

**DESCHUTES PUBLIC LIBRARY DISTRICT  
REQUEST FOR PROPOSALS  
Downtown Bend Library CMGC Services**

**NOTICE IS HEREBY GIVEN;** Deschutes Public Library District (District) is requesting sealed proposals to invite qualified Vendors to work with the District design team to participate in the CMGC preconstruction services during the design development of the drawings for work package #3 also known as the Downtown Bend Library Remodel. Which is part of the bond- funded library projects. Phase I work will include preconstruction Services reviewing the drawings as they develop to provide input with respect to construction methods, materials, cost analysis and estimates as requested for each phase of the development schedule. A potential Phase II may consist of: (1) constructing the Downtown Bend Library remodel.

Sealed proposals will be received until 2:00 PM on February 13th, 2024. Clearly mark proposals “Deschutes Public Library District: Downtown Bend Library CMGC Services Proposal” and submit to Todd Dunkelberg, Library Director, Deschutes Public Library District at 507 NW Wall Street, Bend, Oregon 97703. Proposals received after closing will be rejected as nonresponsive and returned unopened. Public opening of responsive proposals will occur at 507 NW Wall Street, Bend, OR. 97703, at 2:00 PM on February 13th, 2024.

A copy of the RFP, including all contract terms, conditions and specifications may be obtained on the District’s website at <https://www.deschuteslibrary.org/about/bond/>, the address above, or by calling (541) 312-5291, from January 22<sup>nd</sup>, 2024, until the closing date. Interested parties will prepare and submit proposals meeting the requirements of the District’s RFP for consideration by District. It is the District’s intent to select the most advantageous proposal(s) based on the evaluation criteria set forth in this RFP. No pre-qualification will be required for the contract award, nor will a pre-proposal conference be held.

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Todd Dunkelberg, Library Director

Dated: January 22<sup>nd</sup>, 2024

**REQUEST FOR PROPOSAL**  
**23/24-#15**

**Deschutes Public Library District**

**Construction Manager / General Contractor (CM/GC)**  
**for Bond-Funded Construction Projects**

**Work Package 3 – Downtown Library**

Issue date: January 22-23rd, 2024

Mandatory Pre-Proposal Conference: January 31, 2024

Proposals Due: February 13, 2024@ 2:00p.m.

## Public Notice

# Deschutes Public Library District Request for Proposal for Construction Manager / General Contractor (CM/GC) Services for Bond-Funded Construction Projects

## Work Package 3 – Downtown Library

Deschutes Public Library District (District) is seeking Proposals from qualified Contractors to perform CM/GC services related to remodel design and construction of DPL's Downtown Library. The work will include design review and cost estimates for Schematic Design, Design Development, and Construction Documents; coordination with District's architect and engineers, providing a guaranteed maximum price (GMP) for pre-construction and construction.

Based on findings prepared by the District and for which a public hearing was held on July 14, 2021, the District board passed a resolution exempting the Bond-Funded Construction Projects from procurement by competitive bid, and authorized the use of a Construction Manager/General Contractor (CM/GC).

Copies of the Request for Proposals, CM/GC findings, and contract terms, are on file and may be reviewed free of charge at the District website, <https://www.deschuteslibrary.org/about/bond/> or by contacting:

Greg Holcomb, Owner's Representative  
Deschutes Public Library  
Email: [greg@Redpointcm.com](mailto:greg@Redpointcm.com)  
Office: (541) 312-5291  
Mobile: (949) 326-3748

A mandatory virtual pre-proposal conference will be held via Zoom on January 31, 2024 at 10:00 AM (PDT). The pre-proposal conference will be recorded for public record, and will provide an overview of the project and current status, followed by a question-and-answer session.

Login information will be posted at the District's website, <https://www.deschuteslibrary.org/about/bond/>.

All Proposals must be received no later than 2:00 p.m. (PDT) on February 13, 2024. Proposals not received by that time will be rejected as non-responsive and not opened. All proposals shall be submitted to Mr. Holcomb in person or by mail in sealed envelopes at the Deschutes Public Library District Administration Building, 507 NW Wall St., Bend, OR 97703. Proposals must be plainly marked on the outside as "Deschutes Public Library District CM/GC Services, Work Package 3 – "Downtown Branch Library" and bear the name of the Proposer. Faxed and emailed proposals will be rejected as non-responsive. Opening shall occur at 507 NW Wall St., Bend, OR 97703, on February 13, 2024 @ 2:00 PM (PDT).

No prequalification's will be required for submittal of a proposal. Proposals that do not meet the Minimum Qualifications will not be considered. This Contract will be for a public work, subject to ORS 279C.800 to 279C.870 requiring compliance with all applicable provisions and payment of prevailing wages.

*Published DJC: January 24, 2024*

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# **Deschutes Public Library District**

## **Request for Proposal for Construction Manager / General Contractor (CM/GC) Services for Bond-Funded Construction Projects**

### **Work Package 3 – Downtown Bend Library**

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# 1: PROJECT BACKGROUND

In 2018, Deschutes Public Library (District) initiated a master planning process to assess how well its facilities support modern library service, and to establish a plan for the future. The **Deschutes Public Library Facilities Capital Plan** (FCP) recommended that the Downtown Bend, La Pine, Sisters, Sunriver and East Bend libraries should be renovated to address maintenance needs and update service; that the Redmond Library be significantly expanded; and that a new Central Library be added to the District network to allow for the expansion of the collection, as well as serve as the Library's distribution center to process and deliver materials for Deschutes County. The Central Library will also serve as the cultural and enrichment hub for all Deschutes County Residents.

On November 3, 2020, Deschutes County voters approved a \$195 million bond measure to construct a new Central Library, and to expand and update existing libraries in the District system. Through a subsequent request for proposal process, DeChase Miksis was retained as District's Owners Representative, and the Miller Hull Partnership and Steele Associates (Architect) were retained to provide architectural services for the bond work.

Based on findings prepared by the District and for which a public hearing was held on July 14, 2021, the District board passed a resolution exempting the Bond-Funded Construction Projects from procurement by competitive bid, and authorized the use of a Construction Manager/General Contractor (CM/GC).

Deschutes Public Library District has completed the Conceptual Design process for the bond measure projects. The purpose of this process was to establish the program and design vision, confirm the general scope of construction, and develop refined capital budgets for each proposed project. As with the development of its FCP, the Library engaged and collaborated with leaders, and stakeholders throughout Deschutes County communities, as well as with District staff. The **Concept Design Report** summarizes the process and outcomes of the project.

The bond measure work is divided into 4 **Work Packages** as shown in the **Master Development Schedule**. The attached **Contract Form (Appendix C)** is for **Work Package 3** only.

**Work Package 3:** DOWNTOWN BEND Renovations will expand visibility and orientation from lobby, enhance browsability, and increase the variety of studying, meeting, and creative collaboration spaces.

The Owner's estimated construction budget, including design/estimating contingency and escalation, for all of the DOWNTOWN library project in this Work Package is **\$ 13,000,000.00**. This number will be used as the basis of evaluation for this RFP.

With the Architects' assistance, the District's major milestones / deliverables on their behalf have been identified in the attached **Master Development Schedule**. the District desires construction work at the branch library locations to be completed in a timely manner and be staffed and operational in and completed within budget by the dates indicated therein.

District staff, Owner's Representative, Architect, and the District Board also recognized the value of a Construction Manager / General Contractor for the Downtown Bend Library project. The District approved moving forward with CM/GC services under the requirements of Oregon Revised Statute (ORS) 279C.355. Upon completion of construction, the District will have to produce a report with findings supporting the project provided substantial cost savings and other substantial benefits to the District. District will need successful CM/GC and Architect to assist with analysis and conclusions regarding actual cost savings, if any, in the evaluation required under ORS 279C.355.

With the RFP closing, and proposals to be opened on February 13, 2024, the District reserves the right to interview one or more of the top ranked Proposers from February 20 – 23, 2024. The District will issue a Notice of Intent to Award a contract to the top ranked Proposer prior to its board meeting held at 12:00 p.m. on March 13, 2024.

## 2: SCHEDULE

The schedule for District’s CM/GC planned selection is as follows, subject to change at the District’s sole discretion:

January 22-24 <sup>th</sup> 2024	Advertise RFP
February 1st, 2024	Mandatory Pre-Proposal Meeting @ 10:00AM Local Time
February 2, 2024	Deadline for Clarifications/Change Requests/Protests
February 6, 2024	Final Addendum Issued
February 13, 2024	Proposals Due by 2:00 p.m. Local Time
February 13, 2024	Proposal opening @ 2:00 p.m. Local Time
February 20-23, 2024	Interviews (Proposer must reserve these dates when submitting proposal)
March 4th, 2024	Issue Notice of Intent to Negotiate
March 11th, 2024	Appeal Period Ends
March 13, 2024	Formal board action
March 22, 2024	Execute contract

## 3: GENERAL INFORMATION

Contract documents associated with this RFP are attached as Appendix C. Submittal of a Proposal indicates a Proposer’s intent to be bound by those terms. All questions, concerns or requested changes with regards to the Project or required contract documents, including GMP Amendment terms, must be raised as a solicitation protest per Section 10.1 of this RFP or otherwise are waived and will not be later considered by District. In the event of any conflict between this RFP and contract documents, the terms of the contract shall govern.

### 3.1 License:

Proposer must have a current, valid certificate of registration issued by the Oregon Construction Contractors Board (OCCB) at the time the Proposal is submitted. If not registered or in good standing with the OCCB, District shall consider a Proposer non-responsive and shall reject the proposal pursuant to District Public Contracting Rule (District Rule) 137-049-0230.

### 3.2 Mandatory Pre-proposal Meeting:

Pre-proposal meeting attendance is required for submittal of a Proposal. Statements made by the District, Owner’s Representative or Architect’s representatives at the pre-proposal meeting are not binding upon the

District unless confirmed by written addenda. Roll call will be taken at the meeting. Virtual attendees must submit attendee contact information (name, email, phone number) to Greg Holcomb (greg@Redpointcm.com) at least four hours in advance of the meeting time. Only confirmed attendees will be eligible to participate in the meeting. Meeting location and login information will be posted at the District website, <https://www.deschuteslibrary.org/about/bond/>.

### **3.3 Addenda:**

District may change this RFP and attached contract documents prior to proposal closing only by written addenda. Proposers shall provide acknowledgement of receipt of all issued addenda with its Proposal by signing the submitted Proposer Certification form (see Appendices section). District shall notify all known interested Proposer's of addenda by email. Addenda will also be posted on the District website: <https://www.deschuteslibrary.org/about/bond/>.

**It is the sole responsibility of proposers to check the website for Addenda and signify receipt of all addenda in the proposal response on the Certification and Contract Offer form provided.**

### **3.4 BOLI/Prevailing Wage Rate Requirements:**

For each District Project, all contractors and subcontractors will abide by the prevailing wage rates in effect as of GMP execution, as scheduled and published for this region by the U.S. Department of Labor and the Oregon Department of Labor & Industries (BOLI) and will abide by all amendments, decisions, and related regulations of these agencies. Contractor is required to pay workers prevailing wage rates for this region through Project construction. The BOLI /PWR publication is hereby incorporated by reference and can be viewed at [http://www.oregon.gov/BOLI/WHD/PWR/Pages/pwr\\_state.aspx](http://www.oregon.gov/BOLI/WHD/PWR/Pages/pwr_state.aspx). No proposal will be received or considered by District unless the proposal contains a statement by the Proposer as a part of the proposal that "Contractor agrees to be bound and will comply with the provisions of ORS 279C.840 or the Davis-Bacon Act 40 U.S.C. § 3141, *et seq.*"

### **3.5 Public Works Bond:**

Contractors who work on public works projects, subject to the Prevailing Wage Rate law in the State of Oregon, are required to file a \$30,000 Public Works Bond to be used exclusively for unpaid wages determined to be due by State of Oregon Bureau of Labor & Industries. Proof of this bond in effect must be provided to the District prior to Contract signing, after the award of this RFP.

### **3.6 Performance / Payment Bonds:**

Before early work or the construction phase starts and prior to execution of the Contract GMP amendments, or any subsequent amendments to the Contract which authorizes construction services following preconstruction services, the Contractor must execute and deliver to District Performance Bonds and Payment Bonds as provided under ORS 279C.380 and in the forms attached to **Appendix C**, in a sum equal to each Contract GMP Amendment for the early work and construction services authorized by such Contract amendments. Bonds shall be effective from the Contract amendment dates through expiration of the Contractor's warranty period under the Contract. Performance Bonds and Payment Bonds must be furnished by a surety company authorized to do business in Oregon. The apparent successful Proposer must promptly furnish the required performance securities upon District's request.

### **3.7 Bid Bond:**

No bid bond is required for this RFP.

### 3.8 Project Team Members:

- 3.8.1 The selected CM/GC will work as a member of a team with District, Owner's Representative, Architect, and other project consultants. All of these parties together shall be referred to as the Project Team.
- 3.8.2 The CM/GC must be skilled in collaboration with the Project Team, identification and mitigation of risk through analysis and assessment, developing schedules, preparing construction estimates, performing value engineering, analyzing alternative designs, studying labor conditions, understanding construction methods and techniques, and coordinating and communicating the activities of the CM/GC throughout the design and construction phases to all members of the Project Team.
- 3.8.3 In addition, the CM/GC must be familiar with the local labor and subcontracting market and be capable of working with subcontractors to generate viable pricing.
- 3.8.4 All special testing and inspections work will be contracted directly by the District.

### 3.9 Asbestos Abatement:

Asbestos abatement (if required) must be performed by a Contractor licensed under ORS 468A.720 regarding asbestos abatement, for this Project.

## 4: SCOPE OF WORK

The District intends to contract with the successful proposer in two phases, with agreements and fee negotiations for each. For phase I (pre-construction phase services), the successful proposer generally will provide consultative services during the design phase of the Downtown Bend Library project comprising Work Package 3. At or before the completion of the design phase, as may be required by the District, the District will request the successful proposer to provide a Guaranteed Maximum Price ("GMP") to act as CM/GC for phase II (construction services) of the Downtown Bend Library project for which the selected CM/GC will assume the risk of delivering the project on schedule at or under the GMP. A separate GMP amendment will be established for the Downtown Bend Library project. Independent project accounting (Change Orders, Progress Payments, Warranties, etc.) will be required for the Downtown Bend Library project. Services to be performed by the selected CM/GC are set forth below.

### 4.1 Pre-Construction Phase Services:

For the Downtown Library project comprising Work Package 3, the CM/GC shall serve as general-contractor and a special consultant to the design team and will analyze the design and proposed modifications with the goal of providing the District, in the time frame proposed, the highest quality work within budget. The CM/GC shall provide the services identified in **Article 3.1** of the contract attached as **Appendix C** including design related CM/GC consultant services, scheduling, cost estimating, constructability review, coordination review, recommending optimal construction phasing with in the time line of the Master Development Schedule, scheduling and sequencing, and analysis of alternative materials and systems for each of the Downtown Bend Library project. Construction related activities of the CM/GC during this phase will include schedule refinement.

### 4.2 Construction Phase Services

If a GMP amendment to Appendix C is issued, the CM/GC shall perform all acts of work and supply all items necessary to complete the Downtown Bend Library project in accordance with the terms and conditions of the RFP and the Contract documents including, but not limited to, pay and coordinate all materials, tools, equipment, labor, professional and non-professional services, in the time allocated.



Construction Phase Services are identified in **Article 3.2** of the contract attached as **Appendix C**.

#### **4.3 Procurement Procedures:**

Below are the public project procurement procedures for procuring subcontractors for this work, further defined in **Appendix C**.

- 4.3.1 The process used to procure CM/GC subcontractors shall be monitored by the Owner's Representative and reported on by the CM/GC on a regular basis. The CM/GC may not artificially divide or fragment work so as to avoid the procurement rules under this section.
- 4.3.2 All subcontractor bids are to be written and submitted in a sealed package to a specific location at a specific time.
- 4.3.3 If less than three bids are submitted for any work component, including work that may be self-performed, approval by the District's authorized representative is required to accept the bid or require a rebid.
- 4.3.4 If the CM/GC is to self-perform some of the trade work, the CM/GC must bid competitively with trade subcontractors for that work. In such cases, bids must be delivered to a specified location at a location designated by the District three hours prior to the bid opening for that portion of the work.
- 4.3.5 The following public procurement requirements apply in accordance with District Public Contracting Rules:
  - A. Small Procurements – Up to and including \$5,000: CM/GC may award work that does not exceed this threshold in any practical manner, including direct selection.
  - B. Intermediate Procurements – Exceeding \$5,000 up to and including \$100,000: CM/GC shall solicit non-formal written competitive quotes from at least three subcontractors. "No bid" is not an acceptable quote. Quote requests shall include the selection criteria utilized. The selection criteria may be limited to price or some combination of price, experience, specific expertise, availability, subcontractor capacity, responsibility, and similar factors. Award may be made to the prospective subcontractor whose quote will best serve the interests of the District taking into account the selection criteria, with the final selection approved by the District in writing.
  - C. Formal Procurement/Competitive Bids – Exceeding \$100,000: CM/GC shall solicit a formal bid by advertisement at least seven (7) days in advance of the bid due date and time in the Daily Journal of Commerce and Bend Bulletin. CM/GC shall, at a minimum, provide the bid announcement with known Plan Centers located within 50 miles of the District. The competitive bid processes may be preceded by a publicly advertised subcontractor pre-qualification process limiting the participants to only those subcontractors meeting the pre-qualification requirements. Bid requests shall include the selection criteria utilized. The selection criteria may be limited to price or some combination of price, experience, specific expertise, availability, subcontractor capacity, responsibility, and similar factors. Award may be made to the prospective subcontractor whose quote will best serve the interests of the District taking into account the selection criteria, with the final selection approved by the District in writing.
- 4.3.6 When there are single fabricators of materials or special packaging requirements for subcontractor work, advance approval by the District's project manager is required.
- 4.3.7 Except as allowed above, if the CM/GC or an Affiliate or subsidiary of the CM/GC will be included in the subcontractor selection process to perform particular construction work on a project, the CM/GC must

disclose that fact in the selection process documents and announcements. In such cases, a representative of the District, or an independent third party, shall oversee and manage the competitive bidding process including independent review and opening of bids for the elements involved.

- 4.3.8 The CM/GC shall resolve subcontractor protests of the CM/GC's selection of subcontractors and suppliers. A representative of the District, or another third independent party, may aid in the resolution of such protests. Note: the procedures and reporting mechanism related to the resolution are considered public record. Pursuant to OAR 137-049-0690 (5)(n) unsuccessful subcontractors may request and CM/GC will provide, a debrief meeting.

## 5: COST AND TERMS

### 5.1 Basis for Payment:

- 5.1.1 The selected CM/GC is paid up to the maximum Preconstruction Phase Services Fee on a cost-reimbursement basis established for the Downtown Bend Library project comprising **Work Package 3**. Additionally, the CM/GC process adds specified construction manager consulting services to traditional general contractor work, requiring full contract performance within a negotiated guaranteed maximum price (GMP). The basis for payment is reimbursable direct costs as defined under the contract, plus a fee constituting full payment for consulting services rendered and construction work which together shall not exceed the established GMP, as defined in **Article 6 of Appendix C**.

### 5.2 Setting the Guaranteed Maximum Price (GMP):

- 5.2.1 For the Downtown Library project comprising Work Package 3, the GMP shall be set at an identified time consistent with the **Master Development Schedule**, industry practice and project conditions and after supporting information reasonably considered necessary to its use has been developed.
- 5.2.2 District will be afforded the opportunity to review and approve the GMP in a regularly scheduled board meeting. CM/GC will need to attend this meeting to assist with explanation and answer board questions.
- 5.2.3 The GMP includes the preconstruction and CM/GC fees plus the cost of work, as defined in **Article 6 of Appendix C**.
- A. By executing a GMP amendment to the contract, the CM/GC guarantees that the cost of work shall not exceed the GMP. Should the Cost of the Work be less than the GMP, any such positive difference shall be realized as "savings" to the District at the end of the project. Although it is the intention of the District to save money on the project, if at all possible, the District reserves the right to work with the CM/GC to use the anticipated savings to build additional necessary components of the project which may have been omitted from the original GMP scope and carried as alternates. District will not pay any amount that exceeds the established guaranteed maximum price specified in the public improvement contract unless the amount results from material changes to the scope of work set forth in the public improvement contract and the District and CM/GC agree in writing to the material changes.
- B. If the CM/GC is unable to set a GMP within the budget and in the appropriate time, the District reserves the right, at the sole discretion of the District, to cancel the contract with the CM/GC and may proceed immediately with another contractor on the District's list of selected Proposers or another solicitation process, whatever is in the best interest of the public. If the contract with

the initial CM/GC is so terminated, the Proposer will be compensated for its actual time and reasonable expenses.

- 5.2.4 A detailed description of the items that make up the GMP is required from the CM/GC.
- 5.2.5 At the time of execution of each GMP Amendment or Early Work Amendment the CM/GC will be required to submit a 100% performance bond and a 100% payment bond for either the early work or completion of the project, as applicable.

## **6: MINIMUM QUALIFICATIONS**

### **6.1 Experience / Responsibilities:**

- 6.1.1 The Proposer shall have at least five (5) years' experience with CM/GC construction delivery model.
- 6.1.2 The key personnel shall have at least five (5) years' experience with CM/GC construction delivery model.
- 6.1.3 Pursuant to the instructions of this RFP, the Proposer shall demonstrate this experience and qualifications in their ability to provide high quality results on current or past projects, specifically the construction services required (new, remodel, or tenant improvement) for libraries or substantially related complex building types.
- 6.1.4 The Proposer will be expected to assign a dedicated project manager who will be responsible to participate in the Work Package for pre-construction phase services continuing into construction and project close-out, as well as full-time supervision, all labor, materials, plant, equipment, transportation and other facilities and services as necessary and/or required to execute all assigned Work. No illegitimate or capricious changes, including key personnel, will be allowed under any Contract.

## **7: PROPOSAL SUBMISSION**

Submit an original and eight (8) copies of the Proposal. Proposals should be typed, single-spaced and double sided on regular size paper. An electronic PDF copy of the proposal should be included in the application on a USB flash drive.

Forms included in the RFP must be used and must be typed or legibly hand-written (see Appendices).

Marketing brochures, unwarranted visuals, or other promotional presentations, elaborate binders, and expensive paper beyond that sufficient to present a complete and effective response are not necessary.

Proposals are due by 2 p.m. (PDT), February 13, 2024. Proposals shall be submitted in a sealed envelope or package, plainly marked "Deschutes Public Library District CM/GC Services, Work Package 4 – Downtown Bend Library".

Proposals shall be addressed to:

Greg Holcomb, Owner's Representative  
Deschutes Public Library  
507 NW Wall Street  
Bend, OR 97703

Interested, qualified Proposers shall submit proposals in accordance with the requirements of this RFP by the deadline indicated. Proposals shall be publicly acknowledged as received by the District after this date and time, but the contents thereof shall not be made public until a contract has been agreed between the District and the successful Proposer or the District rejects all proposals and terminates the procurement. The scoring matrix will be available for review after the Notice of Intent to Negotiate is issued by the District.

## **8: PROPOSAL REQUIREMENTS**

Proposals shall be wholly contained in a single bound binder or cover. Paper size shall be 8 ½” x 11” using an 11-point minimum font size for text and limited to 20 pages. The cover letter, appendices, resumes, and Proposer Certification Form do not count towards the page limit. Proposals may be printed double-sided, in which each face of the paper will count as a separate page. Covers and any dividers will not be included in the pagecount.

The Proposal shall include the following information in the order indicated, along with the enclosed Proposer Certification Form:

### **8.1 Cover Letter**

- 8.1.1 State general qualifications, expertise, and ability to perform the scope of services described in this RFP.
- 8.1.2 Introduce the CM/GC Project Manager and Project Superintendent.
- 8.1.3 Summarize compliance with each of the Minimum Qualifications as outlined in Section 6 of this RFP.
- 8.1.4 Indicate agreement with the requirements and terms and conditions of this RFP, signed by a representative of the Proposer authorized to undertake contract negotiation and bind the Proposer.
- 8.1.5 Complete and submit the enclosed forms as listed in **Section 13, Appendices**.

### **8.2 Proposer Overview, Qualifications, and Expertise**

- 8.2.1 Provide a brief description of the Proposer’s history and bonding capacity (single project limit and aggregate).
- 8.2.2 Demonstrate that the Proposer has been in business for a minimum of five (5) years as a general contractor by providing a comprehensive narrative detailing the Proposer’s specific prior experience and qualifications for at least five (5) public or private CM/GC projects involving new construction. Summarize the Proposer’s construction service experience with libraries or other projects of similar size, complexity and quality. If no experience, Proposer may describe how the Proposer will be able to provide this type of construction service.

- 8.2.3 For each of the five (5) references, provide the project name and location, client name and a current contact name with phone number and e-mail address, a general scope of the project including physical description (square footage, site area), the architect of record and project manager name, the Proposer's project manager, superintendent, and key personnel project team, the guaranteed maximum price (GMP), and the final construction project cost including the total change order amount. List total claims, by dollar amount, by your firm against Owner going to litigation/arbitration; total claims, by dollar amount; awarded to you by litigation/arbitration; total claims submitted by Owner against proposer and those in this category awarded by litigation/arbitration Provide a brief narrative description of all claims that were arbitrated/litigated.
- A. If five (5) CM/GC projects are not available, the Proposer may substitute projects that are similar in size and complexity. If so, Proposer must detail how the Proposer will be able to adequately perform the necessary services of a CM/GC for a public agency in the State of Oregon.

### 8.3 Key Personnel Experience and Qualifications

- 8.3.1 Award of this RFP will be to one (1) Proposer for the specific District project. District understands that the staffing described below may change; however, District reserves the right to review staffing assignments for change in staffing, including interviews and past performance reviews.
- 8.3.2 Provide details of the Project Manager and Project Superintendent(s) assigned to this Project:
- A. Demonstrate that the Project Manager and Superintendent(s) have a minimum five (5) years of experience with CM/GC project delivery. Include name, title, years in position, years with the Proposer, previous position(s), largest number of employees supervised, and list the three largest projects supervised. Include a brief project description and dollar amount.
- B. Consistent staffing for District projects is extremely important. Provide assurance that the assigned Project Manager and Superintendent(s) will remain consistent for pre-construction phase services continuing into construction, project close-out, and CM/GC summary report completion.
- C. Provide a monetary penalty amount guaranteed to the District if the Project Manager and Superintendent(s) do not remain through project close-out.
- 8.3.3 Provide a project organization chart showing your proposed staff for this job, including all professional staff in the following areas: Project management; corporate oversight and administration; engineering and estimating; and on-site construction supervision. Include resumes for all individuals listed in the chart. Clearly identify the involvement of each person at each phase. By listing individuals in the Proposal, the Proposer guarantees that these individuals will be available to work on the assigned project. District reserves the right to approve or reject any changes to the proposed personnel. District further reserves the right to request a substitution of personnel if deemed to be in the best interest of the District.
- A. For those individuals that are not full time, describe how they will work on the project. If your proposal includes individuals from more than one firm, describe prior experience, if any, of the firms and individuals working with each other (please be specific) and how the proposed team will work for this project. The resumes must include each individual's education, work history, length of tenure with your firm, and prior experience, if any, with library facilities (or comparable) construction, and experience working with public sector CM/GC-GMP jobs. When discussing the

prior experience of the individuals, please be specific as to the nature of their assignment, the percentage of their time they spent on the project and for what duration, and the level of responsibility that they held.

- B. By listing the individuals in the proposal, the firm guarantees that these individuals will work on the project. The District reserves the right to approve or reject any changes to the proposed personnel. The District further reserves the right to request a substitution of personnel if deemed to be in the best interest of the District.
- C. Should the proposer be invited to an interview, questions will be directed solely to the proposed key project staff. At a minimum, the project manager and superintendent will need to be in attendance at the interview.

8.3.4 **Local knowledge.** Describe your firm's knowledge and experience with the labor market and building conditions in Deschutes County.

## 8.4 Approach

8.4.1 Construction Management: Describe in detail the Proposer's approach to construction management information controls, forms, and/or procedures.

8.4.2 Team Communication / Relationships: Describe the Proposer's approach to procedures designed to promote interaction between the Firm's personnel and the personnel of the District, architect, engineering, other consultants, and the subcontractors on a "team" or "partnering" basis.

8.4.3 Risks: Discuss perceived risks on public improvement projects. Describe how these risks can be minimized and/or mitigated by using team performance analysis and information.

