by the price of approved alternates, Amendments and Change Orders. If only Preconstruction Phase Services are provided and a GMP Amendment is not executed between CM/GC and Owner, the Contract Price is the amount payable for Preconstruction Phase Services as set forth in Exhibit B. If Preconstruction Phase Services are provided and a GMP Amendment is executed between CM/GC and Owner, the Contract Price is the amount payable for Preconstruction Phase Services as set forth in Exhibit B and the amount established by the GMP Amendment and any addenda.

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.

Construction Phase means the period commencing on the Owner's execution of a GMP Amendment or Early Work Amendment, together with the earlier of (i) issuance by Owner of a Notice to Proceed with any on-site construction or (ii) execution of a subcontract or issuance of a purchase order for materials or equipment required for the Work.

Construction Phase Services means all of the work performed by the CM/GC and its Subcontractors to construct the Project and associated facilities but not including Preconstruction Services. Early Work will be considered a part of Construction Phase Services.

Construction Documents means the documents produced by the CM/GC and Engineer during the project for its construction.

Days mean calendar days, including weekdays, weekends and holidays, unless otherwise specified.

Design Development Documents means the documents prepared by the CM/GC and Engineer to define systems and general configuration of the Project. The CM/GC shall use the Design Development Documents to develop cost estimates, construction phasing plans and other reports defined in the Preconstruction Services Scope of Work.

Direct Cost 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; rental cost of equipment, and machinery required for execution of the Work; and the additional costs of field personnel directly attributable to the Work.

Early Work means Construction Phase Services authorized by Amendment that the parties agree should be performed in advance of establishment of the GMP. Permissible Early Work will include, but is not 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.

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

Engineer means Carollo Engineers, Inc.

Final Completion means the final completion of all requirements under the Contract, including Contract Closeout as described in Section K of Exhibit A but excluding Membrane Performance Testing and Warranty Work as described in Section I.2 of Exhibit A and the final payment and release of all retainage, if any, by Owner.

Fixed Cost for General Conditions Work means those items identified in Exhibit D and paid for as set forth in Section 7.5.

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.

General Conditions (or "GC") Work means that portion of the Work required to support the Construction Phase Services. General Conditions Work includes both Fixed and Reimbursable costs as more fully described in Section 7 and Exhibit D.

Guaranteed Maximum Price (GMP) means the Guaranteed Maximum Price of the Contract as set forth in the GMP Amendment as determined in accordance with Article 5, and as may be adjusted from time to time pursuant to the provisions of the Contract.

GMP Amendment means an Amendment to the Contract, issued in the form of Exhibit C and executed between the parties which establish the GMP for Construction Phase Services.

GMP Supporting Documents means the documents referenced in the GMP Amendment as the basis for establishing the GMP.

Notice to Proceed with Preconstruction Services means the official written notice from Owner stating the CM/GC is to proceed with the Preconstruction Phase Services. The Owner will not pay for any Work performed prior to issuance of the Notice to Proceed with Preconstruction Services.

Notice to Proceed with Construction Services means the official written notice from the Owner stating that the CM/GC is to proceed with the Work defined in the Contract Documents after agreement is reached on the GMP. Owner will not pay for any Work performed prior to issuance of the Notice to Proceed with Construction Services.

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

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

Owner means the City of Lebanon, Oregon.

Owner's Authorized Representative means the person or persons designated by the Owner to manage this Contract. The Owner will issue a letter at the start of the Project identifying the Owner's Authorized Representative and their authority.

Owner's Membrane Filtration System Supplier means H₂O Innovation USA, Incorporated.

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

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

Preconstruction Phase means the period commencing on the effective date of this Contract and ending upon commencement of the Construction Phase.

Preconstruction Phase Services means all services described in Section 2.1 which will be performed prior to the start of the Construction Phase.

Preconstruction Phase Services Fee means the fee agreed on by the Owner and CM/GC to perform the Preconstruction Phase Services described in Section 2.1.

Project means all Preconstruction Phase and Construction Phase work required for the full completion of the City of Lebanon, Oregon Water Treatment Plant project, Bid Package 2 - Intake, Raw Water Pump Station, and Water Treatment Plant.

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

Record Document means the as-built Plans, Specifications, testing and inspection records, product data, samples, manufacturer and distributor/supplier warranties evidencing transfer to Owner, operational and maintenance manuals, shop drawings, Change Orders, correspondence, certificate(s) of occupancy, and other documents listed in Section B.9.1 of Exhibit A, recording all as-built conditions including changes made in the field to accommodate construction.

Reimbursable Cost for General Conditions Work means those costs that are included in the GMP and will be reimbursed by the Owner. These costs are more fully described in Article 7.

Scope Change means 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), and selection of alternates, all as approved in writing by the Owner under the Contract.

Solicitation Document means an Invitation to Bid or Request for Proposal or Request for Quotes and accompanying documents as defined in the solicitation documents.

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

Subcontractor means a Person having a direct contract with the CM/GC, or another Subcontractor, to perform one or more items of the Work. There is no direct contractual relationship between the Owner and the Subcontractor(s).

Substantial Completion means the date when the Owner accepts in writing the construction of the Project or any designated portion thereof as having reached that state of completion when it may be used or occupied for its intended purpose. Substantial Completion does not mean final completion, and retainage may continue to be retained beyond Substantial Completion.

Substitutions means items that in function, performance, reliability, quality, and general configuration are the same or better than the product(s) specified.

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

ARTICLE 1 - CONTRACT DOCUMENTS

1.1 Contract Documents. In addition to this Contract, the Contract Documents shall include the following Exhibits:

- A. General Conditions
- B. Preconstruction Services Scope of Work (final version may vary from initial scope included in RFP)
- C. GMP Amendment and Attachments (multiple GMP Amendments may be issued under this Contract)
- D. CM/GC General Conditions Cost Matrix

Contract Documents will also include Plans and Specifications prepared by the Engineer, and submittals and shop drawings reviewed by the Engineer.

1.2 Effective Date. The Contract shall become effective when signed by both parties. CM/GC will commence work on receipt of the City's Notice to Proceed with Preconstruction Phase Services.

1.3 The Contract; Order of Precedence. The order of precedence of the Contract Documents is:

- A. Authorized Change Orders
- B. Contract, including Exhibits
- C. General Conditions
- D. Drawings and Standard Details
- E. Supplemental Specifications
- F. Project Special Conditions
- G. Standard Specifications

ARTICLE 2- SCOPE OF WORK

2.1 Preconstruction Phase Services.

2.1.1 CM/GC will provide the Preconstruction Phase Services described in this Article 2 and Exhibit B, the Preconstruction Services Scope of Work. If work defined in the Preconstruction Phase Services Scope of Work is not complete and/or the Preconstruction Phase Services Fee has not been used after the Construction Phase begins, the Owner may elect to: (i) continue the Preconstruction Services until the Preconstruction Phase Services Fee has been fully paid to the CM/GC, or; (ii) issue a modification to this Contract to discontinue any further Preconstruction Phase Services and deduct the remaining amount from the Contract Price.

2.1.2 The CM/GC will make recommendations to Engineer and Owner's Authorized Representative regarding the phased issuance of Plans and Specifications to facilitate phased construction of the Work, if such phased construction is appropriate for the Project, taking into consideration such factors as economics, time of performance, availability of labor and materials, and provisions for temporary facilities.

2.1.3 The CM/GC will recommend to the Owner's Authorized Representative and Engineer a schedule for procurement of long-lead time items which will constitute part of the Work as required to meet the Project schedule. Long-lead time items will be procured by the CM/GC

upon execution of either a GMP Amendment or Early Work Amendment covering such procurement, and approval of such schedule by the Owner's Authorized Representative. The CM/GC shall expedite the delivery of long-lead time items.

2.1.4 The CM/GC will work with the Owner in identifying critical elements of the Work that may require special procurement processes, such as prequalification of Offerors or alternative contracting methods.

2.1.5 The CM/GC will work with the Owner and the design team to maximize energy efficiency in the Project, including without limitation providing estimating and value engineering support to the Owner's analysis and application for energy related incentive programs offered by local utilities.

2.1.6 Preconstruction Phase Services shall include Construction Management (CM) Services described in Section 2.3.

2.2 Construction Phase Services.

2.2.1 Upon execution of a GMP Amendment, the CM/GC shall provide Construction Phase Services, 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 in order to furnish to Owner a complete, fully functional Project which is capable of being legally occupied and fully used for its intended purposes upon completion of the Contract. This section shall also apply to furnishing of Work as described in an Early Work Amendment. Construction Phase Services shall include Construction Management Services described in Section 2.3.

2.2.2 The Construction Phase may commence before the Preconstruction Phase is completed, in which case both phases may proceed concurrently, subject to Section 2.1.

2.2.3 The Owner may issue one or more GMP Amendments for Work to be performed under this Contract.

2.2.4 Notwithstanding any other references to Construction Phase Services in this Contract, the Contract shall include Preconstruction Phase Services only unless (i) the parties execute a GMP Amendment or (ii) the parties execute an Early Work Amendment. CM/GC 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 in a form acceptable to Owner.

2.2.5 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 maximum not-to-exceed price, or a fixed price ("Early Work Price") to be stated in such Amendment. 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 together with the CM/GC Fee does not exceed the Early Work Price. If CM/GC performs Early Work with a maximum not-to-exceed price or fixed price, and incurs costs in excess of that maximum not-to-exceed price or fixed price, the CM/GC shall complete the Early Work and pay such excess cost without reimbursement. If one or more Early Work Amendments are executed, the CM/GC shall diligently continue to work toward development of a GMP Amendment acceptable to Owner, which shall incorporate the Early Work Amendments.

If Owner thereafter terminates the Contract prior to execution of a GMP Amendment, the provisions of Section J.5 of Exhibit A shall apply.

2.2.6 Prior to commencement of the Construction Phase, and in any event not later than execution of the GMP Amendment, CM/GC shall provide to Owner a full performance bond and a payment security bond as required by Section G of Exhibit A 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 Owner additional or replacement bonds at the time of execution of any subsequent Early Work Amendment or GMP Amendment, in each case prior to execution of the Amendment and the supplying of any labor or materials for the Work covered by the Amendment, and in each case in a sufficient amount so that the total bonded sum equals or exceeds the total Early Work Price or the GMP, as the case may be. In the event of a Scope Change that increases the GMP, CM/GC shall provide to Owner an additional or supplemental bond in the amount of such increase prior to performance of the additional Work. The Performance Bond shall be in the form required in Exhibit E.

2.3 Construction Management (CM) Services.

2.3.1 Throughout the Preconstruction Phase and Construction Phase of the Project, the CM/GC shall provide Construction Management Services, generally consisting of coordinating and managing the process as an independent CM/GC, in cooperation with the Owner, Owner's Authorized Representative, Engineer and other designated Project consultants. Construction Management Services include, but are not limited to:

2.3.2 Providing all Preconstruction Phase Services;

2.3.3 Developing and delivering schedules, preparing construction estimates, performing constructability review, analyzing alternative designs for constructability and cost, studying labor conditions, coordinating and communicating the activities of the Owner, Owner's Authorized Representatives, Engineer and other designed Project consultants throughout the Construction Phase;

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

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

2.3.6 Providing Value Engineering ("VE") services ongoing through the Project. CM/GC shall develop cost proposals, in the form of additions to or deductions from the GMP, including detailed documentation to support such adjustments and shall submit such proposals to Owner and Engineer for its review and approval. With the exception of the Work that require CM/GC design as expressly identified in the Scope, CM/GC's opinions and recommendations for value engineering and regarding the constructability of the design are intended for Owner's use in review with the Engineer in considering alternate materials, approaches or methods in the completion of project design and construction. These reviews are not intended to warrant or guaranty the constructability of the design, or to undertake any responsibility for the design, including the suitability or adequacy of the design. Any opinions or recommendations regarding

constructability by CM/GC should be independently evaluated for potential cost savings, construction efficiencies, and impacts on performance and design criteria. While it is expected that value engineering and constructability reviews will identify material issues with the design in development, the nature of these reviews are limited, and these reviews are not intended to eliminate or address all possible design errors, omissions, or issues which may arise or become apparent during construction or following completion of the project.

2.3.7 Holding and conducting meetings with the Owner and the Engineer to coordinate, update and ensure progress of the Work. Unless agreed to by the Owner, during the Preconstruction Phase, meetings will be held every other week at a day and time agreeable to the Owner, Engineer and CM/GC. During the Construction Phase, meetings will be held weekly at a day and time agreeable to the Owner, Engineer and CM/GC. The CM/GC will provide meeting agendas at least 24 hours prior to the meeting and meeting minutes within 48 hours after the meeting.

2.3.8 Submitting monthly written report(s) to the Owner's Authorized Representative. Each report shall include, but shall not be limited to, Project updates including a (a) cost report identifying contracts (subcontracts and purchase orders) committed against the budget, actual costs for the reporting period as compared to the estimate of costs, explanations of significant variations; (b) progress of the Work (undated schedule) showing work completed, work in progress; (c) changes in the Work; (d) issues that could impact the progress of the Work, and (e) other information as determined to be appropriate by the Owner. In addition, written updates shall be provided to the Owner as requested by the Owner;

2.3.9 Maintaining a daily report containing a record of weather, Subcontractors working on the site, number of workers, work accomplished, problems encountered, safety violations and incidents of personal injury and property damage, and other similar relevant data as the Owner may reasonably require. The log shall be available to the Owner and Engineer on request;

2.3.10 Developing and implementing a system of cost control for the Work acceptable to Owner's Authorized Representative, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The CM/GC shall identify variances between actual and estimated costs and report the variances to the Owner and Engineer at regular intervals;

2.3.11 Cooperating with any and all consultants hired by Owner;

2.3.12 At Owner's request, cooperating and performing appropriate warranty and inspection work for the Project as required by the Contract through the expiration date of the applicable warranty period;

2.3.13 Assisting Owner with start-up of the Project, as identified by Scope in applicable GMP Amendment. Such start-up may occur in phases due to phased occupancy;

2.3.14 Incorporate commissioning activities into the Project schedule and coordinating Subcontractors required to participate in the commissioning, as identified by Scope in applicable GMP Amendment; and

2.3.15 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 3 - RELATIONSHIP AND ROLES OF THE PARTIES

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

3.2 Performance of Work. The CM/GC will cooperate with the Engineer and Owner's Authorized Representative and utilize the CM/GC's skill, efforts and judgment in furthering the interests of Owner; to furnish efficient business administration and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in conformance with the terms and conditions of the Contract Documents in an expeditious and economical manner consistent with the interests of Owner.

3.3 Design Consultants. Owner has a separate contract with the Engineer related to the Project. Both the CM/GC and the Engineer shall be given direction by Owner through Owner's Authorized Representative. The CM/GC will support Owner's efforts to create a collaborative and cooperative relationship among the CM/GC, Engineer, other Project consultants, and Owner's Authorized Representative. With the exception of the Work that require CM/GC design as expressly identified in the Scope, the Owner's Engineers are solely responsible for the Project design and shall perform in accordance with the agreement between that firm and Owner, and nothing in this Agreement shall be construed to mean that the CM/GC is responsible for the design of the Project or that the CM/GC assumes any of the contractual or customary duties of the designer or any other persons or parties not specified by this Agreement

3.4 Forms and Procedures. The Owner has developed or may develop procedures and forms for the administration and tracking of the Contract. The CM/GC will abide by those procedures and use those forms. The CM/GC will develop other forms and procedures as necessary for the success of the Project.

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

3.5.1 Project Manager: **Jeff Tedder** shall be the CM/GC's Project Manager and will supervise and coordinate all Construction Phase and Preconstruction Phase Services of CM/GC and participate in all meetings throughout the Project term unless otherwise directed by Owner. CM/GC represents that the Project Manager has authority to execute Change Orders and Contract Amendments on behalf of CM/GC.

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

3.5.3 The CM/GC's personnel identified in Section 3.5, and any other personnel identified by name in CM/GC's Proposal, shall be considered Key Persons.

3.5.4 Key Persons shall not be replaced during the Contract Period without the written permission from Owner, which shall not be unreasonably withheld. If the CM/GC intends to replace personnel, a request must be given to Owner at least thirty (30) Days prior to the intended time of replacement. If a replacement is approved by Owner, the CM/GC shall provide a transition period of at least ten (10) working Days during which the original and replacement personnel shall work on the Project concurrently at no added cost to the Owner.

3.5.5 The Owner may request the replacement of CM/GC's personnel including but not limited to Key Persons if the Owner determines personnel are working in an unsafe manner or are detrimental to the Project. If the Owner requests the CM/GC replace personnel, the CM/GC will comply with this request. Upon receipt of Owner's request to replace personnel, the CM/GC will immediately remove that person and provide the Owner with replacement candidates to be approved by Owner.

3.6 Owner's Authorized Representative. Owner may elect, by written notice to CM/GC, to delegate certain duties of the Owner's Authorized Representative to more than one party, including without limitation, to the Engineer. However, nothing in this Contract is intended to abrogate the professional responsibilities of Engineer under ORS Chapter 672.

ARTICLE 4 - COMMENCEMENT OF CONSTRUCTION: SUBSTANTIAL AND FINAL COMPLETION: INSPECTION

4.1 Notice to Proceed. If Construction Phase Services are added to the Contract as set forth in Section 2.2, Owner will issue a Notice to Proceed with Construction to begin the designated or full Construction Phase Services. The Notice to Proceed will be issued in conjunction with the execution GMP Amendment. . A separate Notice to Proceed shall be issued for any and every Early Work Amendment.

4.2 Completion of Project. The CM/GC shall achieve Substantial Completion of the entire Work or any portion thereof as agreed by the Parties in the GMP on the dates specified in the GMP Amendments.

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

4.4 Time Extensions. Notwithstanding provisions for Contract time extensions in Section D.2 of Exhibit A, CM/GC agrees 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 and only by written Change Order or Amendment. CM/GC will make every appropriate effort to recover "lost" time.

4.5 Liquidated Damages. The CM/GC acknowledges that the Owner will incur significant damages if the Project is not completed by the dates set forth in Section 4.2 and any Contract Time. These damages include without limitation: inability to use the Project and all related facilities ("Loss of Use"); delay costs for completion of portions of the Project or related projects to be constructed by the Owner or the Owner's separate CM/GCs; or costs of extended services of the Owner's Project management staff, Engineers, any separate CM/GCs and consultants, and others performing work or services related to the Project.

4.5.1 The Owner and CM/GC acknowledge and agree that if Substantial Completion of the Work is not achieved by the Contract Time for Substantial Completion as set forth in Section 4.1, the amount of the Owner's actual damages (as described in Section 4.5) will be difficult, impractical or impossible to determine. Accordingly, the parties agree that if Substantial Completion is not achieved by the agreed date of Substantial Completion (as may be adjusted pursuant to the Contract Documents), the CM/GC shall pay to the Owner as liquidated damages as set forth in the GMP Amendment for the Construction Phase for each partial day or full day of

delay beyond the deadline for Substantial Completion. Such Liquidated Damages shall be in lieu of all consequential damages, including any Loss of Use or capital, resulting from CM/GC's delay in performance. To the extent that the parties enter into a GMP amendment for a portion of the Work (a Work Package for less than the entire scope of the Work), the parties may agree therein to a required Substantial Completion Date for such portion of the Work and separate proportional share of these Liquidated Damages for the CM/GCs failure to achieve Substantial Completion of such portion of the Work within the Contract Time Requirements provided therein.

4.5.2 The parties agree that the daily rate agreed to above is reasonable in comparison to the approximate scope of actual delay damages for loss of use that the parties anticipate as of the time of execution of this Contract, and that the payment of such liquidated damages is not intended to be a penalty or forfeiture.

ARTICLE 5 - FEES AND THE GMP

5.1 Owner will pay CM/GC as payment for work under this Contract as follows:

5.2 Payment of Preconstruction Phase Services Fee.

5.2.1 The Preconstruction Phase Services Fee will be paid for on a cost reimbursement basis in accordance with the labor rate schedule included in this Contract up to and not to exceed **\$196,975.00**. If CM/GC's costs for Preconstruction Phase Services exceed the amount set forth herein without receiving a written Change Order from the Owner allowing for such increase, CM/GC will not receive any additional compensation for Preconstruction Phase Services.

5.2.2 If a GMP Amendment is not executed under this Contract, Owner will pay CM/GC only for the Preconstruction Phase Services.

