

CITY OF REDMOND, OREGON

CM/GC CONSTRUCTION CONTRACT

This CM/GC Construction Contract (this "Contract") is made as of the Effective Date between City of Redmond ("City"), an Oregon municipal corporation, whose address is 411 SW 9th St., Redmond, Oregon 97756, and _____ ("Contractor"), an Oregon _____, whose address is _____.

Project:

Redmond Municipal Airport - Airport Terminal Building Project

Engineer is:

RS&H, Denver, Co

City's Authorized Representative:

Keith Witcosky, City Manager

Target GMP Range:

\$75,000,000.00 - \$90,000,000.00

TABLE OF CONTENTS

CM/GC CONSTRUCTION CONTRACT.....	1
1. DEFINITIONS.....	1
2. CONTRACT DOCUMENTS.....	1
3. CONTRACT WORK.....	1
4. RELATIONSHIP AND ROLES OF THE PARTIES.....	9
5. DATES OF COMMENCEMENT, SUBSTANTIAL AND FINAL COMPLETION.....	10
6. CONTRACT PRICE AND GMP.....	12
7. CHANGES IN THE WORK.....	17
8. COST OF THE WORK (To Be Reimbursed).....	18
9. COSTS EXCLUDED FROM COST OF THE WORK (Not to Be Reimbursed).....	21
10. DISCOUNTS, REBATES AND REFUNDS.....	22
11. SUBCONTRACTS AND OTHER CONTRACTS.....	22
12. ACCOUNTING RECORDS.....	28
13. PROGRESS PAYMENTS.....	28
14. FINAL PAYMENT.....	29
15. TERMINATION OR SUSPENSION.....	30
16. REPRESENTATIONS AND WARRANTIES.....	31
17. MISCELLANEOUS.....	32
General Conditions for Public Improvement Contracts	Exhibit A
Federal Contract Provisions	Exhibit B
Form of GMP Amendment	Exhibit C
Scope of Preconstruction Phase Services	Exhibit D
General Conditions and Cost of the Work Matrix	Exhibit E
Performance Bond Form	Exhibit F
Payment Bond Form	Exhibit G

AGREEMENT

City and Contractor (together, the "Parties"), in consideration of their mutual covenants and obligations contained in this Contract, agree as follows:

1. DEFINITIONS.

Unless defined elsewhere in this Contract, capitalized terms contained in this Contract have the meanings assigned to such terms in Section A of the General Conditions for Public Improvement Contracts attached as Exhibit A (the "General Conditions"). Words describing material or work which have well-known technical or trade meanings, unless otherwise specifically defined in the Contract Documents, will be construed in accordance with such well-known meanings, as recognized by architects, engineers, and tradesmen.

2. CONTRACT DOCUMENTS.

2.1 Contract Documents. In addition to this Contract, the Contract Documents include the following: the Request for Proposals, Instructions to Proposers, General Conditions, Federal Contract Provisions, Supplemental General Conditions, if any, Contractor's Proposal, Plans, Specifications, Amendments, and Change Orders.

2.2 Effective Date. The effective date of this Contract will be the date upon which this Contract is fully executed by the Parties. Contractor will commence work on receipt of City's Notice to Proceed with Preconstruction Phase Services.

2.3 Order of Precedence. The Contract Documents form the entire agreement between the Parties. Except as otherwise expressly provided in this Contract, the order of precedence of the Contract Documents is established in Section A.3 of the General Conditions, if there are inconsistent or conflicting terms among the Contract Documents.

3. CONTRACT WORK.

3.1 Preconstruction Phase Services. Contractor will provide all Preconstruction Phase Services described below on an ongoing basis in support of, and in conformance with, the time frames described in the RFP. Commencement of the Construction Phase will not excuse Contractor from completion of the Preconstruction Phase Services if such services have not been fully performed at the commencement of the Construction Phase. Preconstruction Phase Services will include all Construction Manager Services to be performed during the Preconstruction Phase, in a collaborative and proactive manner.

3.1.1 Every evaluation must also include a report of any apparent errors, omissions, or inconsistencies in the information obtained by Contractor from any source including, without limitation, City, the Architect/Engineer, or the Contractor's observations, together with Contractor's recommendations for resolving any apparent errors, omissions, or inconsistencies.

3.1.2 Contractor is expected to provide project cost estimates at each of the milestones at a minimum. Contractor will also be expected to provide continual cost estimating exercises during the design process for City to evaluate value-added and value-engineering options.

- 3.1.3** Contractor will provide the following services related to overall design and construction tasks:
- 3.1.3.1** Contractor will consult with, advise, assist, and provide recommendations to City and the Architect/Engineer on all aspects of the planning and design of the Work.
 - 3.1.3.2** Contractor will jointly schedule and attend regular meetings with the Architect/Engineer and City's Authorized Representative. Contractor will consult with City's Authorized Representative and the Architect/Engineer regarding site use and improvements, and the selection of materials, building systems and equipment.
 - 3.1.3.3** Contractor will provide recommendations on the following: constructability; minimizing adverse effects of labor or material shortages; time requirements for procurement, installation, and construction completion; and factors affecting construction costs including estimates of alternative designs or materials, preliminary budgets, and possible cost savings.
 - 3.1.3.4** Contractor will review in-progress design documents, including documents generally described in the industry as Schematic Design Documents, Design Development Documents, and Construction Documents and provide input and advice on constructability, alternative materials, and availability. Contractor will review these completed Schematic Design Documents, Design Development Documents, and Construction Documents and timely suggest modifications to the Architect/Engineer to improve completeness and clarity of the documents.
 - 3.1.3.5** Contractor will meet with RDM operations staff to understand how the current systems operate and the best means for tying into existing facilities to minimize disruptions to airport, airline and passenger operations. Each evaluation provided by Contractor will include site logistics requirements, including, without limitation, site access, temporary construction facilities, temporary power, excavated material storage, hoisting, lay-down, and staging areas. This activity includes review of record drawings and investigation of existing conditions at the Project site to ensure that the Contract Documents reflect the actual site conditions. If requested by City, Contractor will recommend and provide additional tests or investigations to verify existing conditions and/or capability of existing systems.
 - 3.1.3.6** Create a value analysis and value engineering ("VE/VA") tracking system which identifies each VE/VA proposal, provides a cost estimate of the savings to the Project if the proposal is accepted, indicates the date by which a decision must be made to incorporate the VE/VA proposal, indicates the current status of the VE/VA proposal and the team member with current action, and the date the Proposal was accepted or rejected.

3.1.4 Contractor will provide the following services related to the Project schedule:

3.1.4.1 Contractor will prepare, and periodically update, a preliminary Project schedule for City's Authorized Representative's and the Architect/Engineer's review and City's Authorized Representative's approval.

3.1.4.2 Contractor will coordinate and integrate the preliminary Project schedule with the services and activities of City, the Architect/Engineer and Contractor. As design proceeds, Contractor will 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, associated permits and City's occupancy requirements showing portions of the Project having occupancy priority, provided that the approved date(s) of Substantial Completion will not be modified without City's prior written approval. If preliminary Project schedule updates indicate that previously approved schedules may not be met, Contractor will make appropriate recommendations to City's Authorized Representative and the Architect/Engineer to bring the Project back within the previously approved schedules.

3.1.4.3 The Schedule must be a Critical Path Method (CPM) schedule developed using the latest version of Primavera P6. The schedule must list all major work packages with an appropriate critical path to complete the design, permitting, and construction. The schedule must be prepared within 30 days of Notice to Proceed and must be updated monthly with changes and progress reports and submitted with a monthly invoice in native file format and PDF. The schedule will include, without limitation, each specific Preconstruction Phase Services task identified in this Scope of Work.

3.1.5 Contractor will make recommendations to City's Authorized Representative and the Architect/Engineer 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, provisions for temporary facilities and overall benefits to City or the Project.

3.1.6 Contractor will provide the following services related to cost estimating:

3.1.6.1 Contractor will prepare, for review by City's Authorized Representative and the Architect/Engineer, and approval by City, a preliminary cost estimate utilizing area, volume, or similar conceptual estimating techniques.

3.1.6.2 When Schematic Design Documents have been prepared by the Architect/Engineer and approved by City, Contractor will prepare a more detailed estimate with supporting data for review by City's Authorized

Representative and the Architect/Engineer, and approval by City. During the preparation of the Design Development Documents, Contractor will update and refine this estimate at appropriate intervals agreed to by City, City's Authorized Representative, the Architect/Engineer and Contractor.