8.4.4 Quality Control / Craftsmanship: Discuss the Proposer's approach to managing quality and craftsmanship.

- A. Describe how the Proposer has provided a satisfactory record of delivering quality projects with self-performed work.
- B. Describe how the Proposer handles subcontractor selection and oversight to ensure high quality craftsmanship.

8.4.5 Safety and Drug Program: Describe the Proposer's safety, drug, and alcohol programs.

8.4.6 Socio-Economic Programs: Successful Proposer shall comply with applicable laws, regulations, and special requirements of the Contract Documents and State of Oregon regarding equal employment opportunity. Identify conditions relating to any required socio-economic programs, including the manner in which such programs affect the selected CM/GC's subcontracting requirements, the enforcement mechanism(s) available, and the respective responsibilities of the CM/GC and District. Describe your soliciting approach strategy and plan to engage women / minority owned businesses, and the small local contracting community.

## 8.5 Schedule And Cost Control

8.5.1 Schedule: Describe the Proposer's overall plan with regards to planning, scheduling, site management, and project monitoring skills and processes. Within the parameters described in this solicitation, how would you organize and monitor the work to ensure the stated intent of quality, function, timely

completion, and cost within budget? Do you see any other major challenges to successful completion, and how do you propose to approach them?

- 8.5.2 **Cost Control:** Describe the Proposer’s job costing procedure and how the Proposer will keep the District apprised of project costs. Describe the Proposer’s process for managing change orders and claims, including efforts to minimize both. What will be done by your firm to guarantee that the GMP will be achieved as required? State how you will do the estimating and value engineering for the mechanical, electrical and structural components of the project (i.e., in-house staff, subcontractors - if so, name them).

## 8.6 Preconstruction Fee and Construction Management Fee Percentage

- 8.6.1 Complete and return **Appendix B**, edit staffing information as required. The Preconstruction Fee and Construction Management Fee Percentage is inclusive of the Downtown Bend Library project included in Work Package #3.

## 8.7 Interview

- 8.7.1 District will determine interview invitations based on the information provided by the top ranked finalists. The interview format, location and criteria will be provided to the firms being selected for interview at least 48 hours prior to the interview. Reference checks will be factored into the overall scoring. The project manager and superintendent must be in attendance at this interview, along with other key personnel that will be involved with the project.

# 9: EVALUATION CRITERIA

Proposals will be reviewed for compliance with the minimum qualifications as set forth in the RFP. If a Proposer is found not to possess the minimum qualifications or if a Proposal is found not in compliance with these requirements, the Proposal will be removed from further consideration and the Proposer informed of this action. Scoring will be based on the proposal responses as outlined in Section 8. The highest ranked finalists will be invited to interview.

8.1 Minimum Qualifications, Cover Letter, and <b>Appendix A</b>	pass/fail
8.2 Proposer Overview, Qualifications, and Expertise	10 points
8.3 Key Personnel Qualifications and Experience	10 points
8.4 Approach	10 points
8.5 Schedule and Cost Control	15 points
8.6 Pricing Proposal Form ( <b>Appendix B</b> )	15 points
8.7 Interview and Reference Checks	40 Points

The Evaluation Committee will score the remaining Proposals according to the Evaluation Criteria listed above. The highest scoring Proposer will be deemed the Apparent Successful Proposer, and the District will undertake contract negotiations. After the District has reached mutually agreeable contract terms with the Apparent Successful Proposer, the selection and agreement will be presented to District Board for review and approval. If the District and Proposer cannot reach an agreement in the negotiation, the District will terminate negotiation and, at its option, negotiate with the next-ranked Proposer.

## 10: COMMENTS AND APPEALS

**10.1 SOLICITATION PROTEST:** Requests for changes and protests of the solicitation process shall be governed by this provision and as otherwise set out in District Rule 137-049-0260. Proposers may submit a change request or protest of any Proposal requirement or of any provision, term, or condition of the exhibits attached to this RFP, by email to District's Representative, Greg Holcomb (greg@dechase.com) no later than 7 (seven) calendar days prior to the scheduled closing time for filing Proposals.

10.1.1 Proposer's written protest shall include:

- A detailed statement of the legal and factual grounds for the protest.
- A description of the resulting prejudice to the Proposer; and
- A statement of the desired changes to the RFP, including Contract terms, conditions, or any specification.

10.1.2 A PROPOSER SHALL MARK ITS PROTEST AS FOLLOWS;

- "Solicitation Protest"; and
- "Deschutes Public Library District CM/GC Services, Work Package 4 – Branch Libraries"

10.1.3 DISTRICT RESPONSE: The District is not required to consider a Proposer's request for change or protest after the deadline established for submitting such request or protest. The District shall provide notice to the protester if it entirely rejects a protest. If the District agrees with the Proposer's request or protest, in whole or in part, the District shall either issue an Addendum reflecting its determination under District Rule 137-049-0260 or cancel the solicitation under District Rule 137-049-270.

10.1.4 EXTENSION OF CLOSING: If the District receives a Written request for change or protest from a Proposer in accordance with this rule, the District may extend the RFP due date if the District determines an extension is necessary to consider the request or protest and issue an Addendum, if any, to the RFP Document.

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

10.2.1 If the District makes the award following interviews, only Proposers who were interviewed shall be considered "affected" and entitled to protest the award. An affected Responsive Proposer may submit a written protest of the District's award decision by 2 p.m. within seven (7) calendar days after issuance of the Notice of Intent to Award Contract.

10.2.2 The protest shall be in writing and must specify the grounds upon which the protest is based, submitted to District's Representative, Greg Holcomb (greg@dechase.com).

10.2.3 A Proposer is adversely affected only if the Proposer submitted a responsive proposal and is eligible for award as the best responsive and responsible Proposer and is next in line for award ( i.e., the



protesting Proposer must claim that all higher-scored Proposers are ineligible for award because their proposals were non-responsive, or the District committed a material violation of a provision in the RFP or of an applicable procurement statute or administrative rule, and the protesting Proposer was unfairly evaluated and would have, but for such material violation, been the highest-ranked Proposer.)

## 11: TERMS AND CONDITIONS

- 11.1 District may engage other consultants to provide for independent third-party review of work done.
- 11.2 District reserves the right to accept or reject any or all Proposals, to postpone the selection process for its own convenience at any time, and to waive minor defects in the Proposals.
- 11.3 District reserves the right to accept or reject any individual subcontractor that a Proposer proposes to use.
- 11.4 This RFP and the associated review process shall in no way be deemed to create a binding contract or agreement of any kind between the District and the Proposer. Submittal of a response to this RFP indicates Proposer's intent to bound to the terms of the Contract Documents attached as **Appendix C**. District reserves the right to negotiate any and all terms of the attached contract in its sole discretion, including the Term, Scope of Services, and Compensation.
- 11.5 District will maintain ownership of all work product produced as result of any contract arising from this RFP.
- 11.6 Each Proposer submitting in response to this RFP acknowledges and agrees that the preparation of all materials for submittal to the District and all presentations, related costs and travel expenses are at the Proposer's sole expense and the District shall not under any circumstances, be responsible for any cost or expense incurred by the Proposer. In addition, each Proposer acknowledges and agrees that all documentation and/or materials submitted with the RFP shall remain the property of the District and shall not be returned to the Proposer. Further, by submitting a response to this RFP, each Proposer affirms:
  - 11.6.1 That the information provided in the Proposal is true, accurate and represents the most current information available as of the date of this RFP;
  - 11.6.2 That the Proposer can comply with the necessary insurance requirements as set out in Section 11 of this RFP; and
  - 11.6.3 That the Proposer agrees to be bound by the proposal submitted as a response to this Request for Proposals and agrees to hold the terms of the Proposal open for a period of 90 days from the RFP submission deadline.
- 11.7 Factors such as, but not limited to, any of the following may be considered just cause to disqualify a Proposal without further consideration:
  - 11.7.1 Evidence of collusion, directly or indirectly, among Proposers in regard to amount, terms, or conditions of this RFP;
  - 11.7.2 Any attempt to improperly influence any member of the selection staff;
  - 11.7.3 Existence of any lawsuit, unresolved contractual claim or dispute between the Proposer and the District;

- 11.7.4 Evidence of incorrect information submitted as part of the Proposal;
- 11.7.5 Evidence of Proposer's inability to successfully complete the responsibilities and obligations of the Proposal; and
- 11.7.6 Proposer's default under any agreement, which resulted in termination of the agreement.

## 12: INSURANCE REQUIREMENTS

Contractor shall maintain insurance acceptable to District in full force and effect throughout the term of this contract. Such insurance shall cover all activities of the contractor arising directly or indirectly out of Contractor's work performed hereunder, including the operations of its subcontractors, if any. Coverages provided by the Contractor must be underwritten by an insurance company deemed acceptable by the District. The District reserves the right to reject all or any insurance carrier(s) with an unacceptable financial rating. As evidence of the insurance coverage required by the contract, the Contractor shall furnish a Certificate of Insurance to District prior to execution of the contract. Such policies or certificates must be delivered prior to commencement of the work. No contract shall be effective until the required certificates have been received and approved by District. The certificate will specify and document all provisions within this contract. A renewal certificate will be sent to the above address 10 days prior to coverage expiration. The procuring of such required insurance shall not be construed to limit Contractor's liability hereunder. Notwithstanding said insurance, Contractor shall be obligated for the total amount of any damage, injury, or loss caused by negligence or neglect of contractor connected with this contract.

The policy or policies of insurance maintained by the Contractor shall provide at least the limits and coverages as identified in the attached **Appendix C, CM/GC Contract and Associated General Conditions**. These rates shall be in place throughout the duration of the project and shall be utilized during preconstruction and development of the general conditions cost.

## 13: APPENDICES

### List of Appendices:

- A. Proposer Certification Forms\*
  - B. Pricing Proposal Form (edit specific job roles as needed)\*
  - C. CM/GC Contract and Associated General Conditions and Bond Forms
  - D. Master Development Schedule (Date Published: 1-15-24)
- \* **Complete and return with the proposal response.** (If not, proposal will be non-responsive.)

## 14: REFERENCE DOCUMENTS

Available at the District Website: <https://www.deschuteslibrary.org/about/bond/>

- A. District 2018 Facilities Capital Plan
- B. District Concept Design Report dated 10/1/21
- C. District Administrative Rules

- D. District Public Contracting Rules 2020
- E. CMGC Exemption Findings

## APPENDIX A: PROPOSER CERTIFICATION FORMS

---

(Contractor/Proposer Name )

**The Proposer, by and through the undersigned, its authorized representative, acknowledges, represents, attests, warrants and certifies that:**

1. Proposer has read and understands, and agrees to be bound by and comply with all RFP instructions, terms and conditions, together with all Addenda, if any, issued.
2. Proposer has read and understands, and agrees to be bound by and comply with the terms of all Contract Documents identified, included, or incorporated by reference into the RFP.
3. Proposer has, or will have, the equipment, personnel, materials, facilities and technical and financial ability necessary to complete the Work in accordance with the Contract documents within the time specified in the **Master Development Schedule**. Proposer agrees to the schedule milestones and durations indicated therein.
4. The Proposal was prepared independently from all other Proposers, and without collusion, fraud, or other dishonesty.
5. Neither the Proposer, nor anyone representing the Proposer, offered or gave any advantage, gratuity, bonus, discount, bribe or loan of any sort to District or its agents, employees, or anyone representing District, or engaged in any other type of anti-competitive conduct at any time in conjunction with this RFP.
6. Proposer has not and will not discriminate against a subcontractor in the awarding of a subcontract because the subcontractor is a minority, woman or emerging small business enterprise certified under ORS 200.055, or against a business enterprise that is owned or controlled by, or that employees a disabled veteran as defined in ORS 408.225.
7. If awarded the Contract, Proposer shall utilize in performance of the Contract all resources indicated in its Proposal, including Key Personnel, to the extent within Proposer's control and Proposer's best efforts.
8. Proposer has the power and authority to enter into and perform the Contract to be awarded, and the Contract, when executed and delivered, shall be a valid and binding obligation enforceable according to its terms.
9. District has the right to modify the Contract prior to execution to (a) correct typographical errors, (b) reconcile inconsistencies within and among the Contract Documents, (c) conform terminology used throughout the Contract Documents, (d) include omitted terms clearly contemplated by the language in the Contract Documents, (e) add terms required under State or federal Law, and (f) incorporate those portions of the Project Proposal and Price, modified, if so, by such negotiations as may be authorized under applicable statutes and rules.
10. Proposer will execute the formal Contract within a reasonable time; and in the case the undersigned fails or neglects to appear within a reasonable time to execute the Contract the undersigned is considered having abandoned the Contract by District.
11. Proposer has complied or will comply with all requirements of local, state, and national laws, and that no legal requirement has been or will be violated in making or accepting this proposal.

12. Proposer has not and will not discriminate against a subcontractor in the awarding of a subcontract because the subcontractor is a minority, woman or emerging small business enterprise certified under ORS 200.055, or against a business enterprise that is owned or controlled by, or that employees a disabled veteran as defined in ORS 408.225.
13. Proposer agrees to comply with the provisions of Prevailing Wage Laws ORS 279C.840. The Proposer to comply with Oregon tax laws in accordance with ORS 305.385. "Contractor agrees to be bound and will comply with the provisions of ORS 279C.840 or the Davis-Bacon Act 40 U.S.C. § 3141, *et seq.*"
14. Proposer is registered with the Construction Contractors Board - license number:\_\_\_\_\_.  
(District will not consider a proposal for a Public Improvement unless the Proposer is registered and in good standing with the Construction Contractors Board, as required).
15. The Proposer, pursuant to ORS 279A.120 (1), (circle one) is/is not a resident Proposer. If not, indicate State of residency\_\_\_\_\_.

I have received the following addenda, as initialed below:

Addendum 1	Date received	_____
Addendum 2	Date received	_____
Addendum 3	Date received	_____

Respectfully submitted:\_\_\_\_\_ (Date)  
By:

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Phone number/ Email address)

\_\_\_\_\_  
(Physical address)

\_\_\_\_\_  
(City, State, Zip)

This RFP will result in a Contract for a Public Work subject to ORS 279C.800 to 279C.870. Any proposal of a contractor or subcontractor listed on BOLI's List of Ineligibles will be rejected.

## DPL CM/GC Services

### Work Package 3 - Downtown Bend Library

RFP# 23/24-#15

### Appendix B

Fee Schedule Appendix B	Points Available	Fee or %
*1. Pre-Construction Maximum Not-To-Exceed Fee	2	\$ -
*2. CM/GC Fee % of Cost of the Work (COW)	11	0.00%
*3. CAT Tax (X%)	2	0.00%
<b>Estimated CM/GC Fee (% * COW)</b>		\$ -
<b>Grand Total Pre-Construction + CM/GC Fee</b>		\$ -
<b>Grand Total Points Available</b>	<b>15</b>	
<b>Estimated Cost of Work (COW) as stated in RFP</b>		<b>\$ 13,000,000.00</b>

\*Complete items #1, #2 & #3 above. Pre-Construction Maximum Not-To-Exceed Fee is the total amount for all branch library projects. CM/GC Fee % of Cost of the Work (COW) will also apply to all branch library projects. Estimated CM/GC Fee and Grand Total Pre-Construction + CM/GC Fee are formulas that will calculate and auto fill.

### Hourly Rate Schedule

**Staff Classifications	Hourly Rates	
1. Project Executive	\$ -	Per Hour
2. Sr. Project Manager	\$ -	Per Hour
3. Project Manager	\$ -	Per Hour
4. Sr. Superintendent	\$ -	Per Hour
5. Superintendent	\$ -	Per Hour
6. Assistant Superintendent	\$ -	Per Hour
7. Safety Professional	\$ -	Per Hour
8. BIM Manager/Coordinator	\$ -	Per Hour
9. Senior/Chief Estimator	\$ -	Per Hour
10. Estimator	\$ -	Per Hour
11. MEP Estimator	\$ -	Per Hour
14. Field Office Coordinator	\$ -	Per Hour
12. Clerical	\$ -	Per Hour
13. Scheduler	\$ -	Per Hour
14. Sr. Project Engineer	\$ -	Per Hour
15. Project Engineer	\$ -	Per Hour
16. Assistant Project Engineer	\$ -	Per Hour
17. MEP Manager	\$ -	Per Hour
18. Foreman	\$ -	Per Hour

\*\*This example list of staff classifications may be expanded/reduced as required. These rates shall be in place throughout the duration of all work package 3 project and shall be utilized during preconstruction and development of the general conditions cost.

APPENDIX C

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

**THIS CONTRACT IS BETWEEN:**

**OWNER:** Deschutes Public Library District

And

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

**The Project is:**

**Work Package 3: Downtown Libraries Project**

Downtown Renovations will expand visibility and orientation from lobby, enhance browsability, and increase the variety of studying, meeting, and creative collaboration spaces. Upon Owner's issuance of a written task work order for this project comprising Work Package 3, the CM/GC shall proceed with the project, as directed, pursuant to the terms of this Contract.

**The Architect is:**

**The Miller Hull Partnership, LLP  
71 Columbia Street, 6th Floor  
Seattle, WA 98104**

**The Owner's Authorized Representative is:**

**Greg Holcomb, Owner's Representative  
Deschutes Public Library  
Email: greg@dechase.com**

**The Owner's Combined Target GMP Range is: \$13,000,000.00**





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

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**ARTICLE 1**  
**DEFINITIONS**

Except as expressly defined or modified below or elsewhere in this Contract, all capitalized terms shall have the meanings set forth in Section 1.B of the General Conditions for Construction Contracts, attached as Exhibit A hereto (the “General Conditions”). The terms below are expressly defined as follows:

**1.1 Affiliate.** Affiliate shall mean any subsidiary of CM/GC, and any other entity in which CM/GC has a financial interest or which has a financial interest in CM/GC (including without limitation parent companies, related businesses under the same holding company, or any other business controlled by, under common control with, or which controls CM/GC).

**1.2 Allowances.** Allowances shall mean the allowance amounts shown in the GMP Supporting Documents, together with such further allowances as may be developed by the parties as the Project progresses.

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

**1.4 Business Days.** Business Days shall mean every day except Saturday, Sunday, and legal holidays recognized for employees of the State of Oregon.

**1.5 Change Order.** Change Order shall mean a written modification of this Contract under Section 4.A of the General Conditions (including without limitation any agreed change to GMP), identified as a Change Order and executed by the Owner’s Authorized Representative, CM/GC, where applicable.

**1.6 CM/GC Field Work.** CM/GC Field Work shall mean customary layout, clean up, supervision, and portions of the Work of a minor nature and not feasibly part of the subcontracted work due to: exclusions by the Subcontractor not resolved through the process described in Article 11.3.3, undeveloped design owing to deviations in Work performed or materials delivered by Subcontractors or suppliers that do not represent defective or nonconforming work, a breach or failure to perform by the Subcontractor or supplier, complexity of coordination of the Work, and other similar reasons typically providing cause for “pick-up” or GC Work under industry standards; provided, however, that (i) the CM/GC has reasonably determined that doing such portion of the Work itself is in the best interests of Owner, (ii) such Work is identified as CM/GC Field Work in monthly billings and (iii) CM/GC receives prior approval of Owner’s Authorized Representative as to the scope of such CM/GC Field Work.

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

**1.8 Construction Documents.** Construction Documents shall have the meaning given in the Professional Services Agreement with the Architect for this Project.

**1.9 Construction Phase.** The Construction Phase shall mean 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.

**1.10 Construction Phase Services.** Construction Phase Services shall mean all of the Work other than the Preconstruction Phase Services.

**1.11 Contract Documents.** Contract Documents shall have the meaning given in Section 1.B. of the General Conditions, as supplemented by Article 2.1, below.

**1.12 CM/GC Contingency.** The Guaranteed Maximum Price includes a CM/GC Contingency to cover unforeseen occurrences that arise during the course of the project. Subject to the terms of the Contract Documents, and with Owner's approval, Contractor shall be entitled to allocate from and apply against the Construction Contingency Costs of the Work for the following, and no other, purposes relating to the Work: (a) cost overruns, (b) warranty costs prior to Final Completion, (c) those circumstances where the actual cost of an item exceeds the amount allocated to such item in the Guaranteed Maximum Price, (d) any purpose expressly authorized in this Contract, and (e) concealed conditions; provided, however, that Contractor may not apply, use or allocate from the Construction Contingency any amounts for any of the foregoing purposes that are the result of, relate to or arise from any material breach or material failure to perform by, Contractor, any Subcontractor or Vendor (except as necessary to replace any Subcontractor or Vendor because of the bankruptcy or failure to perform of such Subcontractor or Vendor), or any party for which any of them are liable or responsible at law or under the Contract Documents or for any Costs Excluded From Cost of Work, pursuant to Article 9. Each allocation of the Construction Contingency by Contractor shall be reflected (with a narrative explanation) on the respective application for payment submitted pursuant to Section 5.B of the General Conditions, for the period during which Contractor makes such allocation and application. Any portion of the CM/GC Contingency remaining unallocated at Final Completion shall be a credit against and reduce the Guaranteed Maximum Price.

**1.13 Design Development Documents.** Design Development Documents shall have the meaning given in the Professional Services Agreement with the Architect for this Project.

**1.14 Early Work.** Early Work shall mean Construction Phase Services authorized by Amendment that the parties agree should be performed in advance of establishment of the GMP. Permissible Early Work shall be limited to: early procurement of materials and supplies; early release of bid or proposal packages for site development and related activities; and any other advance work related to critical components of the Project for which performance prior to establishment of the GMP will materially affect the critical path schedule of the Project.

**1.15 Early Work Amendment.** Early Work Amendment shall mean an Amendment to this Contract executed by and between the parties to authorize Early Work.

**1.16 Fixed Cost for General Conditions Work.** Fixed Cost for General Conditions Work or GC Work shall mean that fixed sum identified in Article 8.8.

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

**1.18 Guaranteed Maximum Price (GMP).** GMP shall mean the Guaranteed Maximum Price of this Contract, as stated in dollars within the GMP Amendment, as determined in accordance with Article 6, and as it may be adjusted from time to time pursuant to the provisions of this Contract.

**1.19 GMP Amendment.** GMP Amendment shall mean an Amendment to this Contract, issued in the form of Exhibit B and executed by and between the parties, to establish the GMP and identify the GMP Supporting Documents for Construction Phase Services.

**1.20 GMP Supporting Documents.** GMP Supporting Documents shall mean the documents referenced in the GMP Amendment as the basis for establishing the GMP. The GMP Supporting Documents shall expressly identify the Plans and Specifications, assumptions, qualifications, exclusions, conditions, allowances, unit prices, and alternates that form the basis for the GMP.

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

**1.22 Preconstruction Phase Services.** Preconstruction Phase Services shall mean all services described in Article 3.1, and any similar services described in the Request for Proposals, including such similar services as are described in the CM/GC's RFP Response to the extent they are accepted by Owner, but excluding any Early Work. Early Work shall be considered part of Construction Phase Services.

**1.23 Schematic Design Documents.** Schematic Design Documents shall have the meaning given in the Professional Services Agreement with the Architect for this Project.

**1.24 Scope Change.** Scope Change shall mean only (i) changed site conditions not reasonably inferable from information available to CM/GC at the time of execution of the GMP Amendment, and (ii) significant Work modifications (including additions, substitutions, and deletions), application of Allowances, and selection of alternates, all as approved by the Owner under this Contract beyond that identified or inferable from the GMP Supporting Documents (but in the case of Allowance items, the GMP will increase only if the cost to Owner of the Allowance items exceeds the total amount of the Allowances).

**ARTICLE 2**  
**CONTRACT DOCUMENTS**

**2.1 Contract Documents.** For valuable consideration as stated below, Owner and the CM/GC agree to the terms of the contract that are set forth in the Contract Documents. As used in the General Conditions, the "Owner Contract" shall mean this CM/GC Contract.

**2.2 Effective Date.** This CM/GC Contract (hereafter the "Contract") shall become effective on the first date on which every party has signed this Contract and Owner has received all necessary approvals.

**2.3 The Contract; Order of Precedence.** This Contract, together with the other Contract Documents, form the entire agreement between the parties. Except as expressly otherwise provided herein, the order of precedence of the Contract Documents is established in the General Conditions for Construction Contracts, if there are inconsistent or conflicting terms among the Contract Documents.

**ARTICLE 3**  
**WORK OF THIS CONTRACT**

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

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

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

- (a) The CM/GC shall consult with, advise, assist, and provide recommendations to the Owner and the design team on all aspects of the planning and design of the Work.
- (b) The CM/GC shall jointly schedule and attend regular meetings with the Architect and Owner's Authorized Representative. The CM/GC shall consult with the Owner and Architect and Owner's Authorized Representative regarding site use and improvements, and the selection of materials, building systems and equipment.
- (c) The CM/GC shall provide recommendations on construction feasibility; actions designed to minimize adverse effects of labor or material shortages; time requirements for procurement, installation and construction completion; and

factors related to construction cost including estimates of alternative designs or materials, preliminary budgets and possible economies.

- (d) The CM/GC shall review in-progress design documents, including the documents generally described in the industry as Conceptual Development Documents, Schematic Development Documents, Design Development Documents, and Construction Documents and provide input and advice on construction feasibility, alternative materials, and availability. CM/GC shall review these completed Schematic Development Documents, Design Development Documents, and Construction Documents and timely suggest modifications to improve constructability, completeness and clarity.
- (e) CMGC shall assist with the determination of trades to be considered for Design Assist or Design Build delivery methods.
- (f) CMGC shall coordinate with the design team to determine and confirm deferred submittal requirements.
- (g) CMGC shall coordinate with the design team to determine and confirm the requirements for all mock-ups to be included in the construction documents and GMP.

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

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

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

**3.1.5** Provide the following services relating to cost estimating:

- (a) The CM/GC shall prepare, for the review of the Architect and Owner's Authorized Representative and approval of the Owner, a preliminary cost estimate utilizing area, volume or similar conceptual estimating techniques.
- (b) When Schematic Design Documents have been prepared by the Architect and approved by the Owner, the CM/GC shall prepare for the review of the Architect and Owner's Authorized Representative and approval of the Owner, a more detailed estimate with supporting data. During the preparation of the Design Development Documents, the CM/GC shall update and refine this estimate at appropriate intervals agreed to by the Owner, Architect and Owner's Authorized Representative and CM/GC.
- (c) When Design Development Documents have been prepared by the Architect and approved by the Owner, the CM/GC shall prepare a detailed estimate with supporting data for review by the Architect and Owner's Authorized Representative and approval by the Owner. During the preparation of the Construction Documents, the CM/GC shall update and refine this estimate at appropriate intervals agreed to by the Owner, Architect and Owner's Authorized Representative and CM/GC.
- (d) If any estimate submitted to the Owner exceeds previously approved estimates or the Owner's budget, the CM/GC shall make appropriate recommendations to the Architect and Owner's Authorized Representative.
- (e) CM/GC shall notify the Owner and the design team immediately if any construction cost estimate appears to be exceeding the construction budget.
- (f) The CM/GC otherwise shall work with the Architect and Owner to develop a GMP within the Target GMP Range and within Owner's schedule.
- (g) Owner will retain a third-party cost estimator to prepare cost estimates concurrently with the CM/GC for the Conceptual, Schematic and Design Development phases. CM/GC shall coordinate with the third-party cost estimator, owner, owner's representative and architect to reconcile the cost estimates.
- (h) CM/GC shall provide cost estimates for alternative systems, materials, and designs as requested by the architect to assist in determining the most advantageous design solution.
- (i) CM/GC shall provide value engineering options in connection with each cost estimate to identify design, material, or construction options that will reduce cost while maintaining or enhancing the project design.
- (j) CM/GC shall provide a detailed cost estimate for the General Conditions and General Requirements with each cost estimate. A staffing plan identifying the CM/GC staff to be assigned to the project shall be included.

**3.1.6** Perform the following services relating to Subcontractors and suppliers:

- (a) The CM/GC shall seek to develop Subcontractor and supplier interest in the Project, consistent with applicable legal requirements, and shall furnish to the Owner's Authorized Representative and Architect for their information a list of possible Subcontractors and suppliers, including suppliers who may furnish materials or equipment fabricated to a special design, from whom competitive bids, quotes, or proposals (collectively, "Offers") will be requested for each principal portion of the Work, subject to Article 11 of this Contract. Submission of such list is for information and discussion purposes only and not for prequalification. The receipt of such list shall not require the Owner, Owner's Authorized Representative or Architect to investigate the qualifications of proposed Subcontractors and suppliers, nor shall it waive the right of the Owner or Architect later to object to or reject any proposed Subcontractor, supplier, or method of procurement.
- (b) The CM/GC shall provide input to the Owner and the design team regarding current construction market bidding climate, status of key subcontract markets, and other local economic conditions. CM/GC shall determine the division of work to facilitate bidding and award of trade contracts, considering such factors as bidding climate, improving or accelerating construction completion, minimizing trade jurisdictional disputes, and related issues. CM/GC shall advise Owner on subcontracting opportunities for minority/women/ESB firms.