5.2.3 CM/GC will not be entitled to any CM/GC Fees for Preconstruction Phase Services.

5.3 Payment under a GMP Amendment.

5.3.1 If a GMP Amendment is executed between the Owner and CM/GC, Owner shall pay CM/GC, as payment for the Work, the Contract Price which shall be equal to:

- A. the Preconstruction Phase Services described in Section 5.2;
- B. the CM/GC Fee described in Section 5.4;
- C. the Actual Cost of the Work and Fixed General Condition Costs as described in Articles 6, 7, and 10 and Exhibit D; and, any Early Work, but not exceeding the "not to exceed" price negotiated separately for the Early Work. (reference section 2.2.5).

5.3.2 The GMP shall be determined in accordance with this Article. Costs in excess of the GMP shall be paid by the CM/GC without reimbursement by Owner, except to the extent that the GMP is increased by Changes to the GMP. Changes to the GMP shall only be authorized by Amendment or Change Order which includes written approvals from the Owner.

5.3.3 If Owner and CM/GC execute a GMP Amendment and the total actual amount paid for Preconstruction Phase Services is less than the maximum amount set forth under Section 5.2.1, the GMP shall be reduced by the difference. Except to the extent the parties may expressly

agree to the contrary in the GMP Amendment, no costs related to Preconstruction Phase Services or other costs, compensation or reimbursement shall be payable to CM/GC with respect to Preconstruction Phase Services performed after execution of the GMP Amendment.

5.4 CM/GC Fee.

5.4.1 The "CM/GC Fee" shall be included in the GMP Amendment, and shall be calculated as **4.95%** of the estimated Cost of the Work at the time of establishment of the GMP, with the exception of Self-Perform as defined in Section 9.4 which shall have a fee of 9.5%. In making such calculation, the estimated Cost of the Work shall exclude the Preconstruction Phase Services Fee, the CM/GC Fee itself, and any other cost or charge which this Contract states is not to be included in calculating the CM/GC Fee. The CM/GC Fee shall be applied to Allowances, selected alternates, Fixed Cost for GC Work, and reasonable CM/GC Contingencies as designated in the GMP Supporting Documents. The CM/GC Fee shall be as follows:

Cost of Work (Other than Self-Perform Work) X 4.95%
Self-Perform Work X 9.5%

5.4.2 The CM/GC Fee is inclusive of profit, overhead, and all other indirect or non-reimbursable costs as defined in Exhibit D. Owner shall pay the CM/GC Fee ratably with each application for payment during the Construction Phase. In the case of Early Work, the CM/GC Fee shall be the above percentage multiplied by the actual cost of the Early Work, until such time as a GMP Amendment is executed, at which time such CM/GC Fee payments shall be credited against the CM/GC Fee fixed therein.

5.4.3 Notwithstanding any provision of Section D.1.3 of Exhibit A, and unless the parties agree in writing to the contrary, any Amendment or Change Order that increases or decreases the GMP shall adjust the CM/GC Fee then in effect by the multiplying the percentage shown in Section 5.4 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.

5.5 Determination of GMP.

5.5.1 Documents developed during performance of Preconstruction Phase Services to establish the scope of Work for the Construction Phase Services phase shall be used by the CM/GC to develop and negotiate the GMP.

5.5.2 CM/GC shall deliver to Owner a proposed GMP and GMP Supporting Documents at a time designated by Owner during the Preconstruction Phase. The CM/GC shall include with its GMP Supporting Documents a written statement of its basis for the GMP, which shall expressly identify the following:

- A. A list of the Plans, Specifications, Offers, and other documents including all addenda and changes thereto and the conditions of the Contract, which were used in preparation of the GMP proposal.
- B. A list of Allowances and a statement of their basis. The basis shall include what is included in each Allowance and how the Allowance will be applied.

- C. A list of the clarifications, assumptions, exclusions, conditions, unit prices, and alternates made by the CM/GC in the preparation of the GMP proposal to supplement the information contained in the Plans and Specifications.
- D. 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.
- 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.

5.5.3 The CM/GC shall meet with the Owner and Engineer to review the GMP proposal and the written statement of its basis. If the Owner or Engineer discovers any incomplete information, 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.

5.5.4 Prior to the Owner's acceptance of the CM/GC's GMP proposal and execution of a GMP Amendment or Early Work Amendment and subsequent issuance of a Notice to Proceed with the work defined in said Amendment, the CM/GC shall not incur any cost to be reimbursed as part of the Cost of the Work except to the extent authorized by Owner. The CM/GC will not be reimbursed for any cost incurred prior to its receipt of a Notice to Proceed with Construction and other documents required under this Contract as set forth in Section 2.2, except to the extent authorized by the Owner.

5.5.5 After execution of a GMP Amendment, the Owner shall authorize and cause the Engineer to revise the Plans and Specifications to the extent necessary to reflect the agreed-upon assumptions and clarifications contained in the GMP Amendment. Such revised Plans and Specifications shall be furnished to the CM/GC in accordance with schedules agreed to by the Owner, Engineer and CM/GC. The CM/GC shall promptly notify the Engineer and Owner if such revised Plans and Specifications are inconsistent with the agreed-upon assumptions and clarifications.

5.5.6 The GMP shall include in the estimated Cost of the Work only those State and local taxes which are enacted at the time the GMP is established.

5.5.7 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 unanticipated costs and unforeseen conditions which are properly reimbursable as Cost of the Work but which are not the basis for a Change Order. OWNER shall be notified of any monies to be taken from or added to this contingency.

5.5.8 The CM/GC shall work with the Engineer and Owner to identify and confirm components and systems not specifically included in the Plans and Specifications but required for a complete, fully functional Project. Owner will direct the Engineer to complete the final Construction Documents in accordance with the Project scope agreed upon by all parties in writing at the time the GMP is established.

5.5.9 The CM/GC represents and warrants, that at the time it submits the GMP, the GMP will include the entire cost of all components and systems required for a complete, fully functional Project as specifically included the scope of the GMP.

5.6 Failure to Furnish an Acceptable GMP. If the CM/GC does not furnish a GMP acceptable to Owner within Owner's budget, or if Owner determines at any time in its sole discretion that the parties may fail to reach a timely agreement on a GMP acceptable to Owner, Owner may terminate the Contract without liability, and the CM/GC shall not receive additional compensation beyond the actual amount for Preconstruction Phase Services performed, and described in Exhibit B, sums due under any Early Work Amendment, and CM/GC's reasonable termination expenses. Termination under this provision shall proceed under Section J.5 of Exhibit A as a termination for Owner's convenience. CM/GC agrees that Owner shall not be liable for any additional damages whether actual, consequential or otherwise for termination of the Contract under this provision.

5.7 Acceptance of GMP. Upon acceptance of the GMP by Owner, the parties shall execute a GMP Amendment in the form included in this Contract as Exhibit C.

5.8 Owner Savings. If upon Final Completion of the Project, the sum of the actual costs of Construction Phase Services, plus the CM/GC Fee, plus the actual and final Cost of the Work, is less than the GMP, all savings shall go to the Owner.

5.9 Allowance Work.

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

5.9.2 The GMP will increase only if the cost to Owner of the Allowance items exceeds the total amount of the Allowances.

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

5.9.4 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.

5.9.5 Allowance items not identified in the GMP Amendment or the GMP Supporting Documents will not be paid until such Allowance item is reduced to a fixed price by Change Order or Amendment.

5.9.6 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 by a Change Order or Amendment.

5.10 Reallocating Projected Cost Under runs/Overruns after Bid (Offer) Buyout. At reasonable intervals, or at least quarterly beginning on Notice to Proceed date, the CM/GC shall provide a report to the Owner that reviews projected costs. The report will provide the Owner with a buy-out status report showing any projected cost under runs, overruns, reconciliation of accepted offers and other reasonably anticipated costs. CM/GC shall include with its report any underlying documentation requested by Owner used to develop or support such report. CM/GC

shall also consider the reduced risk associated with known subcontracting costs, and the impact that reduced risk has on the amount of the CM/GC's Contingency.

5.10.1 The parties shall negotiate in good faith to execute a Change Order transferring an appropriate portion of any projected cost under runs to an Owner-controlled contingency fund to be held within the GMP to pay for additional costs arising from:

- A. Any Owner-directed or approved change to the Work,
- B. Schedule changes that would otherwise entitle CM/GC to an increase in the GMP,
- C. Allowance items after exhaustion of all Allowances,
- D. Selection by Owner of more expensive alternates than those used for calculation of the GMP,
- E. Owner selection of substitutions that increase the Cost of the Work, or
- F. Any other costs which otherwise would entitle CM/GC to an increase in the GMP.

5.10.2 Any transfer of projected cost under runs from CM/GC's contingency to the Owner-controlled contingency fund will not affect CM/GC's obligation to furnish Owner with a complete, fully functional Project within the GMP without use of the funds transferred to the Owner-controlled contingency fund unless such funds are released by Owner for the purposes set forth in A through F of Section 5.10.1. Any transfer of funds to the Owner-controlled contingency fund will reduce the CM/GC Fee.

ARTICLE 6 - CHANGES IN THE WORK

6.1 Price Adjustments. Adjustments to the estimated Cost of the Work required by changes in the Work shall be determined by the methods listed in Section D of Exhibit A.

6.1.1 The Owner and CM/GC can agree to an adjustment based upon fixed pricing or unit pricing.

6.1.2 The overhead and profit markup for the CM/GC shall be limited to the CM/GC Fee adjustment permitted under Section 5.4 of this Contract.

6.1.3 The increase or decrease in the cost resulting from changes in the Work shall be calculated pursuant to Articles 7 and 8 of this Contract. Changes to Subcontractor work shall be calculated in accordance with Section D of Exhibit A.

6.1.4 In calculating adjustments to subcontracts, unless the parties agree otherwise, the change shall be limited to the Subcontractor's direct costs plus the supplemental mark-up provided in Section D of Exhibit A and shall not be modified by Articles 7 and 8 of this Contract.

6.2 Adjustments to GMP. Adjustments to the GMP after execution of the GMP Amendment may be made only with written agreement between the Owner and CM/GC and: (i) in the event of Scope Changes or (ii) as otherwise expressly provided in this Contract, Adjustments to the GMP will occur only in accordance with the following procedure:

6.2.1 CM/GC shall review subsequent changes to 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.

6.2.2 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 Engineer and Owner's Authorized Representative promptly after becoming aware of any Scope Change if, in CM/GC's opinion, it constitutes grounds for adjustment of the GMP. Any GMP Change Request shall include a proposal as to the appropriate GMP adjustment with respect to the Scope Change at issue.

6.2.3 CM/GC shall submit its GMP Change Requests as soon as possible, and CM/GC shall not be entitled to claim a GMP increase unless CM/GC submitted a GMP Change Request to Owner's Authorized Representative and to Engineer within the earlier of: (i) seven (7) Days after CM/GC has received the information constituting the basis for the claim, or (ii) 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 (ii) in any event, prior to CM/GC's signing of a Change Order for the Scope Change.

6.2.4 Owner may, at any time, submit a GMP Change Request requesting a reduction of the GMP, which shall include Owner's basis for such request, which may include, for example, reduction of the CM/GC's Contingency after further development of the Plans and Specifications that form the basis for the original GMP Amendment, and/or unused Allowances. Any reduction in the GMP will not be included in the cost savings described in Section 5.8.

6.2.5 CM/GC shall work with Engineer to reconcile all differences in its GMP Change Request within seven (7) days from the date of submission of the GMP Change Request. "Reconciled" means that the CM/GC and Engineer have verified that their assumptions about the various categories are the same, and that they have identified the reason for differences in the GMP Change Request and the Engineer's position. CM/GC shall submit the reconciled GMP Change Request to Owner, which submission shall be a condition to any CM/GC claim for a GMP increase.

6.2.6 If the reconciled GMP Change Request is not acceptable to Owner, CM/GC will work with the Owner and the Engineer to provide a GMP Change Request that is acceptable to Owner.

6.2.7 CM/GC will make all records, calculations, drawings and similar items relating to GMP Change Request available to Owner and will provide the Engineer and Owner with copies of all such documents at the Owner's request. Upon Owner's reasonable notice, CM/GC shall deliver two copies of such documents to Owner and Engineer.

6.2.8 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.

6.2.9 Except as provided in this Section 6.2, adjustments to the GMP shall be reconciled in accordance with Section D of Exhibit A.

6.3 Execution of Change Orders or Amendments by Owner. If Engineer is not the Owner's Authorized Representative, then notwithstanding any provision in the Contract to the contrary, Engineer has no authority to execute Change Orders or Amendments on behalf of Owner, and only duly authorized personnel of Owner may do so.

ARTICLE 7 - COST OF THE WORK

7.1 Cost of the Work. Generally, the “Cost of the Work” is defined as all direct costs of constructing the Project such as labor, materials and equipment, subcontractor costs, and other costs specially referenced in Exhibit D as Cost of Work. The CM/GC will be paid for the Cost of the Work. 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 7, and only to the extent that they are directly related to the Project. The Cost of the Work includes those items set forth in this Article 7.

7.2 Labor Costs.

7.2.1 Labor costs include wages of construction workers (including safety and quality control staff) directly employed by the CM/GC to perform the construction of the Work at the site, including craft labor, burden, and reasonable overhead recovery. All work bid and performed by the CM/GCs forces outside of General Conditions Work shall meet the same requirements as other subcontracted work.

7.2.2 Wages and salaries of the CM/GC's supervisory and administrative personnel working directly for the project are costs included in the Fixed Costs for General Conditions Work. As agreed to by Owner in GMP, offsite or home office employees may be covered under Fixed Costs for General Conditions Work for specific work performed on the project or to support project specific tasks, and in the best interest of the project to perform these tasks offsite in order to mitigate any unnecessary travel costs. Employees under this category working offsite may include project specific charges for payroll and project accounting, estimating, risk and claims management, contracts, project audit and procurement/expediting of site equipment.

Fixed Costs for General Conditions Work includes per diem costs, accommodations both long term and short term, mileage, lease of onsite vehicles and mileage and other costs specifically referenced in Exhibit D as Fixed Costs for General Conditions. .

7.3 Subcontract Costs.

7.3.1 CM/GC's actual payment to Subcontractors pursuant to CM/GC's contract with such Subcontractor for the Work on the Project. No amount paid by or payable to any such Subcontractor other than the fixed or cost reimbursement price of its subcontract shall be included in the Cost of the Work, unless otherwise approved in writing by Owner. Subcontractor costs shall be determined through the process defined in Article 9 of this Contract.

7.4 Costs of Materials and Equipment Incorporated in the Work or Stored On Site.

7.4.1 Costs of Materials and Equipment Incorporated in the Work or Stored On Site shall include costs for transportation of, and costs of materials and equipment incorporated or to be incorporated in the completed Work. These costs shall be considered a direct cost and included in the Cost of Work.

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

sales shall be credited to Owner as a deduction from the Cost of the Work minus the costs of obtaining such discounts, rebates and credits.

7.4.3 Under special conditions, applications may be made for payment for materials stored on site or off site prior to incorporation into work per Exhibit A, Section E.2.3. Owner has a right to inspect or require documentation prior to payment of materials stored offsite. All materials and equipment stored offsite that the Owner has paid will be segregated from other materials and equipment, and clearly identified as property of the Owner.

7.5 Fixed Cost For General Conditions Work. Exhibit D (CM/GC General Conditions Cost Matrix) identifies the overhead costs that will be paid to the CM/GC as a fixed cost for General Conditions (GC) Work. General Conditions work includes the management and supervision of the Work working directly for the Project. To the extent any GC Work is listed in Exhibit D and also otherwise described in this Article 7, CM/GC's compensation 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 5% retainage, 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 Construction Phase.

7.6 Reimbursable Cost of Work include the following. Additional reimbursable costs are identified in Exhibit D, General Conditions and Cost of Work Matrix.

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

7.6.2 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.

7.6.3 CM/GC deposits lost due to the Owner's negligence.

7.6.4 Drawings, Specifications and other documents required to complete the Work, except as provided by Owner or Engineer.

7.6.5 Bonding, insurance premiums and deductible costs.

7.6.6 Job Site Office, and associated furnishings, equipment, janitorial service and supplies.

7.6.7. Cost of fees of testing laboratories for tests required by the Contract Documents, except those related to defective or nonconforming work for which reimbursement is excluded provisions of the Contract Documents.

7.6.8. Rental charges of all necessary machinery and equipment used at the Worksite, whether rented from the CM/GC or others, including installation, operator costs, fuel, repair and replacement, dismantling, removal, maintenance, transportation and delivery costs.

7.6.9. Costs to receive, store and install any Owner furnished equipment or materials as called for in this Contract.

7.6.10. Cost of surveys if required for the work.

7.6.11. Subcontractor defaults and subcontract enforcement, including re-procurement costs, subcontractor claims analysis, dispute resolution, attorney's fees and litigation costs.

- 7.6.12.** All costs associated with establishing, equipping, operating, maintaining and demobilizing the CM/GC and the subcontractor's field offices.
- 7.6.13.** Costs of obtaining and using all water, power and fuel necessary for the Work, if not paid directly by the Owner.
- 7.6.14.** Reproduction costs, photographs, cost of telegrams, facsimile transmissions, long distance telephone calls, data processing services, postage, express delivery charges, and telephone service at the Worksite and reasonable petty cash expenses at the field office.
- 7.6.15.** Cost of removal of all non-hazardous substances, debris and waste materials.
- 7.6.16.** Cost of bonds, insurance, Builder's Risk, and taxes required by the Contract Documents.
- 7.6.17.** Other project specific costs, which may include but not be limited to, key subcontractor bonds, off-site work defined within the GMP to avoid unnecessary transportation costs, transport costs, T1 line, site telephones, and applicable utility fees.
- 7.6.18** Costs for all chemicals and other expendables required for start-up and commissioning shall be provided by the Owner.
- 7.6.19** 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 provided however that the CM/GC and its agents or Subcontractors are not responsible for such emergency.
- 7.7 Documenting Costs.** The CM/GC must provide documentation for all costs paid by the CM/GC with each payment request submitted to the Owner.

ARTICLE 8 - COSTS EXCLUDED FROM COST OF WORK

- 8.1 Costs Excluded from Cost of Work.** The following shall not be included in the Cost of the Work and not reimbursed to the CM/GC:
- 8.1.1** Salaries and other compensation of the CM/GC's personnel stationed at CM/GC's principal office or offices other than the site office except as provided herein.
- 8.1.2** Cost of long-distance telephone calls, communication devices, postage and parcel delivery charges, and telephone service at the site which are solely for the benefit of the Work shall be included in the overhead costs as defined in Exhibit D.
- 8.1.3** That portion of premiums for insurance directly attributable to any deductibles. .
- 8.1.4** Expenses of the CM/GC's principal office and offices other than the site office.
- 8.1.5** Any overhead and general expenses, except as may be expressly included in Article 7.
- 8.1.6** CM/GC's capital expenses, including interest on the CM/GC's capital employed for the Work.

- 8.1.7** Any cost associated with the Project not specifically and expressly described in Article 7.
- 8.1.8** Costs due to the negligence of the CM/GC, Subcontractors, suppliers, anyone directly or indirectly employed by any of them, or for whose acts any of them may be liable.
- 8.1.9** The cost of correction of any repair work, nonconforming or defective work, or warranty work.
- 8.1.10** Merit, safety, or other incentive payments, bonuses or awards, or any expenses in connection therewith.
- 8.1.11** Fines and penalties.
- 8.1.12** Except for Early Work, the cost of Preconstruction Phase Services.
- 8.1.13** The Cost of the Work for GC Work in excess of the Fixed Cost for GC Work.
- 8.1.14** Any costs in excess of the GMP not approved by written Change Order.

ARTICLE 9- SUBCONTRACTS AND OTHER CONTRACTS

9.1 General Subcontracting Requirements.

9.1.1 Other than Work performed pursuant to Section 9.4 of this Contract, CM/GC shall subcontract the Work to Subcontractors other than the CM/GC and its Affiliates. All subcontractor selections shall comply with ORS 279C.337(3) and OAR 137-049-0690 (5)(k).

9.2 CM/GC's Obligations under Subcontracts.

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

9.2.2 The CM/GC shall include in each subcontract and require each Subcontractor to include in any lower tier subcontract, all provisions necessary to make all of the provisions of the Contract Documents fully effective as applied to Subcontractors. CM/GC shall indemnify Owner for any additional cost based on a Subcontractor claim which results from the failure of CM/GC to incorporate the provisions of this 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.