3.1.6.3 When Design Development Documents been prepared by the Architect/Engineer and approved by City, Contractor will prepare a more detailed estimate with supporting data for review by City's Authorized Representative and the Architect/Engineer, and approval by City. During the preparation of the Construction Documents, Contractor will update and refine this estimate at appropriate intervals agreed to by City, City's Authorized Representative, the Architect/Engineer and Contractor.

3.1.6.4 If any estimate submitted to City exceeds previously approved estimates or City's budget, Contractor will make appropriate recommendations to City's Authorized Representative and the Architect/Engineer to bring the Project back within the previously approved estimates or City's budget.

3.1.6.5 Contractor will notify City and the Architect/Engineer immediately if any construction cost estimate appears to exceed the construction budget.

3.1.6.6 Contractor will provide estimates for proposed alternatives throughout the Preconstruction Phase to assist in evaluation of alternatives.

3.1.6.7 Contractor otherwise will develop a GMP with a project budget of \$90,000,000 (inclusive of construction costs, contingencies and soft costs) and within City's schedule.

3.1.7 Contractor will perform the following services related to Subcontractors and suppliers:

3.1.7.1 Contractor will develop Subcontractor and supplier interest in the Project and will furnish to City's Authorized Representative and the Architect/Engineer a list of possible Subcontractors and suppliers, including suppliers who may furnish materials or equipment fabricated to a special design, and from whom Offers will be solicited for each principal portion of the Work. Contractor submission of such list is for information and discussion purposes only and not for prequalification of any Subcontractor or supplier. The receipt of such list will not require City, City's Authorized Representative, or the Architect/Engineer to investigate the qualifications of proposed Subcontractors and suppliers, nor will it waive the right of City or the Architect/Engineer to later object to or reject any proposed Subcontractor, supplier, or method of procurement.

3.1.7.2 Contractor will provide input to City and the Architect/Engineer regarding the current construction market bidding climate, status of key subcontract markets, and other economic conditions. Contractor will determine the division of the 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. Contractor will advise City on subcontracting opportunities for disadvantaged business enterprises, minority-owned businesses, women-owned businesses, emerging small businesses, or businesses that are owned by a service-disabled veterans.

3.1.8 Contractor will perform the following services related to construction safety:

3.1.8.1 Contractor will submit a Construction Safety & Phasing Plan (“CSPP”) outlining the processes and procedures that will be used to perform all aspects of the Work. A draft CSPP must be submitted within 30 days of the Design Development Documents submittal and a revised CSPP must be provided with each GMP submission. The CSPP will include, without limitation, the following:

- (I.) Demolition of existing features required to execute the Work.
- (II.) Plans and actions necessary to comply with environmental requirements and permits.
- (III.) Parking and storage requirements during construction.
- (IV.) Staging areas for construction equipment and material storage and use of and access to public roadways.
- (V.) Coordination of Work and communication of construction activities with the public, including utility disruptions.
- (VI.) Coordination of Work and construction activities by other contractors and subcontractors.
- (VII.) Protection of private and public properties (including properties adjacent to the Project site).
- (VIII.) Temporary facilities to maintain terminal operations (baggage belts, covered passenger walkways, temporary ramps and access, etc.).
- (IX.) Dust, dirt, and debris mitigation.
- (X.) Temporary erosion control.
- (XI.) Noise minimization during construction.
- (XII.) Storm water drainage management.
- (XIII.) Vibration control and monitoring.
- (XIV.) Temporary facilities.
- (XV.) Third-party agreements with utilities and other public entities and/or

property owners.

- (XVI.) Temporary shutdowns and related durations.
- (XVII.) Emergency vehicle provisions.
- (XVIII.) Maintenance of Project site access.
- (XIX.) Traffic control, maintenance of all construction and detour signage.
- (XX.) Public and worker safety protection.
- (XXI.) Security and maintenance of construction work zones.
- (XXII.) Permitting.
- (XXIII.) Maintaining full airline operations during construction.
- (XXIV.) Ensuring safety and security compliance when coordinating construction activities with airport operations per the FAA.

3.1.9 Contractor will recommend to City's Authorized Representative and the Architect/Engineer a schedule for procurement of long-lead time items as required to meet the Project schedule, which will be procured by Contractor upon execution of either a GMP Amendment or Early Work Amendment covering such procurement, and approval of such schedule by City's Authorized Representative. Contractor will expedite the delivery of long lead-time items.

3.1.10 Contractor will work with City to identify critical elements of the Work that may require special procurement processes, such as prequalification of Subcontractors or suppliers or alternative procurement methods.

3.1.11 Contractor will work with City and the Architect/Engineer to maximize Project energy efficiency including, without limitation, providing estimating and VE support for City's analysis and application for energy-related incentive programs offered by local utilities.

3.2 Construction Phase Services.

3.2.1 Upon execution of an Early Work Amendment or GMP Amendment, Contractor will provide Construction Phase Services as required by 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 to furnish to City 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 will include all CM Services to be performed during the Construction Phase.

3.2.2 Notwithstanding any other references to Construction Phase Services in the

Contract, the Contract Price will include Construction Phase Services only if (i) the Parties execute a GMP Amendment, or (ii) the Parties execute an Early Work Amendment.

- 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 (the “Early Work Price”) to be stated in such Amendment, with such Amendment including any required City approvals. If the Early Work Price is a not-to-exceed budget or a not-to-exceed guaranteed maximum price, then Contractor will be obligated to perform the Early Work only to the extent that the Cost of the Work for the Early Work, together with the CM/GC Fee, does not exceed the Early Work Price; however, if Contractor performs Early Work with a cost in excess of the Early Work Price, Contractor will pay such excess cost without reimbursement. If one or more Early Work Amendments are executed, Contractor will diligently continue to work toward development of a GMP Amendment acceptable to City, which will incorporate the Early Work Amendments. If multiple Early Work Amendments are executed, the Early Work Price will be the total of amounts payable under all Early Work Amendments. If City thereafter terminates this Contract prior to execution of a GMP Amendment, the provisions of Section J.5 of the General Conditions will apply.
- 3.2.4** Prior to commencement of the Construction Phase, and in any event not later than mutual execution of the GMP Amendment, Contractor will provide to City, at Contractor’s sole cost and expense, a performance bond and a payment bond, each in the amount of the GMP. If an Early Work Amendment is executed, Contractor will provide such bonds in the amount of the Early Work Price. Contractor will provide City with additional or replacement bonds at the time of execution of any subsequent Early Work Amendment or GMP Amendment, in each case prior to supplying any labor or materials for the Work covered by the Amendment, and in each case in an amount sufficient to equal or exceed the total Early Work Price or the GMP, as the case may be. If a Scope Change that increases the GMP, Contractor will provide to City an additional or supplemental bond in the amount of such increase prior to performance of the additional Work. Performance and payment bonds may also be required of Subcontractors, in a sum equal to the subcontract price, as determined by City or as recommended by Contractor. The performance bond will be in the form required in Exhibit F. The payment bond will be in the form required in Exhibit G.
- 3.3 Construction Management Services.** Throughout the Preconstruction Phase and Construction Phase of the Project, Contractor will provide CM Services, generally consisting of coordinating and managing the construction process, in cooperation with City, City’s Authorized Representative, the Architect, and other designated Project consultants (the “Construction Principals”), including, but not limited to:
- 3.3.1** Preconstruction Phase Services;
- 3.3.2** Develop and deliver schedules, prepare construction estimates, perform constructability reviews, analyze alternative designs, study labor conditions, coordinate and communicate the activities of the Construction Principals

throughout the Construction Phase to all Construction Principals;

- 3.3.3** Continuously monitor the Project schedule and recommend adjustments to ensure completion of the Project in the most expeditious manner possible;
- 3.3.4** Work with City, City'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 City with the highest quality Project within the schedule and the GMP;
- 3.3.5** Provide value engineering services intended to improve the value received by City with respect to cost reduction or life cycle of the Project, including, but not limited to, the following: develop cost proposals, in the form of additions to or deductions from the GMP, including detailed documentation to support such adjustments, and submit such proposals to City for its approval. Actively participate in a formal value engineering study, which is anticipated to be held at the end of the Design Development phase;
- 3.3.6** Hold and conduct periodic meetings with City and the Architect to coordinate, update, and ensure timely progress of the Work;
- 3.3.7** Submit monthly written Project update reports to City's Authorized Representative that include:
 - (i) actual costs and progress for the reporting period as compared to the then-current cost estimate;
 - (ii) explanations of significant variations;
 - (iii) work completed;
 - (iv) work in progress;
 - (v) changes in the work;
 - (vi) identification of variances between actual and estimated costs; and
 - (vii) other information requested by City. The Contractor will provide oral or written updates to City as deemed appropriate by Contractor or as requested by City;
- 3.3.8** Maintain a daily log containing a record of weather, Subcontractors working on the site, number of workers, Work accomplished, problems encountered, safety violations and incidents of personal injury or property damage, and other similar relevant data as City may reasonably require. The log will be available to City and the Architect on request;
- 3.3.9** Develop and implement a system of cost control for the Work acceptable to City's Authorized Representative, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes;

- 3.3.10 Cooperate with any and all consultants hired by City;
- 3.3.11 At City's request, cooperate with or perform warranty and inspection Work for the Project through the expiration date of the applicable warranty period;
- 3.3.12 Assist City with Project start-up. Such start-up may occur in phases due to phased occupancy requirements.
- 3.3.13 Incorporate commissioning and inspection agents' activities into the Project schedule and coordinate Subcontractor participation in the commissioning and inspection process; and
- 3.3.14 Performing all other acts and supply all other things necessary to fully and properly perform and complete the Work as required by this Contract.