**3.1.7** The CM/GC shall recommend to the Owner's Authorized Representative and Architect a schedule for procurement of long-lead time items which will constitute part of the Work as required to meet the Project schedule, which shall be procured by the CM/GC upon execution of either a GMP Amendment or Early Work Amendment covering such procurement, and approval of such schedule by the Owner's Authorized Representative. The CM/GC shall expedite the delivery of long-lead time items.

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

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

**3.1.10** Not Used

**3.1.11** CM/GC shall prepare and maintain site logistics plans to be updated with each cost estimate.

**3.1.12** CM/GC shall perform a site review to confirm existing conditions, improvements perimeter points of connection, existing utilities and utility connections. CM/GC to incorporate



this information into their plan for executing the construction work under the Construction Phase as well as their evaluation of the design documents as they are developed.

3.1.13 CM/GC to assist in the coordination with the Utility Companies in confirming existing system points of contact, routing of new facilities and construction methodology.

3.1.14 CM/GC to review the Geotechnical reports and grading requirements to confirm the plan and strategy for site grading and preparations.

### **3.2 Construction Phase Services.**

**3.2.1** Upon execution of an Early Work Amendment or GMP Amendment, the CM/GC shall provide Construction Phase Services as provided in the Contract Documents, including without limitation providing and paying for all materials, tools, equipment, labor and professional and non-professional services, and performing all other acts and supplying all other things necessary to fully and properly perform and complete the Work, as required by the Contract Documents, to furnish to Owner a complete, fully functional Project, capable of being legally occupied and fully used for its intended purposes upon completion of the Contract (or, as to an Early Work Amendment, to furnish such Work as is described in the Early Work Amendment). Construction Phase Services shall include CM Services performed during the Construction Phase.

**3.2.2** Notwithstanding any other references to Construction Phase Services in this Contract, this Contract shall include Construction Phase Services only if (i) the parties execute a GMP Amendment or (ii) the parties execute an Early Work Amendment, defined below.

**3.2.3** The parties may execute one or more Early Work Amendments identifying specific Construction Phase Services that must be performed in advance of establishment of the GMP, without exceeding a not-to-exceed budget, a not-to-exceed guaranteed maximum price, or a fixed price ("Early Work Price") to be stated in such Amendment, with such Amendment including all necessary approvals where required. If the Early Work Price is a not-to-exceed budget, then CM/GC shall be obligated to perform the Early Work only to the extent that the Cost of Work therefor, together with the CM/GC Fee, does not exceed the Early Work Price; however if CM/CG performs Early Work with a cost in excess of the Early Work Price the CM/GC shall pay such excess cost without reimbursement. If one or more Early Work Amendments are executed, the CM/GC shall diligently continue to work toward development of a GMP Amendment acceptable to 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 10.F of the General Conditions shall apply.

**3.2.4** Prior to commencement of the Construction Phase, and in any event not later than mutual execution of the GMP Amendment, CM/GC shall provide to Owner a full performance bond and a payment security bond, in the form attached as Exhibit C, as required by Section 7.B of the General Conditions in the amount of the GMP. If an Early Work Amendment is executed, CM/GC shall provide such bond in the amount of the Early

Work Price under the Early Work Amendment. CM/GC shall provide to Owner additional or replacement bonds at the time of execution of any subsequent Early Work Amendment or GMP Amendment, in each case prior to execution of the Amendment and the supplying of any labor or materials for the prosecution of the Work covered by the Amendment, and in each case in a sufficient amount so that the total bonded sum equals or exceeds the total Early Work Price or the GMP, as the case may be. In the event of a Scope Change that increases the GMP, CM/GC shall provide to Owner an additional or supplemental bond in the amount of such increase prior to performance of the additional Work.

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

- 3.3.1** Providing all Preconstruction Phase Services described above;
- 3.3.2** Developing and delivering schedules, preparing construction estimates, performing constructability review, analyzing alternative designs, studying labor conditions, coordinating and communicating the activities of the Construction Principals throughout the Construction Phase to all Construction Principals;
- 3.3.3** Continuously monitoring the Project schedule and recommending adjustments to ensure completion of the Project in the most expeditious manner possible;
- 3.3.4** Working with the Owner, Owner's Authorized Representative, and the Architect to analyze the design, participate in decisions regarding construction materials, methods, systems, phasing, and costs, and suggest modifications to achieve the goals of providing the Owner with the highest quality Project within the budget, GMP and schedule;
- 3.3.5** Providing Value Engineering ("VE") services ongoing through the Project. CM/GC shall develop cost proposals, in the form of additions or deductions from the GMP, including detailed documentation to support such adjustments and shall submit such proposals to Owner for its approval. CM/GC shall actively participate in a formal VE study anticipated to be held at the end of the Design Development phase. CM/GC acknowledges that VE services are intended to improve the value received by Owner with respect to cost reduction or life cycle of the Project;
- 3.3.6** Holding and conducting periodic meetings with the Owner and the Architect to coordinate, update and ensure progress of the Work;
- 3.3.7** Submitting monthly written report(s) to the Owner's Authorized Representative. Each report shall include, but shall not be limited to, Project updates including (i) actual costs and progress for the reporting period as compared to the estimate of costs; (ii) explanations of significant variations; (iii) work completed; (iv) work in progress; (v) changes in the work; and (vi) other information as determined to be appropriate by the

Owner. Oral or written updates shall be provided to the Owner as deemed appropriate by the CM/GC or as requested by the Owner;

- 3.3.8** Maintaining a daily log containing a record of weather, Subcontractors working on the site, number of workers, Work accomplished, problems encountered, safety violations and incidents of personal injury and property damage, and other similar relevant data as the Owner may reasonably require. The log shall be available to the Owner and Architect on request;
- 3.3.9** Developing and implementing a system of cost control for the Work acceptable to Owner's Authorized Representative, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The CM/GC shall identify variances between actual and estimated costs and report the variances to the Owner and Architect at regular intervals;
- 3.3.10** Cooperating with any and all consultants hired by Owner;
- 3.3.11** At Owner's request, cooperating and performing warranty and inspection Work for the Project through the expiration date of the applicable warranty period;
- 3.3.12** Assisting Owner with start-up of the Project. Such start-up may occur in phases due to phased occupancy;
- 3.3.13** Incorporating commissioning and inspection agents' activities into the Project schedule and coordinating Subcontractors required to participate in the commissioning and inspection process;
- 3.3.14** Performing all other obligations and providing all other services set forth in the Contract Documents; and performing all other acts and supplying all other things necessary to fully and properly perform and complete the Work as required by the Contract.

#### **ARTICLE 4** **RELATIONSHIP AND ROLES OF THE PARTIES**

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

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

**4.3 Design Consultants.** Owner has a separate contract with the Architect related to the Project. Both the CM/GC and the Architect shall be given direction by Owner through Owner's Authorized Representative. The CM/GC agrees to support Owner's efforts to create a

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

**4.4 Forms and Procedures.** The Owner has developed or may develop procedures and forms for the administration and tracking of the Contract. The CM/GC agrees to abide by those procedures and use those forms.

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

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

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

**4.6 Key Persons.** The CM/GC's personnel identified in Article 4.5, shall be considered Key Persons and shall not be replaced during the Project without the written permission of Owner, which shall not be unreasonably withheld. If the CM/GC intends to substitute personnel, a request must be given to Owner at least 30 Days (or such shorter period as permitted by Owner) prior to the intended time of substitution. When replacements have been approved by Owner, the CM/GC shall provide a transition period of at least 10 Business Days during which the original and replacement personnel shall be working on the Project concurrently. Once a replacement for any of these staff members is authorized, further replacement shall not occur without the written permission of Owner.

## **ARTICLE 5** **DATE OF COMMENCEMENT; SUBSTANTIAL AND FINAL COMPLETION**

**5.1 Notice to Proceed.** If Construction Phase Services are added to the Contract as set forth in Article 3.2, then a notice to proceed will be issued by Owner to begin the designated or full Construction Phase Services ("Notice to Proceed"). It is anticipated that the Notice to Proceed will be issued on or about \_\_\_\_\_, 20\_\_\_. A separate Notice to Proceed shall be issued for any and every Early Work Amendment.

**5.2 Completion of Project.** The CM/GC shall achieve Substantial Completion of the entire **WP3 - Downtown Libraries Contract** not later than \_\_\_\_\_, 20\_\_.

The CM/GC shall achieve Substantial Completion of the entire Work not later than \_\_\_\_\_, 20\_\_ and shall achieve Final Completion not later than 30 Days after the earlier of (i) Substantial Completion or (ii) the required date for Substantial Completion.

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

**5.4 Time Extensions.** Notwithstanding provisions for Contract time extensions in Section 4.B of the General Conditions, Owner and CM/GC agree that timely completion of the Work is essential to the success of the Project, and that approval for time extension shall be granted only as a last resort. CM/GC agrees to make every effort to recover "lost" time.

**5.5 Liquidated Damages.** The CM/GC acknowledges that the Owner will sustain damages as a result of the CM/GC's failure to substantially complete each of the four (4) sites the Project in accordance with the Contract Documents. These damages may include, but are not limited to delays in completion, use of the Project, and costs associated with Contract administration and use of temporary facilities. The CM/GC and the Owner acknowledge that the actual amount of damages would be difficult or impossible to determine accurately and agree that that the following liquidated damages figure represents a reasonable estimate of such damages and is not a penalty:

**5.5.1** Liquidated Damages shall be **\$500.00** for each day that Substantial Completion exceeds the required date of Substantial Completion at each of the four (4) sites. Liquidated Damages shall be an additional **\$500.00** for each day that Final Completion exceeds the required date of Final Completion at each of the four (4) sites.

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

## ARTICLE 6 CONTRACT SUM AND GMP

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

The GMP shall be determined in accordance with the formula set forth below and as described in Article 6.3. The "Cost of the Work" is defined in Article 8. Costs in excess of the GMP shall be paid by the CM/GC without reimbursement by Owner. Changes to the GMP shall only be authorized by Amendment or Change Order.

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

**6.2 Preconstruction Fee.** The Preconstruction Fee shall be payable to CM/GC on a cost reimbursement basis up to a maximum sum of \$\_\_\_\_\_, which shall cover constructability review, value engineering, cost estimating, development of GMP, and all other Preconstruction

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

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

**6.3.1** The "CM/GC Fee" shall be a fixed dollar lump sum to be identified in the GMP Amendment, and shall be calculated as \_\_\_% of the Estimated Cost of the Work at the time of establishment of the GMP. In making such calculation, the Estimated Cost of the Work shall exclude the Preconstruction Fee, the CM/GC Fee itself, and any other cost or charge for which this Contract states is not to be included in calculating the CM/GC Fee, but shall include Allowances, selected alternates, Fixed Cost for GC Work, and reasonable CM/GC contingencies as designated in the GMP Supporting Documents. The CM/GC Fee is inclusive of profit, overhead (including corporate activity and other taxes), and all other indirect or non-reimbursable costs. Owner shall pay the CM/GC Fee ratably with each application for payment during the Construction Phase. In the case of Early Work, the CM/CG Fee shall be the above percentage multiplied by the actual Cost of the Early Work, until such time as a GMP Amendment is executed, at which time such CM/GC Fee shall be expressed as a fixed amount and payments shall be credited against the CM/GC Fee fixed therein.

**6.3.2** Notwithstanding any provision of Section 4.A of the General Conditions to the contrary, and unless the parties agree in writing to the contrary, any Amendment or Change Order that increases or decreases the GMP shall adjust the CM/GC Fee then in effect by multiplying the percentage shown in Article 6.3.1 by the change in the Estimated Cost of the Work reflected in such approved Amendment or Change Order. In addition, if the Contract is terminated for any reason prior to full completion of the Work (including, without limitation, termination during or following performance of Early Work), the CM/GC Fee shall be limited to the total CM/GC Fee multiplied by the percentage of Work completed and accepted at the time of termination. The CM/GC Fee shall not be subject to adjustment for any other reason, including, without limitation, schedule extensions or adjustments, Project delays, unanticipated costs, or unforeseen conditions.

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

**6.4.1** CM/GC shall deliver to the Owner Four (4) proposed GMP(s) and GMP Supporting Documents by the dates required on the Master Development schedule for each of the

Downtown Library: \_\_\_\_\_, 20\_\_\_. If any actual subcontract Offers are available at the time the GMP is being established, CM/GC shall use those subcontract Offers in establishing the GMP.

- 6.4.2** As the Plans and Specifications may not be developed to the stage of biddable design documents at the time the GMP proposal is prepared, the CM/GC shall provide in the GMP for further development of the Plans and Specifications by the Architect that is consistent with the Contract Documents and reasonably inferable construction industry standards therefrom. Such further development does not include such things as changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which, if required, shall be incorporated by Change Order or Amendment with a corresponding GMP adjustment.
- 6.4.3** The CM/GC shall include with its GMP proposal a written statement of its basis (the “GMP Supporting Documents”). This statement shall state what is included and excluded as defined in Article 8 “Cost of Work” and Article 9 “Costs excluded from the cost of the work” and shall also include:
- (a) A list of the Plans and Specifications, including all addenda thereto and the conditions of the Contract, which were used in preparation of the GMP proposal.
  - (b) A list of allowances and a statement of their basis.
  - (c) A list of the clarifications and assumptions made by the CM/GC in the preparation of the GMP proposal to supplement the information contained in the Plans and Specifications.
  - (d) The proposed GMP, including a statement of the estimated cost organized by trade categories, allowances, contingency, and other items and the associated fees that comprise the GMP.
  - (e) The Date of Substantial Completion and detailed construction schedule upon which the proposed GMP is based, and a schedule of the Construction Documents issuance dates upon which the date of Substantial Completion is based.
- 6.4.4** The CM/GC shall meet with the Owner and Architect to review the GMP proposal and the written statement of its basis. If the Owner or Architect discovers any inconsistencies or inaccuracies in the information presented, they shall promptly notify the CM/GC, who shall make appropriate adjustments to the GMP proposal, its basis or both.
- 6.4.5** Prior to the Owner's acceptance of the CM/GC's GMP proposal and issuance of a Notice to Proceed, the CM/GC shall not incur any cost to be reimbursed as part of the Cost of the Work, except as specifically provided in an Early Work Amendment.
- 6.4.6** The Owner shall authorize and cause the Architect to revise the Plans and Specifications to the extent necessary to reflect the agreed-upon assumptions and clarifications contained in the GMP Amendment. Such revised Plans and Specifications shall be furnished to the CM/GC in accordance with schedules agreed to by the Owner, Architect

and CM/GC. The CM/GC shall promptly notify the Architect and Owner if such revised Plans and Specifications are inconsistent with the agreed-upon assumptions and clarifications.

- 6.4.7** The GMP shall include in the Cost of the Work only those taxes which are enacted at the time the GMP is established.
- 6.4.8** The Estimated Cost of the Work shall include the CM/GC's contingency, a sum established by the CM/GC for the CM/GC's exclusive use to cover additional development of Plans and Specifications and unforeseen costs which are properly reimbursable as Cost of the Work but which are not the basis for a Change Order.
- 6.4.9** The CM/GC shall work with the Architect and Owner to identify and confirm components and systems not specifically shown but required for a complete, fully functional Project. Owner will direct the Architect to complete the final Construction Documents in accordance with the Project scope agreed upon by all parties at the time the GMP is established.
- 6.4.10** Notwithstanding the level of detail represented in the GMP Supporting Documents, the CM/GC shall represent and warrant, at the time that it submits the GMP, that the GMP includes the entire cost of all components and systems required for a complete, fully functional facility.
- 6.4.11** In developing the GMP, the CM/GC shall include and identify such contingencies within the GMP as may be necessary to pay for unforeseen elements that are required for a complete, fully functional facility.

**6.5 Failure to Furnish an Acceptable GMP.** If the CM/GC does not furnish a GMP acceptable to Owner within Owner's Target GMP Range, or if Owner determines at any time in its sole discretion that the parties may fail to reach a timely agreement on a GMP acceptable to Owner, Owner may terminate this Contract without liability, and the CM/GC shall not receive additional compensation beyond the Preconstruction Fee under this Contract and sums due under any Early Work Amendment. Termination under this provision shall proceed under Section 10.E. of the General Conditions as a termination for Owner's convenience. CM/GC further agrees that Owner shall not be liable for any damages whether actual, consequential or otherwise for termination of the Contract under this provision.

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

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

**6.8 Allowance Work.**



- 6.8.1** CM/GC shall not perform any Allowance Work without prior execution by Owner of a Change Order approving the Specifications for the Allowance Work and the price thereof.
- 6.8.2** Owner shall be entitled to apply any Allowance line items that are not fully expended to other line item Allowances that have been fully expended, without any resulting increase in the GMP.
- 6.8.3** If the total Cost of the Allowance Work exceeds the total Allowances within the GMP, CM/GC shall not perform any Allowance Work in excess of such amount until either (i) the parties agree that the additional Allowance work will be performed within the then-current GMP or (ii) a GMP Amendment is executed to increase the GMP by the excess cost of the Allowance work.
- 6.8.4** The Contract Sum shall not include any Allowance items not identified in the GMP Amendment or the GMP Supporting Documents until such allowance item is reduced to a fixed price by Change Order or Amendment.
- 6.8.5** If at the Final Completion of the Project, any portion of the Allowance funds remains unexpended, the GMP shall be reduced by a corresponding amount via a Change Order or Amendment.

**6.9 Reallocating Projected Cost Underruns after Bid (Offer) Buyout.** As soon as possible after the awarding of the Work to the primary Subcontractors, CM/GC shall review projected costs and provide the Owner with a buy-out status report showing any projected cost underruns, reconciling accepted Offers and other reasonably anticipated costs, to the cost estimate used by CM/GC to establish the GMP. CM/GC shall include with its report any underlying documentation requested by Owner used to develop or support such report. CM/GC shall also consider the reduced risk associated with known subcontracting costs, and the impact that reduced risk has on the amount of the CM/GC's Contingency. The parties shall negotiate in good faith to execute a Change Order transferring an appropriate portion of any projected cost underruns to an Owner-controlled contingency fund to be held within the GMP to pay for additional costs arising from (a) any Owner-directed or approved change to the Work, (b) schedule changes that would otherwise entitle CM/GC to an increase in the GMP, (c) Allowance items after exhaustion of all Allowances, (d) selection by Owner of more expensive alternates than those used for calculation of the GMP, (e) Owner selection of substitutions that increase the Cost of the Work, or (f) any other costs which otherwise would entitle CM/GC to an increase in the GMP. Any transfer of projected cost underruns from CM/GC's contingency to the Owner-controlled contingency fund will not affect CM/GC's obligation to complete the Project within the GMP.

## **ARTICLE 7** **CHANGES IN THE WORK**

**7.1 Price Adjustments.** Adjustments to the Estimated Cost of the Work required by changes in the Work shall be determined by any of the methods listed in Section 4 of the General Conditions, except that, unless the adjustment is based upon fixed pricing or unit pricing:

- 7.1.1 The overhead and profit markup for the CM/GC shall be limited to the CM/GC Fee adjustment, if any, permitted under Article 6.3.2 of this Contract;
- 7.1.2 The increase or decrease in the Estimated Cost of the Work, other than for subcontract work, shall be calculated pursuant to Articles 8 and 9 of this Contract, instead of being based on CM/GC's Direct Costs as defined in the General Conditions; and
- 7.1.3 In calculating adjustments to subcontracts, unless the parties agree otherwise, the change shall be limited to the Subcontractor's Direct Costs plus the supplemental mark-up provided in Section 4 of the General Conditions, and shall not be modified by Articles 8 and 9 of this Contract.

**7.2 Adjustments to GMP.** Adjustments to the GMP after execution of the GMP Amendment may be made only (i) in the event of Scope Changes or (ii) as otherwise expressly provided in this Contract, and then only in accordance with the following procedure:

- 7.2.1 CM/GC shall review subsequent iterations of the Plans and Specifications as they are prepared to determine whether, in the opinion of CM/GC, they result in a Scope Change so that it can be determined if an adjustment to the GMP is warranted.
- 7.2.2 Changes to the GMP shall be initiated by written notice by one party to the other (“GMP Change Request”). CM/GC shall deliver any such GMP Change Request to Architect and Owner’s Authorized Representative promptly after becoming aware of any Scope Change if, in CM/GC’s opinion, it constitutes grounds for adjustment of the GMP. Any GMP Change Request shall include a proposal as to the appropriate GMP adjustment with respect to the Scope Change at issue.
- 7.2.3 CM/GC shall submit its GMP Change Requests as soon as possible, and CM/GC shall not be entitled to claim a GMP increase unless CM/GC submitted a GMP Change Request to Owner’s Authorized Representative and to Architect within the earlier of (a) 30 Days after CM/GC has received the information constituting the basis for the claim, or (b) as to Work not yet bid or proposed, prior to submission of solicitations for such Work and as to Work already solicited, prior to commencement of the portion of the Work for which CM/GC intends to claim a Scope Change; and (c) in any event, prior to CM/GC's signing of a Change Order for the Scope Change.
- 7.2.4 Owner may, at any time, submit a GMP Change Request requesting a reduction of the GMP, which shall include Owner's basis for such request, which may include, for example, reduction of the CM/GC’s Contingency after further development of the Plans and Specifications that form the basis for the original GMP Amendment, and/or unused Allowances.
- 7.2.5 CM/GC shall work with Architect to reconcile all differences in its GMP Change Request with Architect within seven Days from the date of submission of the GMP Change Request. “Reconciled” means that the CM/GC and Architect have verified that their assumptions about the various categories are the same, and that identifies the reason for differences in the GMP Change Request and the Architect's position. CM/GC shall

submit the Reconciled GMP Change Request to Owner, which submission shall be a condition to any CM/GC claim for a GMP increase.

- 7.2.6** If the Reconciled GMP Change Request is not acceptable to Owner, CM/GC agrees to work with the Owner and the Architect to provide a GMP Change Request that is acceptable to Owner.
- 7.2.7** CM/GC agrees to make all records, calculations, drawings and similar items relating to GMP Change Request available to Owner and to allow Architect and Owner access and opportunity to view such documents at CM/GC's offices. Upon Owner's reasonable notice, CM/GC shall deliver two copies of such documents to Owner and Architect at any regular meeting or at the Site.
- 7.2.8** GMP increases, if any, shall not exceed the increased Cost of the Work arising from the Scope Change (whether based on agreed fixed pricing, or the estimated Cost of the Work increase based on cost-reimbursable pricing), reconciled in accordance with the above provisions, as arising from the incident justifying the GMP increase, plus or minus the CM/GC Fee applicable to such change in the Cost of the Work.
- 7.2.9** Except as provided in this Article 7.2, adjustments to the GMP shall be reconciled in accordance with Section 4 of the General Conditions.

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

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

**8.1 Cost of the Work.** The term "Cost of the Work" shall mean the following costs. The Cost of the Work shall include only those items necessarily and reasonably incurred by CM/GC in the proper performance of the Work Remodeling the Downtown Library; specifically identified in this Article 8, and only to the extent that they are directly related to the Project.

### **8.2 Labor Costs.**

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

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

### **8.3 Subcontract Costs.**

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

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

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

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

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

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

**8.5.2** Rental charges for temporary facilities, machinery, equipment and hand tools not customarily owned by the construction workers, which are provided by the CM/GC at the site, whether rented from the CM/GC or others, and costs of transportation, installation, minor repairs and replacements, dismantling and removal thereof. Rates and quantities of equipment rented shall be according to industry standards, shall not exceed 100% of the rental rates published from time to time by the American Association of Equipment

dealers in effect at the time of rental, shall not exceed acquisition costs, and for individual items exceeding \$10,000, will be subject to Owner's prior approval. CM/GC shall deliver to Owner a list of published rates from time to time at Owner's request. For all items rented or leased, the CM/GC shall charge Owner only the rental charge incurred by CM/GC with no additional administrative or other mark-up. CM/GC shall make efforts and use its best skills and judgement to procure equipment in the most expeditious and economical manner consistent with the interest of the Owner. Efforts shall include, but not be limited to, providing Owner with a rent/buy analysis so that Owner may elect for CM/GC to procure the item in lieu of rental if the facility at issue is expected to be rented for six months or longer. Such rent/buy analysis shall include, where available, a leasing rate commensurate with the expected term of rental of the facility at issue. Inclusions to and exclusions from rental rates will be made in accordance with American Association of Equipment Dealer standards.

- 8.5.3** Costs of removal of debris from the site.
- 8.5.4** Cost of telegrams and long-distance telephone calls, postage and parcel delivery charges, telephone service at the site and reasonable petty cash expenses of the site office, which are solely for the benefit of the Work.
- 8.5.5** That portion of the travel and subsistence expenses of the CM/GC's personnel determined by Owner to be reasonable and necessary, at Owner approved rates, incurred while traveling in discharge of duties connected with the Work. Main office staff travel shall not be reimbursed unless approved in advance by Owner. These travel costs shall be reimbursed only to the extent allowed under Owner's travel reimbursement guidelines applicable to Owner and only at approved travel rates. CM/GC personnel who are scheduled to work at the Project site for less than six months may receive a subsistence per diem approved by the Owner in accordance with District Travel Rules if their place of residence is greater than 100 miles from the Project site; provided no such personnel shall be entitled to such per diem reimbursement beyond such six-month period.

## **8.6 Other Costs.**

- 8.6.1** That portion of premiums for insurance directly attributable to this Contract, specifically, builders all/risk insurance, including the deductible (but excluding premiums for comprehensive/commercial general liability, automobile and worker's compensation coverage which the Owner does not consider Project specific), and payment and performance bonds as required by Section 7.B. of the General Conditions (but excluding premiums for Subcontractor bonds unless authorized by Owner).
- 8.6.2** Sales, use or similar excise taxes imposed by a governmental authority which are directly related to the Work and for which the CM/GC is liable.
- 8.6.3** Fees and assessments for the building permit and for other permits, licenses and inspections for which the CM/GC is required by the Contract Documents to pay.
- 8.6.4** CM/GC deposits lost for causes other than the CM/GC's fault or negligence.

**8.6.5** Safety incentive plans developed and managed by the CM/GC for the benefit of the project as approved by the owner.

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

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

**8.7 Repairs to Damaged, Defective or Nonconforming Work.** The Cost of the Work shall also include costs which are incurred by the CM/GC in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property.

**8.8 Fixed Cost For General Conditions Work.** CM/GC shall be paid a fixed sum of \$ \_\_\_\_\_ as payment for the GC Work, including all labor, materials, and direct and indirect costs thereof. To the extent any GC Work is otherwise described above in this Article 8, CM/GC's compensation for the same is included in the Fixed Cost for GC Work and shall not otherwise be charged as Cost of the Work. The Fixed Cost for GC Work, less 5% retainage thereon, shall be paid in equal installments monthly over the number of months of the scheduled Construction Phase, commencing with the first progress billing after commencement of the scheduled Construction Phase. However, no adjustment in the amount payable for General Conditions Work will be made if the actual construction period is shorter or longer than the number of months scheduled for the Construction Phase, unless the construction period is extended because of an Owner-requested delay.

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

**9.1 Costs Excluded from Cost of Work.** The following shall not be included in the Cost of the Work:

**9.1.1** Salaries and other compensation of the CM/GC's personnel stationed at the CM/GC's principal office or offices other than the site office except as allowed under Articles 8.2.2 and 8.2.3.

**9.1.2** Expenses of the CM/GC's principal office and offices other than the site office.

**9.1.3** Any overhead and general expenses, except as may be expressly included in Article 8.

**9.1.4** CM/GC's capital expenses, including interest on the CM/GC's capital employed for the Work.

**9.1.5** Rental cost of machinery and equipment, except as provided in Article 8.5.2

**9.1.6** Any cost associated with the Project not specifically and expressly described in Article 8.

- 9.1.7 Costs due to the fault or negligence of the CM/GC, Subcontractors, suppliers, anyone directly or indirectly employed by any of them, or for whose acts any of them may be liable.
- 9.1.8 The cost of correction of any repair work including reinspection fees, nonconforming or defective work, or warranty work.
- 9.1.9 Merit, safety, or other incentive payments, bonuses or awards, or any expenses in connection therewith, except as approved under Article 8.6.5.
- 9.1.10 Fines and penalties.
- 9.1.11 Except for Early Work, the cost of Preconstruction Phase Services.
- 9.1.12 The Cost of the Work for GC Work in excess of the Fixed Cost for GC Work.
- 9.1.13 Any costs in excess of the GMP.