9.2.3 Retainage from Subcontractors. Except with the Owner's prior approval, payments to Subcontractors shall be subject to retainage of no more than 5% or such other amount as required by applicable law. The Owner and the CM/GC shall agree upon a mutually acceptable procedure for review and approval of payments and retainage for Subcontractors.

9.3 Subcontractor Selection.

9.3.1 Unless otherwise provided under this Article 9, the selection of all Subcontractors and suppliers shall be made by competitive Offers in a manner that will not encourage favoritism or substantially diminish competition. While not subject to the competitive procurement requirements of ORS Chapter 279C, the process shall conform to the following procedures, in general compliance with the open and competitive nature of public procurement, taking into account industry subcontracting practices.

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

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

- A. All contracts must be awarded by a competitive bid process consistent with Oregon State law.
- B. Solicitations will be advertised at least 21 Days prior to opening in the Daily Journal of Commerce. CM/GC also agrees to advertise in a local community newspaper in the area in which the Project is located, in order to allow for local participation in the solicitation process.
- C. Unless specific other prior arrangement has been made with Owner, all Offers will be written, and submitted to a specific location at a specific time. CM/GC shall time-stamp all Offers as received. Subcontractors must be qualified to perform the Work for this Project by being appropriately registered with the State of Oregon Construction CM/GCs Board or by being listed on the City of Lebanon Approved CM/GCs list for specified work as applicable.
- D. If fewer than three Offers are submitted in response to any solicitation (inclusive of any Offer submitted by CM/GC), prior written approval by Owner shall be required to accept an Offer.
- E. CM/GC may develop and implement a prequalification process for particular solicitations; followed by selection of successful Offers among those Offerors that CM/GC determines meet the prequalification standards, with Owner's prior written approval of such prequalification process.
- F. CM/GC shall comply, and require Subcontractor compliance with, State of Oregon Bureau of Labor & Industries prevailing wage rates as specified in the RFP.
- G. Owner may at its sole discretion, require CM/GC to re-solicit for Offers based on the same or modified documents.

- H. 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.
- I. The CM/GC will document any and all discussions, questions and answers, modifications and responses to from any Offeror and ensure that the same are distributed to all Offerors, and Owner shall be entitled to inspect such documentation on request.
- J. 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. If CM/GC determines it is unable to execute a suitable subcontract with such Offeror, CM/GC may, with Owner's prior approval, execute a subcontract with the second-lowest Offeror pursuant to Section 9.3.4 below.

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

9.3.5 CM/GC shall notify Owner in writing in advance before award of any proposed Subcontract, which notice shall include summaries in a form acceptable to Owner of all Offers received for the Subcontract at issue. Owner reserves the right to disapprove any proposed Subcontractors, suppliers and subcontract or supply contract awards, based on legal standards of responsibility. Owner shall not unreasonably disapprove any proposed Subcontractor or supplier.

9.3.6 CM/GC's subcontracting records may be considered public records. The Owner and/its representatives retain the right to audit and monitor the subcontracting process in order to protect the Owner's interests.

9.4 Subcontracting by CM/GC.

9.4.1 Except to the extent otherwise approved in advance in writing by Owner's Authorized Representative, the CM/GC or its Affiliates may submit an Offer in accordance with Section 9.3 to do Work with its own forces, provided at least fifty (50%) of the labor by such work unit is performed by employees of the CM/GC or its Affiliate.

9.4.2 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 Section 9.3.1, and Owner notified in writing. All Offers for this work shall be delivered to Owner and publicly opened by Owner at an announced time, date, and place.

9.5 CM/GC Self-Performance without Competition. CM/GC shall be allowed to self-perform elements of the construction Work without competition. The portion of the Work CM/GC is to self-perform is outlined in CM/GC's RFP submission. Any self-performance under this section must comply with ORS 279C.337(3)(c) and OAR 137-049-0690 (5)(m). The Owner has the authority to require at least one independent cost estimate prior to the work being included in the contract.

9.6 Protests. CM/GC, acting as an independent CM/GC, shall include in the competitive process to award all subcontracts, a protest process for Subcontractors and suppliers that are competing Offerors, which process shall be subject to approval by Owner.

9.6.1 CM/GC shall be responsible for coordinating with Owner the procurement protests of Subcontractors and suppliers, and CM/GC may utilize Contingency for the costs associated with any procurement protest.

9.6.2 To the extent the bid protest results from CM/GC's negligence or sole fault, any impacts to the schedule that result from a bid protest will be the CM/GC's responsibility.

9.6.3 To the extent the bid protest results from CM/GC's negligence or sole fault, CM/GC shall indemnify, defend, protect and hold harmless Owner from and against any such procurement protests and resulting claims or litigation.

9.5.4 CM/GC shall act as an independent CM/GC, and not an agent of Owner, in connection with any procurement protest.

9.5.5 The provisions of this Article 9 are solely for the benefit of Owner, and do not grant any rights or remedies (including third party beneficiary rights) to any Offeror or other protester, in connection with any procurement protest or claim.

ARTICLE 10 - ACCOUNTING RECORDS

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

10.2 Periodic and Final Audits. Owner may, at its discretion, perform periodic audits of the reimbursable Cost of the Work and any other reimbursable costs associated with the Project. Owner intends to conduct a final audit of reimbursable costs prior to the Contract closeout. The CM/GC shall cooperate fully with Owner in the performance of such audits. Disputes over audit findings or conclusions shall be subject to the process set forth in Section 12.4.

ARTICLE 11 - PROGRESS PAYMENTS

11.1 Preconstruction Phase Services. Work performed as Preconstruction Phase Services will be invoiced monthly based on actual hours billed by CM/GC's staff to perform the activities described in Exhibit B. The monthly invoice shall be accompanied by a summary of all work performed by CM/GC during the previous month. The CM/GC Fee shall not be paid on Preconstruction Phase Service work performed. Home office activities already included in the general conditions for the Project as set forth in Exhibit D shall not be billed on an hourly basis during the Preconstruction Phase.

11.2 Integration with Exhibit A. The requirements of Article 11 and Article 12 are in addition to, and not in lieu of, the requirements of Section E of Exhibit A.

In the event of conflict between the provisions of Articles 11 and 12 and Section E, the provision more favorable to Owner shall control. Without limitation, the provisions of Sections 11.3 shall control over the corresponding provisions of Section E.2.5 of Exhibit A.

11.3 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 percentage of that portion of the Work which has actually been completed.

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

- A. Take that portion of the GMP properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work under the Schedule of Values by the share of the GMP allocated to that portion of the Work in the Schedule of Values. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included;
- B. Add that portion of the GMP properly allocable to materials and equipment delivered and suitably stored and otherwise in compliance with Section E.2.3 of Exhibit A;
- 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 subsections (a) and (b) above bears to the estimated probable Cost of the Work described in Section 5.1.2, but in no event causing total CM/GC Fee payments to exceed the total CM/GC Fee;
- D. Subtract the aggregate of previous payments made by and retained by the Owner;
- E. Subtract the shortfall, if any, indicated by the documentation required to substantiate prior applications for payment, or resulting from errors subsequently discovered by the Owner in such documentation;
- F. Subtract any amounts for which the Owner's Authorized Representative has withheld or denied payment as provided in the Contract Documents; and
- G. Subtract 5% retainage on the entire progress payment.

11.5 Withholding of Payments. The Owner can withhold payment or portions of payments to the CM/GC if the work performed by the CM/GC does not comply with the Contract Documents.

11.6 Reduction of Retainage. As work progresses, Owner may reduce the amount of the retainage in accordance with ORS 279C.570, and the Owner may eliminate retainage on any remaining monthly contract payments after 50 percent of the Work under the Contract is completed if, in the Owner's opinion, such work is progressing satisfactorily. Elimination or reduction of retainage shall be allowed only upon written application by the CM/GC, and the application shall include written approval of the CM/GC's surety. However, when the contract work is 97.5 percent completed the Owner may, at its discretion and without application by the CM/GC, reduce the retained amount to 100 percent of the value of the Contract Work remaining to be done. Upon receipt of a written application by the CM/GC, the Owner shall respond in writing within a reasonable time.

11.6 Interest. Late payment interest shall begin to accrue on undisputed payments due and owing 30 Days after owner approval of invoice. Late payment interest shall accrue at the rate of one half percent per month until paid.

ARTICLE 12 - FINAL PAYMENT

12.1 Final Payment Accounting. CM/GC shall submit to Owner a final detailed accounting of the Cost of the Work together with CM/GC's final application for payment after full completion of the Project, including any Punchlist tasks.

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

12.2.1 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.

12.2.2 Subtract amounts, if any, for which the Owner's Authorized Representative withholds, in whole or in part, approval of payment.

12.2.3 Subtract amounts, if any, for materials and equipment as defined in Sections 7.4.

12.2.4 Subtract the aggregate of previous payments made by Owner to CM/GC. If the aggregate of previous payments made by Owner exceeds the amount due the CM/GC, the CM/GC shall reimburse the difference to Owner within 30 Days with interest at the rate applicable to Owner payments under Exhibit A.

12.3 Final Payment Review. Owner and/or its accountants will review and report in writing on the CM/GC's final accounting within 30 Days after delivery of the final accounting by the CM/GC. Based upon such Cost of the Work as Owner or Owner's accountants report to be substantiated by the CM/GC's final accounting, and provided the other conditions of the Contract have been met, the Owner's Authorized Representative will, within 10 Days after receipt of the written report of Owner's accountants, either issue to Owner an approval of CM/GC's final application for payment with a copy to the CM/GC or notify the CM/GC and Owner in writing of the Owner's Authorized Representative's reasons for withholding approval of any part of the application for payment, which disapproval shall include Owner's Authorized Representative's estimate of the amount that is due the CM/GC under the application for payment.

12.4 Payment Disputes. If Owner's accountants report on the Cost of the Work as requested by the CM/GC's final accounting is less than that claimed by the CM/GC or if Owner's Authorized Representative declines to approve any duly submitted payment request by CM/GC, the CM/GC shall be entitled to a review by the Owner's highest contracting authority of the disputed amount. A request for review shall be made by the CM/GC within 30 Days after the CM/GC's receipt of a copy of the rejection of the application for payment.. In addition, If Owner or any other state agency performs a subsequent audit of the Cost of the Work and determines any item to have been unsubstantiated or that CM/GC was overpaid, CM/GC shall have thirty (30) Days after delivery of request for reimbursement by Owner to request review by Owner's highest contracting authority.. If CM/GC timely submits a protest to Owner's highest contracting authority, CM/GC's claim shall be subject to the claims review process in Section D.3 of Exhibit A.

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

ARTICLE 13 - TERMINATION OR SUSPENSION

13.1 Owner's Right to Terminate Prior to Execution of GMP Amendment. Prior to execution by both parties of the GMP Amendment, the Owner may terminate the Contract at any time without cause. Upon such termination, the amount to be paid to the CM/GC shall not exceed the Preconstruction Phase Services Fee payable to the date of termination, together with amounts payable for Early Work if an Early Work Amendment has been executed, together with CM/GC's reasonable termination expenses. If Owner terminates for convenience during the Preconstruction Phase, Owner shall be entitled to copies of, and shall have the right to use, all work products of CM/GC and its Subcontractors performed to the date of termination, and CM/GC shall deliver copies of all work products to Owner on request.

13.2 Owner's Termination for Convenience after GMP Amendment. After the GMP Amendment is executed by both parties, the Contract may be terminated by Owner without penalty for convenience pursuant to Section J.5 of Exhibit A in which case CM/GC shall be entitled to payment of the actual amount for Preconstruction Phase Services, together with the actual Cost of the Work completed, plus the CM/GC's Fee prorated based on the actual Cost of the Work completed prior to the date of termination, plus CM/GC's reasonable termination expenses. but in any event not in excess of the GMP.

13.3 Owner's Termination for Cause. In the event of termination of this Contract by Owner for cause pursuant to Section J.4 of Exhibit A, the amount, if any, to be paid to the CM/GC shall not exceed the amount the CM/GC would be entitled to receive under Section 12.2.

13.4 Assignment of Subcontracts. Prior to termination of the Contract, Owner will notify CM/GC in writing if Owner elects to have any subcontracts and/or supply contracts assigned from CM/GC to Owner. CM/GC will include a provision in each subcontract and supply agreement whereby the Subcontractor/supplier acknowledges Owner's rights under this Section 13.4. With respect to any subcontracts/supply contracts that are not accepted by Owner, the provisions of Section J.6.1 of Exhibit A shall apply.

ARTICLE 14 - REPRESENTATIONS, WARRANTIES AND CERTIFICATIONS

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

14.1.1 it is qualified to do business as a licensed general CM/GC 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;

14.1.2 it has full corporate power and corporate authority to enter into and perform the Contract and to consummate the transactions contemplated hereby; CM/GC has duly and validly executed and delivered this Contract to Owner and that the Contract constitutes the legal, valid and binding obligation of CM/GC. CM/GC agrees that this Contract is enforceable against CM/GC in accordance with its terms;

14.1.3 CM/GC's execution and delivery of this 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;

14.1.4 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;

14.1.5 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

14.1.6 The CM/GC's Project Manager and Assistant Project Manager identified in Article 3 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.

14.2 Tax Compliance Certification.

The individual signing on behalf of CM/GC hereby certifies and swears under penalty of perjury that s/he is authorized to act on behalf of CM/GC, s/he has authority and knowledge regarding CM/GC's payment of taxes, and to the best of her/his knowledge, CM/GC is not in violation of any Oregon tax laws. For purposes of this certification, "Oregon tax laws" are those tax laws listed in ORS 305.380(4), namely ORS Chapters 118, 314, 316, 317, 318, 320, 321 and 323 and Sections 10 to 20, Chapter 533, Oregon Laws 1981, as amended by Chapter 16, Oregon Laws 1982 (first special session); the elderly rental assistance program under ORS 310.630 to 310.706; and any local taxes administered by the Oregon Department of Revenue under ORS 305.620.

14.3 CM/GC will provide Owner and Owners Authorized Representative with immediate notice of CM/GC's filing of any notice of bankruptcy. Owner will be allowed all rights under Bankruptcy law. Owner may elect to terminate this Contract upon receipt of such notice from CM/GC.

ARTICLE 15 - MISCELLANEOUS

15.1 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.

15.2 Compliance with Public Contracting Law. The Contract has been awarded as authorized by ORS 279C.335. All applicable provisions of ORS chapters 187 and 279A, 279B, and 279C and all other terms and conditions necessary to be inserted into public contracts in the State of Oregon, are hereby incorporated as if such provision were a part of this Agreement. Specifically, it is a condition of this contract that CM/GC and all employers working under this Agreement are subject employers that will comply with ORS 656.017 as required by 1989 Oregon Laws, Chapter 684.

For public work subject to ORS 279C.800 to 279C.870, the CM/GC shall pay prevailing wages. If such public work is subject both to ORS 279C.800 to 279C.870 and to 40 U.S.C. 276a, the CM/GC and every subcontractor on such public work shall pay at least the higher prevailing wage. The CM/GC and each subcontractor shall pay workers not less than the specified minimum hourly rate of wage in accordance with Section 7 of 2005 Oregon Laws Chapter 360. METRO shall pay an administrative fee as provided in ORS 279C.825(1) to the Bureau of Labor and Industries pursuant to the administrative rules established by the Commissioner of Labor and Industries. CM/GC must promptly pay, as due, all persons supplying to such contractor labor or material used in this contract. If the CM/GC or 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 30 days after receipt of payment from the public contracting agency or a contractor, the CM/GC or first-tier subcontractor shall owe the person the amount due plus shall pay interest in accordance with ORS 279C.515. If the CM/GC or first-tier subcontractor fails, neglects, or refuses to make payment, to a person furnishing labor or materials in connection with the public 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. CM/GC must pay any and all contributions and amounts due to the Industrial Accident Fund from contractor or subcontractor and incurred in the performance of the contract. No liens or claims are permitted to be filed against Metro on account of any labor or material furnished. CM/GC is required to pay the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.

For public improvement work all contractors must demonstrate that an employee drug-testing program is in place

15.3 Notices. All notices shall be in writing and shall be served upon the other party by personal service, by facsimile transmission, E-Mail followed by mail delivery of the original of the notice, by overnight courier with proof of receipt, or by certified mail, return receipt requested, postage prepaid, addressed as follows:

Owner:

City of Lebanon, Oregon
925 Main Street
Lebanon, Oregon 97355
Attn: Ron Whitlatch, Engineering Services Director
541-258-4269
rwhitlatch@ci.lebanon.or.us

CM/GC:

Slayden Constructors, Inc.
PO Box 247
Stayton, OR 97383
Attn: Gregory Huston, President
gregh@slayden.com

Service by mail shall be deemed complete on the date of actual delivery or three (3) business days after being sent via certified mail. Service by facsimile transmission or E-Mail shall be deemed served on receipt of the facsimile or E-Mail, followed by mail delivery.

15.4 Waiver of Consequential Damages. Owner waives all rights against CM/GC, Subcontractors, and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them, for:

1. loss due to business interruption, loss of use, or other consequential loss extending beyond direct physical loss or damage to Owner's property or the Work caused by, arising out of, or resulting from fire or other perils whether or not insured by Owner; and
2. loss or damage to the completed Project or part thereof caused by, arising out of, or resulting from fire or other insured peril or cause of loss covered by any property insurance maintained on the completed Project or part thereof by Owner during partial occupancy or use after Substantial Completion.

Any insurance policy maintained by Owner covering any loss, damage or consequential loss referred to above shall contain provisions to the effect that in the event of payment of any such loss, damage, or consequential loss, the insurers will have no rights of recovery against CM/GC, Subcontractors, or Engineer, or the officers, directors, members, partners, employees, agents, consultants, or subcontractors of each and any of them.

CM/GC shall be responsible for assuring that the agreement under which a Subcontractor performs a portion of the Work contains provisions whereby the Subcontractor waives all rights against Owner, CM/GC, the Engineer and its consultants, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, relating to, or resulting from any of the perils or causes of loss covered by builder's risk insurance and any other property insurance applicable to the Work.

15.5 Indemnification. To the fullest extent permitted by Laws and Regulations, and in addition to any other obligations of CM/GC under the Contract or otherwise, CM/GC shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to the performance of the Work, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom but only to the extent caused by any negligent act or omission of CM/GC, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work or anyone for whose acts any of them may be liable.

In any and all claims against Owner or Engineer or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors by any employee (or the survivor or personal representative of such employee) of CM/GC, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, the indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for CM/GC or any such Subcontractor, Supplier, or other individual or entity under workers' compensation acts, disability benefit acts, or other employee benefit acts.

The indemnification obligations of CM/GC shall not extend to the liability of Engineer and Engineer's officers, directors, members, partners, employees, agents, consultants and subcontractors arising out of: the preparation or approval of, or the failure to prepare or approve maps, Drawings, opinions, reports, surveys, Change Orders, designs, or

Specifications; or giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage.

15.6 Drinking Water State Revolving Fund. This Project is funded in part by the Drinking Water State Revolving Fund (SDWRF). This Agreement is subject to the applicable provisions of the Construction Contract Requirements for Recipients of Safe Drinking Water financing. CM/GC expressly warrants that it will comply with all the applicable requirements of these laws, rules and regulations at all times and further warrants that CM/GC will ensure any lower tier subcontractor, supplier or consultant of CM shall also comply with these laws, rules and regulations at all times. Construction Contract Requirements for SDWRF financing as provided in Exhibit F is hereby incorporated into this Agreement in its entirety.

THIS CONTRACT is executed in two originals, with one original to be delivered to each party.

CM/GC:

Date

Signature of Authorized Representative

Blair M. Lavoie, P.E.