4. **RELATIONSHIP AND ROLES OF THE PARTIES**

- 4.1 **Independent Contractor.** Contractor is an independent contractor and not an officer, employee, or agent of City as those terms are used in ORS 30.265.
- 4.2 **Performance of Work.** Contractor will: cooperate with City's Authorized Representative and the Architect and utilize Contractor's professional skill, efforts, and judgment in furthering the interests of City; furnish efficient business administration and supervision; furnish an adequate supply of workers and materials; and perform the Work in conformance with the terms and conditions of the Contract Documents in an expeditious and economical manner consistent with City's best interests.
- 4.3 **Design Consultants.** City has a separate contract with the Architect related to the Project. Both Contractor and the Architect will be given direction by City through City's Authorized Representative. Architect may, from time to time, provide clarification, interpretation, and/or answer questions regarding the plans and specifications, but will not direct the work of Contractor. Contractor will support City's efforts to create a collaborative and cooperative relationship among all Construction Principals.
- 4.4 **Forms and Procedures.** City has developed or may develop procedures and forms for the administration and tracking of the Work. Contractor will abide by those procedures and use those forms.
- 4.5 **Contractor's Project Staff.** Contractor's Project staff will consist of the following personnel:
 - 4.5.1 **Project Executive and Project Manager:** _____ will be Contractor's Project Executive and _____ will be Contractor's Project Manager. One or both will supervise and coordinate all Construction Phase Services and Preconstruction Phase Services and participate in all meetings throughout the Project term unless otherwise directed by City. Contractor represents that each of the Project Manager and Assistant Project Manager have authority to execute Change Orders and Amendments on behalf of Contractor.
 - 4.5.2 **Job Superintendent:** If Construction Phase Services are requested and accepted by City, _____ will be Contractor's on-site job superintendent throughout the

Project term.

4.6 Key Persons. Contractor's personnel identified in Article 4.5, will be considered Key Persons. Contractor will not replace Key Persons during the Project without City's prior written consent, which will not be unreasonably withheld. Contractor will not request replacement of Key Persons unless they are terminated (voluntarily or involuntarily) from Contractor's employment or for other justifiable extenuating circumstances. Moving personnel to another project is not considered justifiable extenuating circumstances. If Contractor intends to substitute personnel, Contractor will submit a written request to City at least thirty (30) Days (or such shorter period as permitted by City) prior to the intended time of substitution. When replacements have been approved by City, Contractor will provide a transition period of at least ten (10) Business Days during which Contractor will concurrently use the original and replacement personnel on the Project at no added cost to City. Replacement personnel will be deemed Key Persons.

4.6.1 City may request the replacement of Contractor's personnel, including, but not limited to Key Persons, if City determines such personnel are working in an unsafe manner or are otherwise detrimental to the Project. If City requests that Contractor replace personnel, Contractor will comply with this request at no added cost to City. Upon receipt of City's request to replace personnel, Contractor will immediately remove the identified personnel and, in the case of Key Persons, provide City with replacement candidates to be approved by City.

5. DATES 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, City will issue a Notice to Proceed based on the below preliminary schedule:

- Preconstruction services phase: April 2023 – October 2023
- Early Work/Procurement Amendment (if required): Starting December 2023
- Construction Phase Services (GMP) Packages: Starting March 2024

5.2 Completion of Project.

5.2.1 Contractor will achieve Substantial Completion of the entire Work no later than _____ and will achieve Final Completion no later than thirty (30) Days after the earlier of (i) Substantial Completion of the entire Work, or (ii) the required date for Substantial Completion identified in the GMP Amendment. Substantial Completion of facilities with operating systems occurs only after thirty (30) continuous Days of successful, trouble-free operation of the operating systems as provided in Section K.4.2 of the General Conditions.

5.2.2 Contractor will provide City no less than ten (10) days' prior written notice when Contractor reasonably determines that the Work is Substantially Completed (the "Substantial Completion Notice"). No later than twenty (20) days after Contractor issues the Substantial Completion Notice, Contractor and City will complete a joint

physical inspection of the Project to identify any aspect of the Work that has not been completed in accordance with the Contract Documents (the "Punch List Items"). If City identifies any Punch List Items, Contractor will complete the Punch List Items no later than thirty (30) days after City's issuance of written notice of the Punch List Items.

- 5.2.3** If and when City determines that the Work is Substantially Complete, Contractor will prepare (with Owner's cooperation and assistance) a proposed Certificate of Substantial Completion, which Certificate of Substantial Completion will be subject to Owner's review and approval. Once approved and signed by both parties, the final Certificate of Substantial Completion will establish the Substantial Completion Date. Warranties required under the Contract Documents will commence on the Substantial Completion Date unless otherwise provided in the Certificate of 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 D.2 of the General Conditions, timely completion of the Work is essential to the success of the Project. City will grant approval for a Contract Time extension only as a last resort. Contractor will make every effort to recover "lost" time.
- 5.5** **Liquidated Damages.** Contractor acknowledges that City will sustain damages as a result of Contractor's failure to substantially complete the Project in accordance with the Contract Documents. These damages may include, but are not limited to, inability to use the Project and all related facilities ("Loss of Use"); delay costs for completion of portions of the Project or related projects to be constructed by City or City's separate contractors; or costs of extended services of City's Project management staff, Architects, any separate contractors and consultants, and other performing work or services related to the Project. In consideration of the factors set forth in this Article 5.5, Contractor acknowledges and agrees that time is of the essence in Contractor's performance of the Work in accordance with the agreed date of commencement of the Work, the agreed dates of Substantial Completion and Final Completion of the Work, and the Project Schedule. Contractor and the City acknowledge that the actual amount of damages would be difficult 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** Contractor will pay City liquidated damages in the amount of \$5,000.00 (the "LD Amount") for each full or partial day of delay beyond the required date of Substantial Completion. For each full or partial day that the delay to timely obtain Substantial Completion exceeds ten (10) days, the LD Amount will be \$10,000.00; for each full or partial day that the delay to timely obtain Substantial Completion exceeds twenty (20) days, the LD Amount will be \$15,000.00; for each full or partial day that the delay to timely obtain Substantial Completion exceeds thirty (30) days, the LD Amount will be \$25,000.00.
- 5.5.2** City may deduct such sums from payments (amounts) City otherwise owes to Contractor under the Contract. If such deduction does not result in payment to City

of the assessed liquidated damages in full, Contractor will promptly pay any and all remaining sums due to City immediately upon demand.

- 5.5.3** The Parties agree that the liquidated damages agreed to in this Article 5.5 are a reasonable estimate of the actual delay damages for Loss of Use that the Parties anticipate as of the Effective Date, and that the payment of such liquidated damages is not intended to be a penalty or forfeiture. The Parties further acknowledge that these liquidated damages are meant to reimburse City only for Loss of Use damages. City reserves the right to claim other types of delay damages against Contractor, including, but not limited to, any other delay damages described in the Contract Documents.
- 5.5.4** Contractor will pay to City the liquidated damage sums set forth above for each day of delay or any fraction thereof.
- 5.5.5 Withholding of Liquidated Damages:** Owner may deduct liquidated damages prescribed in this section from any unpaid amounts then or thereafter due Construction Manager under the Contract for Construction and any liquidated damages not so deducted will be payable to Owner by Construction Manager upon demand by Owner plus interest from the date of demand at the maximum legal rate of interest until paid. Further, when Owner reasonably believes (a) that Architect's Substantial Completion will be inexcusably delayed; or (b) that Construction Manager will fail to achieve Final Completion by the Final Completion Date, Owner will be entitled, but not required, to withhold from any amounts otherwise due Construction Manager the daily amount specified for liquidated damages in this section and the GMP Amendment for each day of the anticipated unexcused delay. If and when Construction Manager overcomes the delay in timely achieving Architect's Substantial Completion or Final Completion, or any part thereof, for which Owner has withheld payment, Owner will release to Construction Manager only those funds withheld but no longer applicable, as liquidated damages, subject to the satisfaction of all other conditions precedent to release of such funds.