**ARTICLE 10**  
**DISCOUNTS, REBATES AND REFUNDS**

- 10.1 **Discounts, Rebates and Refunds.** Cash discounts obtained on payments made by the CM/GC shall accrue to Owner. Trade discounts, rebates, refunds and net amounts received from sales of surplus materials and equipment shall accrue to Owner, and the CM/GC shall make provisions so that they can be secured.
- 10.2 **Amounts Credited to Owner.** Amounts which accrue to Owner in accordance with the provisions of Article 10.1 shall be credited to Owner as a deduction from the Cost of the Work.

**ARTICLE 11**  
**SUBCONTRACTS AND OTHER CONTRACTS**

- 11.1 **General Subcontracting Requirements.**
  - 11.1.1 Other than Work performed pursuant to Articles 11.4 or 11.5 of this Contract, CM/GC shall subcontract the Work to Subcontractors other than the CM/GC and its Affiliates.
  - 11.1.2 The CM/GC shall comply with Owner’s Public Contracting Rules and Oregon Administrative Rules (“OAR”), to the extent applicable, in all respects for the solicitation of Minority, Women and Emerging Small Business Enterprises. Compliance shall include pass-through requirements for Subcontractor demonstrations of good faith efforts for all subcontract Offer packages, for which set goals shall not be utilized.
  - 11.1.3 The CM/GC shall report to Owner on the results of the good faith efforts of compliance required in Article 11.1.2 following award of all subcontracts. The CM/GC shall also submit quarterly reports to Owner listing Work contracted to date with Minority, Women and Emerging Small Business Enterprises.

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

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

**11.2.2** The CM/GC shall include in each subcontract and require each Subcontractor to include in any lower tier subcontract, any provisions necessary to make all of the provisions of the Contract Documents, including the General Conditions, fully effective as applied to Subcontractors. CM/GC shall indemnify 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.

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

## **11.3 Subcontractor Selection.**

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

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



Offers, the CM/GC agrees to disclose in writing to Owner any financial interest it has in any such Subcontractor, supplier or other contracting party whenever such Subcontractor, supplier or contracting party intends to compete on any Project work, directly or indirectly, including whether such party is an Affiliate of CM/GC.

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

- (a) Solicitations will be advertised at least 10 Days prior to opening in the Daily Journal of Commerce and at least one other newspaper specifically targeted to reach the Minority, Women and Emerging Small Business audience. CM/GC also agrees to advertise in a local community newspaper in the area in which the Project is located, in order to allow for local participation in the solicitation process.
- (b) Unless specific other prior arrangement has been made with Owner, all Offers will be written, and submitted to a specific location at a specific time. CM/GC shall time-stamp all Offers as received. Subcontractors must be qualified to perform the Work for this Project by being appropriately registered with the State of Oregon Construction Contractors Board.
- (c) If fewer than three (3) Offers are submitted in response to any solicitation (inclusive of any Offer submitted by CM/GC), prior written approval by Owner shall be required to accept the Offer.
- (d) CM/GC may develop and implement a prequalification process for particular solicitations, followed by selection of successful Offers among those Offerors that CM/GC determines meet the prequalification standards, with Owner's prior written approval of such prequalification process.
- (e) CM/GC shall comply, and require Subcontractor compliance with, State of Oregon Bureau of Labor & Industries prevailing wage rates as specified in the RFP.
- (f) Owner may at its sole discretion, require CM/GC to re-solicit for Offers based on the same or modified documents.
- (g) CM/GC shall review all Offers and shall work with Offerors to clarify Offers, reducing and capturing exclusions, verify scope and quantities, and seek to minimize work subsequently awarded via the Change Order process.
- (h) The CM/GC will document any and all discussions, questions and answers, modifications and responses to from any Offeror and ensure that the same are distributed to all Offerors, and Owner shall be entitled to inspect such documentation on request.
- (i) CM/GC shall determine the lowest Offer for each solicitation that meets CM/GC's reasonable performance standards for the components of the Work at issue; provided that if CM/GC determines it is unable to execute a suitable

subcontract with such Offeror, CM/GC may, with Owner's prior approval, execute a subcontract with the second-lowest Offeror pursuant to Article 11.3.4 below.

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

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

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

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

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

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

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

**11.5.1** Except to the extent otherwise approved in advance in writing by Owner's Authorized Representative, the CM/GC or its Affiliates may submit an Offer in accordance with Article 11.3 to do Work with its own forces, provided at least 50% of the labor by such work unit is performed by employees of the CM/GC or such Affiliate.

**11.5.2** For those items for which the CM/GC or any of its subsidiaries intends to submit an Offer, such intent must be publicly announced with the solicitation for Offers required by Article 11.3.1, and Owner notified in writing. All Offers for this work shall be delivered to Owner and publicly opened by Owner at an announced time, date, and place.

**11.6 Protests.** CM/GC, acting as an independent contractor, shall include in the competitive process to award all subcontracts, a protest process for Subcontractors and suppliers that are competing Offerors, which process shall be subject to approval by Owner. CM/GC shall be solely responsible for resolving the procurement protests of Subcontractors and suppliers. CM/GC shall indemnify, defend, protect and hold harmless Owner from and against any such procurement protests and resulting claims or litigation. CM/GC shall act as an independent contractor, and not an agent of Owner, in connection with any procurement protest. The provisions of this Article 11 are solely for the benefit of Owner, and do not grant any rights or remedies (including third party beneficiary rights) to any Offer or other protester, in connection with any procurement protest or claim.

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

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

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

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

**13.1 Integration with General Conditions.** The requirements of this Article 13 and Article 14 are in addition to, and not in lieu of, the requirements of Section 5 of the General Conditions. In the event of conflict between the provisions of Articles 13 and 14 and Section 5, the provision more favorable to Owner shall control. Without limitation, the provisions of Articles 13.3 and 13.4 shall control over the corresponding provisions of Section 5.B of the General Conditions.

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

**13.3 Percentage of Completion.** Applications for payment shall show the percentage of completion of each portion of the Work per the Downtown Library; as of the end of the period

covered by each of the individual applications for payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed; or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the CM/GC on account of that portion of the Work for which the CM/GC has made or intends to make actual payment prior to the next application for payment by (b) the share of the GMP allocated to that portion of the Work in the Schedule of Values.

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

- (a) Take that portion of the GMP properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work under the Schedule of Values by the share of the GMP allocated to that portion of the Work in the Schedule of Values. Pending final determination of cost to the 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 5.B.3. of the General Conditions;
- (c) Add the CM/GC's Fee. The portion of the CM/GC's Fee payable shall be an amount that bears the same ratio to CM/GC Fee as sum of the amounts in the two preceding Clauses bears to the estimated probable Cost of the Work described in Article 6.1.2, but in no event causing total CM/GC Fee payments to exceed the total CM/GC Fee;
- (d) Subtract the aggregate of previous payments made by and retained by the 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 nullified payment as provided in the Contract Documents; and
- (g) Subtract 5% retainage on the entire progress payment.

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

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

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

**14.2.1** Take the sum of the CM/GC Fee, plus the Preconstruction Fee, plus the actual Cost of the Work substantiated by the CM/GC's final accounting. Said sum shall not exceed the GMP.

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

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

**14.3 Final Payment Review.** Owner or its accountants will review and report in writing on the CM/GC's final accounting within 30 Days after delivery of the final accounting by the CM/GC. Based upon such Cost of the Work as Owner or Owner's accountants report to be substantiated by the CM/GC's final accounting, and provided the other conditions of this 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 Contractor under the application for payment.

**14.4 Payment Disputes.** If Owner's accountants report the Cost of the Work as substantiated by the CM/GC's final accounting to be less than claimed by the CM/GC or if Owner's Authorized Representative declines to approve any duly submitted payment request by CM/GC, the CM/GC shall be entitled to demand a review by the Owner's highest contracting authority of the disputed amount. Such demand shall be made by the CM/GC within 30 Days after the CM/GC's receipt of a copy of the rejection of the application for payment; failure to demand additional review within this 30-Day period shall result in the substantiated amount reported by Owner's accountants becoming binding on the CM/GC. In addition, If Owner or any other state agency performs a subsequent audit of the Cost of the Work and determines any item therein to have been unsubstantiated or that CM/GC was otherwise overpaid, CM/GC shall have 30 Days after delivery of request for reimbursement by Owner to demand additional review by Owner's highest contracting authority; failure to make such demand within this 30 Day period shall result in the requested reimbursement becoming unconditionally due and payable by CM/GC. If CM/GC timely submits a protest to the Agency's highest contracting authority, CM/GC's Claim shall be subject to the claims review process in Section 4.C. of the General Conditions. Pending a final resolution, Owner shall pay the CM/GC the amount of the application for payment approved by the Owner's Authorized Representative.

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

**ARTICLE 15**  
**TERMINATION OR SUSPENSION**

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

**15.2 Owner's Termination for Convenience after GMP Amendment.** After the GMP Amendment is executed by both parties, the Contract may be terminated by Owner without penalty for convenience pursuant to Section 10.E. of the General Conditions in which case CM/GC shall be entitled to payment of the amount stated in Article 15.1 together with the actual Cost of the Work, plus the CM/GC's Fee prorated based on the actual Cost of the Work to the date of termination, but in any event not in excess of the GMP.

**15.3 Owner's Termination for Cause.** In the event of termination of this Agreement by Owner for cause pursuant to Section 10.D of the General Conditions, the amount, if any, to be paid to the CM/GC after application of the General Conditions and Owner's rights at law shall not exceed the amount the CM/GC would be entitled to receive under Article 15.2.

**15.4 CM/GC Termination for Cause.** CM/GC acknowledges that disputes regarding payments and Change Orders may occur as part of the CM/GC process, and that Owner's declining to pay disputed amounts shall not be grounds for suspension of the Work or termination for cause by CM/GC. If CM/GC terminates this Contract for Owner's material breach, the amount to be paid to CM/GC shall not exceed the amount CM/GC would have been entitled to receive under Article 13 above through termination and demobilization from the Project, with the CM/GC Fee prorated based on the actual Cost of the Work through the date of termination.

**15.5 Assignment of Subcontracts.** Each subcontract and supply contract for any portion of the Work is hereby irrevocably assigned by the CM/GC to the Owner, provided that such assignment is effective only after termination of this Contract by the Owner, and only for those subcontracts and supply contracts which the Owner accepts by notifying the Subcontractor/supplier and CM/GC in writing. For those subcontracts and supply contracts accepted by Owner, if the Work has been suspended for more than 30 Days, the Subcontractor's/supplier's compensation shall be equitably adjusted for increases in cost resulting from the suspension. CM/GC shall include a provision in each subcontract and supply agreement whereby the Subcontractor/supplier acknowledges Owner's rights under this Article 15.5. With respect to any subcontracts/supply contracts that are not accepted by Owner, the provisions of Section 2.K.2 of the General Conditions shall apply.

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

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

**16.1.1** It is qualified to do business as a licensed general contractor under the laws of the State of Oregon, and has all requisite corporate power and corporate authority to carry on its business as now being conducted;

**16.1.2** It has full corporate power and corporate authority to enter into and perform the Contract and to consummate the transactions contemplated hereby; CM/GC has duly and validly executed and delivered the Contract to Owner and that the Contract constitutes the legal, valid and binding obligation of CM/GC, enforceable against CM/GC in accordance with its terms, except as enforceability may be limited or affected by applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting creditors' rights generally and by general principles of equity (regardless of whether enforceability is considered in a proceeding in equity or at law);

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

**16.1.4** No material consent, approval, authorization, declaration or other order of, or registration or filing with, any court or regulatory authority or any third person is required for the valid execution, delivery and performance of the Contract by CM/GC or its consummation of the transactions contemplated hereby;

**16.1.5** There is no action, proceeding, suit, investigation or inquiry pending that questions the validity of the Contract or that would prevent or hinder the consummation of the transactions contemplated hereby; and

**16.1.6** The CM/GC's Project Manager and Assistant Project Manager identified in Article 4 are duly appointed representatives and each has the authority to bind the CM/GC to any and all duties, obligations and liabilities under the Contract Documents and any Amendments thereto.

**ARTICLE 17**  
**MISCELLANEOUS**

**17.1 Headings.** The headings used in the Contract are solely for convenience of reference, are not part of the Contract and are not to be considered in construing or interpreting the Contract.

**17.2 Merger.** The Contract Documents constitute the entire contract between the parties. No waiver, consent, modification or change of terms of the Contract shall bind either party unless in writing and signed by both parties. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. There are no understandings, agreements, or representations, oral or written, not specified herein regarding the Contract. CM/GC, by signature of its representative, hereby acknowledges that it has read the Contract, understands it and agrees to be bound by its terms and conditions.

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

**CM/GC:**

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

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

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

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

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

Title \_\_\_\_\_

Date \_\_\_\_\_

**OWNER:**

DESCHUTES PUBLIC LIBRARY DISTRICT

\_\_\_\_\_  
Signature of Owner's Authorized Representative

Title \_\_\_\_\_

Date \_\_\_\_\_

**EXHIBITS:**

**Exhibit A –General Conditions for Construction Contracts**

**Exhibit B - Form of GMP Amendment**

**Exhibit C – Payment Bond/Performance Bond Forms**



**EXHIBIT A**  
**GENERAL CONDITIONS FOR CONSTRUCTION CONTRACTS**

**EXHIBIT B**

**GMP AMENDMENT TO CM/GC CONTRACT**

**THIS AMENDMENT IS BETWEEN:**

**OWNER:** **Deschutes Public Library District**

**And**

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

**The Project is: Add project Numbers A, B, C, D**

**Date of Original CM/GC Contract ("Contract"):**

**Date of this Amendment:**

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

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

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

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

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

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

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

**2. Basis of GMP.** The GMP is based on the GMP Supporting Documents attached as Attachments A-F (\_\_\_\_ pages) including the Allowances, assumptions, exclusions, unit prices, and alternates designated therein.

**3. Plans and Specifications.** The Plans and Specifications for the Project are as listed in the GMP Supporting Documents. CM/GC shall perform Construction Phase Services in accordance with the Plans and Specifications and the other Contract Documents.

**4. Substantial Completion Date.** Notwithstanding any provision in the GMP Supporting Documents to the contrary, the required date for Substantial Completion shall *[NOTE-SELECT ONE: remain that stated in the Contract/ Insert if different Substantial Completion Date has been agreed: \_\_\_\_\_, 20\_\_.]*

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

**CM/GC:**

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

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

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

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

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

Title \_\_\_\_\_

Date \_\_\_\_\_

**OWNER:**

DESCHUTES PUBLIC LIBRARY DISTRICT

\_\_\_\_\_  
Signature of Owner's Authorized Representative

Title \_\_\_\_\_

Date \_\_\_\_\_

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

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

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

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

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

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

**EXHIBIT C**  
**PAYMENT BOND**

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

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

SURETY (Name and Address of

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

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

**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

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

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

By: \_\_\_\_\_  
Signature  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Signature (Attach Power of Attorney)  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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

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

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

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 addresses 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 addresses 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 had 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 a 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 under the Contract, whichever of (1) or (2) first occurs. If the provisions of this paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

12. Notice to Surety, Owner, or Contractor shall be mailed or delivered to the addresses shown on the signature page. Actual receipt of notice by Surety, Owner, or Contractor, however accomplished shall be sufficient compliance as of the date received at the address shown on the signature page.

13. When this Bond has been furnished to comply with a statutory requirement in the location where the Contract was to be performed, any provision in this Bond conflicting with said statutory requirement shall be deemed deleted herefrom and provisions conforming to such statutory requirement shall be deemed incorporated herein. The intent is that this Bond shall be construed as a statutory Bond and not as a common law bond.

14. Upon request of any person or entity appearing to be a potential beneficiary of this Bond, Contractor shall promptly furnish a copy of this Bond or shall permit a copy to be made.

15. Definitions

15.1 Claimant: An individual or entity having a direct contract with Contractor, or with a first-tier subcontractor of Contractor, to furnish labor, materials, or equipment for use in the performance of the Contract. The intent of this Bond shall be to include without limitation in the terms "labor, materials or equipment" that part of water, gas, power, light, heat, oil, gasoline, telephone service, or rental equipment" that 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.

FOR INFORMATION ONLY:

Name, Address and Telephone:

---

---

---

Surety Agency or Broker;

---

Owner's Representative (Engineer or other):

---

---



**PERFORMANCE BOND**

KNOW ALL PERSONS BY THESE PRESENTS that

\_\_\_\_\_  
(Name of Contractor)

\_\_\_\_\_  
(Address of Contractor)

\_\_\_\_\_ hereinafter called "PRINCIPAL", and  
(Corporation, Partnership, or Individual)

\_\_\_\_\_  
(Name of Surety)

\_\_\_\_\_  
(Address of Surety)

\_\_\_\_\_  
(Oregon representative for service of process for Surety)

hereinafter called "SURETY," are held and firmly bound unto

Deschutes Public Library District  
507 NW Wall Street  
Bend, OR 97703

hereinafter called "OWNER," in the total amount of \_\_\_\_\_  
(insert here a sum  
\_\_\_\_\_ Dollars (\$ \_\_\_\_\_) for the  
equal to the contract price)

payment whereof PRINCIPAL and SURETY bind themselves, their heirs, executors,  
administrators, successors and assigns jointly and severally, firmly by these presents.

WHEREAS, the PRINCIPAL has by written agreement entered into a certain contract with the  
OWNER, dated the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, a copy of which is hereto attached  
and made a part hereof and is hereinafter referred to as the Contract. Said Contract is for:

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

---

NOW, THEREFORE:

1. The condition of this obligation is such that, if PRINCIPAL shall promptly and faithfully perform said Contract, then this obligation shall be null and void; otherwise it shall remain in full force and effect.

2. The SURETY hereby waives notice of any alteration or extension of time made by the OWNER.

3. It is expressly agreed that the Bond shall be deemed amended automatically and immediately, without formal and separate amendments hereto, upon amendment of the Contract not increasing the Contract price more than twenty percent (20%), so as to bind the PRINCIPAL and the SURETY to the full and faithful performance of the Contract as so amended. The term "Amendment", wherever used in this Bond, and whether referring to this Bond, the Contract, or the Loan Documents shall include any alteration, addition, extension or modification of any character whatsoever.

4. Whenever PRINCIPAL shall be, and declared by OWNER to be in default under the Contract, the OWNER having performed OWNER's obligations thereunder, the SURETY may promptly remedy the default, or shall promptly:

a) Arrange for the PRINCIPAL, with consent of the OWNER, to perform and complete the contract;

b) Complete the Contract in accordance with its terms and conditions, or

c) Obtain a bid or bids for completing the Contract in accordance with its terms and conditions, and upon determination by OWNER and the SURETY jointly of the lowest responsible bidder, arrange for a contract between such bidder and OWNER, and make available as work progresses (even though there should be a default or a succession of defaults under the contract or contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the balance of the contract price; but not exceeding, including other costs and damages for which the SURETY may be liable hereunder, the amount set forth above. The term "balance of the contract price," as used in this paragraph, shall mean the total amount payable by OWNER to PRINCIPAL under the Contract and any amendments thereto, less the amount properly paid by OWNER to PRINCIPAL.

5. Any suit under this Bond must be instituted before the expiration of two (2) years from the date on which final payment under the Contract falls due.

6. If any provision of this Bond conflicts with state law, such portion will be deemed deleted therefrom and provisions conforming to such state law shall be deemed incorporated

herein. The intent is that the bond shall be construed as a statutory bond and not as a common law bond.

7. No right of action shall accrue on this Bond to or for the use of any person or corporation other than the OWNER named herein or the heirs, executors, administrators or successors of the OWNER.

IN WITNESS WHEREOF, this instrument is executed in \_\_\_\_\_ counterparts, each one of which shall be deemed an original, this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

ATTEST:

\_\_\_\_\_  
PRINCIPAL

\_\_\_\_\_  
(PRINCIPAL) Secretary

(SEAL)

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

\_\_\_\_\_  
(Witness to PRINCIPAL)

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(SURETY)

ATTEST:

\_\_\_\_\_  
(Witness to SURETY)

By \_\_\_\_\_  
(Attorney-in-Fact)

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(Address)

NOTE: Date of Bond must not be prior to date of Contract.

If CONTRACTOR is partnership, all partners must execute Bond.

IMPORTANT: SURETY companies executing BONDS must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in Oregon. SURETY companies must also have an Oregon representative for service of process.

# Exhibit A

## GENERAL CONDITIONS FOR CONSTRUCTION CONTRACTS

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## 1. GENERAL PROVISIONS

### 1.A. CONVENTIONS

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

### 1.B. DEFINITION OF TERMS

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

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



- 1.B.5. **CONSTRUCTION CHANGE DIRECTIVE:** means, a written order given by the Owner to a Contractor directing a change in the Work or performance period and stating a proposed adjustment or methodology in adjustment to the Contract.
- 1.B.6. **CONTRACT,** means the written agreement that sets forth rights and obligations of the parties with respect to a particular transaction, including, but not limited to all general and special conditions, drawings, specifications, price terms and legal requirements.
- 1.B.7. **CONTRACT DOCUMENTS,** means the Solicitation and addenda thereto, Contractor's offer and associated submitted documents, the Owner Contract, any Amendments to the Contract, General Conditions, Supplemental General Conditions, if any, the accepted Offer, Plans, Specifications, Construction Change Field Directives and Change Orders.
- 1.B.8. **CONTRACT PRICE,** means the total amount paid or to be paid under a Contract including any approved Bid alternates, unit Bid prices, fully executed Change Orders, Contract Amendments and/or any, Construction Change Field Directives.
- 1.B.9. **CONTRACT TIME,** means any incremental period of time allowed under the Contract to complete any portion of the Work as reflected in the project schedule, as increased or decreased by Change Orders.
- 1.B.10. **CONTRACTOR,** means the Entity awarded a Contract.
- 1.B.11. **DAYS,** means calendar days unless otherwise specified.
- 1.B.12. **DEFECTIVE WORK,** means Work that a) is performed in an unsatisfactory, faulty, or deficient manner, b) does not conform to the Contract Documents, c) does not meet the requirements of any reference standard, test, or approval referred to or incorporated by the Contract Documents, or d) has been damaged by anyone other than the Owner prior to acceptance of the Work, whether or not such Work is in possession of Owner or in use by Owner.
- 1.B.13. **DIRECT COSTS,** means, unless otherwise provided in the Contract Documents, the cost of materials, including sales tax, cost of delivery; cost of labor, including social security, old age and unemployment insurance, and fringe benefits required by agreement or custom; worker's compensation insurance; ; bond premiums, rental cost of equipment, and machinery required for execution of the work; and the additional costs of field personnel directly attributable to the Work.
- 1.B.14. **ENTITY,** means a natural person capable of being legally bound, sole proprietorship, corporation, partnership, limited liability company or partnership, limited partnership, profit or nonprofit unincorporated association, business trust, two or more persons having a joint or common economic interest, or any other person with legal capacity to contract, or a government or governmental subdivision.
- 1.B.15. **EQUITABLE ADJUSTMENT,** means an adjustment to the Contract Price, Contract Time, or both in consideration of costs or credits when the Contract authorizes such a change.
- 1.B.16. **FINAL COMPLETION,** means the final completion of all requirements under the Contract, including Contract Closeout as described in Section 11 but excluding Warranty Work as described in Section 9.B.
- 1.B.17. **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.
- 1.B.18. **NOTICE TO PROCEED,** means the official written notice from the Owner stating that the Contractor is to proceed with the Work defined in the Contract Documents. Notwithstanding the Notice to Proceed, Contractor shall not be authorized to proceed with the Work until all initial Contract requirements, including the Contract, performance bond and payment bond, and certificates of insurance, have been fully executed and submitted to Owner in a suitable form.
- 1.B.19. **OFFER,** means a Bid, Proposal, or Quotation, as applicable.

- 1.B.20. **OFFEROR**, means an Entity that offers to enter into a Contract by submitting a Bid, Quote or Proposal to the Owner or general contractor, as applicable.
- 1.B.21. **OVERHEAD**, means those items which may be included in the Contractor's markup (general and administrative expense and profit) and that shall not be charged as Direct Cost of the Work, including without limitation such Overhead expenses as wages or salary of personnel working in the home office including owners and expenses of Contractor's home offices, and Commercial General Liability Insurance and Automobile Liability Insurance.
- 1.B.22. **OWNER**, means the Deschutes Public Library District.
- 1.B.23. **OWNER'S AUTHORIZED REPRESENTATIVE**, means those individuals identified in writing by the Owner to act on behalf of the Owner for this project. Owner may elect, by written notice to Contractor, to delegate certain duties of the Owner's Authorized Representative to more than one party, including without limitation, to an Architect/Engineer. However, nothing in these General Conditions is intended to abrogate the separate design professional responsibilities of Architects under ORS Chapter 671 or of Engineers under ORS Chapter 672.
- 1.B.24. **PLANS**, means the drawings which show the location, type, dimensions, notes and details of the Work to be done under the Contract.
- 1.B.25. **PROPOSAL REQUEST**, means request from Owner for the Contractor to provide change in Contract Price and Contract Time.
- 1.B.26. **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.
- 1.B.27. **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 2.1.1 of these General Conditions and the Specifications, recording all Work performed.
- 1.B.28. **REQUEST FOR INFORMATION (RFI)**, means a documented communication, generally on a predetermined form, between the Contractor and the Architect/Engineer or Owner, to clarify a detail, Specification or note on the Plans or to secure a directive or clarification. A RFI is not a Notice to Proceed with a changed condition if modification to Contract Price or Contract Time is required.
- 1.B.29. **SCHEDULE OF VALUES**, means a general itemization of work to be performed accompanied by an associated cost required when the Work, or a portion of the Work, has been priced on a lump sum basis. When accepted by the Owner, the Schedule of Values determines how much money the Contractor is entitled to receive for work performed in a given time period based on its progress in completing the items of work listed.
- 1.B.30. **SOLICITATION**, means any oral or written invitation to one or more potential Contractor(s) to submit a Bid, Proposal, Quote, Statement of Qualifications or letter of interest to the Owner with respect to a proposed project, procurement or other contracting opportunity.
- 1.B.31. **SPECIFICATION**, means any description, or compilation of descriptions, of the physical or functional characteristics of the Work, or of the nature of a supply, service or construction item. A Specification may include a description of any process or 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 Documents.
- 1.B.32. **SUBCONTRACTOR**, means a Person, supplier or company having a direct contract with the Contractor, or another Subcontractor, to perform one or more items of the Work.

- 1.B.33. **SUBMITTAL**, means shop drawings, material data, samples, product data and other information provided by the Contractor to the Owner and/or Architect/Engineer to verify that the correct products will be installed on the project and to transmit other required information.
- 1.B.34. **SUBSTANTIAL COMPLETION**, means the date when the Owner issues a Punchlist and accepts in writing the construction, alteration or repair of the improvement to real property or any designated portion thereof as having reached that state of completion when it may be used or occupied for its intended purpose.
- 1.B.35. **SUBSTITUTIONS**, means items that in function, performance, reliability, quality, and general configuration are the same or better than the product(s) specified. Approval of any substitute item shall be solely determined by the Owner's Authorized Representative. The decision of the Owner's Authorized Representative is final.
- 1.B.36. **SUPERINTENDENT** means a competent superintendent who shall represent the Contractor on the site and have overall field responsibility for the Work.
- 1.B.37. **SUPPLEMENTAL GENERAL CONDITIONS**, means those conditions that remove from, add to, or modify these General Conditions. Supplemental General Conditions may be included in the Solicitation or may be a separate attachment to the Contract.
- 1.B.38. **UNFORESEEN CONDITIONS**, means those conditions which differ materially from what was represented in the Contract Documents or from conditions that would normally be expected to exist and be inherent to the construction activities defined in the Contract Documents.
- 1.B.39. **WARRANTY**, means the Contractor's guarantee that all work completed, including but not limited to workmanship, materials and equipment is free of defects for the period set forth in the Contract. Unless otherwise specified in the Contract, the Warranty period shall be for a one (1) year period commencing upon the date of Substantial Completion of all successfully completed Work.
- 1.B.40. **WORK**, means furnishing all materials, labor, equipment, services, subcontracts and/or incidentals according to the Statement of Work and Solicitation Documents necessary to successfully complete or carry out all the duties and obligations as set forth in the Contract.