Print Name

Segment President and Chairman for SCI

Title

500 Willamette Avenue, PO Box 247

Mailing Address

Stayton, OR 97383

City, State, Zip

503-769-1969

Telephone

503-769-4525

Fax

47-5658451

Corporation Tax No. (If Incorporated)

CITY OF LEBANON, OREGON:

Date

Signature of Authorized Representative

Paul R. Aziz

Print Name

Mayor

Title

Date

Signature of Authorized Representative

Gary B. Marks

Print Name

City Manager

Title

APPROVED AS TO FORM:

Signature

John E. Kennedy

Print Name

City Attorney

Title

EXHIBIT A

CITY OF LEBANON, OREGON

WATER TREATMENT PLANT PROJECT

**Bid Package 2 - Intake, Raw Water Pump Station,
and Water Treatment Plant**

TABLE OF SECTIONS

SECTION A

GENERAL PROVISIONS

- A.1 DEFINITION OF TERMS
- A.2 SCOPE OF WORK
- A.3 INTERPRETATION OF CONTRACT DOCUMENTS
- A.4 EXAMINATION OF PLANS, SPECIFICATIONS, AND SITE
- A.5 INDEPENDENT CONTRACTOR STATUS
- A.6 RETIREMENT SYSTEM STATUS AND TAXES
- A.7 GOVERNMENT EMPLOYMENT STATUS

SECTION B

ADMINISTRATION OF THE CONTRACT

- B.1 OWNER'S ADMINISTRATION OF THE CONTRACT
- B.2 CONTRACTOR'S MEANS AND METHODS
- B.3 MATERIALS AND WORKMANSHIP
- B.4 PERMITS
- B.5 COMPLIANCE WITH GOVERNMENT LAWS AND REGULATIONS
- B.6 SUPERINTENDENCE & PERSONNEL
- B.7 INSPECTION
- B.8 SEVERABILITY
- B.9 ACCESS TO RECORDS
- B.10 WAIVER
- B.11 SUBCONTRACTS AND ASSIGNMENT
- B.12 SUCCESSORS IN INTEREST

- B.13 OWNER'S RIGHT TO DO WORK
- B.14 OTHER CONTRACTS
- B.15 GOVERNING LAW
- B.16 LITIGATION
- B.17 ALLOWANCES
- B.18 SUBMITTALS, SHOP DRAWINGS, PRODUCT DATA AND SAMPLES
- B.19 SUBSTITUTIONS
- B.20 USE OF PLANS AND SPECIFICATIONS
- B.21 FUNDS AVAILABLE AND AUTHORIZED
- B.22 NO THIRD PARTY BENEFICIARIES

SECTION C

WAGES AND LABOR

- C.1 MINIMUM WAGES RATES ON PUBLIC WORKS
- C.2 PAYROLL CERTIFICATION; ADDITIONAL RETAINAGE; FEE REQUIREMENTS
- C.3 PROMPT PAYMENT AND CONTRACT CONDITIONS
- C.4 PAYMENT FOR MEDICAL CARE
- C.5 HOURS OF LABOR

SECTION D

CHANGES IN THE WORK

- D.1 CHANGES IN THE WORK
- D.2 DELAYS
- D.3 CLAIMS REVIEW PROCESS

SECTION E

PAYMENTS

- E.1 SCHEDULE OF VALUES
- E.2 APPLICATIONS FOR PAYMENT
- E.3 PAYROLL CERTIFICATION REQUIREMENT
- E.4 DUAL PAYMENT SOURCES
- E.5 RETAINAGE
- E.6 FINAL PAYMENT

SECTION E

JOB SITE CONDITIONS

- F.1 USE OF PREMISES
- F.2 PROTECTION OF WORKERS, PROPERTY AND THE PUBLIC
- F.3 CUTTING AND PATCHING
- F.4 CLEANING UP
- F.5 ENVIRONMENTAL CONTAMINATION
- F.6 ENVIRONMENTAL CLEAN-UP
- F.7 FORCE MAJEURE

SECTION G

INDEMNITY, BONDING AND INSURANCE

- G.1 RESPONSIBILITY FOR DAMAGES / INDEMNITY
- G.2 PERFORMANCE AND PAYMENT SECURITY; PUBLIC WORKS BOND
- G.3 INSURANCE

SECTION H

SCHEDULE OF WORK

- H.1 CONTRACT PERIOD
- H.2 SCHEDULE
- H.3 PARTIAL OCCUPANCY OR USE

SECTION I

CORRECTION OF WORK

- I.1 CORRECTIONS OF WORK BEFORE FINAL PAYMENT
- I.2 WARRANTY WORK

SECTION J

SUSPENSION AND/OR TERMINATION OF THE WORK

- J.1 OWNER'S RIGHT TO SUSPEND

THE WORK

- J.2 CONTRACTOR'S RESPONSIBILITIES
- J.3 COMPENSATION FOR SUSPENSION
- J.4 OWNER'S RIGHT TO TERMINATE CONTRACT
- J.5 TERMINATION FOR CONVENIENCE
- J.6 ACTION UPON TERMINATION

SECTION K

CONTRACT CLOSE-OUT

- K.1 RECORD DRAWINGS
- K.2 OPERATION AND MAINTENANCE MANUALS
- K.3 AFFIDAVIT/RELEASE OF LIENS AND CLAIMS
- K.4 COMPLETION NOTICES
- K.5 TRAINING
- K.6 EXTRA MATERIALS
- K.7 ENVIRONMENTAL CLEAN-UP
- K.8 CERTIFICATE OF OCCUPANCY
- K.9 OTHER CONTRACTOR RESPONSIBILITIES
- K.10 SURVIVAL

SECTION L

LEGAL RELATIONS AND RESPONSIBILITY TO THE PUBLIC

- L.1 LAWS TO BE OBSERVED
- L.2 FEDERAL AGENCIES
- L.3 STATE AGENCIES
- L.4 LOCAL AGENCIES

**SECTION A
GENERAL PROVISIONS**

A.1 DEFINITION OF TERMS

See Article I of the Contract for definitions used in this Exhibit A

A.2 SCOPE OF WORK

The Work under this Contract includes all labor, materials, transportation, equipment and services for and incidental to the completion of all construction work on the project described in the Contract Documents. Separate scopes of work may be issued for pre-construction and construction phase services. CM/GC shall perform all Work necessary as required by the Contract Documents.

A.3 INTERPRETATION OF CONTRACT DOCUMENTS

A.3.1 Unless defined in the Contract Documents, words that have well-known technical meanings or construction industry meanings are used in accordance with those recognized meanings. Contract Documents are intended to be complementary. In the event of discrepancies among the Contract Documents, the following descending order of precedence applies:

1. Contract Amendments and Change Orders, with those of later date having precedence over those of an earlier date;
2. The City of Lebanon, Oregon CM/GC Contract;
3. The Plans, Specifications, and documents prepared to define the scope of Work for Construction Phase Services for the Project;
4. The Accepted Offer.

A.3.2 Inconsistencies among the

Plans, Specifications, and documents prepared to define the scope of Work for Construction Phase Services for the Project will be resolved by written interpretation of the Owner.

A.3.3 If CM/GC finds inconsistency or omissions in the Contract Documents, or if CM/GC is in doubt as to their meaning, CM/GC shall at once notify the Owner or Owner's Authorized Representative. Matters concerning performance under, and interpretation of requirements of, the Contract Documents will be decided by Owner's Authorized Representative, who may delegate that duty in some instances to the Architect/Engineer. Responses to CM/GC's requests for interpretation of Contract Documents will be made in writing by Owner's Authorized Representative (or the Architect/Engineer). Owner's Authorized Representative Owner's Authorized Representative

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

A.4 EXAMINATION OF PLANS, SPECIFICATIONS, AND SITE

A.4.1 CM/GC, before submitting an Offer, shall make a careful examination of the Solicitation Documents; become fully informed as to the quality and quantity of materials and the character of the Work required; and

shall make a careful examination of the location and conditions of the Work and the sources of supply for materials. The Owner will in no case be responsible for any loss or for any unanticipated costs that may be suffered by CM/GC as a result of CM/GC'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 Engineer either before or after the execution of this Contract, shall affect or modify any of the terms or obligations herein contained.

A.4.2 Should the Plans, Specifications, and documents prepared to define the scope of Work for Construction Phase Services for the Project fail to particularly describe the materials, kind of goods, or details of construction of any aspect of the Work, CM/GC shall inquire of the Owner and Engineer as to what is required prior to performing the Work..

A.4.3 Any design errors or omissions noted by CM/GC shall be reported promptly to Owner's Authorized Representative, including without limitation, any nonconformity with applicable laws, statutes, ordinances, building codes, rules and regulations.

A.4.4 If CM/GC believes that additional cost or Contract Time is involved because of clarifications or instructions issued by Owner's Authorized Representative (or Architect/Engineer) in response to CM/GC's notices or requests for information, CM/GC must submit a written request to Owner's Authorized Representative, setting forth the nature and extent of the request, including all time and cost impacts against the Contract as soon as possible, but no later than 30Days after receipt by CM/GC of

the clarifications or instructions issued. If Owner's Authorized Representative denies CM/GC's request for additional compensation, additional Contract Time, or other relief that CM/GC believes results from the clarifications or instructions, CM/GC may proceed to file a Claim under Section D.3, Claims Review Process. If CM/GC fails to perform the obligations of Sections A.4.1 to A.4.3, CM/GC shall pay costs and damages to the Owner as would have been avoided if CM/GC had performed such obligations, but only to the extent that CM/GC knew or reasonably should have known of the items covered by Sections A.4.1 to A.4.3..

A.5 INDEPENDENT CONTRACTOR STATUS

A.5.1 The service or services to be performed under this Contract are those of an independent contractor as defined in ORS 670.600. CM/GC is not an officer, employee or agent of the Owner.

A.6 RETIREMENT SYSTEM STATUS AND TAXES

A.6.1 CM/GC 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. CM/GC 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. Unless CM/GC is subject to backup withholding, Owner will not withhold from such payments any amount(s) to cover CM/GC's federal or state tax obligations.

A.7 GOVERNMENT EMPLOYMENT STATUS

A.7.1 If this payment is to be charged against federal funds, CM/GC represents and warrants that it is not currently employed by the Federal Government. This does not preclude CM/GC from holding another contract with the Federal Government.

Authorized Representative will neither have control over or charge of, nor be responsible for the construction means, methods, techniques,

sequences or procedures, or for the safety precautions and programs in connection with the Work.

SECTION B ADMINISTRATION OF THE CONTRACT

B.1 OWNER'S ADMINISTRATION OF THE CONTRACT

B.1.1 Owner's Authorized Representative will provide administration of the Contract as described in the Contract Documents (1) during construction (2) until final payment is due and (3) during the -one year period for correction of Work. Owner's Authorized Representative will act on behalf of the Owner to the extent provided in the Contract Documents, unless modified in writing. Owner's Authorized Representative may rely on the Engineer or other consultants to perform some or all of these tasks.

B.1.2 Owner's Authorized Representative will visit the site at intervals appropriate to the stage of CM/GC's operations (1) to become generally familiar with and to keep the Owner informed about the progress and quality of the portion of the Work completed, (2) to endeavor to guard the Owner against defects and deficiencies in the Work, and (3) to determine in general if Work is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. Owner's Authorized Representative will not make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. Owner's

B.1.3 Owner and CM/GC shall endeavor to communicate with each other through Owner's Authorized Representative or designee about matters arising out of or relating to the Contract. Communications by and with the Architect/Engineer's consultants shall be through the Architect/Engineer.

Communications by and with Subcontractors and material suppliers shall be through CM/GC. Communications by and with separate contractors shall be through Owner's Authorized Representative.

B.1.4 Based upon the Architect/Engineer's evaluations of CM/GC's Application for Payment, or unless otherwise stipulated by Owner's Authorized Representative, the Engineer will review and certify the amounts due CM/GC and will issue Certificates for Payment in such amounts.

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

B.2.1 CM/GC shall supervise and direct the Work, using CM/GC's best skill and attention. CM/GC shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters. If the Contract Documents give specific instructions concerning construction

means, methods, techniques, sequences or procedures, CM/GC shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures.

B.2.2 CM/GC is responsible to protect and maintain the Work during the course of construction and to mitigate any adverse impacts to the project, including those caused by authorized changes, which may affect cost, schedule, or quality.

B.2.3 CM/GC is responsible for the actions of all its personnel, laborers, suppliers, and Subcontractors on the project. CM/GC shall enforce strict discipline and good order among CM/GC's employees and other persons carrying out the Work. CM/GC shall not permit employment of persons who are unfit or unskilled for the tasks assigned to them.

B.3 MATERIALS AND WORKMANSHIP

B.3.1 The intent of the Contract Documents is to provide for the construction and completion in every detail of the Work described. All Work shall be performed in a professional manner and unless the means or methods of performing a task are specified elsewhere in the Contract Documents, CM/GC shall employ methods that are generally accepted and used by the industry, in accordance with industry standards.

B.3.2 CM/GC is responsible to perform the Work as required by the Contract Documents. Defective Work shall be corrected at CM/GC's expense.

B.3.3 Work done and materials furnished shall be subject to inspection and/or observation and testing by Owner's Authorized Representative to

determine if they conform to the Contract Documents. Inspection of the Work by Owner's Authorized Representative does not relieve CM/GC of responsibility for the Work in accordance with the Contract Documents.

B.3.4 CM/GC shall furnish adequate facilities, as required, for Owner's Authorized Representative to have safe access to the Work including without limitation walkways, railings, ladders, tunnels, and platforms. Producers, suppliers, and fabricators shall also provide proper facilities and access to their facilities.

B.3.5 CM/GC shall furnish Samples of materials for testing by Owner's Authorized Representative and include the cost of the Samples in the Contract Price.

B.4 PERMITS

B.4.1 CM/GC shall obtain and pay for all necessary permits and licenses, except for those specifically excluded in the Contract Documents, for the construction of the Work, for temporary obstructions, enclosures, opening of streets for pipes, walls, utilities, environmental Work, etc., as required for the project. CM/GC shall be responsible for all violations of the law in connection with the construction or caused by obstructing streets, sidewalks or otherwise. CM/GC shall give all requisite notices to public authorities. CM/GC shall pay all royalties and license fees. CM/GC shall defend all suits or claims for infringement of any patent or other proprietary rights and save harmless and blameless from loss Owner and its departments, divisions, members and employees.

B.5 COMPLIANCE WITH GOVERNMENT LAWS AND REGULATIONS

B.5.1 CM/GC shall comply with all federal, state and local laws, codes, regulations and ordinances applicable to the Work and the Contract. Failure to comply with such requirements shall constitute a breach of Contract and shall be grounds for Contract termination. Without limiting the generality of the foregoing, CM/GC expressly agrees to comply with the following as applicable:

i) Title VI and VII of Civil Rights Act of 1964, as amended; (ii) Section 503 and 504 of the Rehabilitation Act of 1973, as amended; (iii) the Health Insurance Portability and Accountability Act of 1996; (iv) the Americans with Disabilities Act of 1990, as amended; (v) ORS Chapter 659A; as amended (vi) all regulations and administrative rules established pursuant to the foregoing laws; and (vii) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations. Owner's performance under the Contract is conditioned upon CM/GC's compliance with the provisions of ORS 279C.505, 279C.510, 279C.515, 279C.520, and 279C.530, which are incorporated by reference herein.

B.5.2 CM/GC shall comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations; and

(a) CM/GC shall not discriminate against Disadvantaged, Minority, Women or Emerging Small Business enterprises, as those terms are defined in ORS 200.005, in the awarding of subcontracts (ORS 279A.110).

(b) CM/GC shall maintain, in current and valid form, all licenses and certificates

required by law, regulation, or this Contract when performing the Work.

B.5.3 Unless contrary to federal law, CM/GC shall certify that it shall not accept a bid from Subcontractors to perform Work as described in ORS 701.005 under this Contract unless such Subcontractors are registered with the Construction Contractors Board in accordance with ORS 701.035 to 701.055 at the time they submit their bids to CM/GC.

B.5.4 Unless contrary to federal law, CM/GC shall certify that each landscape contractor, as defined in ORS 671.520(2), performing Work under this Contract holds a valid landscape contractor's license issued pursuant to ORS 671.560.

B.5.5 The following notice is applicable to Contractors who perform excavation Work. ATTENTION: Oregon law requires you to follow rules adopted by the Oregon Utility Notification Center. Those rules are set forth in OAR 952-001-0010 through OAR 952-001-0090. You may obtain copies of the rules by calling the center at (503)232-1987.

B.5.6 Failure to comply with any or all of the requirements of B.5.1 through B.5.5 shall be a breach of Contract and constitute grounds for Contract termination. Damages or costs resulting from such noncompliance shall be the responsibility of CM/GC.

B.6 SUPERINTENDENCE & PERSONNEL

B.6.1 CM/GC shall keep on the site, during the progress of the Work, a competent superintendent and any necessary assistants who shall be satisfactory to the Owner and who shall represent CM/GC on the site. Directions given to the

superintendent by Owner's Authorized Representative shall be confirmed in writing to CM/GC.

B.6.2 CM/GC is responsible for the actions of all its personnel, laborers, suppliers, and Subcontractors on the project. CM/GC shall enforce strict discipline and good order among CM/GC's employees and other persons carrying out the Work. CM/GC shall not permit employment of persons who are unfit or unskilled for the tasks assigned to them. CM/GC to remove from the Project any employee Owner reasonably deems incompetent, careless, or otherwise objectionable at its expense.

- (a) If CM/GC removes any persons from the Project at its request or at the request of the Owner, CM/GC shall provide the Owner with the names and qualifications of the replacement person for the Owner's approval.

B.7 INSPECTION

B.7.1 Owner's Authorized Representative shall have access to the Work at all times.

B.7.2 Inspection of the Work will be made by Owner's Authorized Representative at its discretion. 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 Owner's Authorized Representative, shall be removed and replaced at CM/GC's expense.

B.7.3 CM/GC shall coordinate at the appropriate time all tests, inspections and approvals of portions of the Work required by the Contract Documents or by laws, ordinances, rules, regulations or orders of public authorities having jurisdiction. Unless otherwise

provided, CM/GC shall coordinate and make arrangements for tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority. All required inspections shall be performed by or contracted directly with the City of Lebanon. Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work. CM/GC shall give Owner's Authorized Representative timely notice of when and where tests and inspections are to be made so that 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 CM/GC and promptly delivered to Owner's Authorized Representative.

B.7.4 As required by the Contract Documents, Work done or material used without inspection or testing by Owner's Authorized Representative may be ordered removed at CM/GC's expense.

B.7.5 If directed to do so any time before the Work is accepted, CM/GC shall uncover portions of the completed Work for inspection. After inspection, CM/GC 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 Owner's Authorized Representative, the uncovering and restoration shall be done at CM/GC's expense.

B.7.6 If any testing or inspection reveals failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure, including those of repeated procedures and compensation for Owner's Authorized

Representative's and Engineer's services and expenses, shall be at CM/GC's expense.

B.7.7 When the United States government participates in the cost of the Work, or the Owner has an agreement with other public or private organizations, or if any portion of the Work is being performed for a third party or in close proximity to third party facilities, representatives of these organizations have the right to inspect the Work affecting their interests or property. Their right to inspect shall not make them a party to the Contract and shall not interfere with the rights of the parties of the Contract. Instructions or orders of such parties shall be transmitted to CM/GC, through Owner's Authorized Representative.

B.8 SEVERABILITY

B.8.1 If any provision of this Agreement is held illegal or unenforceable in any respect, the enforceability of the provision in any other respect and of the remaining provisions will not be impaired unless the illegal or unenforceable provision affects a significant right or responsibility, in which case the adversely affected party may request renegotiation of the agreement, and if negotiations fail, may terminate the agreement.

B.9 ACCESS TO RECORDS

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

B.9.2 CM/GC shall retain and the Owner and its duly authorized representatives shall have access to, for a period not less than 6 years, all Record Documents, financial and accounting records, and other books, documents, papers and records of CM/GC which are pertinent to the Contract including records pertaining to Overhead and indirect costs, for the purpose of making audit, examination, excerpts and transcripts. If for any reason, any part of the Contract is involved in litigation, CM/GC shall retain all such records until all litigation is resolved.

The Owner and/or its agents shall continue to be provided full access to the records during litigation.

B.10 WAIVER

B.10.1 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 performance in the future of the same or any other provision of this Contract.

B.11 SUBCONTRACTS AND ASSIGNMENT

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

B.11.2 At Owner's request, CM/GC shall submit to Owner prior to their execution either CM/GC's form of subcontract, or the subcontract to be executed with any particular Subcontractor. If Owner disapproves such form, CM/GC 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 CM/GC of its obligations under this Agreement or be deemed a waiver of such obligations of CM/GC.

B.11.3 CM/GC shall not assign, sell, or transfer its rights, or delegate its responsibilities under this Contract, except if CM/GC is reorganized, merges or otherwise changes structure, in which case an assignment to a surviving entity is subject to written approval of the City in its total discretion..