6. CONTRACT PRICE AND GMP.

- 6.1 Contract Price.** If a GMP Amendment or Early Work Amendment is executed, City will pay Contractor, as payment for the Work, an amount equal to the sum of the Preconstruction Fee, the Early Work Price, the CM/GC Fee, and the actual Cost of the Work performed (the "Contract Price"), but in no event exceeding the GMP.

The GMP will be determined in accordance with the formula set forth below and as described in Article 6.3. Contractor will pay all costs in excess of the GMP without reimbursement by City. Contractor is not entitled to any change in the GMP unless first authorized by City through Amendment or Change Order.

$$\text{Preconstruction Fee} + \text{CM/GC Fee} + \text{Estimated Cost of the Work (Est. COW)} = \text{GMP}$$

Cost Reimbursement	+	_____% of Est. COW (becomes lump sum)	+	Includes Contractors Contingency and Fixed Costs for GC Work, Bonds, and Insurance	=	\$
\$		Maximum	+	\$	+	\$

6.2 Preconstruction Fee. City will pay Contractor the Preconstruction Fee, up to a maximum amount of \$_____, for constructability review, value engineering, cost estimating, development of GMP, and all other Preconstruction Phase Services described in Article 3.1. If Contractor’s costs for providing the Preconstruction Phase Services exceed the maximum Preconstruction Fee, Contractor will pay such additional cost without reimbursement. Contractor will not be entitled to any CM/GC Fee upon the Preconstruction Fee. City will pay the Preconstruction Fee based on application for payments 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, City may reduce the GMP by the difference, or apply any portion of the maximum Preconstruction Fee to Construction Phase Services, (in which case the GMP will not be reduced by the portion so applied). Except to the extent the Parties otherwise expressly agree in the GMP Amendment, no Preconstruction Fee or other fee, compensation, or reimbursement will be payable to Contractor with respect to Preconstruction Phase 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” is a fixed dollar lump sum to be identified in the GMP Amendment, which will equal to ____% of the estimated Cost of the Work at the time the GMP is established. For the purpose of calculating the CM/GC Fee, the estimated Cost of the Work excludes the Preconstruction Fee, the CM/GC Fee itself, and any other cost or charge excluded by this Contract from calculation of the CM/GC Fee, but includes Allowances, selected alternates, the Fixed Cost for GC Work, and reasonable Contractor contingencies as designated in the GMP Supporting Documents. The CM/GC Fee is inclusive of profit, overhead, and all other indirect or non-reimbursable costs including, without limitation, Oregon’s Corporate Activity Tax. City will pay the CM/GC Fee ratably with each application for payment during the Construction Phase. In the case of Early Work for which the Early Work Price is a not-to-exceed budget or a not-to-exceed guaranteed maximum price, the CM/CG Fee will be the above percentage multiplied by the actual Cost of the Work for the Early Work, until such time as a GMP Amendment is executed, at which time such CM/GC Fee payments will be credited against the CM/GC Fee established in the GMP Amendment.

6.3.2 Notwithstanding any provision of Section D.1.3 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 will 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 resulting from such approved Amendment or Change Order. In addition, if the Contract is terminated for any reason prior to full completion of the Work (including, without limitation, termination during or

following performance of Early Work), the CM/GC Fee will be limited to the actual Cost of the Work for the Work completed and accepted at the time of termination multiplied by the percentage shown in Article 6.3.1. The CM/GC Fee will not be subject to adjustment for any other reason, including, without limitation, schedule extensions or adjustments, Project delays, unanticipated costs, or unforeseen conditions.

6.4 Determination of GMP.

- 6.4.1** Contractor will deliver a proposed GMP and GMP Supporting Documents to City at a time designated by City during the Preconstruction Phase. If any actual subcontract Offers are available at the time the GMP is being established, Contractor will 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, Contractor will provide for further development of the Plans and Specifications by the Architect that is consistent with, and reasonably inferable from, the Contract Documents in Contractor's proposed GMP. Such further development does not include such things as changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which, if required, will be incorporated by Change Order or Amendment with a corresponding GMP adjustment.
- 6.4.3** Contractor will submit a written statement of the GMP Supporting Documents with its GMP proposal, which will include:
- (a) a list of the Plans and Specifications, including all addenda, and the conditions of the Contract which were used in preparation of the GMP proposal;
 - (b) a list of Allowances and a statement of the basis for each;
 - (c) a list of the clarifications, assumptions, exclusions, conditions, unit prices, and alternates made by Contractor in the preparation of the GMP proposal to supplement the information contained in the Plans and Specifications;
 - (d) the proposed GMP, including a schedule of the estimated Cost of the Work organized by trade categories, Allowances, contingency, and all other items and associated fees that comprise the GMP; and
 - (e) the date of Substantial Completion upon which the proposed GMP is based, together with a schedule of the issuance dates for the Construction Documents upon which the date of Substantial Completion is based.
- 6.4.4** Contractor will meet with City and the Architect to review the GMP proposal and the GMP Supporting Documents. City or the Architect will promptly notify Contractor if they discover any inconsistencies or inaccuracies in the information presented. Contractor will then make appropriate adjustments to the GMP proposal, the GMP Supporting Documents, or both.
- 6.4.5** Prior to City's acceptance of Contractor's GMP proposal and issuance of a Notice to Proceed, Contractor will 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** City will 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. City will provide Contractor with revised Plans and Specifications in accordance with schedules agreed to by City, the Architect, and Contractor. Contractor will promptly notify the Architect and City if such revised Plans and Specifications are inconsistent with the agreed-upon assumptions and clarifications.
- 6.4.7** The estimated Cost of the Work will only include those sales, use, or similar excise taxes which are in effect at the time the GMP is established.
- 6.4.8** The estimated Cost of the Work will include Contractor's contingency, a sum established by Contractor for Contractor'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. With each application for payment, Contractor will itemize all costs to be taken from or added to this contingency.
- 6.4.9** Contractor will work with the Architect and City to identify and confirm components and systems not specifically shown on the Plans and Specifications but required for a complete, fully functional Project. City 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 and deliver the final Construction Documents to Contractor.
- 6.4.10** Notwithstanding the level of detail represented in the GMP Supporting Documents, the GMP Amendment will include a representation and warranty by Contractor that the GMP includes the entire cost of all components and systems required for a complete, fully functional Project.
- 6.5** **Failure to Furnish an Acceptable GMP.** If Contractor does not furnish a GMP acceptable to City within City's Target GMP Range, or if City determines at any time in its sole discretion that the Parties may fail to reach timely agreement on a GMP acceptable to City, City may terminate this Contract without liability, and Contractor will not receive additional compensation beyond the Preconstruction Fee payable under this Contract and sums due and payable under any Early Work Amendment. Termination under this provision will proceed under Section J.5 of the General Conditions as a termination for City's convenience. Contractor further agrees that City will 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 City's acceptance of the GMP, the Parties will execute a GMP Amendment in the form attached as Exhibit C. By its execution of a GMP Amendment for all or any given portion of the Work, Contractor represents and warrants that the Contract Price and Contract Time are reasonable for any and all Work to be provided or performed and any and all related or associated costs and expenses. Contractor further represents and warrants that Contractor has fully examined the Contract Documents, and the Project site, and is fully satisfied with the nature, quality,

restrictions, location, and character of the Project.

6.7 City Savings. If the Contract Price is less than the GMP, all savings will accrue to City.

6.8 Allowance Work.

6.8.1 Contractor will not perform any Allowance Work without prior execution by City of a Change Order approving the Specifications and costs for the Allowance Work .

6.8.2 City may apply any Allowance line items 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, Contractor will not perform any Allowance Work in excess of such amount until either;

(a) the Parties agree that the additional Allowance work will be performed within the then-current GMP or

(b) a GMP Amendment is executed to increase the GMP by the excess cost of the Allowance work.

6.8.4 The Contract Price will not include any Allowance items not identified in the GMP Amendment or the GMP Supporting Documents until such allowance item is reduced to a fixed price by Change Order or Amendment.