**1.C. SCOPE OF WORK**

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

**1.D. INTERPRETATION OF CONTRACT DOCUMENTS**

1.D.1. Unless otherwise specifically defined in the Contract Documents, words which have well-known technical meanings or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings. Contract Documents are intended to be complementary. Whatever is called for in one, is interpreted to be called for in all. However, in the event of conflicts or discrepancies among the Contract Documents, interpretations will be based on the following descending order of precedence:

- 1.D.1.a. Contract amendments to the Contract, with those of later date having precedence over those of an earlier date;
- 1.D.1.b. The Contract;
- 1.D.1.c. Change Orders and Construction Change Field Directives, with those of later date having precedence over those of an earlier date;
- 1.D.1.d. The Supplemental General Conditions;

- 1.D.1.e. The General Conditions;
  - 1.D.1.f. Specifications;
  - 1.D.1.g. Large Scale Plans
  - 1.D.1.h. Small Scale Plans
  - 1.D.1.i. The Solicitation and any addenda thereto; and
  - 1.D.1.j. The accepted Offer.
- 1.D.2. In the case of an inconsistency between Plans and Specifications or within either document not clarified by addendum or Change Order, the better quality or greater quantity of Work shall be provided in accordance with the Owner or Owner's Authorized Representative's interpretation in writing.
- 1.D.3. If the Contractor finds discrepancies in, or omissions from the Contract Documents, or if the Contractor is in doubt as to their meaning, the Contractor shall at once notify the Owner or Owner's Authorized Representative in writing by submitting a Request For Information. Matters concerning performance under, and interpretation of requirements of, the Contract Documents will be decided by the Owner's Authorized Representative, who may delegate that duty in some instances to the Architect/Engineer. Responses to Contractor's requests for interpretation of Contract Documents will be made in writing by Owner's Authorized Representative (or the Architect/Engineer) within any time limits agreed upon or otherwise with reasonable promptness.
- 1.D.4. Interpretations and decisions of the Owner's Authorized Representative (or Architect/Engineer) will be consistent with the intent of and reasonably inferable from the Contract Documents. Contractor shall not proceed without direction in writing from the Owner's Authorized Representative (or Architect/Engineer).
- 1.D.5. References to standard specifications, manuals, codes of any technical society, organization or association, to the laws or regulations of any governmental authority, whether such reference be specific or by implication, shall mean the latest standard specification, manual, code, laws or regulations in effect in the jurisdiction where the project is occurring on the first published date of the Solicitation, except as may be otherwise specifically stated. Contractor shall comply with all referenced documents.

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

- 1.E.1. It is understood that the Contractor, before submitting an Offer, has made a careful examination of the Contract Documents; has become fully informed as to the quality and quantity of materials and the character of the Work required; and has made a careful examination of the location and conditions of the Work, weather, permit requirements and the sources of supply for materials. The Owner will in no case be responsible for any loss or for any unanticipated costs that may be suffered by the Contractor as a result of the Contractor's failure to acquire full information in advance in regard to all conditions pertaining to the Work. No oral agreement or conversation with any officer, agent, or personnel of the Owner, or with the Architect/Engineer either before or after the execution of this Contract, shall affect or modify any of the terms or obligations herein contained.
- 1.E.2. It is the Contractor's sole responsibility to understand the Work, the Plans and Specifications, determine what notes on the Plans apply to the Work and sequence the Work, coordinate all trade work to reduce and/or avoid conflicts with the Work.
- 1.E.3. Should the Plans or Specifications fail to particularly describe the materials, kind of goods, or details of construction of any aspect of the Work, Contractor shall have the duty to promptly, pursuant to Section 4.A.10, make inquiry in writing by Request For Information to the Owner's Authorized Representative and Architect/Engineer as to what is required prior to performance of the Work. Absent Specifications to the contrary, the materials or processes that would normally

be used to produce first quality finished Work shall be considered a part of the Contract requirements.

- 1.E.4. Any design conflicts, errors or omissions noted by the Contractor shall be reported in writing by Request For Information promptly, pursuant to Section 4.A.10, to the Owner's Authorized Representative and Architect/Engineer, including without limitation, any nonconformity with applicable laws, statutes, ordinances, building codes, rules and regulations.
- 1.E.5. If the Contractor believes that additional cost or Contract Time is involved because of clarifications or instructions issued by the Owner's Authorized Representative or Architect/Engineer in response to the Contractor's notices or Requests For Information, the Contractor must submit a written request to the Owner's Authorized Representative, setting forth the nature and specific extent of the request, including all time and cost impacts against the Contract according to Section 4.
- 1.E.6. If the Contractor fails to perform the obligations of Sections 1.E.1 to 1.E.5, the Contractor waives any right to submit a claim and shall pay such costs and damages to the Owner as would have been avoided if the Contractor had performed such obligations.

#### **1.F. INTERPRETATION OF SPECIFICATIONS**

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

#### **1.G. INDEPENDENT CONTRACTOR STATUS**

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

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

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

#### **1.I. GOVERNMENT EMPLOYMENT STATUS**

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

## 2. ADMINISTRATION OF THE CONTRACT

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

- 2.A.1. The Owner's Authorized Representative will provide administration of the Contract as described in the Contract Documents from Notice to Proceed (1) during construction (2) during closeout issuance of final payment and retainage and (3) during and to the end of the warranty period for correction of Work. The Owner's Authorized Representative will act on behalf of the Owner to the extent provided in the Contract Documents, unless modified in writing in accordance with other provisions of the Contract. In performing these tasks, the Owner's Authorized Representative may rely on the Architect/Engineer or other consultants to perform some or all of these tasks.
- 2.A.2. The Owner's Authorized Representative will visit the site at intervals appropriate to the stage of the Contractor's operations (1) to become generally familiar with and to keep the Owner informed about the progress and quality of the portion of the Work completed, (2) to endeavor to guard the Owner against defects and deficiencies in the Work, and (3) to determine in general if Work is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. The Owner's Authorized Representative will not make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Owner's Authorized Representative will neither have control over or charge of, nor be responsible for the construction means, methods, techniques, sequences or procedures, Contractor or Subcontractor forces or for the safety precautions and programs in connection with the Work.
- 2.A.3. Except as otherwise provided in the Contract Documents or when direct communications have been specifically authorized, the Owner and Contractor shall endeavor to communicate with each other through the Owner's Authorized Representative or designee about matters arising out of or relating to the Contract. Communications by and with the Owner's Architect/Engineer's subconsultants shall be through the Architect/Engineer with copy to Owner's Authorized Representative. Communications by and with Subcontractors and material suppliers shall be through the Contractor with copy to the Contractors Superintendent. Communications by and with separate contractors shall be through the Owner's Authorized Representative.
- 2.A.4. The Owner's Authorized Representative may, upon reasonable notice, call meetings with Contractor and/or Architect/Engineer and any of Contractor's representatives and/or Subcontractors and/or others as the Owner's Authorized Representative may determine and reserves the right to determine the frequency, location, participants and the agenda of meetings and to record and publish minutes of the meetings. Contractor and Subcontractors shall comply with all such requests as part of the Contract Price.
- 2.A.5. The Owner's Authorized Representative may consult with the Architect/Engineer on any evaluations of the Contractor's Application for Payment, or unless otherwise stipulated by the Owner's Authorized Representative, the Architect/Engineer will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.
- 2.A.6. The Owner's Authorized Representative's decisions will be final, binding and conclusive on the Contractor on all questions that arise regarding the quantity of materials and work, the quality of materials and work, the acceptability of materials furnished and work performed, the acceptable rate of progress of the Work, the interpretation of the Plans and Specifications, the measurement of all quantities, the acceptable fulfillment of the Contract on the part of the Contractor, and payments under the Contract.
- 2.A.7. Owner's decisions on matters relating to aesthetic effect will be final.

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

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

## **2.C. MATERIALS AND WORKMANSHIP**

- 2.C.1. The intent of the Contract Documents is to provide for the construction and completion in every detail of the Work described. All Work shall be performed in a professional manner and unless the means or methods of performing a task are specified elsewhere in the Contract Documents, Contractor shall employ methods that are generally accepted and used by the industry, in accordance with industry standards.
- 2.C.2. The Contractor is responsible to perform the Work as required by the Contract Documents. Defective Work shall be corrected at the Contractor's expense.
- 2.C.3. Work done and materials furnished shall be subject to inspection and/or observation and testing by the Owner's Authorized Representative to determine if they conform to the Contract Documents. Inspection and/or observation of the Work by the Owner's Authorized Representative does not relieve the Contractor of responsibility for the Work in accordance with the Contract Documents.

- 2.C.4. Contractor shall furnish adequate facilities, as required, for the Owner's Authorized Representative to have safe access to the Work including without limitation walkways, railings, ladders, tunnels, and platforms. Producers, suppliers, and fabricators shall also provide proper facilities and access to their facilities.
- 2.C.5. The Contractor shall furnish all Submittals and samples of materials for testing by the Owner's Authorized Representative and include the cost of the samples in the Contract Price. The Specifications may include other Contractor furnished mockup, testing, samples and include the cost of such items in the Contract Price.

## **2.D. PERMITS**

- 2.D.1. Contractor shall obtain and pay for as part of the Contract Price all necessary permits and licenses generally consisting of trade and like permits, except for those specifically excluded in the Specifications or Supplemental General Conditions. Trade permits generally consist of those required 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.
- 2.D.2. Contractor shall be responsible for all violations of the law, in connection with the construction or caused by obstructing streets, sidewalks or otherwise.
- 2.D.3. Contractor shall give all requisite notices to public permit authorities and shall schedule and comply with all permit inspection requirements.
- 2.D.4. Unless otherwise set forth in the Specifications or Supplemental General Conditions, the Owner will obtain all City Planning and Zoning approvals, City General Building Permit.

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

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



drug testing program. Contractor shall provide a copy of the company's drug testing policy for the Owner's file.

2.E.5.b. Employee Notice. Contractor must give to employees who work on a public works contract, notice of the number of hours per day and days per week that the employees may be required to work as specified in ORS 279C.520, either: (a) in writing, either at the time of hire or before commencement of work on the contract, or (b) by posting a notice in a location frequented by employees.

2.E.6. Licensed Contractors

2.E.6.a. Contractor and Subcontractors shall be licensed by the Oregon Construction Contractor's Board, and others as required, to perform the Work. Such licenses shall be maintained in good standing throughout the duration of this Contract.

2.E.6.b. Unless contrary to federal law, Contractor certifies that it shall not accept a bid from Subcontractors to perform Work as described in ORS 701.005 under this Contract unless such Subcontractors are registered with the Construction Contractors Board in accordance with ORS 701.035 to 701.055 at the time they submit their bids to the Contractor.

2.E.6.c. Unless contrary to federal law, Contractor certifies that each landscape contractor, as defined in ORS 671.520(2), performing Work under this Contract holds a valid landscape contractor's license issued pursuant to ORS 671.560.

2.E.6.d. Excavation Contractors: The following notice is applicable to Contractors who perform excavation Work. ATTENTION: Law requires you to follow rules adopted by the Oregon Utility Notification Center. Those rules are set forth in OAR 952-001-0010 through OAR 952-001-0090. You may obtain copies of the rules by calling the center at (503)232-1987.

2.E.6.e. Other Special Licensing Requirements: The Supplemental General Conditions set forth other special Contractor or Subcontractor licensing requirements including but not limited to Asbestos, Heating Oil, Lead Based Paint, etc. Contractor shall comply with any and all laws, rules or other requirements.

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

2.E.8. Failure to comply with all requirements of Sections 2.E.1 through 2.E.9 for the duration of this Contract shall constitute a breach of Contract and shall be grounds for Contract termination pursuant to Section 10. Damages or costs resulting from such noncompliance shall be the sole responsibility of Contractor and may be deducted from the Contract Price.

2.E.9. The Contractor shall pay all royalties and license fees. The Contractor shall defend all suits or claims for infringement of any patent or other proprietary rights and save harmless and blameless from loss, on account thereof, the Owner, and its departments, divisions, members and employees.

## 2.F. SUPERINTENDENT

2.F.1. Contractor shall keep on the site, during the progress of the Work, a competent Superintendent and any necessary assistants who shall be satisfactory to the Owner and who shall represent the Contractor on the site. Directions given to the Superintendent by the Owner's Authorized Representative are binding on the Contractor.

- 2.F.2. Contractor's project manager and Superintendent shall not be removed from the Project by Contractor, temporarily or otherwise, without Owner's Authorized Representative advance written approval. If the project manager or Superintendent becomes ill, resigns or otherwise must terminate his/her position with Contractor, then Contractor shall appoint a substitute subject to Owner's Authorized Representative written approval.

## 2.G. INSPECTION OF WORK

- 2.G.1. Owner's Authorized Representative and Architect/Engineer shall have access to the Work at all times. Contractor shall interlock all access gates with Owner's lock and/or provide duplicate access key(s) or lock combination to Owner's Authorized Representative.
- 2.G.2. Observation of the Work will be made by the Owner's Authorized Representative or Architect/Engineer at its discretion. The Owner's Authorized Representative will have authority to reject Work that does not conform to the Contract Documents. Any Work found to be not in conformance with the Contract Documents, in the discretion of the Owner's Authorized Representative, shall be removed and replaced at the Contractor's expense.
- 2.G.3. Contractor shall make or obtain at the appropriate time all tests, inspections and approvals of portions of the Work required by the Contract Documents or by laws, ordinances, rules, regulations or orders of public authorities having jurisdiction. Unless otherwise set forth in the Specifications or Supplemental General Conditions, the Contractor shall make arrangements for such tests, inspections and approvals with Owner's independent testing laboratory or with the appropriate public authority, and shall bear all related costs of retests, reinspections and approvals as part of the Contract Price. Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work. The Contractor shall give the Owner's Authorized Representative timely notice of when and where tests and inspections are to be made so that the Owner's Authorized Representative may be present for such procedures. Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Owner's Authorized Representative.
- 2.G.4. As required by the Contract Documents or as directed by the Owner's Authorized Representative, Work done or material used without observation, inspection or testing by the Owner's Authorized Representative may be ordered removed and replaced at the Contractor's expense.
- 2.G.5. If directed to do so any time before the Work is accepted, the Contractor shall uncover portions of the completed Work for observation or inspection. After observation or inspection, the Contractor shall restore such portions of Work to the standard required by the Contract. If the Work uncovered is unacceptable or was done without sufficient notice to the Owner's Authorized Representative, the uncovering and restoration shall be done at the Contractor's expense. If the Work uncovered is acceptable and was done with sufficient notice to the Owner's Authorized Representative, the uncovering and restoration will be paid for by Owner as a Change Order.
- 2.G.6. If any testing or inspection reveals failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure, including those of repeated procedures and compensation for the Owner's Authorized Representative's, Special Inspector and Architect/Engineer's services and expenses, shall be at the Contractor's expense and deducted from the Contract Price.
- 2.G.7. When the United States government or State of Oregon participates in the cost of the Work, or the Owner has an agreement with other public or private organizations, or if any portion of the Work is being performed for a third party or in close proximity to third party facilities, representatives of these organizations have the right to inspect the Work affecting their interests

or property. Their right to inspect shall not make them a party to the Contract and shall not interfere with the rights of the parties of the Contract. Instructions or orders of such parties shall be transmitted to the Contractor, through the Owner's Authorized Representative.

## **2.H. SEVERABILITY**

If any provision of this Contract is declared by a court to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected and the rights and obligations of the parties shall be construed and enforced as if the Contract did not contain the particular provision held to be invalid.

## **2.I. ACCESS TO RECORDS**

- 2.I.1. Contractor shall keep, at all times on the Work site, one record copy of the complete Contract Documents, including the Plans, Specifications, Change Orders and addenda, in good order and marked currently to record field changes and selections made during construction, and one record copy of shop drawings, product data, samples and similar Submittals, and shall at all times give the Owner's Authorized Representative or Architect/Engineer access thereto.
- 2.I.2. Contractor shall retain and the Owner and its duly authorized representatives shall have access to, for a period not less than six (6) years, all Record Documents, financial and accounting records, and other books, documents, papers and records of Contractor and Subcontractors which are pertinent to the Contract including records pertaining to Overhead, Direct 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 any claims or litigation, Contractor shall retain all such records until all litigation is resolved. The Owner and/or its agents shall continue to be provided full access to the records during litigation.
- 2.I.3. Owner shall have the right to conduct an independent audit of Contractor's or any Subcontractor's records, books and all other cost documentation at any time during or after the Project. Contractor shall allow reasonable access to Contractor's offices and other sites where the documentation is kept, and Contractor shall cooperate fully in the audit. Contractor understands and agrees that the audit may require more than one visit to Contractor's offices or other sites. Owner and its audit representatives will endeavor to minimize interference to Contractor's operations while the audit is being conducted.
- 2.I.4. To the extent that the audit reveals any malfeasance, Contractor shall reimburse Owner for any costs associated with the audit and Contractor shall promptly correct any deviations discovered as a result of the audit.

## **2.J. WAIVER**

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

## **2.K. SUBCONTRACTS AND ASSIGNMENT**

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

- 2.K.2. At Owner's request, Contractor shall submit to Owner prior to their execution either Contractor's form of subcontract, or the subcontract to be executed with any particular Subcontractor. If Owner disapproves such form, Contractor shall not execute the form until the matters disapproved are resolved to Owner's satisfaction. Owner's review, comment upon or approval of any such form shall not relieve Contractor of its obligations under this Contract or be deemed a waiver of such obligations of Contractor. Owner may request from the Contractor copies of any executed subcontract, material or supply contract for any Subcontractor at any level.
- 2.K.3. Owner reserves the right to approve Subcontractors prior to performing any work.
- 2.K.4. Contractor shall not assign, sell, or transfer its rights, or delegate its responsibilities under this Contract, in whole or in part, without the prior written approval of the Owner. No such written approval shall relieve Contractor of any obligations of this Contract, and any transferee shall be considered the agent of the Contractor and bound to perform in accordance with the Contract Documents. Contractor shall remain liable as between the original parties to the Contract as if no assignment had occurred.
- 2.K.5. No Contractual Relationship between Owner and any Subcontractor, supplier or manufacturer. Nothing in this Contract shall be construed to establish a contractual relationship between Owner and any Subcontractor, supplier or manufacturer; provided, however, that nothing in this Contract shall prevent Owner from maintaining any third-party beneficiary claims against Subcontractors, suppliers or manufacturers.

## **2.L. SUCCESSORS IN INTEREST**

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

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

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

## 2.N. OTHER CONTRACTS

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

## 2.O. GOVERNING LAW

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

## 2.P. LITIGATION

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

## 2.Q. ALLOWANCES

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

## 2.R. UNIT PRICES

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

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

- 2.S.1. The Owner may establish and the Contractor shall keep current, for the Architect's/Engineer's review (or for the approval of Owner's Authorized Representative if approval authority has not been delegated to the Architect/Engineer), a schedule and list of Submittals which is coordinated with the Contractor's construction schedule and allows the Architect/Engineer reasonable time to review Submittals. Owner reserves the right to finally approve the schedule and list of Submittals. Submittals include, without limitation, Shop Drawings, Product Data, and Samples which are described below:
- 2.S.1.a. Shop Drawings are drawings, diagrams, schedules and other data specially prepared for the Work by the Contractor or a Subcontractor (including any sub-subcontractor), manufacturer, supplier or distributor to illustrate some portion of the Work.
  - 2.S.1.b. Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.
  - 2.S.1.c. Samples are physical examples which illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.
- 2.S.2. Shop Drawings, Product Data, Samples and similar Submittals are not Contract Documents. The purpose of their Submittal is to demonstrate for those portions of the Work for which Submittals are required by the Contract Documents the way by which the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents. Review of Submittals by the Architect/Engineer is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, or for approval of safety precautions or, unless otherwise specifically stated by the Architect/Engineer, of any construction means, methods, techniques, sequences or procedures, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect/Engineer's review of the Contractor's Submittals shall not relieve the Contractor of its obligations under the Contract Documents. The Architect/Engineer's review and/or approval of a specific item shall not indicate approval of an assembly of which the item is a component. Informational Submittals upon which the Architect/Engineer is not expected to take responsive action may be so identified in the Contract Documents. Submittals which are not required by the Contract Documents may be returned by the Architect/Engineer without action.
- 2.S.3. Prior to submitting Shop Drawings, Product Data, Samples and similar Submittals, the Contractor shall review all components for compliance with the Contract Documents. By submitting the Submittal, Contractor represents that Contractor has determined and verified all materials, field measurements and field construction criteria related thereto, or will do so, and has checked and coordinated the information contained within such Submittals with the requirements of the Work and of the Contract Documents.
- 2.S.4. The Contractor shall submit to the Architect/Engineer Shop Drawings, Product Data, Samples and similar Submittals required by the Contract Documents with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of separate contractors. Submittals which are not marked as reviewed for compliance with the Contract Documents and approved by the Contractor may be returned by the Architect/Engineer without action.
- 2.S.5. The Contractor shall perform no portion of the Work for which the Contract Documents require Submittal and review of Shop Drawings, Product Data, Samples or similar Submittals until the respective Submittal has been reviewed by the Architect/Engineer.

- 2.S.6. The Work shall be in accordance with approved Submittals except that the Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Architect/Engineer's review of Shop Drawings, Product Data, Samples or similar Submittals unless the Contractor has specifically informed the Architect/Engineer in writing of such deviation at the time of Submittal and (i) the Architect/Engineer has given written approval to the specific deviation as a minor change in the Work, or (ii) a Construction Change Directive or Change Order has been executed by Owner's Authorized Representative authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar Submittals by the Architect/Engineer's review or approval thereof.
- 2.S.7. In the event that Owner elects not to have the obligations and duties described under this Section 2.S performed by the Architect/Engineer, or in the event no Architect/Engineer is employed by Owner on the project, all obligations and duties assigned to the Architect/Engineer hereunder shall be performed by the Owner's Authorized Representative.

## 2.T. SUBSTITUTIONS

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

## 2.U. USE OF PLANS AND SPECIFICATIONS

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

## 2.V. FUNDS AVAILABLE AND AUTHORIZED

The Owner reasonably believes at the time of entering into this Contract that sufficient funds are available and authorized for expenditure to finance the cost of this Contract within the Owners budget appropriation. Contractor understands and agrees that, to the extent that sufficient funds are not available and authorized for expenditure to finance the cost of this Contract, Owner's payment of amounts under this Contract attributable to work performed after the last day of the current budget period is contingent on the Owner receiving additional appropriations, limitations or other expenditure authority for this work sufficient to allow the Owner, in the exercise of its reasonable administrative discretion, to continue to make payments under this Contract in the next budget period. If additional funds are not made available to finance the cost of this Contract, this Contract will be Terminated according to Section 10.E.

## 2.W.NO THIRD PARTY BENEFICIARIES

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

## 3. WAGES AND LABOR

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

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

- (a) The hourly rate of wage to be paid by Contractor or any Subcontractor to workers in each trade or occupation required for the public works employed in the performance of this Contract shall not be less than the specified minimum rate of wage in accordance with ORS 279C.838 and ORS 279C.840.
- (b) The prevailing wage rates, plus any amendments, in effect at the time of GMP Amendment for public works contracts in Oregon apply to this project. If the GMP Amendment is executed as anticipated, the applicable prevailing wage rates are contained in the following publications: The January 2022 Prevailing Wage Rates for Public Works Projects in Oregon. Such publications can be reviewed electronically at:

<https://www.oregon.gov/boli/employers/Pages/prevailing-wage-rates.aspx>

and are hereby incorporated as part of the Contract Documents.

- (c) Contractor and all Subcontractors shall keep the prevailing wage rates for this Project posted in a conspicuous and accessible place in or about the Project.
- (d) The Owner shall pay a fee to the Commissioner of the Oregon Bureau of Labor and Industries as provided in ORS 279C.825. The fee shall be paid to the Commissioner under the administrative rule of the Commissioner.
- (e) If Contractor or any Subcontractor also provides for or contributes to a health and welfare plan or a pension plan, or both, for its employees on the Project, it shall post notice describing such plans in a conspicuous and accessible place in or about the Project. The notice shall contain information on how and where to make claims and where to obtain future information.

Contract Fee. The Owner is required to pay a fee to the Bureau of Labor and Industries pursuant to the provisions of ORS 279C.825(1). The fee is one-tenth of one percent (.1 %) of the price of this contract, but not less than \$250 nor more than \$7,500, regardless of the contract price. The fee shall be paid at the time owner enters into this contract. The fee is payable to the Commissioner of the Bureau of Labor and Industries and shall be mailed or otherwise delivered to the Bureau at the following address:

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



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

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

**3.C. PAYROLL CERTIFICATION; SPECIAL RETAINAGE REQUIREMENTS**

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

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

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

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

3.D.1. Pursuant to ORS 279C.505 the Contractor shall:

- 3.D.1.a. Promptly pay all of its obligations arising out of or in connection with the Work, including, but not limited to, to all persons supplying to Contractor labor, equipment or materials for the prosecution of the Work provided for in this Contract.
- 3.D.1.b. Pay all contributions or amounts due the State Industrial Accident Fund from such Contractor or Subcontractor incurred in the performance of the Contract.
- 3.D.1.c. Not permit any lien or claim to be filed or prosecuted against the Owner on account of any labor or material furnished. Contractor will not assign any claims that Contractor has against Owner, or assign any sums due by Owner, to Subcontractors, suppliers, or manufacturers, and will not make any agreement or act in any way to give Subcontractors a claim or standing to make a claim against the Owner.
- 3.D.1.d. Pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.

3.D.2. Pursuant to ORS 279C.515, Contractor agrees:

- 3.D.2.a. If Contractor fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to the Contractor or a Subcontractor by any person in connection with the project as such claim becomes due, the proper officer(s) representing the

Owner may pay the claim and charge the amount of the payment against funds due or to become due Contractor under this Contract. Payment of claims in this manner shall not relieve the Contractor or the Contractor's surety from obligation with respect to any unpaid claims.

- 3.D.2.b. If the Contractor or a first-tier Subcontractor fails, neglects or refuses to make payment to a person furnishing labor or materials in connection with the public contract for a public improvement within thirty (30) days after receipt of payment from Owner or a contractor, the contractor or first-tier Subcontractor shall owe the person the amount due plus interest charges commencing at the end of the 10-day period that payment is due under ORS 279C.580(3) and ending upon final payment, unless payment is subject to a good faith dispute as defined in ORS 279C.580. The rate of interest charged to the Contractor or first-tier Subcontractor on the amount due shall equal three times the discount rate on 90-day commercial paper in effect at the Federal Reserve Bank in the Federal Reserve district that includes Oregon on the date that is thirty (30) days after the date when payment was received from Owner or from the Contractor, but the rate of interest shall not exceed thirty percent (30%). The amount of interest may not be waived.
- 3.D.2.c. If the Contractor or a Subcontractor fails, neglects or refuses to make payment to a person furnishing labor or materials in connection with the Contract, the person may file a complaint with the Construction Contractors Board, unless payment is subject to a good faith dispute as defined in ORS 279C.580. Every contract related to this Contract shall contain a similar clause.
- 3.D.3. Pursuant to ORS 279C.580, Contractor shall include in each subcontract for property or services entered into by the Contractor and a first-tier Subcontractor, including a material supplier, for the purpose of performing a construction contract:
  - 3.D.3.a. A payment clause that obligates the Contractor to pay the first-tier Subcontractor for satisfactory performance under its subcontract within ten (10) days out of such amounts as are paid to the Contractor by Owner under the Contract;
  - 3.D.3.b. An interest penalty clause that obligates the Contractor if payment is not made within thirty (30) days after receipt of payment from Owner, to pay to the first-tier Subcontractor an interest penalty on amounts due in the case of each payment not made in accordance with the payment clause included in the subcontract pursuant to paragraph 3.D.3.a of this subsection. Contractor or first-tier Subcontractor shall not be obligated to pay an interest penalty if the only reason that the Contractor or first-tier Subcontractor did not make payment when payment was due is that the Contractor or first-tier Subcontractor did not receive payment from Owner or Contractor when payment was due. The interest penalty shall be for the period beginning on the day after the required payment date and ending on the date on which payment of the amount due is made; and shall be computed at the rate specified in ORS 279C.515(2).
  - 3.D.3.c. A clause which requires each of Contractor's Subcontractors to include, in each of their contracts with lower-tier Subcontractors or suppliers, provisions to the effect that the first-tier Subcontractor shall pay its lower-tier Subcontractors and suppliers in accordance with the provisions of subsections (a) and (b), above and requiring each of their Subcontractors and suppliers to include such clauses in their subcontracts and supply contracts.
- 3.D.4. All employers, including Contractor, that employ subject workers who work under this contract in the State of Oregon shall comply with ORS 656.017 and provide the required Workers'

Compensation coverage, unless such employers are exempt under ORS 656.126. Contractor shall ensure that each of its Subcontractors complies with these requirements.