B.12 SUCCESSORS IN INTEREST

B.12.1 The provisions of this Contract shall be binding upon and shall accrue to the benefit of the parties to the Contract and their respective permitted successors and assigns.

B.13 OWNER'S RIGHT TO DO WORK

B.13.1 Owner reserves the right to perform other or additional work at or near the project site with other forces than those of CM/GC. If such work takes place within or next to the project site, CM/GC and Owner will coordinate work with the other contractors or forces, cooperate with all other contractors or forces, carry out the Work in a way that will minimize interference and delay for all forces involved, place and dispose of materials being used so as not to interfere with the operations of another, and join the Work with the work of the others in an acceptable manner and perform it in proper sequence to that of the

others. Owner's Authorized Representative will resolve any disagreements that may arise between or among CM/GC and the other contractors over the method or order of doing all work (including the Work). The GMP or the Date of Substantial Completion or the Date of Final Completion shall be equitably adjusted, as mutually agreed by the Parties, for changes made necessary by the coordination of construction activities, and the Schedule of the Work shall be revised accordingly.

B.14 OTHER CONTRACTS

B.14.1 In all cases and at any time, the Owner has the right to execute other contracts related to or unrelated to the Work of this Contract. CM/GC will fully cooperate with any and all other contractors in the manner described in section B.13.

B.15 GOVERNING LAW

B.15.1 This Contract shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflict of laws.

B.16 LITIGATION

B.16.1 Any Claim between Owner and CM/GC that arises from or relates to this Contract and that is not resolved through the Claims Review Process in Section D.3 shall be brought and conducted solely and exclusively within the Circuit Court of Linn County for the State of Oregon; provided, however, if a Claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. In no event shall this section be construed as a waiver by the City of Lebanon, Oregon 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 CONSENTS TO THE JURISDICTION OF THE COURTS REFERENCED IN THIS SECTION.

B.17 ALLOWANCES

- B.17.1 CM/GC shall include in the Contract Price all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct.
- B.17.2 Unless otherwise provided in the Contract Documents:
- (a) When finally reconciled, allowances shall cover the cost to CM/GC of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
 - (b) CM/GC's costs for unloading and handling at the site, labor, installation costs, Overhead, profit and other expenses contemplated for stated allowance amounts shall be included in the Contract Price but not in the allowances;
 - (c) whenever costs are more than or less than allowances, the Contract Price shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (i) the difference between actual costs and the allowances under Section B.17.2(a) and (2) changes in CM/GC's costs under Section B.17.2(b).

- (d) Unless Owner requests otherwise, CM/GC shall provide to Owner a proposed fixed price for any allowance work prior to its performance.

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

- B.18.1 CM/GC shall prepare and keep current, for the Owner's Authorized Representative's approval, a schedule and list of submittals which is coordinated with CM/GC's construction schedule and allows the 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 CM/GC 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 CM/GC to illustrate materials or equipment for some portion of the Work. (c) Samples are physical examples which illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.
- B.18.2 Shop Drawings, Product Data, Samples and similar submittals are

not Contract Documents. The purpose of their submittal is to demonstrate for those portions of the Work for which submittals are required by the Contract Documents the way by which CM/GC proposes to conform to the information given and the design concept expressed in the Contract Documents. Review of submittals by the 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 Engineer, of any construction means, methods, techniques, sequences or procedures, all of which remain the responsibility of CM/GC as required by the Contract Documents. The Engineer's review of CM/GC's submittals shall not relieve CM/GC of its obligations under the Contract Documents. The Engineer's approval of a specific item shall not indicate approval of an assembly of which the item is a component. Informational submittals upon which the 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 Engineer without action.

B.18.3 CM/GC shall review for compliance with the Contract Documents, approve and submit to the 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

CM/GC may be returned by the Engineer without action.

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

B.18. CM/GC 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 Engineer.

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

B.18.7 In the event that Owner elects not to have the obligations and duties described under this Section B.18 performed by the Engineer, or in the event no Engineer is employed by Owner on the

project, all obligations and duties assigned to the Engineer hereunder shall be performed by Owner's Authorized Representative.

B.19 SUBSTITUTIONS

B.19.1 CM/GC may make Substitutions only with the consent of the Owner, and only in accordance with a Change Order. Substitutions shall be subject to the requirements of the bid documents. By making requests for Substitutions, CM/GC represents that CM/GC has personally investigated the proposed substitute product; represents that CM/GC will provide the same warranty for the Substitution that CM/GC 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 required for the Work to be completed in all respects.

B.20 USE OF PLANS AND SPECIFICATIONS

B.20.1. Plans, Specifications and related Contract Documents furnished to CM/GC by Owner or Owner's Engineer shall be used solely for the performance of the Work under this Contract. CM/GC and its Subcontractors and suppliers are authorized to use and reproduce applicable portions of the documents appropriate to the execution of the Work, but shall have no ownership or other interest in them beyond the scope of this Contract. Unless otherwise indicated, all common law, statutory and other reserved rights, in addition to copyrights, are retained

by Owner.

B.21 FUNDS AVAILABLE AND AUTHORIZED

B.21.1 Owner reasonably believes at the time of entering into this Contract that sufficient funds are available and authorized for expenditure to finance the cost of this Contract within the Owner's appropriation or limitation. CM/GC 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 Services performed after the last day of the current biennium is contingent on Owner receiving appropriations, limitations or other expenditure authority sufficient to allow Owner, in the exercise of its reasonable administrative discretion, to continue to make payments under this Contract.

B.22 NO THIRD PARTY BENEFICIARIES

B.22.1 Owner and CM/GC are the only parties to this Contract and are the only parties entitled to enforce its terms. There are no third party beneficiaries to this Contract. Any obligations running to the Engineer under this Contract are enforceable only by Owner, who may change the Engineer on the Project.

**SECTION C
WAGES AND LABOR**

C.1 MINIMUM WAGE RATES ON PUBLIC WORKS

C.1.1 CM/GC shall comply fully with the provisions of ORS 279C.800 through 279C.870. Documents establishing those conditions, as determined by the Commissioner of the Bureau of Labor and

industries (BOLI), are included in the Contract Documents, either directly, as attachments, or by reference. CM/GC shall pay workers at not less than the specified minimum hourly rate of wage, and shall include that requirement in all subcontracts.

C.2 PAYROLL CERTIFICATION AND FEE REQUIREMENTS: ADDITIONAL RETAINAGE

C.2.1 In accordance with ORS 279C.845, CM/GC and every Subcontractor shall submit written certified statements to Owner's Authorized Representative, on the form prescribed by the Commissioner of the Bureau of Labor and Industries, certifying the hourly rate of wage paid each worker which CM/GC or any Subcontractor has employed on the project and containing the certifications required by law. The certified statements shall set out accurately and completely the payroll records for the prior week including the name and address of each worker, the worker's correct classification, rate of pay, daily and weekly number of hours worked, deductions made and actual wages paid. Certified statements for each week during which CM/GC or Subcontractor has employed a worker on the project shall be submitted once a month, by the fifth business day of the following month.

CM/GC and Subcontractors shall preserve the certified statements for a period of 6 years from the date of completion of the Contract.

C.2.2 Pursuant to ORS 279C.845(7), the Owner shall retain 25 percent of any amount earned by CM/GC on this public works project until CM/GC has filed the certified statements required by section

C.2.1. The Owner shall pay to CM/GC the amount retained under this subsection within 14 days after CM/GC files the required certified statements, regardless of whether a Subcontractor has failed to file certified statements.

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

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

C.3 PROMPT PAYMENT AND CONTRACT CONDITIONS

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

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

C.3.1.2 Pay all contributions or amounts due the State Industrial Accident Fund from such CM/GC or Subcontractor incurred in the

performance of the Contract.

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

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

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

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

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

drugs.

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

(b) CM/GC shall require each Subcontractor providing labor for the project to:

- (1) Demonstrate to CM/GC that it has a Qualifying Employee Drug Testing Program for the Subcontractor's Subject Employees, and represent and warrant to CM/GC that the Qualifying Employee Drug Testing Program is in place at the time of subcontract execution and will continue in full force and effect for the duration of the subcontract, or
- (2) Require that the Subcontractor's Subject Employees participate in CM/GC's Qualifying Employee Drug Testing Program for the duration of the subcontract.

C.3. Pursuant to ORS 279C.515, and as a condition to Owner's performance hereunder, CM/GC agrees:

C.3.2.1 If CM/GC fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to CM/GC 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 CM/GC under this Contract. Payment of claims in

this manner shall not relieve CM/GC or CM/GC's surety from obligation with respect to any unpaid claims.

C.3.2.2 If CM/GC 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 30 Days after receipt of payment from Owner or a contractor, CM/GC or first-tier Subcontractor shall owe the person the amount due plus interest charges commencing at the end of the 10-Day period that payment is due under ORS 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 CM/GC or first-tier Subcontractor on the amount due shall equal three times the discount rate on 90-Day commercial paper in effect at the Federal Reserve Bank in the Federal Reserve district that includes Oregon on the date that is thirty (30) Days after the date when payment was received from Owner or from CM/GC, but the rate of interest shall not exceed 30percent. The amount of interest may not be waived.

C.3.2.3 If CM/GC 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.

C.3.3 Pursuant to ORS 279C.580,

CM/GC shall include in each subcontract for property or services entered into by CM/GC and a first-tier Subcontractor, including a material supplier, for the purpose of performing a construction contract:

- (a) A payment clause that obligates CM/GC to pay the first-tier Subcontractor for satisfactory performance under its subcontract within 10 Days out of such amounts as are paid to CM/GC by Owner under the Contract;
- (b) An interest penalty clause that obligates CM/GC if payment is not made within 30Days 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 (a) of this subsection. CM/GC or first-tier Subcontractor shall not be obligated to pay an interest penalty if the only reason that CM/GC or first-tier Subcontractor did not make payment when payment was due is that CM/GC or first-tier Subcontractor did not receive payment from Owner or CM/GC 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 that requires each of CM/GC's Subcontractor's 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.

- C.3.4 All employers, including CM/GC, 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 exempt under ORS 656.126. CM/GC shall ensure that each of its Subcontractors complies with these requirements.

C.4 PAYMENT FOR MEDICAL CARE

- C.4.1 CM/GC shall promptly, as due, make payment to any person, partnership, association or corporation furnishing medical, surgical, and hospital care or other needed care and attention, incident to sickness or injury, to the employees of CM/GC, all sums CM/GC agrees to pay for such services and all moneys and sums that CM/GC has collected or deducted from the wages of personnel pursuant to any law, contract or agreement for the purpose of providing or paying for those services.

C.5 HOURS OF LABOR

- C.5.1 CM/GC shall comply with ORS 279C.520, as amended from time to time and incorporated herein by this reference:

No person shall be employed to perform Work under this Contract for more than 10 hours in any one day or 40 hours in any one week, except in cases of necessity, emergency or where public policy absolutely requires it. In such instances, CM/GC shall pay the employee at

least time and a half pay:

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

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

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

**SECTION D
CHANGES IN THE WORK**

D.1 CHANGES IN WORK

- D.1.1 The terms of this Contract shall not be waived, altered, modified, supplemented or amended without prior written approval of Owner, and then only in a manner consistent with the Change Order provisions of Article 6 of the Agreement and this Section D.1 and after any necessary approvals required by public contracting laws have been obtained. Otherwise, a formal contract amendment is required, which shall not be effective until its execution by the parties to this Contract and all approvals required by public contracting laws have been obtained.

- D.1.2 Changes in Plans, quantities, or

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

- (a) Modification of specifications and design.
- (b) Increases or decreases in quantities.
- (c) Increases or decreases to the amount of Work.
- (d) Addition or elimination of any Work item.
- (e) Change in the duration of the project.
- (f) Acceleration or delay in performance of Work.
- (g) Deductive changes.

Deductive changes are those that reduce the scope of the Work, and shall be made by mutual agreement whenever feasible.

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

D.1.3 The Owner and CM/GC agree that

Change Order Work shall be administered and compensated according to the following:

- (a) *Unit pricing* may be utilized at the Owner's option when unit prices or solicitation alternates were provided that established the cost for additional Work, and a binding obligation exists under the Contract on the parties covering the terms and conditions of the additional Work.
- (b) If the Owner elects not to utilize unit pricing, or in the event that unit pricing is not available or appropriate, *fixed pricing* may be used for Change Order Work. In fixed pricing the basis of payments or total price shall be agreed upon in writing between the parties to the Contract, and shall be established before the Work is done whenever feasible. Cost and price data relating to Change Orders shall be supplied by CM/GC to Owner upon request, but Owner shall be under no obligation to grant the requests.
- (c) If unit pricing and fixed pricing are not utilized, then Change Order Work shall be performed on a *cost reimbursement* basis for Direct Costs. Such Work shall be compensated on the basis of the actual, reasonable and allowable cost of labor, equipment, and material furnished on the Work performed. In addition, the following markups shall be added to CM/GC's or Subcontractor's Direct Costs as full compensation for profit, Overhead and other indirect costs for Work directly performed with CM/GC's or Subcontractor's own forces:

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

On Materials..... 10%

When Change Order Work under D.1.3(c) is invoiced by an authorized Subcontractor at any level, each ascending tier Subcontractor will be allowed a supplemental mark-up on each piece of subcontract Work covered by such Change Order as follows:

\$0.00 - \$5,000.00 10%,
and then
Over \$5,000.00 5%

CM/GC will be allowed to apply the CM/GC Fee identified in Section 5.4 of the Contract on each piece of subcontract Work covered by such Change Order.

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

D.1.4 Any necessary adjustment of Contract Time that may be required as a result of a Change Order must be agreed upon by the parties before the start of the Change Order Work unless Owner's Authorized Representative authorizes CM/GC to start the Work before agreement on Contract Time adjustment. CM/GC shall submit any request for additional compensation (and

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

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

The 30 day time limit applies to claims of Subcontractors, suppliers, or manufacturers that may be affected by the Change Order and that request additional compensation or an extension of

Contract Time to perform; CM/GC has responsibility for contacting its Subcontractors, suppliers, or manufacturers within the 30 day time limit, and including their requests with CM/GC's requests. If the request involves Work to be completed by Subcontractors, or materials to be furnished by suppliers or manufacturers, the requests shall be submitted to CM/GC in writing with appropriate analysis and justification for the compensation and additional Contract Time requested. CM/GC will analyze and evaluate the merits of the requests submitted by Subcontractors, suppliers, and manufacturers to CM/GC prior to including those requests and CM/GC's analysis and evaluation of those requests with CM/GC's requests for additional compensation or Contract Time that CM/GC submits to Owner's Authorized Representative. Failure of Subcontractors, suppliers, manufacturers or others to submit their requests to CM/GC for inclusion with CM/GC's requests submitted to Owner's Authorized Representative within the time period and by the means described in this section shall constitute a waiver of these Subcontractor claims. Owner's Authorized Representative and the Owner will not consider direct requests or claims from Subcontractors, suppliers, manufacturers or others not a party to this Contract. The consideration of such requests and claims under this section does not give any person, not a party to the Contract the right to bring a claim against Owner whether in this claims process, in litigation, or in any dispute resolution process.

If Owner's Authorized Representative denies or fails to respond to CM/GC's request for additional compensation or an extension of Contract Time, CM/GC may proceed to file a

Claim under Section D.3, Claims Review Process.

- D.1.6 No request or Claim by CM/GC for additional costs or an extension of Contract Time shall be allowed if made after receipt of final payment application under this Contract. CM/GC agrees to submit its final payment application within 90 days after Full Completion, unless written extension is granted by Owner. CM/GC shall not delay final payment application for any reason, including without limitation nonpayment of Subcontractors, suppliers, manufacturers or others not a party to this Contract, or lack of resolution of a dispute with Owner or any other person of matters arising out of or relating to the Contract. If Contractor fails to submit its final payment application within 90 days after Full Completion, and Contractor has not obtained written extension by Owner, which extension shall not be unreasonably withheld, all requests or Claims for additional costs or an extension of Contract Time shall be waived
- D.1.7 It is understood that changes in the Work are inherent in construction of this type. The number of changes, the scope of those changes, and the effect they have on the progress of the original Work cannot be defined at this time. CM/GC is notified that numerous changes may be required and that there will be no compensation made to CM/GC directly related to the number of changes. Each change will be evaluated for extension of Contract Time and increase or decrease in compensation based on its own merit.

D.2 DELAYS

- D.2.1 Delays in construction include "Avoidable Delays", which are defined in Section D.2.1.1, and "Unavoidable Delays", which are

defined in Section D.2.1.2. The effect of Avoidable Delays is described in Section D.2.2 and the effect of Unavoidable Delays is described in Section D.2.3.

D.2.1.1 Avoidable Delays include any delays other than Unavoidable Delays, and include delays that otherwise would be considered Unavoidable Delays but that:

- (a) Could have been avoided by the exercise of care, prudence, foresight, and diligence on the part of CM/GC or its Subcontractors.
- (b)
- (c) Do not impact activities on the accepted critical path schedule.
- (d)

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

- (a) Caused by any actions of the Owner, Owner's Authorized Representative, or any other employee or agent of the Owner, or by separate contractor employed by the Owner.
- (b) Caused by any site conditions which differ materially from what was represented in the Contract Documents or from conditions that would normally be expected to exist and be inherent to the construction activities defined in the Contract Documents. CM/GC shall notify Owner's Authorized Representative immediately of differing site conditions before the area has been disturbed. 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 CM/GC and Owner's Authorized Representative agree that a differing site condition exists, CM/GC shall be entitled to an equitable adjustment of the Contract Price and Time and any additional compensation or additional Contract Time will be determined based on the process set forth in Section D.1.5 for Change Order Work. If Owner's Authorized Representative disagrees that a differing site condition exists and denies CM/GC's request for additional compensation or Contract Time, CM/GC may proceed to file a Claim under Section D.3, Claims Review Process.

- (c) Caused by Force Majeure acts, events or occurrences that could not have been avoided by the exercise of care, prudence, foresight, and diligence on the part of CM/GC or its Subcontractors.
- (d) Caused by adverse weather conditions. Any adverse weather conditions must be substantiated by documentary evidence that weather conditions were abnormal for the specific time period claimed, could not have been anticipated by CM/GC, and adversely impacted the project in a manner that could not be avoided by rescheduling the Work or by implementing measures to protect against the weather so that the Work could proceed. A rain, windstorm, high water, or other natural phenomenon for the specific locality of the Work, which might reasonably have been anticipated from the previous 10-year historical records of the

general locality of the Work, shall not be construed as abnormal. The parties agree that rainfall greater than the following levels cannot be reasonably anticipated:

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

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

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

D.2.3 In the event of Unavoidable Delays, based on principles of equitable adjustment, CM/GC shall be entitled to the following:

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

In the event of any requests for additional compensation or

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

CM/GC

D.2.4 Contractor shall not in any event be entitled to damages arising out of actual or alleged loss of efficiency; moral, fatigue, attitude, or labor rhythm; home office overhead; expectant under run; trade stacking; reassignment of workers; concurrent operations; dilution of supervision; learning curve; ripple; or profit upon damages for delay.

D.3 CLAIMS REVIEW PROCESS

D.3.1 All CM/GC Claims shall be referred to Owner's Authorized

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

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

manufacturer, or other to directly make a claim against Owner.

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

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

D.3.5 If the CM/GC disagrees with the Owner's decision, CM/GC and Owner agree to proceed to mediation through the current Construction Industry Mediation Rules of the American Arbitration Association (AAA), or the Parties may mutually agree to select another set of mediation rules. The administration of the mediation shall be as mutually agreed by the Parties. .. Both parties acknowledge and agree that participation in mediation is a prerequisite to commencement of litigation of any disputes relating to the Contract. Both parties further agree to exercise their best efforts in good faith to resolve all disputes within 60 Days of the commencement of the mediation

through the mediation process set forth herein.

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

D.3.6 The mediator shall be an individual mutually acceptable to both parties, but in the absence of agreement each party shall select a temporary mediator and the temporary mediators shall jointly select the permanent mediator. Each party shall pay its own costs for the time and effort involved in mediation. The cost of the mediator shall be split equally between the two parties. Both parties agree to exercise their best effort in good faith to resolve all disputes in mediation. Participation in an initial mediation session is a mandatory requirement of both the Owner and CM/GC. The schedule, time and place for mediation will be mutually acceptable, or, failing mutual agreement, shall be as established by the mediator. The mediation shall be confidential as provided by state law.