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

6.9 Reallocating Projected Cost Underruns after Bid (Offer) Buyout. As soon as possible after the awarding of the Work to the primary Subcontractors, Contractor will review projected costs and provide City with a buy-out status report showing any projected cost underruns, reconciling accepted Offers and other reasonably anticipated costs to the cost estimates used by Contractor to establish the GMP. Contractor will include with its report any underlying documentation requested by City used to develop or support such report. Contractor will also consider the reduced risk associated with known subcontracting costs, and the impact that reduced risk has on the amount of Contractor's Contingency. The Parties will negotiate in good faith to execute a Change Order transferring an appropriate portion of any projected cost underruns to a City-controlled contingency fund to be held within the GMP to pay for additional costs arising from;

(a) Any City-directed or approved changes to the Work,

(b) Schedule changes that would otherwise entitle Contractor to an increase in the GMP,

(c) Allowance items remaining after exhaustion of all Allowances,

- (d) Selection by City of more expensive alternates than those used for calculation of the GMP,
- (e) City selection of substitutions that increase the Cost of the Work, or
- (f) Any other costs which otherwise would entitle Contractor to an increase in the GMP. Any transfer of projected cost underruns from Contractor's contingency to a City controlled contingency fund will not affect Contractor's obligation to complete the Project within the GMP.

7. CHANGES IN THE WORK.

7.1 Price Adjustments. Adjustments to the estimated Cost of the Work required by changes in the Work will be determined by one of the methods listed in Section D 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 Contractor will 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, will be calculated pursuant to Articles 8 and 9 of this Contract, instead of being based on Contractor'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 will be limited to the Subcontractor's Direct Costs plus the supplemental mark-up provided in Section D of the General Conditions, and will 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 Contractor will review subsequent modifications to the Plans and Specifications as they are prepared to determine whether, in the opinion of Contractor, the modifications result in a Scope Change warranting an adjustment to the GMP.

7.2.2 Contractor-requested changes to the GMP will be initiated by Contractor's delivery of a GMP Change Request. Contractor will deliver any GMP Change Request to City's Authorized Representative and the Architect promptly after becoming aware of any Scope Change if, in Contractor's opinion, it constitutes grounds for adjustment of the GMP. Any GMP Change Request will include Contractor's proposal as to the appropriate GMP adjustment with respect to the Scope Change at issue.

7.2.3 Contractor will submit its GMP Change Requests as soon as possible, and Contractor will not be entitled to claim a GMP increase unless Contractor submits a GMP Change Request to City's Authorized Representative and to the Architect within the earlier of (a) seven (7) Days after Contractor 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 Contractor intends to claim a Scope Change; and (c) in any event, prior to Contractor's signing of a Change Order for the Scope Change.

- 7.2.4** City may, at any time, submit a GMP Change Request requesting a reduction of the GMP, which will include City's basis for such request, which may include, for example, reduction of Contractor's Contingency after further development of the Plans and Specifications that form the basis for the original GMP Amendment, or any unused Allowances.
- 7.2.5** Contractor will work with the Architect to reconcile all differences in its GMP Change Request with the Architect within seven (7) Days from the date of submission of the GMP Change Request. "Reconciled" means that Contractor and the 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. Contractor will submit the Reconciled GMP Change Request to City, which submission will be a condition to any Contractor claim for a GMP increase.
- 7.2.6** If the Reconciled GMP Change Request is not acceptable to City, Contractor agrees to work with City and the Architect to provide a GMP Change Request that is acceptable to City.
- 7.2.7** Contractor will, upon City's request, deliver two (2) copies of all records, calculations, drawings, and similar items related to a GMP Change Request to City and the Architect.
- 7.2.8** GMP increases, if any, will not exceed the increased Cost of the Work arising from the Scope Change (whether based on agreed-upon fixed pricing, or an increase in the estimated Cost of the Work based on cost-reimbursable pricing), Reconciled in accordance with this Article 7.2, 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 will be Reconciled in accordance with Section D of the General Conditions.
- 7.3** **Execution by City.** If the Architect is City's Authorized Representative, then notwithstanding any provision in the Contract to the contrary, the Architect has no authority to execute Change Orders or Amendments on behalf of City, and only duly authorized personnel of City may do so.

8. COST OF THE WORK

- 8.1** **Cost of the Work.** The term "Cost of the Work" will include only those Direct Costs necessarily and reasonably incurred by Contractor in the proper performance of the Work and specifically identified in this Article 8, but only to the extent that such Direct Costs are directly related to the Project. Such costs will be at rates not higher than the standard paid at the place of the Project except with the prior written consent of Owner

only after Construction Manager has provided sufficient support in writing that exceptional circumstances exist, which justify the payment of rates higher than the standard. The Cost of the Work will include only those items set forth below:

8.2 Labor Costs.

- 8.2.1** Wages of construction workers directly employed by Contractor to perform the construction of the Work at the site.
- 8.2.2** Wages and salaries of Contractor'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, or otherwise engaged on and off the site when specifically related to the Project, in each case under this Article 8.2.2 only with City's prior written approval, and only for that portion of their time directly required for the Work.
- 8.2.3** Fringe benefit costs paid or incurred by Contractor 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. Contractor's actual payment to Subcontractors pursuant to Contractor's contract with such Subcontractor for the Work on the Project. No amount paid by or payable to any such Subcontractor other than the fixed or cost reimbursement price of its subcontract will be included in the Cost of the Work, unless otherwise approved in writing by City.

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, will be delivered to City at the completion of the Work or, at City's option, will be sold by Contractor. Any sale will be commercially reasonable, and Contractor will provide an accounting for such a sale within fifteen (15) Days of the transaction. Net amounts realized, if any, from such sales will be credited to City 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 construction workers, which are provided by Contractor at the site and fully consumed in the performance of the Work; and less the salvage value of such items if not fully consumed, whether sold to others or retained by Contractor; provided that City, at City's option, may require that Contractor deliver to City (at no charge) at the end of the Project any of such items procured for this

Project. Costs for items delivered by Contractor to City will mean the fair market value for such items at the time of delivery. Contractor will charge no additional administrative or other mark-up for purchased items. Contractor will document all small tools purchased for the Project via invoices in monthly billing and will document the disposition of small tools which have an individual price that exceeds \$100. A copy of such disposition log will accompany the application for payment 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 Contractor at the site, whether rented from Contractor or others, and costs of transportation, installation, minor repairs and replacements, dismantling and removal thereof. Rates, and quantities of equipment rented, will be according to industry standards, will not exceed 100% of standard rates charged by dealers in the place of the Project in effect at the time of rental, will not exceed acquisition costs for each item rented, and, for individual items exceeding \$10,000, will be subject to City's prior approval. Contractor will deliver to City documentation supporting claimed rates from time to time at City's request. For all items rented or leased, Contractor will charge City only the rental charge incurred by Contractor with no additional administrative or other mark-up. Contractor will make efforts and use its best skills and judgment to procure equipment in the most expeditious and economical manner consistent with the interest of City. Efforts will include, but not be limited to, providing City with a rent/buy analysis so that City may elect for Contractor to procure the item in lieu of rental if the facility at issue is expected to be rented for six (6) months or longer. Such rent/buy analysis will include, where available, a leasing rate commensurate with the expected term of rental of the facility at issue.

8.5.3 Costs of removal of debris from the site.

8.5.4 Cost of 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 Contractor's personnel determined by City to be reasonable and necessary, at City approved rates, incurred while traveling in discharge of duties connected with the Work; provided, however, that mileage reimbursement will be at the then-current Internal Revenue Service rate. The Cost of the Work will not include expenses for travel of less than 40 miles one way to or from the Project site. Main office staff travel will not be reimbursed unless approved in advance by City. These travel costs will be reimbursed only to the extent allowed under City travel reimbursement guidelines applicable to City and only at approved City travel rates.

8.6 Other Included 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 commercial general liability, automobile and worker's compensation coverage which City does not consider Project specific), and payment and performance bonds as required by Section 3.2.4 of this Contract (but excluding

premiums for Subcontractor bonds unless authorized by City).