### **3.E. HOURS OF LABOR**

- 3.E.1. Contractor shall comply with ORS 279C.520, as set forth more specifically within these General and Supplementary Conditions.
- 3.E.2. Pursuant to ORS 279C.520, no person shall be employed to perform Work under this Contract for more than ten (10) hours in any one day or forty (40) hours in any one week, except in cases of necessity, emergency or where public policy absolutely requires it. In such instances, Contractor shall pay the employee at least time and a half pay:
  - 3.E.2.a. For all overtime in excess of eight (8) hours a day or forty (40) hours in any one week when the work week is five consecutive days, Monday through Friday; or
  - 3.E.2.b. For all overtime in excess of ten (10) hours a day or forty (40) hours in any one week when the work week is four consecutive days, Monday through Friday; and
  - 3.E.2.c. For all Work performed on Saturday and on any legal holiday specified in ORS 279C.540.
- 3.E.3. This Section 3.E will not apply to Contractor's Work under this Contract if Contractor is currently a party to a collective bargaining agreement with any labor organization.
- 3.E.4. This Section 3.E shall not excuse Contractor from completion of the Work within the time required under this Contract.
- 3.E.5. Contractor shall obtain prior approval from Owner's Authorized Representative prior to the overtime Work being performed. Unless otherwise agreed to in writing by the Owner's Authorized Representative, all premium and overtime costs are the sole responsibility of the Contractor.

### **3.F. PAYMENT FOR MEDICAL CARE**

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

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

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

- 4.A.1. It is mutually agreed that changes in Plans, Specifications, quantities, or details of construction are inherent in the nature of construction and may be necessary or desirable during the course of construction.
- 4.A.2. Contractor and Owner further agree that it is inherent in any construction project that minor deviations and conflicts occur between the Plans, Specifications and other design documents and that minor unforeseen issues may be found at the project site. The Owner's Authorized Representative reserves the right to reasonably determine what are minor deviations, conflicts and/or unforeseen conditions. These minor deviations, conflicts and/or unforeseen conditions are not changes in the Work.
- 4.A.3. Contractor must have the Owner's Authorized Representative's written authorization prior to proceeding with any changes in the Work. Beginning any changes in the Work without such authorization, unless otherwise provided for in the Contract Documents, will be considered as

within the scope of the Work of the Contract with no change to the Contract Price or Contract Time.

- 4.A.4. All changes to the Contract, including changes to the Work, Contract Price, Contract Time, changes to Plans and Specifications, shall be made by Change Order executed by the parties and shall be signed by a person legally authorized by the Contractor.
- 4.A.5. The terms of this Contract shall not be waived, altered, modified, supplemented or amended in any manner whatsoever without prior written approval of the Owner's Authorized Representative, and then only in a manner consistent with the Construction Change Field Directive and /or Change Order provisions of this Section 4.A and after any necessary approvals required by public contracting laws have been obtained. Otherwise, a formal contract amendment is required which shall not be effective until its execution by the parties to this Contract and all approvals required by public contracting laws have been obtained.
- 4.A.6. Within the general scope of this Contract, the Owner's Authorized Representative may at any time, without notice to the sureties and without impairing the Contract, require changes consistent with this Section 4.A. All Change Order Work shall be executed under the conditions of the Contract Documents. Such changes may include, but are not limited to:
  - 4.A.6.a. Modification to the Contract agreement.
  - 4.A.6.b. Modification to the Supplemental Conditions.
  - 4.A.6.c. Modification of Specifications and Plans.
  - 4.A.6.d. Increases or decreases in quantities.
  - 4.A.6.e. Increases or decreases to the amount of Work.
  - 4.A.6.f. Addition or elimination of any Work item.
  - 4.A.6.g. Change in the duration of the project.
  - 4.A.6.h. Acceleration or delay in performance of Work.
  - 4.A.6.i. Additive or deductive changes.
  - 4.A.6.j. Unforeseen conditions.
  - 4.A.6.k. Equitable Adjustments of any Work.
- 4.A.7. Deductive changes are those that reduce the scope of the Work, and shall be made by Equitable Adjustment whenever feasible. In cases of suspension or partial termination under Section 10, Owner reserves the right to unilaterally impose a deductive change and to self-perform such Work, for which the provisions of Section 2.M shall then apply. Adjustments in compensation shall be made under the provisions of Section 4.A.8.c 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.
- 4.A.8. The Owner and Contractor agree that Change Order Work shall be administered and compensated according to the following:
  - 4.A.8.a. **Unit pricing.** Unit pricing may be utilized at the Owner's option when unit prices or solicitation alternates were provided or further established by Change Order 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. Unless otherwise set forth in the Contract unit prices are either additive or deductive to be based on actual Work units performed. The Owner may establish a maximum not to exceed cost which shall not be exceeded without additional authorization by the Owner's Authorized Representative.
  - 4.A.8.b. **Fixed pricing.** If the Owner elects not to utilize unit pricing, or in the event that unit pricing is not available or appropriate as determined by Owner's Authorized Representative, fixed pricing may be used for Change Order Work. In fixed pricing the basis of payments or total price shall be agreed upon in writing between the parties to

the Contract, and shall be established before the Work is done whenever feasible. The mark-ups set forth in Section 4.A.8.c shall be utilized by the parties as a guide in establishing fixed pricing, and will not be exceeded without adequate justification. Detailed cost and price data relating to fixed pricing shall be supplied by Contractor to Owner upon request, but Owner shall be under no obligation to make such requests.

- 4.A.8.c. **Direct cost reimbursement.** In the event the Owner's Authorized Representative determines that unit pricing and fixed pricing will not be utilized, then Change Order Work shall be performed on a cost reimbursement basis for Direct Costs. Such Work shall be compensated on the basis of the actual, reasonable and allowable cost of labor, equipment, and material furnished on the Work performed. In addition, the following markups shall be added to the Contractor's Direct Costs as full compensation for profit, Overhead and other indirect costs for Work directly performed with the Contractor's own forces:

Fee Percentage as stated in the CM/GC contract Article 6.1

The following markup shall be added to the Subcontractor's Direct Costs as full compensation for Overhead, profit, and all costs that were incurred by the Contractor for Change Order Work:

Fee Percentage as stated in the CM/GC contract Article 6.1

When Change Order Work under Section 4.A.8.c is invoiced by an authorized Subcontractor at any level, each ascending tier Subcontractor will be allowed a supplemental 15% mark-up on each piece of subcontract Work covered by such Change Order.

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

- 4.A.8.d. **Determination of Price by Owner.** Upon review and approval of Changes in Work, the Owner's Authorized Representative shall issue a Construction Change Field Directive or Change Order for determining the proposed adjustment in the Contract Price or Contract Time. Upon receipt of a Construction Change Field Directive or Change Order, Contractor shall promptly advise the Owner's Authorized Representative in writing of Contractor's agreement or disagreement with the method. If Contractor does not respond promptly or disagrees with the method for adjustment, and Owner makes a written request for the work to proceed anyway, the method and the adjustment shall be determined by Owner as set forth in Section 4.A.8.c direct cost reimbursement. In such case, Contractor shall keep and present (and at all times allow Owner to audit as provided in Section 2.I above) an itemized accounting of costs together with appropriate supporting data.

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

- 4.A.10. Notification

- 4.A.10.a. Contractor shall submit in writing any request for additional compensation and /or additional Contract Time to Owner's Authorized Representative as soon as possible but no later than ten (10) days after Contractor first knows or reasonably should have known of the event alleged to have given rise to the changed condition. If Contractor's request for additional compensation or adjustment of Contract Time is not made within the ten (10) day time limit, Contractor's requests pertaining to that Change Order are barred. The ten (10) day time limit for making requests shall not be extended for any reason, including without limitation Contractor's claimed inability to determine the amount of additional compensation or adjustment of Contract Time, unless an extension is granted in writing by Owner.
- 4.A.10.b. The ten (10) day time limit applies to claims of Subcontractors, suppliers, or manufacturers that may be affected by the Change Order and that request additional compensation or an extension of Contract Time to perform.
  - 4.A.10.b.1. Contractor has responsibility for contacting its Subcontractors, suppliers, or manufacturers within the ten (10) day time limit, and including their requests with Contractor's requests.
  - 4.A.10.b.2. If the request involves Work to be completed by Subcontractors, or materials to be furnished by suppliers or manufacturers, such requests shall be submitted to the Contractor in writing with full analysis and justification for the compensation and additional Contract Time requested. The Contractor will analyze and evaluate the merits of the requests submitted by Subcontractors, suppliers, and manufacturers to Contractor prior to including those requests and Contractor's analysis and evaluation of those requests with Contractor's requests for additional compensation or Contract Time that Contractor submits to the Owner's Authorized Representative.
  - 4.A.10.b.3. The Owner will not consider direct requests or claims from Subcontractors, suppliers, manufacturers or others not a party to this Contract.
- 4.A.10.c. Unforeseen Conditions. The Contractor shall notify in writing the Owner's Authorized Representative immediately but no later than ten (10) days after Contractor first knows or reasonably should have known of differing site conditions. Contractor shall to the extent possible without further disturbance of the specific area, perform other work while the unforeseen conditions are being investigated. The Owner's Authorized Representative will investigate the area and make a determination as to whether or not the conditions differ materially from either the conditions stated in the Contract Documents or those which could reasonably be expected in execution of this particular Contract. If Contractor and the Owner's Authorized Representative agree that a differing site condition exists, any additional compensation or additional Contract Time will be determined based on the process set forth in Section 4.A.8 for Change Order Work.
- 4.A.11. If the Owner's Authorized Representative denies the Contractor's request for additional compensation or an extension of Contract Time, the Contractor may proceed to file a Claim under Section 4.C, Claims Resolution Procedures.
- 4.A.12. The consideration of such requests and claims under this section does not give any person, not a party to the Contract the right to bring a claim against the Owner, whether in this claims process, in litigation, or in any dispute resolution process.

#### 4.B. DELAYS

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

4.B.1.a. **Avoidable Delays** include any delays other than Unavoidable Delays, and include delays that otherwise would be considered Unavoidable Delays but that:

- 4.B.1.a.1. Materially affect or delay the Contractor proceeding with the Work and could have been avoided by the exercise of care, prudence, foresight, and diligence on the part of the Contractor or its Subcontractors.
- 4.B.1.a.2. Affect only a portion of the Work and do not necessarily prevent or delay the prosecution of other parts of the Work or the completion of the whole Work within the Contract Time.
- 4.B.1.a.3. Do not impact activities on the Owner approved baseline critical path schedule.
- 4.B.1.a.4. Caused by Contractor or Subcontractor in sequencing of work, delay in fabrication, obtaining trade permits and any permit inspections, equipment failure, material shipment delay or other related actions not caused by Force Majeure acts, events or occurrences.
- 4.B.1.a.5. Are associated with the reasonable interference of other contractors employed by the Owner that do not necessarily prevent the completion of the whole Work within the Contract Time.

4.B.1.b. **Unavoidable Delays** include delays other than Avoidable Delays that are:

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

- 4.B.1.b.5. 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 or closest regional airport.

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

#### 4.C. CLAIMS RESOLUTION PROCEDURES

- 4.C.1. This section outlines the exclusive procedure to be followed if the Contractor believes that it is entitled to additional compensation, additional Contract Time or both. This section applies to all Claims for additional compensation and all requests for additional Contract Time, regardless of whether the basis for the Claim for additional compensation, or request for additional Contract Time, or both, stems from the performance of extra work, changed work, disputes, excusable delays of any nature, suspension of Contract work, or any other reason whatsoever.
- 4.C.2. When the Contractor believes it is entitled to be paid more than the Contract Amount, the Contractor shall notify the Owner's Authorized Representative in writing before beginning any work for which additional compensation is sought. The written Notice shall include:
  - 4.C.2.a. A description of the event that requires additional compensation;
  - 4.C.2.b. The estimated amount of the additional cost to the Owner; and
  - 4.C.2.c. Any Contract provision(s) that support the Claim.
- 4.C.3. When an event occurs that the Contractor believes entitles it to more time to complete the Work than Contract Time permits, the Contractor shall notify the Owner's Authorized Representative in writing when the event occurs. The written Notice shall include:
  - 4.C.3.a. A description of the event that permits additional Contract Time;
  - 4.C.3.b. An estimate of the delay that the event will cause; and
  - 4.C.3.c. Any Contract provision(s) that support the request for additional Contract Time.



- 4.C.4. If the Contractor does not provide written Notice of a Claim for additional compensation or additional Contract Time in the time required, the Claim for additional compensation, additional Contract Time, or both, is waived.
- 4.C.5. If the Owner agrees with the Contractor's request for additional compensation or Contract Time the parties shall negotiate a Change Order setting forth their agreement. If the Owner disagrees, the Contractor shall do the following:
- 4.C.5.a. Continue promptly with the work, including any extra work required by the Owner so the Project is not delayed;
  - 4.C.5.b. Keep complete records of its costs in the manner set forth under Section 4.A.8.c direct cost reimbursement provisions. The Owner also may elect to keep such records to eliminate later confusion. The keeping of such records by either Contractor or Owner does not mean that any Claim is valid; and
  - 4.C.5.c. Submit documentation supporting the request for additional compensation, additional time or both.
- 4.C.6. The Contractor's request for additional compensation shall be supported by all documentation substantiating the amount of additional compensation to which it is entitled. The documentation shall include all information required under Section 4.A.8.c direct cost reimbursement and other relevant documentation, such as payroll records, purchase orders, quotations, invoices, estimates, profit and loss statements, daily logs, ledgers and journals.
- 4.C.6.a. The documentation shall be submitted within thirty (30) days following completion of any work for which a Claim of additional compensation has been made.
  - 4.C.6.b. If the Contractor contends that it will incur costs beyond the thirty (30) day time period that should be included in the Claim, the Contractor shall notify the Owner's Authorized Representative of this fact in writing and provide an estimate of that cost. Thereafter the Contractor shall provide the Owner with additional documentation when the remainder of its additional costs is known.
  - 4.C.6.c. The Owner will rely on the accuracy of the Claim to make decisions regarding future expenditures. Failure to submit the Claim for Contract Price within thirty (30) days is a conclusive waiver of the Contractor's right to additional compensation.
  - 4.C.6.d. The Owner may request additional documentation from the Contractor at any time regarding a Claim. Failure to provide additional documentation when requested and when such documentation exists constitutes a waiver of that portion of the Contractor's Claim to which the additional documentation relates.
- 4.C.7. Any request for additional Contract Time shall be supported by documentation that includes a) a description of the event on which the request is based, and b) all information, including a schedule analysis, that shows that the event delayed completion of the Project as a whole.
- 4.C.7.a. The Contractor shall submit the documentation within thirty (30) days following the completion of the event that caused the delay and for which additional Contract Time is sought.
  - 4.C.7.b. The Owner will rely on the accuracy of the Claim to make decisions regarding future expenditures. Failure to submit the Claim for Contract Time within 30 (thirty) days is a conclusive waiver of the Contractor's right to additional compensation.
  - 4.C.7.c. The Owner may request additional documentation from the Contractor at any time regarding a Claim. Failure to provide additional documentation when requested and when such documentation exists constitutes a waiver of that portion of the Contractor's Claim to which the additional documentation relates.
- 4.C.8. Following receipt of all required documentation, and after the Owner's Authorized Representative has had sufficient period of time to review it in light of work responsibilities, the

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

- 4.C.9. If the Claim cannot be resolved, it shall be referred to persons with higher authority on the part of the Contractor and the Owner, who also shall have the authority to resolve the Claim. Those persons shall meet for negotiations at a mutually agreed upon time and place after having had a sufficient time to review the Claim. The Owner's or designee's decision shall be final and shall exhaust the Contractor's administrative remedies for resolution of any and all Claims.
- 4.C.10. If the matter is not resolved by voluntary mediation, all claims, disputes, and other matters in question between Owner and Contractor arising out of, or relating to the Contract Documents, or the breach thereof except for claims which may have been waived by the making or acceptance of final payment or for acquisition of property subject to eminent domain, may be decided by arbitration. Owner shall have the sole discretion as to whether or not dispute will be decided by arbitration conducted in Deschutes County, Oregon, rather than through the court process.
- 4.C.10.a. No demand for arbitration of any claimed dispute or other matter shall be effective until after a claim or demand is made to Owner, and its Board, at its next regularly scheduled meeting, has rendered a written decision with respect thereto denying the claim or demand. No demand for arbitration of any such claim, dispute, or other matter shall be made later than thirty (30) days after the date on which the Owner has rendered its decision under 4.C.9, above. The failure to demand arbitration within said 30 days shall result in Owner's decision being binding upon Owner and Contractor.
- 4.C.10.b. Notice of demand for arbitration shall be filed in writing with the other party to the Contract. The demand for arbitration shall be made within the 30 day period specified above. Owner, if not the party demanding arbitration, has the option of allowing the matter to proceed with arbitration, or by written notice within five (5) days after receipt of a demand for arbitration, reject arbitration and require the other party to proceed through the courts for relief. Arbitration shall be conducted under the Uniform Arbitration Act, ORS 36.600 et seq. If the parties are unable to mutually select an arbitrator within twenty (20) days following Owner's decision to pursue arbitration, each party shall then select an arbitrator, and the two arbitrators shall select a single arbitrator. The arbitrator(s) shall have substantial experience in construction disputes. The parties agree that any award rendered by the arbitrator(s) will be final, and judgment may be entered upon the award in any court having jurisdiction thereof, and will not be subject to modification or appeal except to the extent permitted by Oregon law.
- 4.C.10.c. If suit, action or arbitration is brought either directly or indirectly to rescind, interpret or enforce the terms of this agreement, the prevailing party shall recover and the losing party hereby agrees to pay reasonable attorney's fees incurred in such proceeding, in both the trial and appellate courts, as well as the costs and disbursements. Further, if it becomes necessary for Owner to incur the services of an attorney to enforce any provision of this Contract without initiating litigation, Contractor agrees to pay Owner's

attorney's fees so incurred. Such costs and fees shall bear interest at the maximum legal rate from the date incurred until the date paid by losing party.”

- 4.C.11. The procedures specified in this Section shall be the sole and exclusive procedures for the resolution for disputes between the Owner and Contractor arising out of or relating to this agreement, except that either may seek preliminary judicial relief or an injunction to avoid irreparable damage. Despite any injunctive relief, the procedures specified in this Contract for the resolution of Claims shall remain applicable.
- 4.C.12. The Owner is not obligated under the Contract to provide additional Contract Time or additional compensation unless documentation submitted by the Contractor establishes its entitlement to additional compensation, additional Contract Time, or both. The parties agree that it is not a breach of contract to deny a request for additional compensation or request for additional Contract Time if the Contractor fails to submit adequate documentation substantiating its Claim or request for time.
- 4.C.13. The Owner will not consider and shall reject any and all Claims to include cost, schedule and/or Work submitted from subcontractors, suppliers, manufacturers or others not a party to the contract. All Claims shall be submitted by the General Contractor or entity named on the Contract documents.
- 4.C.14. Completion of Work During Claims Review
- 4.C.14.a. Unless otherwise directed by Owner’s Authorized Representative, Contractor shall proceed with the work while any dispute or Claim of Contractor is pending. Regardless of the review period or the final decision of Owner, the Contractor shall continue to diligently pursue the work as identified in the contract documents or otherwise as directed by the Owner’s Authorized Representative. In no case is the Contractor justified or allowed to slow, stop or otherwise impede progress of work without a written “Stop Work Order” by the Owner’s Authorized Representative.
- 4.C.14.b. Contractor shall not delay any request for interim or final payment application for any reason, including without limitation payment of subcontractors, suppliers, manufacturers or others not a party to this contract, due to lack of resolution of a dispute or Claim with Owner or any other person of matters arising out of or relating to the contract. If Contractor fails to submit its final payment application within ninety (90) days after Substantial Completion, and Contractor has not obtained written extension by Owner, all requests or Claims for additional Contract Price or an extension of Contract Time shall be waived.
- 4.C.14.c. The Owner, at its sole discretion, pending resolution of any Claim or dispute, may authorize a unilateral Construction Change Field Directive or Change Order to direct the Contractor to perform work; authorize any estimates amounts for such directed work; authorize any extension to contract performance time; place in retainage or establish within retainage account any sum for outstanding Claims or take any other actions necessary in order to complete the project as set forth under the Contract.
- 4.C.14.d. The Owner may, at its sole discretion, provide notice to the Contractor’s sureties of any pending claim, mediation, arbitration or other legal action.

## 5. PAYMENTS

### 5.A. SCHEDULE OF VALUES

- 5.A.1. The Contractor shall submit to the Owner's Authorized Representative for approval, at the preconstruction meeting and at least ten (10) days prior to submission of its first application for

progress payment, a 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.

- 5.A.2. Unless objected to by the Owner's Authorized Representative, this schedule shall be used as the basis for reviewing Contractor's applications for payment. If objected to by Owner's Authorized Representative, Contractor shall revise the schedule of values and resubmit the same for approval of Owner's Authorized Representative.

## 5.B. APPLICATIONS FOR PAYMENT

- 5.B.1. Owner shall make progress payments on the Contract monthly as Work progresses. Payments shall be based upon estimates of Work completed and the Schedule of Values. All payments shall be approved by the Owner's Authorized Representative and Architect/Engineer. A progress payment shall not be considered acceptance or approval of any Work or waiver of any defects therein.
- 5.B.1.a. Owner shall pay to Contractor interest on the progress payment, not including retainage, due the Contractor. The interest shall commence thirty (30) days after the receipt of invoice ("application for payment") from the Contractor or fifteen (15) days after the payment is approved by the Owner's Authorized Representative, whichever is the earlier date.
- 5.B.1.b. The rate of interest shall equal three times the discount rate on 90-day commercial paper in effect at the Federal Reserve Bank in the Federal Reserve district that includes Oregon on the date that is thirty (30) days after receipt of the application for payment from the Contractor or fifteen (15) days after the payment is approved by the Owner, whichever is the earlier date, but the rate of interest shall not exceed thirty percent (30%).
- 5.B.1.c. Notwithstanding the foregoing, in instances when an application for payment is filled out incorrectly, or when there is any defect or impropriety in any submitted application or when there is a good faith dispute, Owner shall so notify the Contractor within fifteen (15) days stating the reason or reasons the application for payment is defective or improper or the reasons for the dispute. A defective or improper application for payment, if corrected by the Contractor within seven (7) days of being notified by the Owner, shall not cause a payment to be made later than specified in this section unless interest is also paid. Accrual of interest will be postponed when payment on the principal is delayed because of disagreement between the Owner and the Contractor.
- 5.B.1.d. Owner reserves the right, instead of requiring the Contractor to correct or resubmit a defective or improper application for payment, to reject the defective or improper portion of the application for payment and pay the remainder of the application for payment that is correct and proper.
- 5.B.2. Contractor shall submit to the Owner's Authorized Representative and Architect an application for each payment on a form as provided or approved by Owner.
- 5.B.2.a. If required by Owner's Authorized Representative, Contractor shall submit receipts or other vouchers showing payments for materials and labor, including payments to Subcontractors.
- 5.B.2.b. Contractor shall include in its application for payment a schedule of the percentages of the various parts of the Work completed, based on the Schedule of Values, which shall aggregate to the payment application total, and shall include, on the face of each copy thereof, a certificate in substantially the following form:

"The undersigned Contractor certifies that to the best of the Contractor's Knowledge, information and belief the Work covered by this Application for Payment has been completed in accordance with the Contract Documents, that all amounts have been paid by the Contractor for Work for which previous Certificates for Payment were issued and payments received from the Owner, and that current payment shown herein is now due.

Signed: \_\_\_\_\_"

- 5.B.2.c. Each application for payment shall be signed by a person legally authorized by the Contractor.
- 5.B.3. Generally, applications for payment will be accepted only for Work performed on and materials delivered to the site. Under special conditions, at Owner's Authorized Representative sole discretion, applications for payment for stored materials or materials fabricated offsite may be accepted. Such a payment, if made, will be subject to the following conditions:
  - 5.B.3.a. The request for stored or fabricated offsite material shall be submitted at least fifteen (15) 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.
  - 5.B.3.b. The Contractor shall submit applications for payment showing the quantity and cost of the material stored. Contractor will provide invoices or other verification of cost of the stored material in a form acceptable to the Owner, if requested.
  - 5.B.3.c. The material shall be stored in a bonded warehouse and identified for use only on this Work. Owner's Authorized Representative shall be granted the right to access the material for the purpose of removal or inspection at any time during the Contract Time.
  - 5.B.3.d. The Contractor shall name the Owner as coinsured on the insurance policy or builders risk policy covering the full value of the property while in the care and custody of the Contractor until it is installed. A certificate noting this coverage shall be issued to the Owner.
  - 5.B.3.e. Payments shall be made for stored materials or materials fabricated offsite only. The submitted amount of the application for payment shall be reduced by the cost of transportation and for the cost of an inspector to check the delivery at out of town storage sites. The cost of said inspection shall be borne solely by the Contractor.
  - 5.B.3.f. Upon payment by Owner, title and ownership of all stored materials or materials fabricated offsite will transfer to Owner.
  - 5.B.3.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.
  - 5.B.3.h. All required documentation must be submitted with the respective application for payment.
- 5.B.4. The Owner reserves the right to withhold all or part of a payment, or may nullify in whole or part any payment previously made, to such extent as may be necessary in the Owner's opinion to protect the Owner from loss, including withholding from a progress payment or final payment up to two hundred percent (200%) of the potential or actual costs, because of:
  - 5.B.4.a. Work that is defective and not remedied, or that has been demonstrated or identified as failing to conform with the Contract Documents,
  - 5.B.4.b. Work has not been approved by special inspections, permit inspections or by field observation by Owner's Authorized Representative or Architect/Engineer,

- 5.B.4.c. Third party claims filed or evidence reasonably indicating that such claims will likely be filed unless security acceptable to the Owner is provided by the Contractor;
- 5.B.4.d. Failure of the Contractor to:
  - 5.B.4.d.1. submit certified payroll reports, in increments, as required,
  - 5.B.4.d.2. submit claim waivers and releases,
  - 5.B.4.d.3. make payments properly to Subcontractors or suppliers for labor, materials or equipment in which case Owner may issue checks made payable jointly to Contractor and such unpaid persons under this provision, or directly to Subcontractors and suppliers at any level under Section 3.D.2;
- 5.B.4.e. Reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Price;
- 5.B.4.f. Damage to the Owner or another party;
- 5.B.4.g. Reasonable evidence that the Work will not be completed within the Contract Time required by the Contract, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;
- 5.B.4.h. Failure to carry out the Work in accordance with the Contract Documents; or
- 5.B.4.i. Assessment of liquidated damages, when withholding is made for offset purposes.
- 5.B.5. Subject to the provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:
  - 5.B.5.a. Take that portion of the Contract Price properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the total Contract Price allocated to that portion of the Work in the Schedule of Values, less retainage as provided in Section 5.E.
  - 5.B.5.b. Include that portion of work completed under an approved Change Order; less retainage as provided in Section 5.E
  - 5.B.5.c. Add that portion of the Contract Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction (or, if approved in advance by the Owner pursuant to Section 5.B.3, suitably stored off the site at a location agreed upon in writing), less retainage as provided in Section 5.E;
  - 5.B.5.d. Subtract the aggregate of previous payments made by the Owner; and
  - 5.B.5.e. Subtract any amounts for which the Owner's Authorized Representative has withheld or nullified payment as provided in the Contract Documents.
- 5.B.6. Contractor's applications for payment may not include requests for payment for portions of the Work for which the Contractor does not intend to pay to a Subcontractor or material supplier.
- 5.B.7. The Contractor shall provide in each progress application for payment a 'conditional release' that warrants that upon submittal of an application for payment all Work for which payments are received from the Owner shall be free and clear of liens, claims, security interests or encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.
- 5.B.8. If Contractor disputes any determination by Owner's Authorized Representative with regard to any application for payment, Contractor nevertheless shall continue to prosecute expeditiously the Work. No payment made hereunder shall be or be construed to be final acceptance or approval of that portion of the Work to which such partial payment relates or shall relieve Contractor of any of its obligations hereunder.

### 5.C. PAYROLL CERTIFICATION REQUIREMENT

See, General Condition 3.C.

### 5.D. DUAL PAYMENT SOURCES

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

### 5.E. RETAINAGE

5.E.1. Retainage shall be withheld and released in accordance with ORS 279C.550 to 279C.580:

5.E.1.a. Owner may reserve as retainage from any progress payment an amount not to exceed five percent (5%) of the payment. As Work progresses, Owner may reduce the amount of the retainage and may eliminate retainage on any remaining monthly Contract payments after fifty percent (50%) of the Work under the Contract is completed if, in the Owner's opinion, such Work is progressing satisfactorily. Elimination or reduction of retainage shall be allowed only upon written application by the Contractor, which application shall include written approval of Contractor's surety; except that when the Work is ninety seven and one half percent (97.5%) completed the Owner may, at its discretion and without application by the Contractor, reduce the retained amount to one hundred percent (100%) of the value of the Work remaining to be done. Upon receipt of written application by the Contractor, Owner shall respond in writing within a reasonable time.