D.3.7 Unless otherwise directed by Owner's Authorized Representative, CM/GC shall proceed with the Work while any Claim of CM/GC is pending, including a Claim for additional

compensation or additional Contract Time resulting from Change Order Work. Regardless of the review period or the final decision of Owner's Authorized Representative, CM/GC shall continue to diligently pursue the Work as identified in the Contract Documents.

SECTION E PAYMENTS

E.1 SCHEDULE OF VALUES

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

E.2 APPLICATIONS FOR PAYMENT

E.2.1 Owner shall make progress payments on the Contract monthly as Work progresses. Payments shall be based upon estimates of Work completed and the Schedule of Values. All payments shall be approved by Owner's Authorized Representative. A progress payment shall not be considered acceptance or approval of any Work or waiver of any defects therein. Owner shall pay to CM/GC interest on the progress payment, not including retainage, due CM/GC. The interest shall commence 30 Days after the receipt of undisputed and Owner approved invoice ("application for payment") from CM/GC. The rate of interest shall be 0.5% per month until paid. No interest shall be

payable on any amount disputed in good faith prior to the date the payment is due or if the request for payment is not properly filled out or submitted

Representative shall be granted the right to access the material for the purpose of removal or inspection at any time during the Contract Period.

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

"I certify that the above bill is true and correct, and that payment for any portion of the amount billed has not been received.

_____ "

E.2.3 Generally, applications for payment will be accepted only for materials that have been installed. Under special conditions, applications for payment for stored materials will be accepted, subject to the following conditions:

- (a) The request for stored material shall be submitted at least 30 Days in advance of the application for payment on which it appears. Applications for payment shall be entertained for major equipment, components or expenditures only.
- (b) CM/GC shall submit applications for payment showing the quantity and cost of the material stored.
- (c) The material shall be stored in a bonded warehouse and Owner's Authorized

(d) CM/GC shall name the Owner as co- insured on the insurance policy covering the full value of the property while in the care and custody of CM/GC until it is installed. A certificate noting this coverage shall be issued to the Owner.

(e) Payments shall be made for materials only. The submitted amount of the application for payment shall be reduced by the cost of transportation and for the cost of an inspector to check the delivery at out of town storage sites. The cost of said inspection shall be borne solely by CM/GC.

(f) Within 60 Days of the application for payment, CM/GC shall submit evidence of payment covering the material stored.

(g) Payment for stored materials shall in no way indicate acceptance of the materials or waive any rights under this Contract for the rejection of the Work or materials not in conformance with the Contract Documents.

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

E.2.4 Owner reserves the right to withhold all or part of a payment, or may nullify in whole or part any payment previously made, to the extent reasonably necessary to protect the Owner from loss because of the

following, to the extent that CM/GC is responsible under this Agreement for:

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

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

- (a) Take that portion of the Contract Price properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the total Contract Price allocated to that portion of the Work in the Schedule of Values, less retainage as provided in Section E.5. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute may be included even though the Contract Price has not yet been adjusted by Change Order;
- (b) Add that portion of the Contract Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction (or, suitably stored off the site at a location agreed upon in writing), less retainage as provided in Section E.5;
- (c) Subtract the aggregate of previous payments made by the Owner; and
- (d) Subtract any amounts for which Owner's Authorized Representative has withheld or nullified payment as provided in the Contract Documents.

E.2.6 CM/GC's applications for payment may not include requests for payment for portions of the Work for which CM/GC does not intend to pay to a Subcontractor or material supplier, except to the extent that CM/GC is entitled to

withhold any such payments pursuant to CM/GC's agreement with said Subcontractors or suppliers and/or in accordance with applicable law..

Change Order for reasonable cost and delay resulting from shutdown, delay, and start-up.

- E.2.7 CM/GC warrants to Owner that title to all Work covered by an application for payment will pass to the Owner no later than the time of payment. CM/GC further warrants that upon submittal of an application for payment all Work for which payments are received from the Owner shall be free and clear of liens, claims, security interests or encumbrances in favor of CM/GC, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.
- E.2.8 If CM/GC disputes any determination by Owner's Authorized Representative with regard to any application for payment, CM/GC 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 CM/GC of any of its obligations hereunder.
- E.2.8. If for any reason not the fault of the CM/GC the CM/GC does not receive a progress payment from the Owner within seven (7) Days after the time such payment is due, then the CM/GC, upon giving seven (7) Days' written notice to the Owner, and without prejudice to and in addition to any other legal remedies, may stop Work until payment of the full amount owing to the CM/GC has been received, including interest for late payment. The GMP and Dates of Substantial or Final Completion shall be equitably adjusted by a

E.3 PAYROLL CERTIFICATION REQUIREMENT

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

E.4 DUAL PAYMENT SOURCES

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

E.5 RETAINAGE

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

E.5.1.1 Owner may reserve as retainage from any progress payment an amount not to exceed five percent of the payment. Owner may reduce the amount of retainage in Owner's sole discretion or allow retainage to be reduced as mandated by ORS 279C.560.

E.5.1.2 The retainage held by Owner shall be included in and paid to CM/GC as part of the final payment of the Contract Price.

E.5.1.3 CM/GC agrees that if CM/GC elects to reserve a retainage from any progress payment due to any Subcontractor or supplier, the retainage shall not exceed five percent of the payment, and retainage withheld from Subcontractors and suppliers shall be subject to the same terms and conditions stated in Subsection E.5 as apply to Owner's retainage from any progress payment due to CM/GC.

E.5.2 As provided in subsections C.2.2 and C.2.3, additional retainage in the amount of 25% of amounts earned shall be withheld and

released in accordance with ORS 279C.845(7) when CM/GC fails to file certified statements as required by section C.2.1.

E.6 FINAL PAYMENT

E.6.1 Upon completion of all the Work under this Contract, CM/GC shall notify Owner's Authorized Representative, in writing, that CM/GC has completed CM/GC's part of the Contract and shall request final payment. Upon receipt of the notice 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 CM/GC. If the Work is not acceptable, Owner will notify CM/GC within 15 Days of CM/GC's request for final payment. Upon approval of this final estimate by the Owner and compliance by CM/GC with provisions in Section K. 3 AFFIDAVIT/RELEASE OF LIENS AND CLAIMS, and other applicable provisions, Owner shall pay CM/GC all monies due under the provisions of these Contract Documents, including all remaining retainage.

E.6.2 The final payment shall not become due until CM/GC submits to Owner's Authorized Representative (1) a notarized affidavit/release of liens and claims in a form satisfactory to Owner that states that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 Days' prior written notice has been given to the Owner, (3) a written

statement that CM/GC knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment and (5), if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, CM/GC may furnish a bond satisfactory to the Owner to indemnify the Owner against Subcontractor's lien. If the lien remains unsatisfied after payments are made, CM/GC shall refund to the Owner all money that the Owner may be compelled to pay in discharging the lien, including all costs and reasonable attorneys' fees.

E.6.3 Acceptance of final payment by CM/GC, a Subcontractor or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final application for payment.

SECTION F JOB SITE CONDITIONS

F.1 USE OF PREMISES

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

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

F.2.1 CM/GC shall maintain continuous and adequate protection of all of

- the Work from damage, and shall protect Owner's Authorized Representative, Owner's workers and property from injury or loss arising in connection with this Contract. CM/GC 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. CM/GC shall adequately protect adjacent property as provided by law and the Contract Documents.
- F.2.2 CM/GC shall take all necessary precautions for the safety of all personnel on the job site, and shall comply with the Contract Documents and all applicable provisions of federal, state and municipal safety laws and building codes to prevent accidents or injury to persons on, about or adjacent to the premises where the Work is being performed. CM/GC 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. CM/GC 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 Owner's Authorized Representative. Owner's Authorized Representative has no responsibility for Work site safety. Work site safety is the responsibility of CM/GC.
- F.2.3 CM/GC shall not enter private property without first obtaining permission from the property owner or its duly authorized representative. CM/GC 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 CM/GC damages any property, CM/GC shall at once notify the property owner and make, or arrange to make, full restitution. CM/GC shall report, immediately in writing, to Owner's Authorized Representative, all pertinent facts relating to such property damage and the ultimate disposition of the claim for damage.
- F.2.4 CM/GC is responsible for protection of adjacent work areas including impacts brought about by activities, equipment, labor, utilities, and materials on the site.
- F.2.5 CM/GC shall at all times direct its activities in such a manner as to minimize adverse effects on the environment. Handling of all materials will be conducted so no release will occur that may pollute or become hazardous.
- F.2.6 In an emergency affecting the safety of life or of the Work or of adjoining property, CM/GC, without special instruction or authorization from Owner's Authorized Representative, shall act reasonably to prevent threatened loss or injury, and shall so act, without appeal, if instructed by Owner's Authorized Representative. Any compensation claimed by CM/GC on account of emergency work shall be determined in accordance with Section D.
- F.3 CUTTING AND PATCHING**
- F.3.1 CM/GC shall be responsible for coordinating all cutting, fitting, or patching of the Work to make its several parts come together properly and fit to receive or be received by work of other contractors or Subcontractors shown upon, or reasonably implied by, the Contract Documents.

F.3.2 CM/GC 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 CM/GC shall be responsible for restoring such surfaces to the condition specified in the Contract Documents.

F.4 CLEANING UP

F.4.1 From time to time as may be ordered by the Owner CM/GC shall, at its own expense, clean up and remove all refuse and unused materials of any kind resulting from the Work. If CM/GC fails to do so within 24 hours after notification by the Owner the work may be done by others and the cost charged to CM/GC and deducted from payment due CM/GC.

F.5 ENVIRONMENTAL CONTAMINATION

F.5.1 CM/GC will be held responsible for and shall indemnify, defend and hold harmless Owner from and against any costs, expenses, damages, claims, and causes of action, (including attorney fees), or any of them, resulting from all spills, releases, discharges, leaks and disposal of environmental pollution, including storage, transportation, and handling during the performance of the Contract which occur as a result of, , the negligence or actions of CM/GC or its personnel, agents, or Subcontractors or any failure to perform in accordance with the Contract Documents (except to the extent otherwise void under ORS 30.140). Nothing in this section F.5.1 shall limit CM/GC's responsibility for obtaining insurance coverages required under Section G.3 of these General Conditions, and CM/GC shall take no action that would void or impair such coverages

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

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

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

F.5.2 CM/GC shall report all reportable quantity releases to applicable federal, state, and local regulatory and emergency response

agencies. Reportable quantities are found in 40 CFR Part 302, Table 302.4 for hazardous substances and in OAR Chapter 340 Division 108 for all products addressed therein. Upon discovery, regardless of quantity, CM/GC must telephonically report all releases to the Owner. A written follow-up report shall be submitted to Owner within 48 hours of the telephonic report. Such written report shall contain, as a minimum:

- (a) Description of items released (identity, quantity, manifest no., and all other documentation required by law.)
- (b) Whether amount of items released is EPA/DEQ reportable, and, if so, when it was reported.
- (c) Exact time and location of release, including a description of the area involved.
- (d) Containment procedures initiated.
- (e) Summary of communications about the release CM/GC has had with members of the press or State officials other than Owner.
- (f) Description of cleanup procedures employed or to be employed at the site, including disposal location of spill residue.
- (g) Personnel injuries, if any, resulting from, or aggravated by, the release.

F.6 ENVIRONMENTAL CLEAN-UP

F.6.1 Unless disposition of environmental pollution is specifically a part of this Contract, or was caused by CM/GC (reference F.5 Environmental Contamination), CM/GC shall

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

F.6.2 Upon being notified by CM/GC of the presence of hazardous substance(s) on the project site, Owner shall arrange for the proper disposition of such hazardous substance(s) at Owner's cost.

F.6.3 CM/GC shall not be required to resume Work in connection with such condition or in any affected area until after Owner have obtained any required permit related thereto and delivered to CM/GC written notice: 1) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work or 2) specifying any special conditions under which such Work may be resumed safely. If Owner and CM/GC cannot agree as to entitlement to

or on the amount or extent, if any, of any adjustment in GMP or Contract Times, or both, as a result of such Work stoppage or such special conditions under which Work is agreed to be resumed by CM/GC, CM/GC shall make a Claim therefor as provided in D.3.

F.7 FORCE MAJEURE

F.7.1 A party to this Contract shall not be held responsible for delay or default due to Force Majeure acts, events or occurrences unless they could have been avoided by the exercise of reasonable care, prudence, foresight, and diligence by that party. The Owner may terminate this Contract upon written notice after determining that delay or default caused by Force Majeure acts, events or occurrences will reasonably prevent successful performance of the Contract.

SECTION G INDEMNITY, BONDING, AND INSURANCE

G.1 INDEMNITY

G.1.1 **Section deleted.** Indemnification provision is as included in Agreement Section 15.5.

G.2 PERFORMANCE AND PAYMENT SECURITY: PUBLIC WORKS BOND

G.2.1 CM/GC shall furnish and maintain in effect at all times during the Contract Period, a performance bond in a sum equal to the Contract Price, and a separate payment bond also in a sum equal to the Contract Price.

G.2.2 Bond forms furnished by the Owner and notarized by awarded CM/GC's surety company authorized to do business in Oregon are the only

acceptable forms of performance and payment security, unless otherwise agreed to in writing by Owner.

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

G.3 INSURANCE

G.3.1 Primary Coverage: Insurance carried by CM/GC 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 are minimums unless otherwise specified in the Contract Documents.

G.3.2 Workers' Compensation: All employers, including CM/GC, 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 \$500,000 for each accident or disease. Contractors who perform the Work without the assistance or labor of any employee need not obtain such coverage if CM/GC certifies so in writing. CM/GC

shall ensure that each of its Subcontractors complies with these requirements. CM/GC 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 CM/GC or its Subcontractors.

G.3.3 Builder's Risk Insurance:

G.3.3.1 Builder's Risk: During the term of this Contract, for new construction CM/GC shall maintain in force, , Builder's Risk insurance on an all risk form, including earthquake and flood, for an amount equal to the full amount of the Contract. Any deductible shall not exceed \$5,000 for each loss, except the earthquake and flood deductible shall not exceed 2 percent of each loss or \$10,000, whichever is more. The policy will include as loss payees the Owner, CM/GC and its Subcontractors as their interests may appear.

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

interests may appear.

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

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

G.3.4 Liability Insurance:

G.3.4.1 Commercial General Liability: CM/GC shall obtain, at CM/GC's expense, and keep in effect during the term of this Contract, Commercial General Liability Insurance covering bodily injury and property damage. This insurance shall include personal injury liability, products and completed operations, and contractual liability coverage for the indemnity provided under this Contract (to the extent contractual liability coverage for the indemnity is available in the marketplace), and shall be issued on an occurrence basis. Combined single limit per occurrence shall not be less than \$2,000,000 for each job site or location. Each annual aggregate limit shall not be less than \$5,000,000.

G.3.4.2 Automobile Liability: CM/GC shall obtain, at CM/GC'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. Combined single limit per occurrence shall not be less than \$1,000,000.00, or the equivalent.

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

G.3.5 Additional Insured: The liability insurance coverage, except Workers Compensation and Professional Liability if included, required for performance of this Contract shall include the City of Lebanon, Oregon., its departments, divisions, officers, and employees and subcontractors, as Additional Insureds but only with respect to CM/GC's activities to be performed under this Contract. If CM/GC cannot obtain an insurer to name the City of Lebanon, Oregon, its departments, divisions, officers and employees, and

subcontractors as Additional Insureds, CM/GC shall obtain at CM/GC's expense, and keep in effect during the term of this Contract, Owners and Contractors Protective Liability Insurance, naming the City of Lebanon, Oregon, its departments, divisions, officers and employees and subcontractors as Named Insureds with not less than a \$1,000,000.00 limit per occurrence. This policy must be kept in effect for 12 months following Final Completion. As evidence of coverage, CM/GC shall furnish the actual policy endorsement to Owner prior to its issuance of a Notice to Proceed.

G.3.6 Notice of Cancellation or Change: There shall be no cancellation, material change, potential exhaustion coverages without 30 Days' written notice from CM/GC 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 City of Lebanon, Oregon, its Owner and their divisions, officers, and employees.

G.3.7 Certificate(s) of Insurance: As evidence of the insurance coverage required by this Contract, CM/GC 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. Insurance coverage required under this Contract shall be obtained from insurance companies or entities acceptable to the Owner that are allowed to provide such insurance under Oregon law. Eligible insurers include admitted insurers that have been issued a certificate of

authority from the Oregon Department of Consumer and Business Services authorizing them to do an insurance business in the state of Oregon, and certain non-admitted surplus lines insurers that satisfy the requirements of applicable Oregon law and are approved by the Owner. The certificates will also specify that there shall be no cancellation, material change, potential exhaustion of aggregate limits or intent not to renew insurance coverages without 30 Days' written notice from the insurer(s) to the Owner. To the extent Certificates of Insurance contain words to the effect that CM/GC shall "endeavor to send notice of cancellation" or similar language, CM/GC shall require its insurer to send such notice by making sure that the words "endeavor to" or similar words are removed from the Certificate. CM/GC shall be financially responsible for all deductibles, self-insured retentions and/or self-insurance included hereunder. Any deductible, self-insured retention and/or self-insurance in excess of \$50,000 shall be approved by the Owner in writing prior to issuance of a Notice to Proceed and is subject to Owner's approval.

SECTION H SCHEDULE OF WORK

H.1 CONTRACT PERIOD

- H.1.1 **Time is of the essence on this Contract.** CM/GC shall at all times carry on the Work diligently, without delay and punctually fulfill all requirements of the Contract Documents. CM/GC shall commence Work on the site within fifteen (15) Days of Notice to Proceed, unless directed otherwise.
- H.1.2 Unless specifically extended by Change Order, all Work shall be complete by the date contained in

the Contract Documents. The Owner shall have the right to accelerate the completion date of the Work, which may require the use of overtime. Such accelerated Work schedule shall be an acceleration in performance of Work under Section D.1.2 (f) and shall entitle the CM/GC to an equitable adjustment to the Contract Price subject to the Change Order process of Section D.1.

- H.1.3 The Owner shall not waive any rights under the Contract by permitting CM/GC to continue or complete the Work or any part of it after the date described in Section H.1.2 above.

H.2 SCHEDULE

- H.2.1 CM/GC shall provide, by or before the pre- construction conference, a detailed schedule for review and acceptance by the Owner. The submitted schedule must illustrate Work by significant project components, significant labor trades, and long lead items, broken down by building and/or floor where applicable. Each schedule item shall account for no greater than 5 % of the monetary value of the project or 5 % of the available Contract Time. Schedules with activities of less than one day or valued at less than 1% of the Contract will be considered too detailed and will not be accepted.

Schedules lacking adequate detail, or unreasonably detailed, will be rejected. Included within the schedule are the following: Notice to Proceed, Substantial Completion, and Final Completion. Schedules will be updated monthly and submitted with the monthly payment application. Acceptance of the Schedule by the Owner does not constitute agreement by the Owner, as to CM/GC's sequencing, means, methods, or allocated Contract

Time.

Any positive difference between CM/GC's scheduled completion and the Contract completion date is float which is a shared Project resource..

- H.2.2 Each week CM/GC shall submit to Owners Representative a **"Three Week Look Ahead"** schedule that includes the details of work elements scheduled to be performed within that period. This schedule shall be compatible with the overall project schedule required in H.2.1 above.

H.3 PARTIAL OCCUPANCY OR USE

- H.3.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage, provided such occupancy or use is consented to by public authorities having jurisdiction over the Work. Partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and CM/GC have reasonably accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, insurance or self-insurance, maintenance, heat, utilities, and damage to the Work, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents with respect to such portion of the Work. Approval by CM/GC to partial occupancy or use shall not be unreasonably withheld. Immediately prior to such partial occupancy or use, the Owner and CM/GC shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work. Partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not

complying with the requirements of the Contract Documents.