- 8.6.2** Sales, use or similar excise taxes, which will not include the Corporate Activity Tax, imposed by a governmental authority which are directly related to the Work and for which Contractor is liable.
 - 8.6.3** Fees and assessments for the building permit and for other permits, licenses and inspections for which Contractor is required to pay by the Contract Documents.
 - 8.6.4** Contractor deposits lost for causes other than Contractor's fault or negligence.
 - 8.6.5** Costs of drawings, Specifications and other documents required to complete the Work, except as provided by City or the Architect.
 - 8.6.6** Other costs incurred in the performance of the Work if and to the extent approved in advance in writing by City.
- 8.7** **Fixed Cost for General Conditions Work.** Contractor will be paid a fixed dollar lump sum for General Conditions Work to be identified in the GMP Amendment, including all labor, materials, and related direct and indirect costs. To the extent any General Conditions Work is otherwise described above in this Article 8, Contractor's compensation for the same is included in the Fixed Cost for GC Work and will not otherwise be included in the Cost of the Work. The Fixed Cost for GC Work, less 5% retainage thereon, will be paid in equal installments monthly over the number of months of the scheduled Construction Phase, commencing with the first progress billing after commencement of the Construction Phase. However, no adjustment in the amount payable for General Conditions Work will be made if the actual construction period is shorter or longer than the number of months scheduled for the Construction Phase, unless the construction period is extended because of a City-requested delay. Notwithstanding the provisions of this Article 8.7, City will reimburse Contractor for General Conditions Work items. Reimbursable General Conditions Work items are shown on the **General Conditions and Cost of the Work Matrix attached as Exhibit E.**

9. COSTS EXCLUDED FROM COST OF THE WORK

- 9.1** **Costs Excluded from Cost of the Work.** The following will not be included in the Cost of the Work:
 - 9.1.1** Salaries and other compensation of Contractor's personnel stationed at Contractor'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 Contractor'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** Contractor's capital expenses, including interest on Contractor'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 Contractor, 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 any repair work, correction of nonconforming or defective work, or warranty work.
- 9.1.9 Merit, safety, or other incentive payments, bonuses or awards, or any expenses in connection therewith, except as provided in Article 8.6.6.
- 9.1.10 Costs which are incurred by Contractor in taking action to prevent threatened damage, injury, or loss in case of an emergency affecting the safety of persons and property.
- 9.1.11 Fines and penalties.
- 9.1.12 Except for Early Work, the cost of Preconstruction Phase Services.
- 9.1.13 The cost of any General Conditions Work in excess of the Fixed Cost for GC Work.
- 9.1.14 Any costs in excess of the GMP.

10. DISCOUNTS, REBATES AND REFUNDS.

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

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, Contractor will subcontract the Work to Subcontractors other than Contractor and its Affiliates.
- 11.1.2 Contractor will comply with Oregon Administrative Rules (“OAR”) 137-046-0200 and OAR 137-046-0210 in all respects for the solicitation of disadvantaged business enterprises, minority-owned businesses, women-owned businesses, emerging small businesses, or businesses that are owned by service-disabled veterans. Compliance will include pass-through requirements for Subcontractor demonstrations of good faith efforts for all subcontract Offer packages, for which set goals will not be utilized.

11.1.2.1 DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION

COMMITMENT: The City of Redmond has established a Disadvantaged Business Enterprise (DBE) program in accordance with regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 26. To complete the work included in this contract, the Roberts Field-Redmond Municipal Airport anticipates that it will receive Federal financial assistance from DOT, and as a condition of receiving this assistance, has signed an assurance that it will comply with 49 CFR Part 26.

- Policy: It is the policy of the Department of Transportation that Disadvantaged Business Enterprises (DBE’s) as defined in 49 CFR Part 26 will have the maximum opportunity to participate in the performance of contracts financed in whole or in part with Federal funds under this agreement. Consequently, the DBE requirements of 49 CFR Part 26 apply to this agreement.
- The Project will include a Disadvantaged Business Enterprise (“DBE”) goal. Note that the Airport has an overall DBE goal for FY2022 and FY2023 of 2.71%, which includes both race neutral (.08%) and race conscious (2.63%) DBE goals. The selected contractor will be required to provide at least the minimum race conscious DBE goal percentage and encourage DBE participation in an effort to meet the DBE goal or perform and provide adequate good faith effort procedures in accordance with FAA DBE compliance procedures. A new DBE goal will be established for projects bid in FY2024-2026.
- Disadvantage Business Enterprises (DBE) must be registered as a DBE Firm in the State of Oregon to be counted as DBE participation. MBE, WBE, SDVBE, & ESB’s are not considered DBE unless they have the specific DBE certification.

11.1.3 Contractor will report to City on the results of the good faith efforts of compliance required in Article 11.1.2 following award of all subcontracts. Contractor will also submit quarterly reports to City listing Work contracted to date with disadvantaged business enterprises, minority-owned businesses, women-owned businesses, emerging small businesses, or businesses that are owned by service-disabled veterans.

11.2 Contractor’s Obligations under Subcontracts.

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

with or between Contractor and any such Subcontractor or supplier.

11.2.2 Contractor will include in each subcontract and require each Subcontractor to include in any lower tier subcontract, any provisions necessary to make all of the provisions of the Contract Documents, including the General Conditions, fully effective as applied to Subcontractors. Contractor will indemnify City for any additional cost based on a subcontractor claim which results from the failure of Contractor to incorporate the provisions of this Contract in each subcontract. Contractor will 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 City's prior approval, payments to Subcontractors will be subject to retainage of 5%. City and Contractor will 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 will be made by competitive Offers in a manner that will not encourage favoritism or substantially diminish competition. While not subject to the competitive procurement requirements of ORS Chapter 279C, the process will conform to the following procedures, in general compliance with the open and competitive nature of public procurement, taking into account industry subcontracting practices.

11.3.2 Contractor will submit to City's Authorized Representative its proposed procurement documents for review and comment before they are issued for solicitation. Contractor will consider and respond to all City comments regarding any proposed Offer packages. As Offers are received, Contractor will submit to City an Offer comparison in a mutually agreeable form together with any specific back-up requested by City. The competitive process used to award subcontracts by Contractor may be monitored by City's Authorized Representative; provided that such monitoring will not excuse Contractor from compliance with the subcontracting requirements of this Contract. Contractor will cooperate in all respects with City's monitoring. City's Authorized Representative will be advised in advance of and be given the opportunity to be present at Offer openings, and Contractor will provide City's Authorized Representative with a summary or abstract of all Offers in form acceptable to City's Authorized Representative, and copies of particular Offers if requested, prior to Contractor's selection of Offerors. Prior to opening Offers, Contractor agrees to disclose in writing to City 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 Contractor. In the event of any conflict between this Article 11.3 and Article 11.5 below, Article 11.5 will control.

11.3.3 The following minimum requirements apply to the subcontract solicitation process:

(a) Solicitations will be advertised at least twenty-one (21) Days prior to

opening in the Daily Journal of Commerce and at least one other newspaper specifically targeted to reach disadvantaged business enterprises, minority-owned businesses, women-owned businesses, emerging small businesses, or businesses that are owned by a service-disabled veterans. Contractor 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 City, all Offers will be written, and submitted to a specific location at a specific time. Contractor will timestamp all Offers as received. Contractor will require all Subcontractors to be qualified to perform the Work for this Project by being appropriately licensed with the State of Oregon Construction Contractors Board and, if applicable, by being listed on the City of Redmond Approved Contractors list for the specified construction work.
- (c) If fewer than three (3) Offers are submitted in response to any solicitation (inclusive of any Offer submitted by Contractor or its Affiliate), prior written approval by City will be required to accept the Offer.
- (d) Contractor may develop and implement a prequalification process for particular solicitations, followed by selection of successful Offers among those Offerors that Contractor determines meet the prequalification standards, with City's prior written approval of such prequalification process.
- (e) Contractor will comply, and require Subcontractor compliance with, State of Oregon Bureau of Labor & Industries prevailing wage rates as specified in the RFP.
- (f) City may, in its sole discretion, require Contractor to re-solicit for Offers based on the same or modified documents.
- (g) Contractor will review all Offers and will work with Offerors to clarify Offers, reduce exclusions, verify scope and quantities, and seek to minimize work subsequently awarded via the Change Order process.
- (h) Contractor 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 City will be entitled to inspect such documentation on request.
- (i) Contractor will determine the lowest Offer for each solicitation that meets Contractor's reasonable performance standards for the components of the Work at issue; provided that if Contractor determines it is unable to execute a suitable subcontract with such Offeror, Contractor may, with City's prior approval, execute a subcontract with the second-lowest Offeror pursuant to Article 11.3.4

below.