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

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

- 5.E.1.b.1.(a). Bills, certificates, notes or bonds of the United States.
- 5.E.1.b.1.(b). Other obligations of the United States or agencies of the United States.
- 5.E.1.b.1.(c). Obligations of a corporation wholly owned by the federal government.
- 5.E.1.b.1.(d). Indebtedness of the Federal National Mortgage Association.
- 5.E.1.b.1.(e). General obligation bonds of the State of Oregon or a political subdivision of the State of Oregon.
- 5.E.1.b.1.(f). Irrevocable letters of credit issued by an insured institution, as defined in ORS 706.008.

5.E.1.b.2. That retainage be deposited in an interest bearing account, in a form acceptable to Owner, in a bank, savings bank, trust company or savings association for the benefit of Owner, with interest from such account accruing to the Contractor; or

5.E.1.b.3. That the Contractor be allowed, with the approval of the Owner, to deposit a Surety bond for the benefit of Owner, in a form acceptable to Owner, in lieu of all or a portion of funds retained, or to be retained. Such bond and any proceeds there from shall be made subject to all claims and liens in the manner and priority as set forth for retainage under ORS 279C.550 to ORS 279C.625.

Where the Owner has accepted the Contractor's election of any of the options above, Owner may recover from Contractor any additional costs incurred through such election by reducing Contractor's final payment. Where the Owner has agreed to Contractor's request to deposit a surety bond, Contractor shall accept like bonds from Subcontractors and suppliers on the project from which Contractor has required retainage.

5.E.1.c. Contractor shall notify the Owner's Authorized Representative at least ten (10) days prior to the first application for payment if retainage is to be held in an interest-bearing account. The retainage held by Owner and any accrued interest shall be included in and paid to the Contractor as part of the final payment of the Contract Price. The Owner shall pay to Contractor interest at the rate of one and one-half percent (1.5%) per month on the final payment due Contractor, interest to commence thirty (30) days after the Work under the Contract has been completed and accepted and to run until the date Contractor shall notify Owner in writing when the Contractor considers the Work complete and Owner shall, within fifteen (15) days after receiving the written notice, either accept the Work or notify the Contractor of Work yet to be performed on the Contract. If Owner does not within the time allowed notify the Contractor of Work yet to be performed to fulfill contractual obligations, the interest provided by this subsection shall commence to run thirty (30) days after the end of the fifteen (15) day period.

5.E.1.d. In accordance with the provisions of ORS 279C.560, if the Owner accepts bonds, securities or other instruments deposited as provided in Sections 5.E.1.b.1 and 5.E.1.b.3 the Owner shall reduce the moneys held as retainage in an amount equal to the value of the bonds, securities and other instruments and pay the amount of the reduction to the Contractor in accordance with ORS 279C.570.

5.E.1.e. Contractor agrees that if Contractor elects to reserve a retainage from any progress payment due to any Subcontractor or supplier, such retainage shall not exceed five percent (5%) of the payment, and such retainage withheld from Subcontractors and suppliers shall be subject to the same terms and conditions stated in Section 5.E as apply to Owner's retainage from any progress payment due to Contractor. Provided, however, if in accordance with the provisions of ORS 279C.560 the Contractor has deposited bonds, securities or other instruments or has elected to have the Owner deposit accumulated retainage in an interest-bearing account, the Contractor shall comply with the provisions of ORS 701.435 respecting the deposit of bonds, securities or other instruments by Subcontractors and suppliers and the sharing of interest earnings with Subcontractors and suppliers.

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



## 5.F. FINAL PAYMENT

- 5.F.1. Upon reaching Substantial Completion and approval of the Owner's Authorized Representative that all punch-list work and all field work is complete, the Contractor shall make written request for final payment.
- 5.F.1.a. Upon receipt of such notice the Owner's Authorized Representative will inspect the Work, and if acceptable, submit to the Owner a recommendation as to acceptance of the completed Work and as to the final estimate of the amount due the Contractor. If the Work is not acceptable, Owner will notify Contractor within fifteen (15) days of Contractor's request for final payment.
- 5.F.1.b. Upon approval by the Owner of this final estimate of the amount due the Contractor and compliance by the Contractor with provisions in Section 11.C, and other provisions as may be applicable, the Owner shall release all retainage and any accrued interest if applicable and pay to the Contractor all monies due under the provisions of these Contract Documents.
- 5.F.1.c. The Owner's Authorized Representative will issue an acceptance letter to Contractor indicating all obligations of the Contract (except warranty provisions) have been completed.
- 5.F.2. Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Owner's Authorized Representative:
- 5.F.2.a. A notarized affidavit/release of liens and claims in a form satisfactory to Owner that states that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied;
- 5.F.2.b. A certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least thirty (30) days' prior written notice has been given to the Owner;
- 5.F.2.c. Consent of surety, if any, to final payment; and
- 5.F.2.d. 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.
- 5.F.2.e. Submission of all close out documentation to the Architect of Record.
- 5.F.3. No request or Claim by the Contractor for additional costs or an extension of Contract Time shall be allowed if made after receipt of final payment application under this Contract.
- 5.F.4. Contractor shall not delay final payment application for any reason, including without limitation nonpayment of Subcontractors, suppliers, manufacturers or others not a party to this Contract, or lack of resolution of a dispute with Owner or any other person of matters arising out of or relating to the Contract. If Contractor fails to submit its final payment application within thirty (30) days after Final Completion, and Contractor has not obtained written extension by Owner, all requests or Claims for additional costs or an extension of Contract Time shall be waived.
- 5.F.5. If the Contractor or any Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.
- 5.F.6. Waiver of Claims by Contractor. Acceptance of final payment by the Contractor, a Subcontractor or material supplier shall constitute a waiver of claims by that payee except those

previously made in writing and identified by that payee as unsettled at the time of final application for payment.

5.F.7. Waiver of Claims by Owner. The making of final payment shall constitute a waiver of claims by Owner except (1) those claims expressly reserved by Owner at the time of final payment; (2) those arising from claims, bond claims, security interests or encumbrances arising out of the Contract and unsettled; (3) failure of the Work to comply with the requirements of the Contract Documents or industry standards; (4) terms of any warranties required by the Contract Documents; and (5) claims for unknown or latent defects or deficiencies in the Work or for unknown damages or expenses caused by the Work.

#### **5.G. TAXES**

Contractor shall pay and remit to the applicable governmental agencies sales and use taxes, if any, on labor, supplies, and materials included in the Work. When requested by the Contractor or a subcontractor, and to the extent applicable, the Owner will comply with such regulations as the Secretary of the Treasury or his delegate shall prescribe to obtain exemption from the application of federal excise tax.

#### **5.H. SAVINGS AND DISCOUNTS ACCRUE TO OWNER**

Cash discounts obtained on payments made by Contractor or Subcontractors shall accrue to Owner if, before making the payment, Contractor included them in an application for payment and received payment for them from Owner. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to Owner, and Contractor shall make provisions so that they can be secured. Amounts which accrue to Owner in accordance with this provision shall be credited to Owner as a deduction from the Contract Price. It is the responsibility of the Contractor to promptly notify the Owner of any savings and discounts that are realized, including any through Subcontractors.

### **6. JOB SITE CONDITIONS**

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

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

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

6.B.1. Contractor shall maintain continuous and adequate protection of all of the Work from damage, and shall protect the public, Owner's Authorized Representative, Owner's workers and property from injury or loss arising in connection with this Contract. Contractor shall remedy acceptably to the Owner, any damage, injury, or loss, except such as may be directly due to errors in the Contract Documents or caused by authorized representatives or personnel of the Owner. Contractor shall adequately protect adjacent property as provided by law and the Contract Documents.

6.B.2. Contractor shall take all necessary precautions for the safety of the public and all personnel on the job site, and shall comply with the Contract Documents and all applicable provisions of federal, state and municipal safety laws and building codes to prevent accidents or injury to persons on, about or adjacent to the premises where the Work is being performed. Contractor shall erect and properly maintain at all times, as required by the conditions and progress of the Work, all

necessary safeguards for protection of workers and the public against any hazards created by construction. Contractor shall designate a responsible employee or associate on the Work site, whose duty shall be the prevention of accidents. The name and position of the person designated shall be reported to the Owner's Authorized Representative. The Owner's Authorized Representative has no responsibility for Work site safety. Work site safety is the sole responsibility of the Contractor.

- 6.B.3. Contractor shall not enter upon private property without first obtaining permission from the property owner or its duly authorized representative. Contractor shall be responsible for the preservation of all public and private property along and adjacent to the Work contemplated under the Contract and shall use every precaution necessary to prevent damage thereto. In the event the Contractor damages any property, the Contractor shall at once notify the property owner and make, or arrange to make, full restitution. Contractor shall report, immediately in writing, to the Owner's Authorized Representative, all pertinent facts relating to such property damage and the ultimate disposition of the claim for damage.
- 6.B.4. Contractor is responsible for protection of adjacent work areas including impacts brought about by activities, equipment, labor, utilities, and materials on the site.
- 6.B.5. Contractor shall at all times direct its activities in such a manner as to minimize adverse effects on the environment. Handling of all materials will be conducted so no release will occur that may pollute or become hazardous.
- 6.B.6. In an emergency affecting the safety of life or of the Work or of adjoining property, the Contractor, without special instruction or authorization from the Owner's Authorized Representative, shall act reasonably to prevent threatened loss or injury, and shall so act, without appeal, if instructed by the Owner's Authorized Representative. Any compensation claimed by the Contractor on account of emergency work shall be determined in accordance with Section 4.
- 6.B.7. Explosives are not permitted without specific written approval from the Owner.

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

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

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

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

#### **6.E. CLEANING UP**

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

cost charged to the Contractor and deducted from payment due the Contractor. Reference specific project requirements in the Plans and Specifications.

#### **6.F. ENVIRONMENTAL CONTAMINATION**

- 6.F.1. Contractor will be held responsible for and shall indemnify, defend (with counsel of Owner's choice) and hold harmless Owner from and against any costs, expenses, damages, claims, and causes of action, (including attorney fees), or any of them, resulting from all spills, releases, discharges, leaks and disposal of environmental pollution, including storage, transportation, and handling during the performance of the Contract which occur as a result of, or are contributed by, the negligence or actions of Contractor or its personnel, agents, or Subcontractors or any failure to perform in accordance with the Contract Documents (except to the extent otherwise void under ORS 30.140). Nothing in this Section 6.F.1 shall limit Contractor's responsibility for obtaining insurance coverages required under Section 7.C of these General Conditions, and Contractor shall take no action that would void or impair such coverages
- 6.F.2. Contractor agrees to promptly dispose of such spills, releases, discharge or leaks to the satisfaction of Owner and proper regulatory agencies in a manner that complies with applicable federal, state, and local laws and regulations. Cleanup shall be at no cost to the Owner and be performed by properly qualified personnel.
- 6.F.3. Contractor shall obtain the Owner's written consent prior to bringing onto the Work site any (1) environmental pollutants or (2) hazardous substances or materials, as the same or reasonably similar terms are used in any applicable federal, state, or local statutes, rules or ordinances. Notwithstanding such written consent from the Owner, the Contractor, at all times, shall:
- 6.F.3.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;
  - 6.F.3.b. Maintain copies or access to all 'Safety Data Sheets' at the Work site at all times along with a 'Health and Safety Plan' in conformance with OR-OSHA requirements;
  - 6.F.3.c. Be responsible for any and all spills, releases, discharges, or leaks of (or from) environmental pollutants or hazardous substances or materials which Contractor has brought onto the Work site; and
  - 6.F.3.d. 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.
- 6.F.4. Contractor shall report all reportable quantity releases to applicable federal, state, and local regulatory and emergency response agencies. Reportable quantities are found in 40 CFR Part 302, Table 302.4 for hazardous substances and in OAR 340-142-0050 for all products addressed therein. Upon discovery, regardless of quantity, Contractor must telephonically report all releases to the Owner. A written follow-up report shall be submitted to Owner within 48 hours of the telephonic report. Such written report shall contain, as a minimum:
- 6.F.4.a. Description of items released (identity, quantity, manifest no., and all other documentation required by law.)
  - 6.F.4.b. Whether amount of items released is EPA/DEQ reportable, and, if so, when it was reported.
  - 6.F.4.c. Exact time and location of release, including a description of the area involved.
  - 6.F.4.d. Containment procedures initiated.
  - 6.F.4.e. Summary of communications about the release Contractor has had with members of the press or State officials other than Owner.

- 6.F.4.f. Description of cleanup procedures employed or to be employed at the site, including disposal location of spill residue.
- 6.F.4.g. Personnel injuries, if any, resulting from, or aggravated by, the release.

#### **6.G. ENVIRONMENTAL CLEAN-UP**

- 6.G.1. Unless cleanup of environmental contamination is specifically a part of this Contract, or was caused by the Contractor (reference Section 6.F Environmental Contamination), Contractor shall immediately notify Owner of any hazardous substance(s) which Contractor discovers or encounters as Unforeseen Conditions during performance of the Work required by this Contract. "Hazardous substance(s)" means any hazardous, toxic and radioactive materials and those substances defined as "hazardous substances," "hazardous materials," "hazardous wastes," "toxic substances," or other similar designations in any federal, state, or local law, regulation, or ordinance, including without limitation asbestos, polychlorinated biphenyl (PCB), or petroleum, and any substances, materials or wastes regulated in 40 CFR, Part 261 and defined as hazardous in 40 CFR S 261.3. In addition to notifying Owner of any hazardous substance(s) discovered or encountered, Contractor shall immediately cease working in any particular area of the project where a hazardous substance(s) has been discovered or encountered if continued work in such area would present a risk or danger to the health or wellbeing of Contractor's or any Subcontractor's work force.
- 6.G.2. Upon being notified by Contractor of the presence of any unforeseen hazardous substance(s) on the project site, Owner shall arrange for the proper investigation, handling and disposition of such hazardous substance(s).

#### **6.H. FORCE MAJEURE**

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

### **7. INDEMNITY AND INSURANCE**

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

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

within 30 days, Owner may defend the claim and charge Contractor with any costs associated with that effort.

- 7.A.4. Owner reserves the right to participate in any claim irrespective of the Contractor's obligations to indemnify, hold harmless, defend or notify. However, if Owner elects to participate in an claim after receiving notification from Contractor, Contractor is not obligated to indemnify Owner for the costs associated with that participation, although its other obligations to indemnify, hold harmless and defend remain intact.

## **7.B. PERFORMANCE AND PAYMENT BONDS; PUBLIC WORKS BOND**

- 7.B.1. When the Contract Price is in excess of \$50,000 the Contractor shall furnish and maintain in effect at all times during the Contract Time, a performance bond in a sum equal to the Contract Price, and a separate payment bond also in a sum equal to the Contract Price. The bonds may be required if the Contract Price is less than the above thresholds see Supplemental General Conditions.
- 7.B.2. Bond forms furnished by the Owner and notarized by awarded Contractor's surety company authorized to do business in Oregon are the only acceptable forms of performance and payment security, unless otherwise approved by the Owner.
- 7.B.3. Public Works Bond. A Public Works Bond is required when the Contract Price is \$50,000 or more. See the Supplemental General Conditions for requirements.
- 7.B.4. Other bonds may be required to include Maintenance Bond, Public Streets Bond etc. Unless exempt under ORS 279C.836(4), (7), (8) or (9), before starting work on this contract, or any subcontract hereunder, contractor and all subcontractors must have on file with the Construction Contractors Board a public works bond with a corporate surety authorized to do business in the State of Oregon in the amount of \$30,000. The bond must provide that the contractor or subcontractor will pay claims ordered by the Bureau of Labor and Industries to workers performing labor upon public works projects. The bond must be a continuing obligation, and the surety's liability for the aggregate of claims that may be payable from the bond may not exceed the penal sum of the bond. The bond must remain in effect continuously until depleted by claims paid under ORS 279C.836(2), unless the surety sooner cancels the bond. Contractor further certifies that contractor will include in every subcontract or provision requiring a subcontractor to have a public works bond filed with the Construction Contractors Board before starting work on the project, unless exempt under ORS 279C.836(4), (7), (8), or (9).

Unless exempt under ORS 279C.836(4), (7), (8), or (9), before permitting a subcontractor to start work on this public works project, the contractor shall verify that the subcontractor has filed a public works bond as required under this section or has elected not to file a public works bond under ORS 279C.836(7).

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

## **7.C. INSURANCE**

- 7.C.1. **Primary Coverage:** Insurance carried by Contractor under this Contract shall be the primary coverage, and the Owner's insurance is excess and solely for damages or losses for which the

Owner is responsible. The coverages indicated in Section 7.C are minimums unless otherwise specified in the Supplemental General Conditions.

**7.C.2. Workers' Compensation and Employer's Liability Insurance:** All employers, including Contractor, that employ subject workers who work under this contract in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage, unless such employers are exempt under ORS 656.126. This shall include Employer's Liability Insurance with coverage limits of not less than those provided below. Contractors who perform the Work without the assistance or labor of any employee need not obtain such coverage if the Contractor certifies so in writing. Contractor shall ensure that each of its Subcontractors complies with these requirements. The Contractor shall require proof of such Workers' Compensation by receiving and keeping on file a certificate of insurance from each Subcontractor or anyone else directly employed by either the Contractor or its Subcontractors.

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

7.C.2.a. Those Contractors who are self-insured and are not required to carry Worker's Compensation per ORS 656.027 must indicate so and certify they are exempt on the agreement.

**7.C.3. Liability Insurance:**

Type of Insurance		Limits of Liability	
		Each Occurrence	Aggregate
<b>GENERAL LIABILITY</b>			
Comprehensive Form	Bodily Injury	\$2,000,000	\$4,000,000
Premises – Operations	Property Damage	\$2,000,000	\$4,000,000
Products & Completed Operations		\$2,000,000	\$4,000,000
Contractual Liability		\$2,000,000	\$4,000,000
Contractors Pollution Liability		\$2,000,000	\$4,000,000
<b>AUTOMOBILE LIABILITY</b>			
Comprehensive Form	Bodily Injury (Each Person)	\$2,000,000	\$2,000,000
Owned	Bodily Injury (Each Accident)	\$2,000,000	\$2,000,000
Hired	Property Damage OR	\$2,000,000	\$2,000,000
Non-Owned	Bodily Injury & Property Damage	\$2,000,000	\$2,000,000
	Combined Single Limit		
<b>PROFESSIONAL LIABILITY</b>			
		\$2,000,000	\$2,000,000
<b>EXCESS LIABILITY</b>			
Umbrella Form	Bodily Injury / Property Damage	\$5,000,000	
	Combined		
<b>WORKER'S COMPENSATION</b>			
	Per Oregon Revised Statues	Per Oregon Revised Statues	

EMPLOYER LIABILITY		\$1,000,000	
OTHER			
Builder's All Risk	Amount of Guaranteed Maximum Price		
Errors and Omissions (Professional Liability)		\$2,000,000	

- 7.C.4. Additional Insured: The liability insurance coverage required for performance of this Contract shall include the Owner and its officers, agents and employees, as Additional Insureds but only with respect to the Contractor's activities to be performed under this Contract.
- 7.C.5. Notice of Cancellation or Change: There shall be no cancellation, material change, potential exhaustion of aggregate limits or intent not to renew insurance coverages without thirty (30) days written notice from the Contractor or its insurer(s) to the Owner. Any failure to comply with the reporting provisions of this insurance, except for the potential exhaustion of aggregate limits, shall not affect the coverages provided to the Owner and its officers, agents and employees.
- 7.C.6. Certificate(s) of Insurance: As evidence of the insurance coverage required by this Contract, the Contractor shall furnish certificate(s) of insurance to the Owner prior to its issuance of a Notice to Proceed. The certificate(s) will specify all of the parties who are Additional Insureds or Loss Payees.
- 7.C.6.a. Insurance coverage required under this Contract shall be obtained from insurance companies or entities acceptable to the Owner that are allowed to provide such insurance under Oregon law. Eligible insurers include admitted insurers that have been issued a certificate of authority from the Oregon Department of Consumer and Business Services authorizing them to do an insurance business in the state of Oregon, and certain non-admitted surplus lines insurers that satisfy the requirements of applicable Oregon law and are approved by the Owner.
- 7.C.6.b. To the extent Certificates of Insurance contain words to the effect that Contractor shall "endeavor to send notice of cancellation" or similar language, Contractor shall require its insurer to send such notice by making sure that the words "endeavor to" or similar words are removed from the Certificate.
- 7.C.6.c. The Contractor shall be financially responsible for all deductibles, self-insured retentions and/or self-insurance included hereunder. Any deductible, self-insured retention and/or self-insurance in excess of \$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.

#### 7.D. WAIVER OF SUBROGATION

To the extent permitted by law, it is agreed that Contractor's insurance company waives any right of subrogation against Owner which may arise by any reason under this Contract.

### 8. SCHEDULE OF WORK

#### 8.A. CONTRACT TIME

- 8.A.1. Time is of the essence on this Contract. The Contractor shall at all times carry on the Work diligently, without delay and punctually fulfill all requirements herein. Contractor shall commence work upon written issuance of 'Notice to Proceed' by the Owner which will commence the Contract Time.



- 8.A.2. Dates of Substantial and Final Completion. Contractor shall achieve Substantial Completion of the entire Work not later than the date shown on the Contract agreement, subject to adjustments of the Contract Time as provided in any Change Orders or Amendments to the Contract. Contractor shall achieve Final Completion of the entire Work not later than the date shown on the Contract, subject to adjustments of this Contract Time as provided in the Contract Documents.
- 8.A.3. 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 4.A.6.h and shall be subject to the Change Order process of Section 4.A.
- 8.A.4. Failure to complete the Work within the stipulated Contract Time may result in delay damages and Owner assessment of liquidated damages or other remedies as set forth in the Contract. See Article 5.5 of Owner Contract.
- 8.A.5. The Owner shall not waive any rights under the Contract by permitting the Contractor to continue or complete the Work or any part of it after the date described in Section 8.A.2 above.

**8.B. SCHEDULE**

- 8.B.1. Contractor shall provide, a detailed baseline schedule for review and acceptance by the Owner. The submitted schedule must illustrate Work by significant project components, significant labor trades, materials with long procurement lead times, broken down by project area, building and/or floor where applicable. The baseline schedule must indicate the date of Notice to Proceed, Substantial Completion and Final Completion.
- 8.B.2. Unless otherwise approved by the Owner’s Authorized Representative, each schedule item shall account for no greater than the proportion of the monetary value of the project or of the available Contract Time as provided in the table below.

If Contract Price is:	
\$0 – \$100,000	20%
\$100,000 - \$500,000	15%
\$500,000 - \$1,000,000	10%
Over \$1,000,000	5%

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

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

**8.C. PARTIAL OCCUPANCY OR USE**

- 8.C.1. The Owner may occupy or use any completed or partially completed portion of the Work at any stage, provided such occupancy or use is consented to by public authorities having jurisdiction

over the Work. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have reasonably accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, insurance or self-insurance, maintenance, heat, utilities, and damage to the Work, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents with respect to such portion of the Work.

8.C.2. Approval by the Contractor to partial Owner occupancy or use shall not be unreasonably withheld. Immediately prior to such partial occupancy or use, the Owner and Contractor shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work. Partial Owner occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

## **9. CORRECTION OF WORK**

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

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

### **9.B. WARRANTY WORK**

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

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

- 9.B.4. 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.
- 9.B.5. In addition to Contractor's warranty, manufacturer's warranties shall pass to the Owner and shall not take effect until affected Work has been accepted in writing by the Owner's Authorized Representative. Contractor shall collect and submit to Owner, as a condition to Final Payment, all standard and special warranties from Subcontractors, distributors, and manufacturers, and assign to Owner all rights under such warranties. All of the warranties above are in addition to, and not in lieu of, other remedies Owner may have, all of which are fully reserved by Owner.
- 9.B.6. The one-(1) year period for correction of Work shall be extended with respect to portions of Work performed after Substantial Completion by the period of time between Substantial Completion and the actual performance of the Work, and shall be extended by corrective Work performed by the Contractor pursuant to this Section, as to the Work corrected. The Contractor shall remove from the site portions of the Work which are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.
- 9.B.7. Nothing contained in this Section 9.B shall be construed to establish a period of limitation with respect to other obligations which the Contractor might have under the Contract Documents. Establishment of the period for correction of Work as described in this Section 9.B relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.
- 9.B.8. If the Owner prefers to accept Work which is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Price will be reduced as appropriate and equitable as set forth by Change Order Section 4.

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

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

- 10.A.1. The Owner and/or the Owner's Authorized Representative have the authority to suspend portions or stop all of the Work due to any of the following causes:
  - 10.A.1.a. Failure of the Contractor to correct unsafe conditions;
  - 10.A.1.b. Failure of the Contractor to carry out any provision of the Contract;
  - 10.A.1.c. Failure of the Contractor to carry out orders;
  - 10.A.1.d. Failure to comply with permit requirements and inspections;

- 10.A.1.e. Conditions, in the opinion of the Owner's Authorized Representative, which are unsuitable for performing the Work;
  - 10.A.1.f. Time required to investigate differing site conditions, perform any environmental investigation or work; or
  - 10.A.1.g. Any reason considered to be in the public interest.
- 10.A.2. The Owner shall notify Contractor and the Contractor's surety in writing of the effective date and time of the suspension or stop work and shall notify Contractor and its surety in writing to resume Work.

**10.B. CONTRACTOR'S RESPONSIBILITIES**

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

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

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

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

- 10.D.1. The Owner may, without prejudice to any other right or remedy, and after giving Contractor seven (7) days written notice and an opportunity to cure, terminate the Contract in whole or in part under the following conditions:
  - 10.D.1.a. If Contractor should, voluntarily or involuntarily, seek protection under the United States Bankruptcy Code and Contractor as debtor-in- possession or the Trustee for the estate fails to assume the Contract within a reasonable time;
  - 10.D.1.b. If Contractor should make a general assignment for the benefit of Contractor's creditors;
  - 10.D.1.c. If a receiver should be appointed on account of Contractor's insolvency;
  - 10.D.1.d. If Contractor should repeatedly refuse or fail to supply an adequate number of skilled workers or proper materials to carry on the Work as required by the Contract Documents, or otherwise fail to perform the Work in a timely manner;
  - 10.D.1.e. If Contractor should repeatedly fail to make prompt payment to Subcontractors or for material or labor, or should disregard laws, ordinances or the instructions of the Owner or the Owner's Authorized Representative; or
  - 10.D.1.f. If Contractor is otherwise in material breach of any part of the Contract.
- 10.D.2. At any time that any of the above occurs, Owner may exercise all rights and remedies available to Owner at law or in equity, and in addition, Owner may take possession of the premises and of all materials and appliances and finish the Work by whatever method it may deem expedient. In

such case, the Contractor shall not be entitled to receive further payment until the Work is completed. If the Owner's cost of finishing the Work exceeds the unpaid balance of the Contract Price, Contractor or surety shall pay the difference to the Owner.

#### **10.E. TERMINATION FOR CONVENIENCE**

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

#### **10.F. ACTION UPON TERMINATION**

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

### **11. CONTRACT CLOSE OUT**

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

#### **11.A. RECORD DOCUMENTS**

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

**11.B. OPERATION AND MAINTENANCE MANUALS**

- 11.B.1. As part of the Work for any operating systems, Contractor shall submit two completed operation and maintenance manuals ("O&M Manuals") for review by the Owner's Authorized Representative and Architect Engineer as part of project closeout. The O&M Manuals shall contain a complete set of all Submittals, all product data as required by the specifications, training information, phone list of consultants, manufacturers, installer and suppliers, manufacturer's printed data, record and shop drawings, schematic diagrams of systems, appropriate equipment indices, warranties etc. See Technical Specifications for additional details.
- 11.B.2. The Owner's Authorized Representative and Architect Engineer shall review and return one O&M Manual for any modifications or additions required. Prior to submission of its final pay request and release of retainage, Contractor shall deliver three (3) complete and approved sets of O&M Manuals to the Owner's Authorized Representative.