SECTION I CORRECTION OF WORK

I.1 CORRECTION OF WORK BEFORE FINAL PAYMENT

CM/GC 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. The CM/GC's warranty does not include remedies for defects or damages caused by use for a purpose for which the Project was not intended, improper operation or insufficient maintenance, modifications performed by the Owner or Others, or abuse. The CM/GC's warranty shall commence on the Date of Substantial Completion of the Work, or of a designated portion. CM/GC shall promptly remove from the premises and replace all defective materials and equipment as determined by Owner's Authorized Representative, whether incorporated in the Work or not. Removal and replacement shall be without loss or expense to the Owner, and CM/GC shall bear the cost of repairing all Work destroyed or damaged by such removal or replacement.

CM/GC shall be allowed a period of no longer than 60 days for completion of defective (punch list) work, unless otherwise agreed. At the end of that period, or earlier if requested by CM/GC, Owner shall arrange for inspection of the Work by the Architect/Engineer. Should the Work not be complete, and all corrections made, the costs for all subsequent re-inspections shall be borne by CM/GC.

If CM/GC fails to complete the punch list work within the above time period, without affecting CM/GC's obligations Owner may perform such work and CM/GC shall reimburse Owner all costs of the work within

30 days after demand.

I.2 WARRANTY WORK

I.2.1 Neither the final certificate of payment nor any provision of the Contract Documents shall relieve CM/GC from responsibility for defective Work, unless a longer period is specified, CM/GC shall correct all defects that appear in the Work within a period of one year from the date of substantial completion and acceptance. The CM/GC's warranty does not include remedies for defects or damages caused, use for a purpose for which the Project was not intended, improper operation or insufficient maintenance, modifications performed by the Owner or Others, or abuse.

The Owner shall give CM/GC notice of defects with reasonable promptness. CM/GC shall perform such warranty work within a reasonable time after Owner's demand. If CM/GC 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 CM/GC's obligations, Owner may perform such work and CM/GC shall reimburse Owner all costs of the same within thirty (30) Days after demand.

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

I.2.3 In addition to CM/GC's warranty, manufacturer's warranties shall pass to the Owner and shall not take effect until affected Work

has been accepted in writing by Owner's Authorized Representative. To the extent products, equipment, systems, or materials incorporated in the Work are specified and purchased by the Owner, they shall be covered exclusively by the warranty of the manufacturer. There are no warranties which extend beyond the description on the face of any such warranty.

I.2.5 Nothing contained in this Section I.2 shall be construed to establish a period of limitation with respect to other obligations which CM/GC might have under the Contract Documents. Establishment of the period for correction of Work as described in this Section I.2 relates only to the specific obligation of CM/GC 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 CM/GC's liability with respect to CM/GC's obligations other than specifically to correct the Work.

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

I.2.7. The remedies in this Section are in addition to any other remedies that Owner may have, including breach of contract and negligence.

SECTION J SUSPENSION AND/OR

**TERMINATION
OF THE WORK**

**J.1 OWNER'S RIGHT TO SUSPEND
THE WORK FOR CONVENIENCE**

J.1.1 The Owner and/or Owner's Authorized Representative has the authority to suspend portions or all of the Work for the convenience of the Owner and not due to any act or omission of the CM/GC or any person or entity for whose acts or omissions the CM/GC may be liable, then the CM/GC shall immediately suspend, delay, or interrupt that portion of the Work for the time period ordered by the Owner. The GMP and the Dates of Substantial or Final Completion shall be equitably adjusted by Change Order. Any action taken by the Owner that is permitted by any other provision of the Contract Documents and that result in a suspension of part or all of the Work does not constitute a suspension of Work under this section..

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

**J.2 CONTRACTOR'S
RESPONSIBILITIES**

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

J.2.2 When the Work is recommenced after the suspension, CM/GC 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 to extent appropriate in light of the suspension.

**J.3 COMPENSATION FOR
SUSPENSION**

J.3.1 CM/GC shall be due compensation which shall be defined using Section D, Changes in Work.

**J.4 OWNER'S RIGHT TO
TERMINATE
CONTRACT**

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

- (a) If CM/GC should voluntarily or involuntarily, seek protection under the United States Bankruptcy Code and CM/GC as debtor-in-possession or the Trustee for the estate fails to assume the Contract within a reasonable time;
- (b) If CM/GC should make a general assignment for the benefit of CM/GC's creditors;
- (c) If a receiver should be appointed on account of CM/GC's insolvency;
- (d) If CM/GC 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 CM/GC should repeatedly fail to make prompt payment to

Subcontractors or for material or labor, or should disregard laws, ordinances or the instructions of the Owner or its Authorized Representative; or

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

J.4.2 At any time that any of the above occurs, Owner may exercise all rights and remedies available to Owner at law or in equity, and in addition, Owner may take possession of the premises and of all materials and appliances and finish the Work by reasonable method. In that case, CM/GC 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, CM/GC shall pay the difference to the Owner. If the Owner's costs are less than the unpaid GMP, the Owner shall pay the difference to the CM/GC. If the Owner exercises its rights under this section, upon the request of the CM/GC, the Owner shall furnish to the CM/GC a detailed accounting of the costs incurred by the Owner. The Owner shall make reasonable efforts to mitigate damages arising from the CM/GC's default, and shall promptly invoice the CM/GC all amounts due pursuant to this section. If the Owner terminates this Agreement for default, and it is later determined that the CM/GC was not in default, or that the default was excusable under the terms of the Contract Documents, then, in such event, the termination shall be deemed a termination for convenience, and the rights of the Parties shall be as set forth in Section J.5.

J.5 TERMINATION FOR CONVENIENCE

J.5.1 Owner may terminate the Contract in whole or in part whenever Owner

determines that termination of the Contract is in the best interest of the public.

J.5.2 The Owner will provide CM/GC with seven Days' written notice of a termination for convenience. After notice, CM/GC shall provide the Owner with prompt and peaceful possession of the premises and materials located on and off the premises for which CM/GC received progress payment under Section E. If the Owner terminates this Agreement pursuant to this section, the CM/GC shall be paid (a) for the Work performed to date including Overhead and profit; (b) for all demobilization costs and costs incurred as a result of the termination. In no circumstance shall CM/GC be entitled to lost profits for Work not performed due to termination.

J.6 ACTION UPON TERMINATION

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

J.6.2 As directed by the Owner, CM/GC 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.

J.6 CONTRACTOR'S RIGHT TO TERMINATE

J.6.1. Upon seven (7) Days' written notice to the Owner, the CM/GC may terminate this Agreement if the Work has been stopped for a thirty (30) Day period through no fault of the CM/GC for any of the following reasons: (1) under court order or order of other government authorities having jurisdiction; (2) as a result of the declaration of a national emergency or other governmental act during which, through no act or fault of the CM/GC, materials are not available; (3) suspension by the Owner for convenience pursuant to Section J.1.

J.6.2. In addition, upon seven (7) Days' written notice to the Owner, the CM/GC may terminate this Agreement if the Owner: (1) fails to furnish reasonable evidence that sufficient funds are available and committed for Project financing; (2) fails to pay the CM/GC in accordance with this Contract; (3) otherwise materially breaches this Contract.

J.6.3. Upon termination by the CM/GC in accordance with this section, the CM/GC shall be entitled to recover from the Owner payment for all Work executed and for any proven loss, cost, or expense in connection with the Work, including all demobilization costs plus reasonable Overhead and profit on Work not performed.

of the entire project 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.

K.2 OPERATION AND MAINTENANCE MANUALS

K.2.1 CM/GC shall submit two completed operation and maintenance manuals ("O & M Manuals") for review by Owner's Authorized Representative prior to submission of any pay request for more than 75% of the Work. No payments beyond 75% will be made by the Owner until the O & M Manuals have been received.

The O & M Manuals shall contain a complete set of all submittals, all product data as required by the specifications, training information, phone list of consultants, manufacturers, installer and suppliers, manufacturer's printed data, record and shop drawings, schematic diagrams of systems, appropriate equipment indices, warranties and bonds. Owner's Authorized Representative shall review and return one O & M Manual for any modifications or additions required.

Prior to submission of its final pay request, CM/GC shall deliver three complete and approved sets of O & M Manuals to Owner's Authorized Representative.

K.3 AFFIDAVIT/RELEASE OF LIENS AND CLAIMS

**SECTION K
CONTRACT CLOSE OUT**

K.1 RECORD DOCUMENTS

K.1.1 As a condition of final payment (refer also to section E.6), CM/GC shall provide Record Documents

K.3.1 As a condition of final payment, CM/GC shall submit to 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 CM/GC's knowledge, there are no claims of any kind outstanding against the project. CM/GC 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. CM/GC 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. Also as a requirement for final payment CM/GC shall submit to the Owner's Representative a **Consent of Surety** indicating the Bonding company is satisfied and Final Payment may be made.

K.4 COMPLETION NOTICES

K.4.1 CM/GC shall provide Owner notice of both Substantial and Final Completion. The certificate of Substantial Completion shall state the date of Substantial Completion, the responsibilities of the Owner and CM/GC for security, maintenance, heat, utilities, damage to the Work and insurance, and the time within which CM/GC shall finish all items on the punchlist accompanying the Certificate. Both completion notices must be signed by CM/GC and the Owner to be valid. The Owner shall provide the final signature on the notices. The notices shall take effect on the date they are signed by the Owner.

K.4.2 All equipment contained in the Work, plus all other components necessary to enable the Owner

to operate the facility in the manner that was intended, shall be complete on the Substantial Completion date. CM/GC may request that a punch list be prepared by Owner's Authorized Representative with submission of the request for the Substantial Completion notice.

K.5 TRAINING

K.5.1 As part of the Work, and prior to submission of the request for final payment, CM/GC shall schedule with Owner's Authorized Representative, training sessions for all equipment and systems, as required in the individual specifications sections. CM/GC shall schedule training sessions at least two weeks in advance of the date of training to allow Owner personnel adequate notice. The O & M Manual shall be used as a basis for training. Training shall be a formal session, held after the equipment and/or system is completely installed and operational in its normal operating environment.

K.6 EXTRA MATERIALS

K.6.1 As part of the Work, CM/GC shall provide spare parts, extra maintenance materials, and other materials or products in the quantities specified in the specifications, prior to final payment. Delivery point for extra materials shall be designated by Owner's Authorized Representative.

K.7 ENVIRONMENTAL CLEAN-UP

K.7.1 As part of the Final Completion notice, or as a separate written notice submitted with or before the notice of Final Completion, CM/GC 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 F.5.1 above.

K.8 CERTIFICATE OF OCCUPANCY

K.8.1 CM/GC shall not be granted Final Completion or receive final payment if the Owner has not received an unconditioned certificate of occupancy from the appropriate building officials, unless failure to obtain an unconditional certificate of occupancy is due to the fault or neglect of Owner.

K.9 OTHER CONTRACTOR RESPONSIBILITIES

K.9.1 CM/GC 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. To the extent applicable, CM/GC shall be responsible for notifying the appropriate utility companies to transfer utility charges from CM/GC 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 CM/GC's forces continue with the Work.

K.10 SURVIVAL

K.10.1 All warranty and indemnification provisions of this Contract, and all of CM/GC's and Owner's other obligations under this Contract that are not fully performed by the time of Final Completion or termination, shall survive Final Completion or any termination of the Contract.

SECTION L

LEGAL RELATIONS & RESPONSIBILITIES

L.1 LAWS TO BE OBSERVED

L.1.1 In compliance with ORS 279C.525, Sections L.2 through L.4 contain lists of federal, state and local agencies of which the Owner has knowledge that have enacted ordinances or regulations relating to environmental pollution and the preservation of natural resources that may affect the performance of the Contract:

L.2 FEDERAL AGENCIES

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

L.3 STATE AGENCIES

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

L.4 LOCAL AGENCIES

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

EXHIBIT B
PRE-CONSTRUCTION SCOPE OF SERVICES

1. Review the bid documents for the Water Treatment Plant, Bid Package 2 - Intake, Raw Water Pump Station, and Water Treatment Plant to understand design criteria and current construction criteria and requirements for the Project.
2. Prepare a value engineering work plan to coordinate the efforts of Owner and Owner's Engineer.
3. Conduct a kickoff meeting with Owner and Owner's Engineer to introduce project Team members, establish communication protocol, review the Scope of Work and schedule for Preconstruction Phase Services (as contracted), and discuss scope items that will be considered to reduce the Project scope.
4. Conduct value engineering work to identify reductions in the Project Scope of Work required to reduce the Project cost to meet Owner's goal for a GMP of \$22 million to \$23 million. During this Work, Owner reserves the right to accept or reject proposed changes. CM/GC value engineering work shall include but not be limited to:
 - a. Developing and proposing changes to the Project from the requirements set forth in Bid Package 2 that will achieve the Owner's goal to reduce Project cost.
 - b. Working collaboratively with Owner and Owner's Engineer to achieve a significant reduction in the building footprint of the Water Treatment Plant.
 - i. Owner's Engineer prepared a 3D model for the WTP in Bid Package 2. Using that model, Owner's Engineer will assist CM/GC in preparing a revised building layout using the 3D model.
 - ii. CM/GC shall prepare sketches and figures to show proposed changes to site and building layouts for review by Owner and Owner's Engineer.
 - c. Retaining the services, if not self-performed, for building supply and erection (e.g. prefabricated metal building, tilt-up wall panel construction, masonry etc.) to identify changes to the building type:
 - i. CM/GC shall assume building will be provided under a performance based specification and provide initial and final submittals for review by Owner's Engineer. Initial submittals shall be as required to establish scope and price for the GMP. Final submittals shall be as required to secure building permits construct the building.
 - d. Retaining the services, if not self-performed, for electrical and control supply and construction to identify changes to the electrical equipment and materials, control devices, and plant control system.
 - i. This work shall include review of a Proposal by H₂O Innovation to change the membrane filtration control system to be used as the WTP control system.
 - ii. Identify alternative electrical equipment that is standard to the industry but lower in cost.
 - iii. Identify alternative control devices that are standard to the industry but lower in cost.
 - iv. Identify alternative control communications systems that are standard to the industry but lower in cost.
 - e. Reviewing / accommodating proposed changes identified by Owner's Engineer and H₂O Innovation to achieve cost reduction in the membrane filtration system.

- f. Creating a value analysis tracking system which identifies each proposed change, providing a cost estimate of the savings to the Project if the Proposal is accepted, and indicating the current status of the Proposal and the Team member (Owner, Owner's Engineer, CM/GC, or other party) with current action, and the date the Proposal was accepted or rejected.
 - g. Identifying a streamlined and efficient process to incorporate changes into documents needed for permitting and construction to reduce the time required and expedite the schedule.
 - h. Assisting in the preparation of documents for incorporation of changes for development of the GMP; this shall include but not be limited to:
 - i. Providing material and equipment submittals,
 - ii. Providing preliminary building submittals,
 - iii. Providing markups to Bid Package 2 Specifications sections, and
 - iv. Providing markups to Bid Package 2 drawings
 - v.
5. Prepare a construction plan outlining the processes and procedures that shall be used to perform the aspects of the Work, recommended phasing (if any), early work items, sequencing of work, materials and equipment procurement, and development of construction packages.
6. Identify subcontract bid packages and material procurement packages required for the construction including those that could be advertised or secured prior to beginning of the Construction Phase Services period. The subcontracting plan shall meet the requirements set forth in the Contract for self-performance and subcontracting. If the Owner concurs that the Project will benefit and funds are available the Owner may, at its option, elect to authorize the CM/GC to advertise and award subcontracts or material procurements in advance of construction. The Owner's decision to not authorize these early activities shall not constitute delay. CM/GC assumes any and all risks related to or associated with its recommendation to advertise and award subcontracts and/or material procurements in advance of the construction period, including but not limited to increased cost of the Work caused by escalation, inflation, market conditions, or further development of the documents used for construction.
7. Provide a master schedule for the project using CPM scheduling. Identify construction sequencing and early work items that may benefit Owner.
8. Provide cost-estimating expertise that includes working with local labor and subcontracting markets and materials and equipment suppliers to generate viable construction cost estimates prior to the GMP. CM/GC shall develop all construction cost estimates with due diligence as their content is critical to the decision-making process for Project Scope reduction, execution of the Project and funding availability. Written documentation and supporting information shall be provided for each cost estimate. CM/GC shall anticipate providing three (3) Project cost estimates (two during the value engineering work and one prior to the formal GMP Proposal);
9. Identify and reconcile constructability issues.
10. Assess project risks and opportunities for cost savings.

**EXHIBIT C
GMP AMENDMENT**

**CITY OF LEBANON, OREGON
WATER TREATMENT PLANT PROJECT
Bid Package 2 - Intake, Raw Water Pump Station,
and Water Treatment Plant**

THIS AMENDMENT IS BETWEEN:

OWNER: City of Lebanon, Oregon

And

**CONSTRUCTION MANAGER/
GENERAL CONTRACTOR ("Contractor"):**

**PROJECT: City of Lebanon, Oregon, Water Treatment Plant Project, Bid
Package 2 - Intake, Raw Water Pump Station, and Water Treatment Plant**

DATE OF ORIGINAL CONTRACT:

DATE OF THIS AMENDMENT: AMENDMENT NUMBER:

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

1. **GMP.** The parties agree that the GMP for the Project is \$ _____,
consisting of the Preconstruction Services Cost, the Estimated Cost of the Work including the fixed General Condition costs of \$ _____, and the CM/GC Fee, as follows:

Preconstruction Fee:	\$ _
<hr/>	
Estimated Cost of Work (Est. COW):	\$ _
<hr/>	
CM/GC Fee (_____ % of Est. COW):	\$ _
<hr/>	
GMP (Total of above categories):	\$ _
<hr/>	

For purposes of determining the GMP, the Estimated Cost of the Work includes CM/GC's Contingency, the Fixed Cost for GC Work..

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 is:

_____ [insert either date or business days .]

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

CM/GC:

Name of Firm: _____

Address: _____

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

Construction CM/GC's Board Registration No.: _____

Signature of Authorized Representative of CM/GC

Title _____

Date _____

OWNER:

CITY OF LEBANON, OREGON

Signature of Owner's Authorized Representative

Title _____

Date _____

**EXHIBIT D
GENERAL CONDITIONS COST OF WORK MATRIX**

**CITY OF LEBANON, OREGON
WATER TREATMENT PLANT PROJECT
Bid Package 2 - Intake, Raw Water Pump Station,
and Water Treatment Plant**

The table below states the categories of Work that support the Fixed Cost for General Conditions Work, Reimbursable Cost for General Conditions Work, and Cost of Work that will be payable under the Contract.

Columns 1 thru 4 = GMP

Item No.	Item	Column			
		1	2	3	4
		Fixed Cost General Conditions Work	Percent General Conditions Fee	Cost of Work	By Owner
1	Advertising Costs for Subcontract Bid			X	
2	Allowances			X	
3	Alternates			X	
4	Engineering/Design Services				X
5	Work performed by CM/GC			X	
6	Insurance Premiums & Deductibles		X		
7	BOLI Fees				X
8	Business Licenses &	X			
9	Communications: Cell phones, radios, pagers, phone, fax, computer networks,	X			
10	Construction Schedules	X			
11	Contract Modification Procedures	X			
12	Contractor Bid Allowances			X	
13	Contractor			X	
14	Contractor Home Office Overhead		X		
15	Correction of Non-Conforming Work		X		
16	Escrow Cost & Fees		X		
17	Final Cleaning & Pest Control			X	

Item No.	Item	Column			
		1	2	3	4
		Fixed Cost General Conditions Work	Percent General Conditions Fee	Cost of Work	By Owner
18	CM/GC Profit		X		
19	CM/GC Project Closeout	X			
20	CM/GC Project Warranty	X			
21	CM/GC Quality Control			X	
22	CM/GC Safety and Administration			X	
23	CM/GC Subcontractor Administration and Coordination	X			
24	GC/CM Submittal Procedures	X			
25	Construction Equipment – Owned and Rented including fuel and maintenance			X	
26	Direct Labor Expense including Benefits and Workers Compensation Insurance			X	
27	Drug/Substance Abuse Testing	X			
28	Mock-Ups			X	
29	Performance & Payment Bond Premium	X			
30	Progress Payment Procedures	X			
31	Project Accounting		X		
32	Project Management & Field Coordination Staff	X			
33	Project Meetings/Minutes	X			
34	Regulatory Permits and Fees			X	
35	Reproduction Costs: Plans/Specifications/Bid Documents		X		

Item No.	Item	Column			
		1	2	3	4
		Fixed Cost General Conditions Work	Percent General Conditions Fee	Cost of Work	By Owner
36	Review and Analysis of Subcontractor Qualifications	X			
37	Updates to the Subcontracting Plan			X	
38	Incidentals and small tools (under \$500) including repairs, storage and maintenance			X	
39	Subcontractor Bonds			X	
40	Subcontractor Costs			X	
41	Subcontractor Closeout / Warranty			X	
42	Subcontractor Submittal Procedures			X	
43	Substitution Requests	X			
44	Environmental Controls			X	
45	Record Drawings by CM/GC	X			
46	O&M Manuals by CM/GC	X			
47	CM/GC Job Site Office, Furnishings, Equipment, and Supplies (for one site)	X			
48	General Housekeeping			X	
49	Material Hoisting/Distribution			X	
50	Project Photos/Recordings	X			
51	Project Signage/Identification	X			
52	Site Survey (Line/Grade Control)			X	
53	Special Inspections and Testing				X
54	Temporary Fencing/Security/Barri cade s/Partitions/Signs			X	
55	Temporary Fire Protection			X	
⁶ 57	Temporary Lay down Areas/Roads			X	

Exhibit D

Item No.	Item	Column			
		1	2	3	4
		Fixed Cost General Conditions Work	Percent General Conditions Fee	Cost of Work	By Owner
57	Temporary Lighting			X	
58	Temporary Parking			X	
59	Temporary Power Consumption			X	
60	Temporary Facilities & Controls: Temporary Power Service			X	
61	Temporary Sanitary Facilities			X	
62	Temporary Water Consumption			X	
63	Temporary Water Service			X	
64	Temporary Weather Protection			X	
65	Vehicles for Managers	X			
66	Warranty Work		X		
67	Waste Management			x	
68	Travel and per diem for home office and project management staff	X			
69	Builders Risk Insurance			X	
70	BIM Modeling			X	

**EXHIBIT E
PAYMENT AND PERFORMANCE BOND FORMS**

**PERFORMANCE
BOND**

CONTRACTOR (*Name and Address*):

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

OWNER (*Name and Address*):

CONSTRUCTION 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 Performance Bond to be duly executed by an authorized officer, agent, or representative.