- 11.3.4** Under special circumstances, documented by written notice from Contractor to City and the Architect, and only with City's prior written authorization, Work may be subcontracted on other than a low-price basis, including without limitation, through competitive negotiation. As a condition to its authorization, City may require Contractor'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 City.
- 11.3.5** If Contractor proposes the award of a subcontract for any portion of the Work through a non-competitive process, Contractor must first provide a written justification for the need to use a non-competitive process and receive written approval from City prior to commencing any non-competitive selection process. Contractor's written justification must include an explanation of the Project circumstances that support a non-competitive Subcontractor selection process for a particular portion of the Work, including, but not limited to: existing emergency circumstances; Contractor's need to utilize a key Subcontractor member of Contractor's project team consistent with Contractor's Proposal; the need to meet other requirements specified in the Contract Documents; the continuation or expansion of an existing subcontract that was awarded through a competitive process, along with facts supporting the continuation or expansion of the subcontract; or a "sole source" justification. If requested by City, Contractor will provide an independent cost estimate for the portion of the Work that will be subcontracted through the proposed non-competitive process. Contractor will fully respond to any questions or comments submitted to Contractor by City.
- 11.3.6** Contractor will notify City in writing in advance before award of any proposed Subcontract, which notice will include summaries in a form acceptable to City of all Offers received for the subcontract at issue. City reserves the right to disapprove any proposed Subcontractors and suppliers, and any subcontract or supply contract awards, based on legal standards of responsibility. City will not unreasonably disapprove any proposed Subcontractor or supplier and increased costs due to City's disapproval will be cause for an increase in the GMP.
- 11.3.7** Contractor will notify all Offerors who submitted Offers for a particular subcontract of the selected Subcontractor in writing.
- 11.3.8** Except as otherwise required by law, Contractor's subcontracting records will not be considered public records; provided, however, that City and other authorized agencies of the State and Federal Government will retain the right to audit and monitor the subcontracting process in order to protect City's interests.

11.4 Contractor Field Work.

- 11.4.1** Contractor or its Affiliate may provide Contractor 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 Contractor or any Affiliate, including without limitation provision of any materials, equipment, or supplies, will be subject to the provisions of Article 11.5.

11.5 Subcontracting by Contractor.

11.5.1 Except to the extent otherwise approved in advance in writing by City's Authorized Representative, Contractor (or its Affiliates) may submit an Offer in accordance with Article 11.3 to perform Work if at least fifty percent (50%) of the labor for such Work is performed by Contractor's (or the Affiliate's, if applicable).

11.5.2 If Contractor or any of its Affiliates intends to submit an Offer for any portion of the Work to be awarded through a competitive process, Contractor will disclose such intent in all solicitation documents and advertisements for Offers required by Article 11.3.3, and will notify City in writing. All Offers submitted, including the Offer of Contractor or its Affiliate, will be delivered to City in a sealed envelope and publicly opened by City at an announced time, date, and place. The City will evaluate all Offers received in accordance with the criteria stated in the solicitation document as provided in Article 11.3.3 or Article 11.3.4, as applicable, for the portion of the Work to be awarded and provide notice to all Offerors of the Subcontractor selected following such evaluation. Subject to City's right to reject any or all Offers, the portion of the Work solicited will be awarded to the responsible bidder with the lowest responsive bid or the responsible proposer with the highest-ranked proposal.

11.5.3 Except as provided for in Article 11.4, Contractor may not self-perform any portion of the Work, or subcontract with an Affiliate, without competition from independent Subcontractors, unless Contractor provides, or had included in Contractor's Proposal, a detailed proposal for performance of a specified portion of the Work by Contractor or an Affiliate. If required by City, Contractor's proposal to perform the construction Work must be supported by at least one independent cost estimate prior to the Work being included in the Contract.

11.6 Unsuccessful Offerors. Upon written request by any Offeror not selected by Contractor to perform a particular subcontract, Contractor will hold a briefing meeting with the requesting Offeror(s), either individually or collectively if all Offerors for a particular subcontract, for the purposes of helping the Offeror better understand why the Offeror was not selected and how the Offeror's can improve its substantive qualifications or competitiveness. Contractor need only hold a briefing meeting if the written request is submitted within 60 Days after Contractor's notice of award for a particular subcontract. Contractor will set a briefing meeting within 45 Days of the Offeror's written request.

11.7 Protests. Contractor will include in the competitive process to award all subcontracts, a protest process for Subcontractors and suppliers that are competing Offerors, which process will be subject to approval by City. Contractor will be solely responsible for resolving the procurement protests of Subcontractors and suppliers. Any impacts to the schedule that result from a bid protest will be Contractor's responsibility. Contractor will indemnify, defend, and hold City harmless from and against any such procurement protests and resulting claims or litigation. Contractor will act as an independent

contractor, and not an agent of City, in the resolution of any procurement protest. The provisions of this Article 11 are solely for the benefit of City, and do not grant any rights or remedies (including third-party beneficiary rights) to any Offeror or other protester, in connection with any procurement protest or claim.

12. ACCOUNTING RECORDS.

- 12.1 Accounting; Audit Access.** Contractor will 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 will be satisfactory to City. City and City's representatives, including City's accountants and auditors, will be afforded reasonable and regular access to Contractor's records, books, correspondence, instructions, drawings, receipts, subcontracts, purchase orders, vouchers, memoranda and other data related to this Contract, and Contractor will preserve these for a period of three (3) years after final payment, or for such longer period as may be required by law.
- 12.2 Periodic and Final Audits.** City may, at its discretion, perform periodic audits of the Cost of the Work and any other reimbursable costs associated with the Project. City intends to conduct a final audit of reimbursable costs prior to the Contract closeout. Contractor will cooperate fully with City in the performance of such audits. Disputes over audit findings or conclusions will be subject to the process set forth in Article 14.4.

13. PROGRESS PAYMENTS.

- 13.1 Integration with the General Conditions.** The requirements of this Article 13 and Article 14 are in addition to, and not in lieu of, the requirements of Section E of the General Conditions. In the event of conflict between the provisions of Articles 13 and 14 and Section E, the provision more favorable to City will control. Without limitation, the provisions of Articles 13.3 and 13.4 will control over the corresponding provisions of Section E.2.5 of the General Conditions.
- 13.2 Progress Payments.** Based upon applications for payment submitted pursuant to Section E of the General Conditions, City will make progress payments on account of the Preconstruction Fee, Cost of the Work and associated CM/GC Fee, less five-percent (5%) retainage, to Contractor as provided below and elsewhere in the Contract Documents. A progress payment will not be considered acceptance or approval of any Work or waiver of any defects in the Work. City will place Retainage into an interest-bearing escrow account in accordance with ORS 279C.570(2).
- 13.3 Percentage of Completion.** In its applications for payment, Contractor will show the percentage of completion of each portion of the Work as of the end of the period covered by the application for payment. The percentage of completion will be the lesser of (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 Contractor on account of that portion of the Work for which Contractor 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 will be computed as follows:

- 13.4.1** 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 City of changes in the Work, amounts not in dispute will be included;
 - 13.4.2** Add that portion of the GMP properly allocable to materials and equipment delivered and suitably stored and otherwise in compliance with Section E.2.3 of the General Conditions;
 - 13.4.3** Add the CM/GC Fee. The portion of the CM/GC Fee payable will be an amount that bears the same ratio to the CM/GC Fee as sum of the amounts in Articles 13.4.1 and 13.4.2 bears to the estimated Cost of the Work described in Article 6.1, but in no event causing total CM/GC Fee payments to exceed the total CM/GC Fee;
 - 13.4.4** Subtract the aggregate of previous payments made by and retained by City;
 - 13.4.5** Subtract the shortfall, if any, indicated by the documentation required to substantiate prior applications for payment, or resulting from errors subsequently discovered by City in such documentation;
 - 13.4.6** Subtract any amounts for which City's Authorized Representative has withheld or nullified payment as provided in the Contract Documents; and
 - 13.4.7** Subtract five percent (5%) retainage on the entire progress payment.
- 13.5** **Withholding of Payments.** City may withhold all or a portion of any progress payment to Contractor if the Work performed by Contractor does not comply with the Contract Documents as determined by City.

14. FINAL PAYMENT.

- 14.1** **Final Payment Accounting.** Contractor will submit to City a final detailed accounting of the Cost of the Work together with Contractor's final application for payment after full completion of the Project, including any Punchlist tasks.
- 14.2** **Calculation of Final Payment.** The amount of the final payment will 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 Contractor's final accounting. Said sum will not exceed the GMP.
 - 14.2.2** Subtract amounts, if any, for which City's Authorized Representative withholds, in whole or in part, approval of payment.
 - 14.2.3** Subtract the aggregate of previous payments made by City to Contractor. If the aggregate of previous payments made by City exceeds the amount due Contractor, Contractor will reimburse the difference to City within thirty (30) Days with interest

at the rate applicable to City payments under the General Conditions.