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

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

**11.D. COMPLETION NOTICES**

- 11.D.1. Contractor shall provide written request to Owner to issue notice of both Substantial Completion and Final Completion of Field Work. Both completion notices must be signed by the Contractor and the Owner to be valid. The Owner shall provide the final signature on the notices. The notices shall take effect on the date set forth on the notices.
- 11.D.2. Substantial Completion
  - 11.D.2.a. The certificate of Substantial Completion shall state the date of Substantial Completion, list of defective punch-list items, the responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and the time within which the Contractor shall finish all items on the punch-list accompanying the Certificate will be prepared by the Owner and signed by the Contractor and Owner.
  - 11.D.2.b. Reference Technical Specifications for Substantial Completion of a facility with operating systems (e.g., mechanical, electrical, HVAC) or other special Substantial Completion requirements.
  - 11.D.2.c. The certification of Substantial Completion shall not amount to a waiver of any claims by Owner.
- 11.D.3. Final Field Work Completion. Contractor will provide written notice to Owner's Authorized Representative that all punch-list items have been corrected and are ready for final inspection. Upon inspection and determination of satisfactory completion of all Work the Owner will issue a Certificate of Final Field Work Completion.
- 11.D.4. Final Acceptance. Upon approval of all closeout requirements, final payment for the Work and release of retainage, the Owner will issue a Certificate of Final Acceptance.

#### **11.E. TRAINING**

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

#### **11.F. EXTRA MATERIALS**

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

#### **11.G. ENVIRONMENTAL CLEAN-UP**

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

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

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

#### **11.I. OTHER CONTRACTOR RESPONSIBILITIES**

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

#### **11.J. SURVIVAL**

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

### **12. LEGAL RELATIONS & RESPONSIBILITIES**

#### **12.A. LAWS TO BE OBSERVED**

- 12.A.1. All sums due the State Unemployment Compensation Fund from the Contractor or any Subcontractor in connection with the performance of the Contract shall be promptly so paid.
- 12.A.2. Contractor certifies its compliance with the Oregon tax laws, in accordance with ORS 305.385.
- 12.A.3. In the performance of this Contract, the Contractor shall use, to the maximum extent economically feasible, recycled paper, materials and supplies.
- 12.A.4. In compliance with ORS 279C.525, Sections 12.B through 12.D 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:

**12.B. FEDERAL AGENCIES**

- 12.B.1. Agriculture, Department of
- 12.B.2. Forest Service Soil Conservation Service
- 12.B.3. Coast Guard
- 12.B.4. Defense, Department of
- 12.B.5. Army Corps of Engineers
- 12.B.6. Energy, Department of
- 12.B.7. Federal Energy Regulatory Commission
- 12.B.8. Environmental Protection Agency
- 12.B.9. Health and Human Services
- 12.B.10. Department of Housing and Urban Development
- 12.B.11. Department of Solar Energy and Energy Conservation Bank
- 12.B.12. Interior, Department of
- 12.B.13. Bureau of Land Management
- 12.B.14. Bureau of Indian Affairs
- 12.B.15. Bureau of Mines
- 12.B.16. Bureau of Reclamation
- 12.B.17. Geological Survey Minerals Management Service
- 12.B.18. U.S. Fish and Wildlife Service
- 12.B.19. Labor, Department of
- 12.B.20. Mine Safety and Health Administration
- 12.B.21. Occupation Safety and Health Administration
- 12.B.22. Transportation, Department of
- 12.B.23. Federal Highway Administration
- 12.B.24. Water Resources Council

**12.C. STATE AGENCIES**

- 12.C.1. Administrative Services, Department of
- 12.C.2. Agriculture, Department of
- 12.C.3. Soil and Water Conservation Commission
- 12.C.4. Columbia River Gorge Commission
- 12.C.5. Energy, Department of
- 12.C.6. Environmental Quality, Department of
- 12.C.7. Fish and Wildlife, Department of
- 12.C.8. Forestry, Department of
- 12.C.9. Geology and Mineral Industries, Department of
- 12.C.10. Human Resources, Department of
- 12.C.11. Consumer and Business Services, Department of
- 12.C.12. Land Conservation and Development Commission
- 12.C.13. Parks and Recreation, Department of
- 12.C.14. State Lands, Division of
- 12.C.15. Water Resources Department of

**12.D. LOCAL AGENCIES**

- 12.D.1. City Councils



- 12.D.2. County Courts
- 12.D.3. County Commissioner, Board of
- 12.D.4. Design Commissions
- 12.D.5. Historical Preservation Commission
- 12.D.6. Planning Commissions
- 12.D.7. Port Districts
- 12.D.8. Metropolitan Service Districts
- 12.D.9. County Service Districts
- 12.D.10. Sanitary Districts
- 12.D.11. Water Districts
- 12.D.12. Fire Protection Districts

End of  
GENERAL CONDITIONS  
FOR CONSTRUCTION CONTRACTS

ID	Task Name	Duration	Start	Finish	2023															
					2024				2025				2026				2027			
					Qtr 1	Qtr 2	Qtr 3	Qtr 4	Qtr 1	Qtr 2	Qtr 3	Qtr 4	Qtr 1	Qtr 2	Qtr 3	Qtr 4	Qtr 1	Qtr 2	Qtr 3	Qtr 4
0	<b>Deschutes Public Libraries Full Schedule</b>	<b>1530 days</b>	<b>Mon 3/8/21</b>	<b>Fri 1/15/27</b>	1/15															
1	<b>A/E Team Selection Process</b>	<b>100 days</b>	<b>Mon 3/8/21</b>	<b>Fri 7/23/21</b>																
62	<b>CMGC Team Selection Process to Contract for Each WF</b>	<b>620 days</b>	<b>Mon 6/7/21</b>	<b>Fri 10/20/23</b>																
63	<b>Develop Findings for Exemption Request (ER)</b>	<b>16 days</b>	<b>Mon 6/7/21</b>	<b>Mon 6/28/21</b>																
67	<b>Publish/Post public Notice Statewide (14 Days Prior</b>	<b>12 days</b>	<b>Tue 6/29/21</b>	<b>Wed 7/14/21</b>																
73	<b>RFP Production - Develop solicitation Documents</b>	<b>52 days</b>	<b>Mon 6/7/21</b>	<b>Tue 8/17/21</b>																
82	<b>Manage Solicitation -Work Package RFP to Contract</b>	<b>568 days</b>	<b>Wed 8/18/21</b>	<b>Fri 10/20/23</b>																
83	<b>WP1 Steven's Ranch Library RFP</b>	<b>53 days</b>	<b>Wed 8/18/21</b>	<b>Fri 10/29/21</b>																
105	<b>WP2 Redmond Library RFP</b>	<b>53 days</b>	<b>Wed 8/18/21</b>	<b>Fri 10/29/21</b>																
127	<b>WP3 Downtown Bend Library RFP</b>	<b>75 days</b>	<b>Mon 7/10/23</b>	<b>Fri 10/20/23</b>																
150	<b>WP4 Sunriver, Sisters, La Pine &amp; East Bend</b>	<b>55 days</b>	<b>Mon 11/1/21</b>	<b>Fri 1/14/22</b>																
172	<b>Finance</b>	<b>804 days</b>	<b>Tue 4/13/21</b>	<b>Mon 5/13/24</b>	5/13															
177	<b>Public Outreach</b>	<b>1460 days</b>	<b>Mon 3/8/21</b>	<b>Fri 10/9/26</b>	10/9															
194	<b>Prime Contracts</b>	<b>1059 days</b>	<b>Mon 7/26/21</b>	<b>Thu 8/14/25</b>	8/14															
204	<b>Steven's Ranch Library</b>	<b>664 days</b>	<b>Mon 3/8/21</b>	<b>Thu 9/21/23</b>																
299	<b>Steven's Ranch Library</b>	<b>1025 days</b>	<b>Mon 3/21/22</b>	<b>Fri 2/20/26</b>	2/20															
494	<b>Downtown Bend</b>	<b>1424 days</b>	<b>Tue 8/3/21</b>	<b>Fri 1/15/27</b>	1/15															
495	<b>Design/Permitting</b>	<b>89 days</b>	<b>Tue 8/3/21</b>	<b>Fri 12/3/21</b>																
496	Concept Planning and Programming	40 days	Tue 8/3/21	Mon 9/27/21																
497	DPL Concept Approval	1 day	Fri 10/29/21	Fri 10/29/21																

Project: Deschutes Public Libraries Full Schedule  
 Print Date: Mon 1/22/24

Task		Project Summary		Inactive Milestone		Manual Summary Rollup		Deadline	
Split		External Tasks		Inactive Summary		Manual Summary		Progress	
Milestone		External Milestone		Manual Task		Start-only		Manual Progress	
Summary		Inactive Task		Duration-only		Finish-only			

ID	Task Name	Duration	Start	Finish	2023				2024				2025				2026						
					Qtr 1	Qtr 2	Qtr 3	Qtr 4	Qtr 1	Qtr 2	Qtr 3	Qtr 4	Qtr 1	Qtr 2	Qtr 3	Qtr 4	Qtr 1	Qtr 2	Qtr 3	Qtr 4			
498	Prepare Estimate	15 days	Mon 11/1/21	Fri 11/19/21																			
499	Review Estimate	5 days	Mon 11/22/21	Fri 11/26/21																			
500	Estimate Reconciliation	5 days	Mon 11/29/21	Fri 12/3/21																			
501	<b>WP3 Downtown Bend Library RFP</b>	<b>293 days</b>	<b>Mon 1/1/24</b>	<b>Wed 2/12/25</b>																			
502	<b>RFP Published to Receipt</b>	<b>32 days</b>	<b>Mon 1/1/24</b>	<b>Tue 2/13/24</b>																			
503	RFP Tune	15 days	Mon 1/1/24	Fri 1/19/24																			
504	Publish RFP to Public Notice/ Website	2 days	Mon 1/22/24	Tue 1/23/24																			
505	CMGC Proposal Prep	16 days	Mon 1/22/24	Mon 2/12/24																			
506	Mandatory Prebid Conference	1 day	Thu 2/1/24	Thu 2/1/24																			
507	Clarification and Questions Deadline	1 day	Fri 2/2/24	Fri 2/2/24																			
508	RFP Last Addendum issued	2 days	Mon 2/5/24	Tue 2/6/24																			
509	RFP Due Date	1 day	Tue 2/13/24	Tue 2/13/24																			
510	<b>Receive and Open Proposals</b>	<b>1 day</b>	<b>Tue 2/13/24</b>	<b>Tue 2/13/24</b>																			
511	Process and Upload	1 day	Tue 2/13/24	Tue 2/13/24																			
512	<b>Evaluate Proposals</b>	<b>21 days</b>	<b>Wed 2/14/24</b>	<b>Wed 3/13/24</b>																			
513	Evaluation & Review	4 days	Wed 2/14/24	Mon 2/19/24																			
514	Interviews	4 days	Tue 2/20/24	Fri 2/23/24																			
515	Selection Recommendations of CM-GC Team	5 days	Mon 2/26/24	Fri 3/1/24																			
516	Issue Summary to Board	2 days	Mon 3/4/24	Tue 3/5/24																			
517	Board Meeting	0 days	Wed 3/13/24	Wed 3/13/24																			

Project: Deschutes Public Libraries Full Schedule  
 Print Date: Mon 1/22/24

Task		Project Summary		Inactive Milestone		Manual Summary Rollup		Deadline	
Split		External Tasks		Inactive Summary		Manual Summary		Progress	
Milestone		External Milestone		Manual Task		Start-only		Manual Progress	
Summary		Inactive Task		Duration-only		Finish-only			

ID	Task Name	Duration	Start	Finish	2023 2024 2025 2026															
					Qtr 1	Qtr 2	Qtr 3	Qtr 4	Qtr 1	Qtr 2	Qtr 3	Qtr 4	Qtr 1	Qtr 2	Qtr 3	Qtr 4	Qtr 1			
518	<b>Plan and Conduct Negotiations</b>	<b>15 days</b>	<b>Mon 3/4/24</b>	<b>Fri 3/22/24</b>	3/4 3/22															
519	Appeal Period	5 days	Wed 3/6/24	Tue 3/12/24	3/6 Appeal Period															
520	Contract Preparation	10 days	Mon 3/4/24	Fri 3/15/24	3/4 Contract Preparation															
521	Contract Award Execution	5 days	Mon 3/18/24	Fri 3/22/24	3/18 Contract Award Execution															
522	<b>Notice to Proceed</b>	1 day	Fri 3/22/24	Fri 3/22/24	3/22 Notice to Proceed															
523	<b>Schematic Design (SD)</b>	<b>52 days</b>	<b>Wed 3/27/24</b>	<b>Thu 6/6/24</b>	3/27 6/6															
524	SD Document Production	21 days	Wed 3/27/24	Wed 4/24/24	3/27 SD Document Production															
525	SD Progress Set for QC	0 days	Wed 4/24/24	Wed 4/24/24	4/24															
526	QC Review	5 days	Thu 4/25/24	Wed 5/1/24	4/25 QC Review															
527	QC Updates	5 days	Thu 5/2/24	Wed 5/8/24	5/2 QC Updates															
528	100% SD Submission	0 days	Wed 5/8/24	Wed 5/8/24	5/8															
529	Owner Review & CMGC Review	15 days	Thu 5/9/24	Wed 5/29/24	5/9 Owner Review & CMGC Review															
530	SD Cost Estimate	15 days	Thu 5/9/24	Wed 5/29/24	5/9 SD Cost Estimate															
531	SD Estimate Submittal	0 days	Wed 5/29/24	Wed 5/29/24	5/29															
532	Estimate Reconciliation	5 days	Thu 5/30/24	Wed 6/5/24	5/30 Estimate Reconciliation															
533	Reconciliation/VE Meeting	1 day	Thu 6/6/24	Thu 6/6/24	6/6 Reconciliation/VE Meeting															
534	DPL Approval Required for DD Start	0 days	Wed 5/29/24	Wed 5/29/24	5/29															
535	<b>Design Development (DD)</b>	<b>86 days</b>	<b>Thu 5/30/24</b>	<b>Thu 9/26/24</b>	5/30 9/26															
536	50% Document Production	25 days	Thu 5/30/24	Wed 7/3/24	5/30 50% Document Production															
537	100% Document Production	30 days	Thu 7/4/24	Wed 8/14/24	7/4 100% Document Production															

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Task		Project Summary		Inactive Milestone		Manual Summary Rollup		Deadline	
Split		External Tasks		Inactive Summary		Manual Summary		Progress	
Milestone		External Milestone		Manual Task		Start-only		Manual Progress	
Summary		Inactive Task		Duration-only		Finish-only			

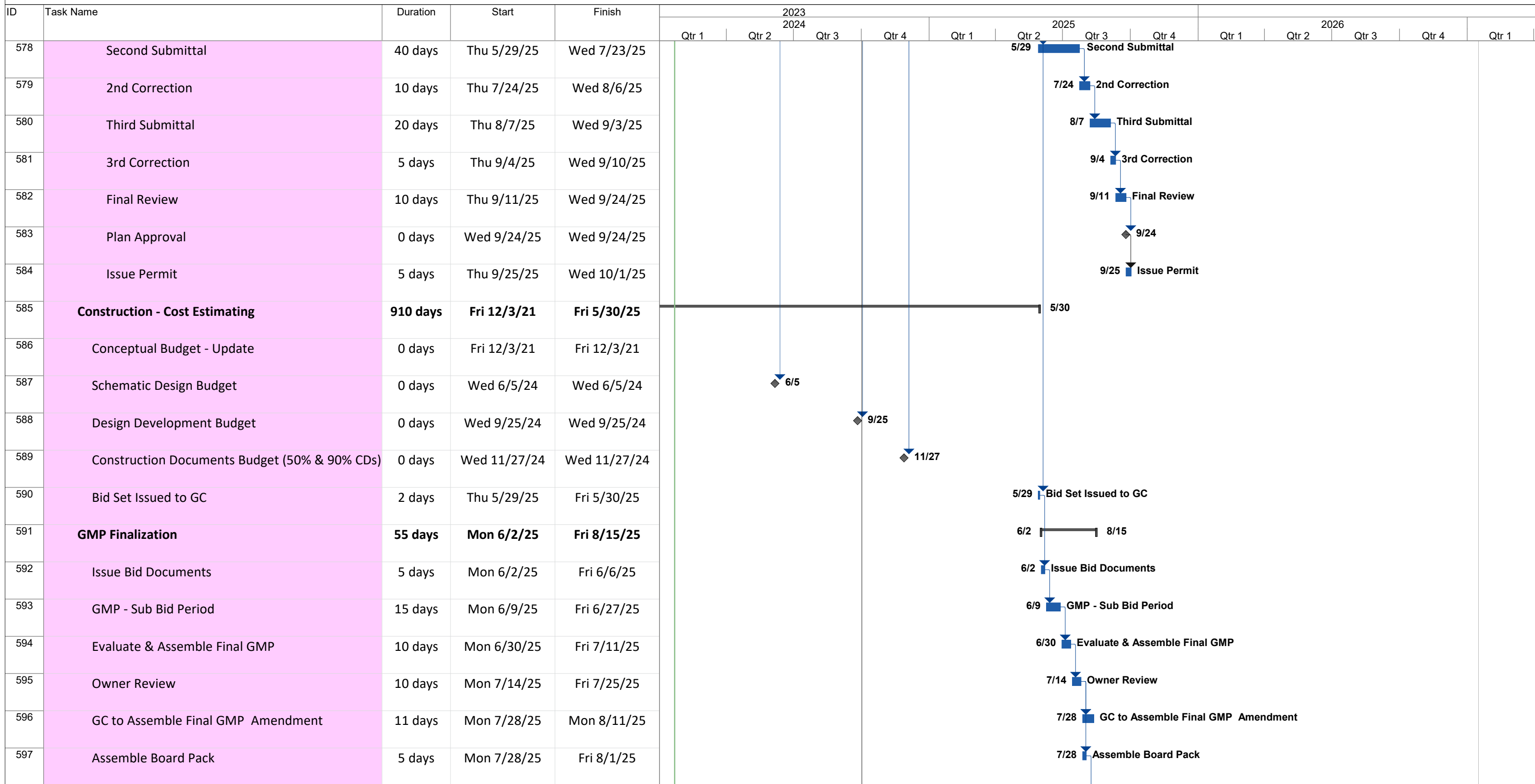
ID	Task Name	Duration	Start	Finish	2023				2024				2025				2026			
					Qtr 1	Qtr 2	Qtr 3	Qtr 4	Qtr 1	Qtr 2	Qtr 3	Qtr 4	Qtr 1	Qtr 2	Qtr 3	Qtr 4	Qtr 1	Qtr 2	Qtr 3	Qtr 4
538	100% DD Progress Set for QC	0 days	Wed 8/14/24	Wed 8/14/24																
539	100% QC Review	5 days	Thu 8/15/24	Wed 8/21/24																
540	100% QC Updates	5 days	Thu 8/22/24	Wed 8/28/24																
541	100% DD Submission	0 days	Wed 8/28/24	Wed 8/28/24																
542	Owner Review & CMGC Review	15 days	Thu 8/29/24	Wed 9/18/24																
543	DD Cost Estimate	15 days	Thu 8/29/24	Wed 9/18/24																
544	DD Estimate Submittal	0 days	Wed 9/18/24	Wed 9/18/24																
545	Estimate Reconciliation	5 days	Thu 9/19/24	Wed 9/25/24																
546	Reconciliation/VE Meeting	1 day	Thu 9/26/24	Thu 9/26/24																
547	DPL Approval required for CD Start	0 days	Wed 9/18/24	Wed 9/18/24																
548	<b>Construction Documents (CD)</b>	<b>105 days</b>	<b>Thu 9/19/24</b>	<b>Wed 2/12/25</b>																
549	<b>50% Construction Documents</b>	<b>51 days</b>	<b>Thu 9/19/24</b>	<b>Thu 11/28/24</b>																
550	50% CD Document Production	20 days	Thu 9/19/24	Wed 10/16/24																
551	50% CD Progress Set for QC	0 days	Wed 10/16/24	Wed 10/16/24																
552	50% QC Review	5 days	Thu 10/17/24	Wed 10/23/24																
553	50% QC Updates	5 days	Thu 10/24/24	Wed 10/30/24																
554	50% CD Submission	0 days	Wed 10/30/24	Wed 10/30/24																
555	50% Owner Review & CMGC Review	15 days	Thu 10/31/24	Wed 11/20/24																
556	50% CD Cost Estimate	15 days	Thu 10/31/24	Wed 11/20/24																
557	50% CD Estimate Submittal	0 days	Wed 11/20/24	Wed 11/20/24																

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	Split		External Tasks		Inactive Summary		Manual Summary		Progress
	Milestone		External Milestone		Manual Task		Start-only		Manual Progress
	Summary		Inactive Task		Duration-only		Finish-only		

ID	Task Name	Duration	Start	Finish	2023				2024				2025				2026											
					Qtr 1	Qtr 2	Qtr 3	Qtr 4	Qtr 1	Qtr 2	Qtr 3	Qtr 4	Qtr 1	Qtr 2	Qtr 3	Qtr 4	Qtr 1	Qtr 2	Qtr 3	Qtr 4								
558	50% Estimate Reconciliation	5 days	Thu 11/21/24	Wed 11/27/24																								
559	50% Reconciliation/VE Meeting	1 day	Thu 11/28/24	Thu 11/28/24																								
560	50% DPL Approval	0 days	Wed 11/20/24	Wed 11/20/24																								
561	<b>95% Construction Documents</b>	<b>45 days</b>	<b>Thu 11/21/24</b>	<b>Wed 1/22/25</b>																								
562	95% CD Document Production	20 days	Thu 11/21/24	Wed 12/18/24																								
563	95% CD Progress Set for QC	0 days	Wed 12/18/24	Wed 12/18/24																								
564	95% QC Review	5 days	Thu 12/19/24	Wed 12/25/24																								
565	95% QC Updates	5 days	Thu 12/26/24	Wed 1/1/25																								
566	95% CD Submission	0 days	Wed 1/1/25	Wed 1/1/25																								
567	95% Owner Review & CMGC Review	15 days	Thu 1/2/25	Wed 1/22/25																								
568	95% DPL Approval	0 days	Wed 1/22/25	Wed 1/22/25																								
569	<b>100% Construction Documents</b>	<b>15 days</b>	<b>Thu 1/23/25</b>	<b>Wed 2/12/25</b>																								
570	100% CD Document Production	10 days	Thu 1/23/25	Wed 2/5/25																								
571	100% QC Review	2 days	Thu 2/6/25	Fri 2/7/25																								
572	100% QC Updates	3 days	Mon 2/10/25	Wed 2/12/25																								
573	100% CD Submittal	0 days	Wed 2/12/25	Wed 2/12/25																								
574	<b>Plan Check and Review</b>	<b>165 days</b>	<b>Thu 2/13/25</b>	<b>Wed 10/1/25</b>																								
575	<b>Full Building Permit - Building and Onsite Imp.</b>	<b>165 days</b>	<b>Thu 2/13/25</b>	<b>Wed 10/1/25</b>																								
576	First Submittal	60 days	Thu 2/13/25	Wed 5/7/25																								
577	1st Correction	15 days	Thu 5/8/25	Wed 5/28/25																								

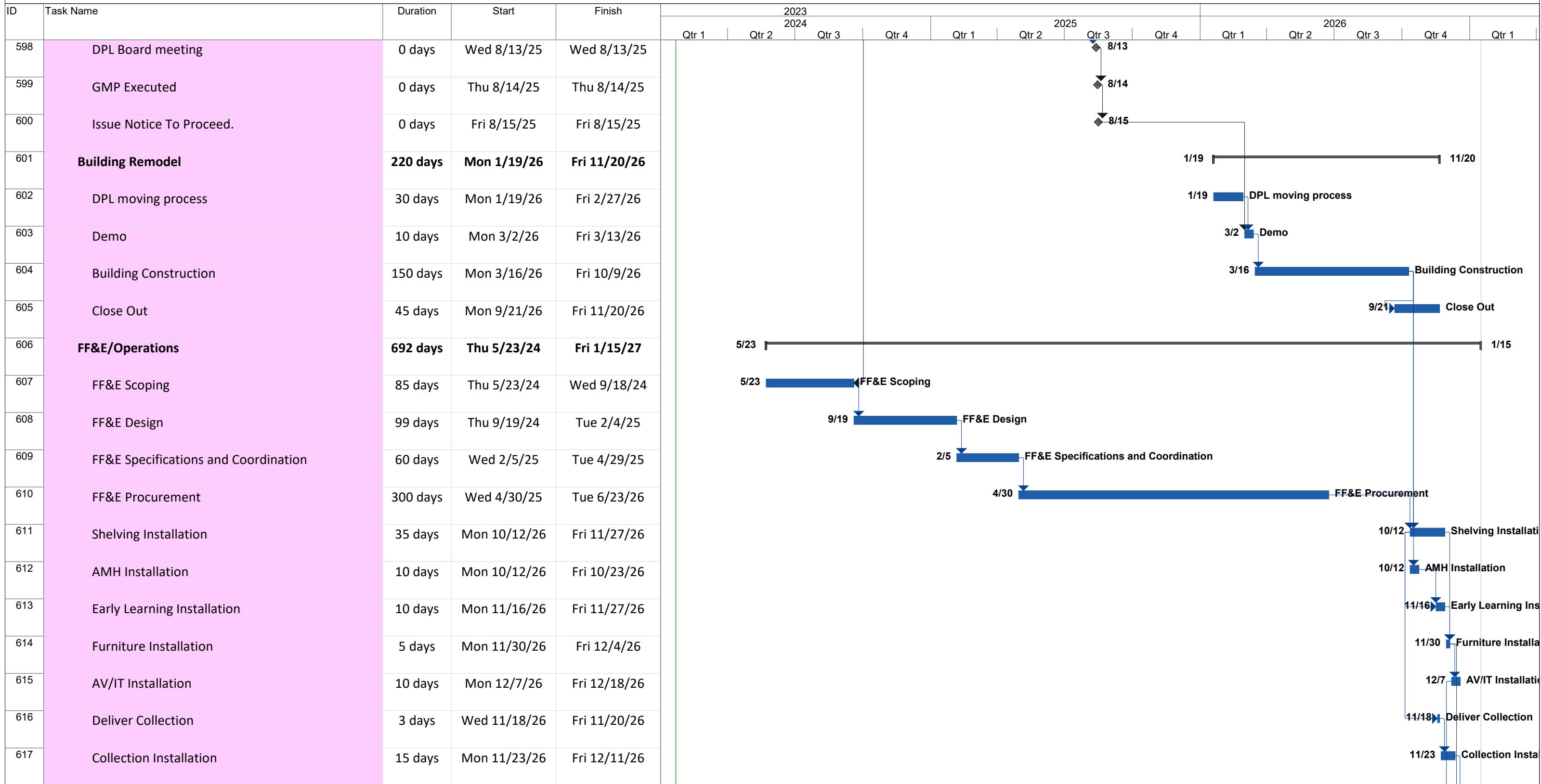
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Task	Project Summary	Inactive Milestone	Manual Summary Rollup	Deadline	↓
Split	External Tasks	Inactive Summary	Manual Summary	Progress	
Milestone	External Milestone	Manual Task	Start-only	Manual Progress	
Summary	Inactive Task	Duration-only	Finish-only		



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Task		Project Summary		Inactive Milestone		Manual Summary Rollup		Deadline	
Split		External Tasks		Inactive Summary		Manual Summary		Progress	
Milestone		External Milestone		Manual Task		Start-only		Manual Progress	
Summary		Inactive Task		Duration-only		Finish-only			



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Task		Project Summary		Inactive Milestone		Manual Summary Rollup		Deadline	
Split		External Tasks		Inactive Summary		Manual Summary		Progress	
Milestone		External Milestone		Manual Task		Start-only		Manual Progress	
Summary		Inactive Task		Duration-only		Finish-only			



ID	Task Name	Duration	Start	Finish	2023 2024 2025 2026																	
					Qtr 1	Qtr 2	Qtr 3	Qtr 4	Qtr 1	Qtr 2	Qtr 3	Qtr 4	Qtr 1	Qtr 2	Qtr 3	Qtr 4						
618	Install RFID Equipment	5 days	Mon 12/14/26	Fri 12/18/26																		
619	Operations Move-in and Set-up	20 days	Mon 12/14/26	Fri 1/8/27																		
620	Downtown Bend Opening	5 days	Mon 1/11/27	Fri 1/15/27																		
621	New Redmond Library	828 days	Tue 8/3/21	Thu 10/3/24	10/3																	
767	Sunriver	754 days	Tue 8/3/21	Fri 6/21/24	6/21																	
887	Sisters	571 days	Tue 8/3/21	Tue 10/10/23																		
1000	La Pine	577 days	Tue 8/3/21	Wed 10/18/23																		
1109	East Bend	881 days	Tue 8/17/21	Tue 12/31/24	12/31																	

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Task		Project Summary		Inactive Milestone		Manual Summary Rollup		Deadline	
Split		External Tasks		Inactive Summary		Manual Summary		Progress	
Milestone		External Milestone		Manual Task		Start-only		Manual Progress	
Summary		Inactive Task		Duration-only		Finish-only			