CONTRACTOR AS PRINCIPAL

SURETY

_____	_____ (SEAL)
Contractor's Name	Surety's Name and Corporate Seal
By: _____	By: _____
_____	_____
Signature	Signature (Attach Power of Attorney)

Print Name	Print Name

Title	Title

Attest: _____	Attest: _____
_____	_____
Signature	Signature

Title	Title

Notes: (1) Provide execution by any additional parties, such as joint venturers, if necessary.
(2) Any singular reference to Contractor, Surety, Owner, or other party shall be considered plural where applicable.

Whereas, the City Council of the City of Lebanon State of Oregon and _____ (hereinafter designated as "Principal") have entered into an Agreement whereby Principal agrees to install and complete certain designated public improvements, which said Agreement, dated _____, 20____, and identified as Project _____, is hereby referred to and made a part hereof; and

Whereas, said Principal is required under the terms of said Agreement to furnish a bond for the faithful performance of said Agreement.

Now, therefore, we, the Principal and _____, as Surety, are held and firmly bound unto the City of Lebanon (hereinafter called "_____"), in the penal sum of _____ dollars (\$ _____) lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, successors, executors and administrators, jointly and severally, firmly by these presents.

The condition of this obligation is such that if the above bounded Principal, his or its heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions and provisions in the said Agreement and any alteration thereof made as therein provided, on his or their part, to be kept and performed at the time and in the manner therein specified, and in all respects according to their true intent and meaning, and shall indemnify and save harmless _____, its officers, agents, employees, and professional consultants, as therein stipulated, then this obligation shall become null and void; otherwise it shall be and remain in full force and effect.

As a part of the obligation secured hereby and in addition to the face amount specified therefor, there shall be included costs and reasonable expenses and fees, including reasonable

attorney's fees, incurred by City in successfully enforcing such obligation, all to be taxed as costs and included in any judgment rendered, including a sum to complete construction according to the Contract Documents.

The Surety hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Agreement or to the Work to be performed thereunder or the Specifications accompanying the same shall in anywise affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Agreement or to the Work or to the Specifications.

In witness whereof, this instrument has been duly executed by the Principal and Surety above named,
on _____, 20__ .

END OF SECTION

PAYMENT BOND

CONTRACTOR (*Name and Address*):

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

OWNER (*Name and Address*):

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

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

Title

Title

Note: (1) Provide execution by any additional parties, such as joint venturers, if necessary.

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

1. Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to Owner to pay for labor, materials, and equipment furnished by Claimants for use in the performance of the Contract, which is incorporated herein by reference.
2. With respect to Owner, this obligation shall be null and void if Contractor:
 - 2.1 Promptly makes payment, directly or indirectly, for all sums due Claimants, and
 - 2.2 Defends, indemnifies, and holds harmless Owner from all claims, demands, liens, or suits alleging non-payment by Contractor by any person or entity who furnished labor, materials, or equipment for use in the performance of the Contract, provided Owner has promptly notified Contractor and Surety (at the address described in Paragraph 12) of any claims, demands, liens, or suits and tendered defense of such claims, demands, liens, or suits to Contractor and Surety, and provided there is no Owner Default.
3. With respect to Claimants, this obligation shall be null and void if Contractor promptly makes payment, directly or indirectly, for all sums due.
4. Surety shall have no obligation to Claimants under this Bond until:
 - 4.1 Claimants who are employed by or have a direct contract with Contractor have given notice to Surety (at the address described in Paragraph 12) and sent a copy, or notice thereof, to Owner, stating that a claim is being made under this Bond and, with substantial accuracy, the amount of the claim.
 - 4.2 Claimants who do not have a direct contract with Contractor:
 1. Have furnished written notice to Contractor and sent a copy, or notice thereof, to Owner, within 90 days after having last performed labor or last furnished materials or equipment included in the claim stating, with substantial accuracy, the amount of the claim and the name of the party to whom the materials or equipment were furnished or supplied, or for whom the labor was done or performed; and
 2. Have either received a rejection in whole or in part from Contractor, or not received within 30 days of furnishing the above notice any communication from Contractor by which Contractor has indicated the claim will be paid directly or indirectly; and
 3. Not having been paid within the above 30 days, have sent a written notice to Surety (at the address described in Paragraph 12) and sent a copy, or notice thereof, to Owner, stating that a claim is being made under this Bond and enclosing a copy of the previous written notice furnished to Contractor.
5. If a notice by Claimant required by Paragraph 4 is provided by Owner to Contractor or to Surety, that is sufficient compliance.
6. Reserved.
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 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 here from 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 by 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 used in the Contract, architectural and engineering services required for performance of the Work of Contractor and Contractor's subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials, or equipment were furnished.
 - 15.2 Contract: The agreement between Owner and Contractor identified on the signature page, including all Contract Documents and changes thereto.
 - 15.3 Owner Default: Failure of Owner, which has neither been remedied nor waived, to pay Contractor as required by the Contract or to perform and complete or otherwise comply with the other terms thereof.

END OF SECTION

EXHIBIT F
Construction Contract Requirements
for Recipients of Safe Drinking Water financing

SAM Registration and DUNS number are required for all entities that enter into direct contracts with the recipients of Safe Drinking Water Revolving Loan funds

SAM Registration: http://www.sam.gov/portal/public/SAM/	DUNS Number http://www.dnb.com/get-a-duns-number.html
NOTE: The SAM registration expires annually and must be kept active until the SDWRLF project is closed	

Language to be included verbatim in construction contracts according to any accompanying instructions

Clauses required in all Contracts

- Termination for Cause and for Convenience & Breach of Contract** (language to be included in all construction contracts and subcontracts in excess of \$10,000:)
“Contractor shall address termination for cause and for convenience, including the manner by which it will be effected and the basis for settlement. In addition, contractor shall address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.”
- Equal Employment Opportunity** (language to be included in all construction contracts and subcontracts in excess of \$10,000:)
“Contractor shall comply with Executive Order 11246 of September 24, 1965, entitled “Equal Employment Opportunity,” as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR chapter 60).”
- Procurement of Recovered Materials** (language to be included in all construction contracts and subcontracts in excess of \$10,000:)
“Contractor must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, including procurement of recovered materials in a manner designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247.”
- Whistleblower** (language to be included in all construction contracts and subcontracts)
“Contractor receiving SDWRLF funds shall under or through this contract to, post notice of the rights and remedies provided to whistleblowers under No Fear Act Pub. L. 107-174. 29 CFR § 1614.703 (d).”

- Source of Funds** (language to be included in all construction contracts and subcontracts)
“Work under this contract is funded by the federal Safe Drinking Water Revolving Loan Fund through the Oregon Business Development Department and a partnership of Local and/or Private Funds. “
- Suspension and Debarment** (language to be included in all construction contracts and subcontracts)
“Contractor certifies that it is not debarred or suspended or is otherwise excluded from or ineligible for participation in federal assistance programs under Executive Order 12549, “Debarment and Suspension”, and shall not contract or permit any subcontract at any level with any party similarly excluded or ineligible. A list of excluded parties is available in the System for Award Management (SAM) at www.sam.gov, under “search records”.”
- Copeland “Anti-Kickback” Act** (language to be included in all construction contracts and subcontracts)
“Contractor shall comply with the Copeland “Anti-Kickback” Act (18 U.S.C. 847) as supplemented in Department of Labor regulations (29 CFR part 3).”
- Intellectual Property** (language to be included in all construction contracts and subcontracts:)
“Contractor hereby grants to the U.S. E.P.A. a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for federal government purposes, any intellectual property developed under this contract. Contractor shall secure from third parties the same license in the name of the U.S. E.P.A. regarding any intellectual property developed by third parties as subcontractors under this contract, or developed under contract with the Contractor specifically to fulfill Contractor’s obligations related to this contract.”
- Inspections; Information** (language to be included in all construction contracts and subcontracts:)
“Contractor shall permit, and cause its subcontractors to allow *[insert name of water system Owner]*, the State of Oregon, the federal government and any party designated by them to:
- Examine, visit and inspect, at any and all reasonable times, the property, if any, constituting the Project.
 - Inspect and make copies of any accounts, books and records, including, without limitation, its records regarding receipts, disbursement, contracts, and any other matters relating to the Project, and to its financial standing, and shall supply such reports and information as reasonably requested.
 - Interview any officer or employee of the Contractor, or its subcontractors, regarding the Project.
- Contractor shall retain all records related to the Project for three years after final payments are made and any pending matters are closed.
- Disadvantaged Business Enterprises** (language to be included in all construction contracts and subcontracts:)

Recipient will implement the good faith efforts for solicitation and contracting with Disadvantaged Business Enterprises (“DBE”) described in Section 4.1 of the Safe Drinking Water Handbook. This applies to all solicitation and contracting for construction, equipment, supplies, engineering or other services that constitute the Project financed by this Contract. Recipient will maintain documentation in a Project file on Disadvantaged Business Enterprises. Recipient will maintain documentation in a Project file and submit required forms, as described in Section 4.1 of the Safe Drinking Water Handbook. Recipient will ensure that all prime contractors and subcontractors implement the good faith efforts for solicitation and contracting, and comply with all DBE procurement forms, statements, and reporting requirements. If the Loan exceeds \$250,000, Recipient agrees to apply the current regional fair share objectives.

Recipient will ensure that each procurement contract (prime plus all subcontractor contracts) includes the following term and condition:

“The contractor shall not discriminate on the basis of race, color, national origin or sex in the performance of this contract. The contractor shall carry out applicable requirements of 40 CFR part 33 in the award and administration of contracts awarded under EPA financial assistance agreements. Failure by the contractor to carry out these requirements is a material breach of this contract which may result in the termination of this contract or other legally available remedies.”

Recipient will ensure that all prime contractors and subcontractors implement the good faith efforts for solicitation and contracting, and comply with all DBE procurement forms, statements, and reporting requirements. If the Loan exceeds \$250,000, Recipient agrees to apply the current regional fair share objectives.

(Include the following forms, found in the IFA Preconstruction Packet:)

- *DBE Six Good Faith Efforts and Form*

American Iron Steel

(language to be included in all construction contracts and subcontracts:)

The Contractor acknowledges to and for the benefit of the *[insert name of water system Owner]* (“Purchaser”) and the State of Oregon (the “State”) that it understands the goods and services under this Agreement are being funded with monies made available by the Drinking Water State Revolving Fund that have statutory requirements commonly known as “American Iron and Steel;” that requires all of the iron and steel products used in the project to be produced in the United States (“American Iron and Steel Requirement”) including iron and steel products provided by the Contractor pursuant to this Agreement. The Contractor hereby represents and warrants to and for the benefit of the Purchaser and the State that (a) the Contractor has reviewed and understands the American Iron and Steel Requirement, (b) all of the iron and steel products used in the project will be and/or have been produced in the United States in a manner that complies with the American Iron and Steel Requirement, unless a waiver of the requirement is approved, and (c) the Contractor will provide any further verified information, certification or assurance of compliance with this paragraph, or information necessary to support a waiver of the American Iron and Steel Requirement, as may be requested by the Purchaser or the State. Notwithstanding any other provision of this Agreement, any

failure to comply with this paragraph by the Contractor shall permit the Purchaser or State to recover as damages against the Contractor any loss, expense, or cost (including without limitation attorney's fees) incurred by the Purchaser or State resulting from any such failure (including without limitation any impairment or loss of funding, whether in whole or in part, from the State or any damages owed to the State by the Purchaser). While the Contractor has no direct contractual privity with the State, as a lender to the Purchaser for the funding of its project, the Purchaser and the Contractor agree that the State is a third-party beneficiary and neither this paragraph (nor any other provision of this Agreement necessary to give this paragraph force or effect) shall be amended or waived without the prior written consent of the State.

Federal Labor Standards

(language to be included in all construction contracts and subcontracts:)

Prevailing Wage Requirements.

“Construction projects assisted in whole or in part with the Safe Drinking Water Revolving Loan Fund Program (SDWRLF) must be carried out in compliance with Federal Davis Bacon and Related Acts and the Oregon Bureau of Labor and Industries (BOLI) requirements. Contractor shall pay each worker employed in the performance of this contract not less than the higher of the wage rate for the type of work being performed as set forth in either the Oregon Prevailing Wage “Prevailing Wage Rate for Public Works Contracts in Oregon” or the applicable federal Davis-Bacon Wage Decision. Contractor shall download a U.S. Department of Labor Employee Fair Compensation Notice and post it at the work site along with a list of locally prevailing wage rates. Contractor shall prepare and submit weekly Certified Payroll Reports on forms to be supplied by Oregon Business Development Department. Contractor shall permit access to construction site in order to conduct on-site interviews with workers during working hours.”

(1) Minimum wages.

(i) All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in § 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including

any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

Subrecipients may obtain wage determinations from the U.S. Department of Labor's web site, www.wdol.gov.

(ii)(A) The subrecipient(s), on behalf of EPA, shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The State award official shall approve a request for an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the subrecipient(s) agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), documentation of the action taken and the request, including the local wage determination shall be sent by the subrecipient (s) to the State award official. The State award official will transmit the request, to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210 and to the EPA DB Regional Coordinator concurrently. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification request within 30 days of receipt and so advise the State award official or will notify the State award official within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the subrecipient(s) do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the award official shall refer the request and the local wage determination, including the views of all interested parties and the recommendation of the State award official, to the Administrator for determination. The request shall be sent to the EPA DB Regional Coordinator concurrently. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt of the request and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii)(B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the

applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(2) Withholding. The subrecipient(s), shall upon written request of the EPA Award Official or an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the (Agency) may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) Payrolls and basic records.

(i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The contractor shall submit weekly, for each week in which any contract work is performed, a copy of all payrolls to the subrecipient, that is, the entity that receives the subgrant or loan from the State capitalization grant recipient. Such documentation shall be available on request of the State recipient or EPA. As to each payroll copy received, the subrecipient shall provide written confirmation in a form satisfactory to the State indicating whether or not the project is in compliance with the requirements of 29 CFR 5.5(a)(1) based on the most recent payroll copies for the specified week. The payrolls shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on the weekly payrolls. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor

is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the subrecipient(s) for transmission to the State or EPA if requested by EPA, the State, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the subrecipient(s).

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be provided under § 5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under § 5.5

(a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the State, EPA or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency or State may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) Apprentices and trainees--

(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee

performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

(5) Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

(6) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the EPA determines may be appropriate, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(7) Contract termination; debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and Subrecipient(s), State, EPA, the U.S. Department of Labor, or the employees or their representatives.

(10) Certification of eligibility.

(i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

Additional Clauses for Contracts greater than 100,000

Construction contracts and subcontracts greater than 100,000 must include all clauses listed above in addition to the clauses listed below

Federal Labor Standards

4. Contract Provision for Contracts in Excess of \$100,000.

(a) Contract Work Hours and Safety Standards Act. The subrecipient shall insert the following clauses set forth in paragraphs (a)(1), (2), (3), and (4) of this section in full in any contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by Item 3, above or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

(1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (a)(1) of this section the contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (a)(1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (a)(1) of this section.

(3) Withholding for unpaid wages and liquidated damages. The subrecipient, upon written request of the EPA Award Official or an authorized representative of the Department of Labor, shall withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (a)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (a)(1) through (4) of this section.

(b) In addition to the clauses contained in Item 3, above, in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in 29 CFR 5.1, the Subrecipient shall insert a clause requiring that the contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall

contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, the Subrecipient shall insert in any such contract a clause providing that the records to be maintained under this paragraph shall be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the (write the name of agency) and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

5. Compliance Verification

(a) The subrecipient may periodically interview employees to provide a check against payroll data, throughout the duration of the construction project, but interviews are not required for Safe Drinking Water Revolving Loan Fund projects. The subrecipient has the option to conduct interviews, an option that should be exercised if needed to address any compliance issues. Contractors must allow access to all workers for interviews, if requested. As provided in 29 CFR 5.6(a)(6), all interviews if conducted, must be conducted in confidence. The subrecipient must use Standard Form 1445 (SF 1445) or equivalent documentation to memorialize the interviews. Copies of the SF 1445 are available from EPA on request.

(b) The subrecipient shall establish and follow an interview schedule based on its assessment of the risks of noncompliance with DB posed by contractors or subcontractors throughout the duration of the contract or subcontract. If necessary, the subrecipient should conduct interviews with a representative group of covered employees. Subrecipients must conduct more frequent interviews if the initial interviews or other information indicates that there is a risk that the contractor or subcontractor is not complying with DB. Subrecipients shall immediately conduct necessary interviews in response to an alleged violation of the prevailing wage requirements. All interviews shall be conducted in confidence.

(c) The subrecipient shall periodically conduct spot checks of a representative sample of weekly payroll data to verify that contractors or subcontractors are paying the appropriate wage rates. The subrecipient shall establish and follow a spot check schedule based on its assessment of the risks of noncompliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract. At a minimum, if practicable, the subrecipient should spot check payroll data within two weeks of each contractor or subcontractor's submission of its initial payroll data and two weeks prior to the completion date the contract or subcontract. Subrecipients must conduct more frequent spot checks if the initial spot check or other information indicates that there is a risk that the contractor or subcontractor is not complying with DB. In addition, during the examinations the subrecipient shall verify evidence of fringe benefit plans and payments thereunder by contractors and subcontractors who claim credit for fringe benefit contributions.

(d) The subrecipient shall periodically review contractors and subcontractors use of apprentices and trainees to verify registration and certification with respect to apprenticeship and training programs approved by either the U.S Department of Labor or a state, as appropriate, and that contractors and subcontractors are not using disproportionate numbers of, laborers, trainees and apprentices. These reviews shall be conducted in accordance with the schedules for spot checks and interviews described in Item 5(b) and (c) above.

(e) Subrecipients must immediately report potential violations of the DB prevailing wage requirements to the EPA DB contact listed above and to the appropriate DOL Wage and Hour District Office listed at <http://www.dol.gov/esa/contacts/whd/america2.htm>.

Environmental and Natural Resource Laws (include the following language in all construction

contracts and subcontracts in excess of \$100,000:)

“Contractor shall comply with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15).

- Prohibition on the Use of Federal Funds for Lobbying** (Certification Regarding Lobbying form follows, for any contracts in excess of \$100,000)

Certification Regarding Lobbying

(Awards to Contractors and Subcontractors in Excess of \$100,000)

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, “Disclosure Form to Report Lobbying,” in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Signed _____
Title _____
Date _____