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

14.4 Payment Disputes. If City's accountants report the Cost of the Work as substantiated by Contractor's final accounting to be less than claimed by Contractor or if City's Authorized Representative declines to approve any duly submitted payment request by Contractor, Contractor will be entitled to demand a review by City's highest contracting authority of the disputed amount. Such demand will be made by Contractor within thirty (30) Days after Contractor's receipt of a copy of the rejection of the application for payment; failure to demand additional review within this thirty (30) Day period will result in the substantiated amount reported by City's accountants becoming binding on Contractor. In addition, if City performs a subsequent audit of the Cost of the Work and determines any item therein to have been unsubstantiated or that Contractor was otherwise overpaid, Contractor will have thirty (30) Days after delivery of request for reimbursement by City to demand additional review by City's highest contracting authority; failure to make such demand within this thirty (30) Day period will result in the requested reimbursement becoming unconditionally due and payable by Contractor. If Contractor timely submits a protest to the City's highest contracting authority, Contractor's Claim will be subject to the claims review process in Section D.3 of the General Conditions. Pending a final resolution, City will pay Contractor that portion of the application for payment approved by City'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 City will constitute acceptance of work not conforming to the Contract Documents, or waiver of the right to assert overpayment.

15. TERMINATION OR SUSPENSION.

15.1 City's Right to Terminate Prior to Execution of GMP Amendment. Prior to execution of the GMP Amendment by the Parties, City may terminate this Contract at any time without cause. Upon such termination, the amount to be paid to Contractor will 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 City terminates for convenience during the Preconstruction Phase, City will be entitled to copies of, and will have the right to use, all work product of Contractor and its Subcontractors performed to the date of termination, and Contractor will deliver copies of the same to City on request.

15.2 City's Termination for Convenience after GMP Amendment. After the GMP

Amendment is executed by both Parties, the Contract may be terminated by City without penalty for convenience pursuant to Section J.5 of the General Conditions in which case Contractor will be entitled to payment of the amount stated in Article 15.1 together with the actual Cost of the Work, plus the CM/GC Fee, prorated based on the actual Cost of the Work to the date of termination and the percentage identified in Article 6.3.1, but in any event not in excess of the GMP.

- 15.3 City's Termination for Cause.** In the event of termination of this Contract by City for cause pursuant to Section J.4 of the General Conditions, the amount, if any, to be paid to Contractor, subject to application of City's rights under the General Conditions and applicable law, will not exceed the amount Contractor would be entitled to receive under Article 15.2.
- 15.4 Contractor Termination for Cause.** Disputes regarding payments and Change Orders may occur as part of the CM/GC process, and City's declining to pay disputed amounts will not be grounds for suspension of the Work or termination for cause by Contractor. If Contractor terminates this Contract for City's material breach of this Contract, the amount to be paid to Contractor will not exceed the amount Contractor would have been entitled to receive under Article 13 above through the date of termination and demobilization from the Project, together with the CM/GC Fee, prorated based on the actual Cost of the Work and the percentage identified in Article 6.3.1, through the date of termination.
- 15.5 Assignment of Subcontracts.** Contractor irrevocably assigns each subcontract and supply contract for any portion of the Work; provided, however, that such assignment is effective only after termination of this Contract by City, and only for those subcontracts and supply contracts which City accepts by notifying the Subcontractor/supplier and Contractor in writing. For those subcontracts and supply contracts accepted by City, if the Work has been suspended for more than thirty (30) Days, the Subcontractor's/supplier's compensation will be equitably adjusted for increases in cost resulting from the suspension. Contractor will include a provision in each subcontract and supply agreement where the Subcontractor/supplier acknowledges City's rights under this Article 15.5. With respect to any subcontracts/supply contracts that are not accepted by City, the provisions of Section J.6.1 of the General Conditions will apply.

16. REPRESENTATIONS AND WARRANTIES.

16.1 Contractor represents and warrants to City as of the Effective Date:

- 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 contemplated transactions ; Contractor has duly and validly executed and delivered the Contract to City and that the Contract constitutes the legal, valid and binding obligation of Contractor, enforceable against Contractor 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** Contractor's execution and delivery of the Contract and the consummation of the contemplated transactions will not conflict with or result in a material breach of any terms or provisions of, or constitute a material default under, (i) Contractor's Articles of Incorporation, Bylaws, or other organizational documents; (ii) any note, bond, mortgage, indenture, license, lease, contract, commitment, agreement or other instrument or obligation to which Contractor is a party or by which Contractor may be bound; or (iii) any statute, order, writ, injunction, decree, rule or regulation applicable to Contractor;
- 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 Contractor 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** Contractor's Project Manager and Assistant Project Manager identified in Article 4 are duly appointed representatives and each has the authority to bind Contractor to any and all duties, obligations and liabilities under the Contract Documents and any Amendments thereto.

17. MISCELLANEOUS.

- 17.1 Headings; Attachments.** 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. Any exhibits, schedules, and other attachments referenced in this Contract are part of this 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 will bind either party unless in writing and signed by the Parties. Such waiver, consent, modification or change, if made, will be effective only in the specific instance and for the specific purpose given. There are no understandings, agreements, or representations, oral or written, not specified herein regarding the Contract. Contractor, 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.
- 17.3 Notices.** Any notice required under this Contract must be in writing. Notice will be deemed given when personally delivered or delivered by email or facsimile transmission (with electronic confirmation of delivery), or three Days following deposit of the notice in the U.S. mail, postage prepaid, certified, return receipt requested, to the address of the applicable party shown in the preamble above (or any other address that a party may designate by notice to the other party), unless that day is a Saturday, Sunday, or legal holiday, in which event it will be deemed delivered on the next following business day.

- 17.4 Amendment.** This Contract may be amended only by an Amendment signed by the party against whom enforcement is sought.
- 17.5 Further Assurances; Survival.** The Parties will sign such other documents and take such other actions as are reasonably necessary to further effect and evidence this Contract. The termination of this Contract, regardless of how it occurs, will not relieve a party of obligations that have accrued before the termination. All Contractor representations, warranties, covenants, and obligations contained in this Contract (including, without limitation, Contractor's indemnity obligations) will survive the termination of this Contract.
- 17.6 Attorneys' Fees.** If any arbitration or litigation is instituted to interpret, enforce, or rescind this Contract, including, without limitation, any proceeding brought under the United States Bankruptcy Code, the prevailing party on a claim will be entitled to recover with respect to the claim, in addition to any other relief awarded, the prevailing party's reasonable attorneys' fees and other fees, costs, and expenses of every kind, including, without limitation, the costs and disbursements specified in ORCP 68 A(2), incurred in connection with the arbitration, the litigation, any appeal or petition for review, the collection of any award, or the enforcement of any order, as determined by the arbitrator or court.
- 17.7 Entire Agreement; Signatures.** This Contract contains the entire understanding of the Parties regarding the subject matter of this Contract and supersedes all prior and contemporaneous negotiations and agreements, whether written or oral, between the Parties with respect to the subject matter of this Contract. This Contract may be signed in counterparts. An electronically transmitted signature page will be considered an original signature page. At the request of a party, the other party will confirm an electronically transmitted signature page by delivering an original signature page to the requesting party. The Parties will execute duplicate originals of this Contract, one of which will be delivered to Contractor, and the other to City.
- 17.8 Interpretation.** As used in this Contract, the term "person" means any natural person, corporation, limited liability company, partnership, joint venture, firm, association, trust, unincorporated organization, governmental agency, political subdivision, or any other entity. All pronouns, and any variations, will be deemed to refer to the masculine, feminine, or neutral, as the identity of the person may require. The singular includes the plural and the plural includes the singular. The word "or" is not exclusive. The words "include," "includes," and "including" are not limiting. The titles, captions, or headings of the articles and sections in this Contract are inserted for convenience of reference only, and are not intended to be a part of or to affect the meaning or interpretation of this Contract.

IN WITNESS WHEREOF, the undersigned have caused this Contract to be executed on the dates written below but made effective for all purposes as of the Effective Date.:

Contractor:

[NAME]

Address:

Contractor's Federal I.D. #: ____-____

Construction Contractor's Board Registration No.:

By: _____

Signature of Authorized Representative of Contractor

Title: _____

Date: _____, 2023

CITY:

CITY OF REDMOND, OREGON

By: _____

Signature of City's Authorized Representative

Title: City Manager

Date: _____, 2023

Attest: _____

The City Recorder – Kelly Morse

Insurance Reviewed _____