

REQUEST FOR PROPOSAL
FOR
CONSTRUCTION MANAGER/GENERAL CONTRACTOR SERVICES

RFP TITLE:

WSK-8 HVAC Systems Replacement

- **Demolition of the existing VRF HVAC system**
- **Installation of a new hot water boiler plant and associated piping**
- **Installation of a new air cool chiller and associated piping**
- **Installation of new HVAC equipment**
- **Modification to HVAC controls as needed for new equipment**

**Jefferson County School District 509J
445 SE Buff Street
Madras, OR 97741**

Date Due: Wednesday, March 5, 2025 @ 2:00pm

CONSTRUCTION MANAGEMENT/GENERAL CONTRACTOR

With a Guaranteed Maximum Price

Request for Proposals

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Attachment A - Proposal Certification Statement Form

Attachment B - Jefferson County School District 509J Board Resolution with Findings of Fact for
CM/GC Procedure for WSK-8 HVAC Systems Replacement

Attachment C - Sample Contract for CM/GC Services

Attachment D - CM/GC Cost Matrix

I. INTRODUCTION

A. PROJECT OVERVIEW – Warm Springs K-8 HVAC Systems Replacement Project

- Demolition of the existing VRF HVAC system
- Installation of a new hot water boiler plant and associated piping
- Installation of a new air cool chiller and associated piping
- Installation of new HVAC equipment
- Modification to HVAC controls as needed for new equipment

The Design Team has been selected to develop the design for the WSK-8 HVAC Systems Replacement Project. The Design Team is:

Architect:	TBD
School District Representative:	Mike Tiller Tiller's Schoolhouse Consulting, LLC Project Manager

II. SELECTION PROCESS

A. SELECTION OVERVIEW

The Board of Directors of the Jefferson County School District 509J chose the CM/GC delivery method vs. the more traditional design-bid-build during a public meeting on February 10, 2025 (Attachment B).

The selection process for a CM/GC contractor will be conducted in a fair and impartial manner, where several qualified individuals will evaluate proposals and presentations. The selection has three major parts:

- 1) Proposal evaluation and ranking
- 2) Interviews if held
- 3) Contract negotiation

Work is divided into two stages: Stage One is Design Assistance, and Stage Two is Post-GMP Construction. **The School District has established a construction budget of \$3,875,435, with a scheduled start date of June 15th, 2026 and a scheduled substantial completion date of August 21st, 2026. Proposals should define how the contractor will complete this project according to the District's timeline.** At the 50% Construction Document phase, the CM/GC must provide a Guaranteed Maximum Price with detailed backup that is consistent with this budget and a construction schedule that meets the District's requirement. If an acceptable GMP can be agreed upon, the School District will enter into a contract with the CM/GC for Stage Two. If no agreement can be reached, the CM/GC will be compensated for the Stage One effort, and the District may enter negotiations with the next ranked firm.

During Stage One, the CM/GC will work with the Project Team, and the work will be performed on a not-to-exceed fee basis. Following submittal of the GMP, it is the intention of the School District to enter into a final contract with the selected CM/GC, which will include a Fixed Fee based on a percentage of direct costs, for all work through construction and completion of the project.

If the District is unable to successfully agree upon contract terms for the entire project with the selected CM/GC, the District reserves the right, in the exercise of its sole discretion, to re-open the selection process by entering into a Contract with the next ranking finalists. The School District reserves the right to reject any or all proposals.

A Proposer may file a written protest or make a written request that the School District Administration change any RFP procedure, provision, or specification. Any protest or request for change must be delivered in writing to Jay Mathisen, Superintendent, at the Owner's Address on or before February 21st, 2025, at 2:00 PM current local time. The purpose of this protest/request for change procedure is to permit the District to correct, prior to the submission of proposals, specifications or procedures that may be improper, unlawful, or which may unnecessarily restrict competition. This requirement is intended to eliminate, by permitting corrections prior to the submission of proposals, the waste of resources and delay that may result from the untimely detection of errors in the RFP, possible protests, and possible rejection of proposals. The School District Administration will consider each protest or request, amend the RFP accordingly if warranted, and will notify in writing, each prospective proposer of any change. No amendment of this RFP shall be effective unless made in writing and signed by the Project Manager.

This solicitation does not obligate the School District to pay any costs incurred in preparation of proposals or presentations, or to select any proposer who responds. The District reserves the right to reject any proposal not in compliance with all prescribed requirements and may reject for good cause any or all proposals upon a written finding that it is in the public interest to do so.

The selection process is as follows:

Publish notice of the RFP in Daily Journal of Commerce, and online at Jefferson County School District Website.

1. The proposals shall be subjectively evaluated by the Evaluation Committee with points assigned based upon the criteria in this RFP. Those proposals submitted that do not meet mandatory requirements outlined in the Instructions to Proposers will not be evaluated.
2. The Evaluation Committee will consist of District Representatives and possibly a local community member. The role of the committee shall include a complete review of all proposals submitted and may include contacting references provided by the proposing firm(s). It may also involve interviews with selected firms. The District reserves the right to seek clarifications of any proposal. Evaluation Committee members may not be contacted or solicited by any firm or individual submitting proposals, with the exception of responses to requests for clarification received from the Evaluation Committee. The School Board or designee will make the final decision on hiring an CM/GC firm. The selected firm will then serve as a special consultant during Stage One.
3. The CM/GC will develop the Guaranteed Maximum Price for the project. The GMP must be successfully negotiated as a part of the Stage One contract.
4. The Project Manager will attempt to negotiate a satisfactory GMP contract with the top ranked firm. If negotiations are not successful, the School District, at its sole discretion, may then negotiate with the second ranked firm, and so forth. Jefferson County School District 509J, reserves the right to reject any or all GMP proposals that do not satisfy project requirements.

B. SCHEDULE FOR SELECTION

The milestones for the selection process are set forth below. The dates are approximate but will be followed to the extent reasonably possible. The purpose of this schedule is for Proposer information only. Required dates for submittals and any other activities are provided elsewhere in this Request for Proposals:

<u>Project Milestone</u>	<u>Completion Date</u>
Advertise RFP	February 12 & 14, 2025
RFP document available	February 12, 2025
Mandatory pre-proposal conference	February 18, 2025
Deadline for proposal protests	February 21, 2025
Deadline for Questions	February 21, 2025
Issue Addenda	February 28, 2025
Submit proposals	March 5, 2025
Interviews if Held	March 13, 2025
Notice of Intent to Award	March 14, 2025
Begin CM/GC Services	March 17, 2025
CM/GC submits GMP (50% CD's)	May 30, 2025
Contract Finalized	September 1, 2025
Notice to Proceed	September 1, 2025
Substantial Completion	August 21, 2026
Final Completion	September 25, 2026

III. SERVICES TO BE PROVIDED

A. DESCRIPTION OF SERVICES

1. **General:** The CM/GC firm will coordinate and manage the design and construction process as a member of a team with the Owner, Architect, and other project consultants. The CM/GC firm should be skilled in developing schedules, preparing construction estimates, performing value engineering, analyzing alternative designs, studying labor conditions, understanding construction methods and techniques, and coordinating and communicating the activities of the Team throughout the design and construction stages to all members of the construction team. In addition, the CM/GC must be familiar with the local labor and subcontracting market and be capable of working with subcontractors to generate viable pricing alternatives.

The CM/GC will serve as general contractor for the project, at risk. At 50% of the Construction Document Stage, the CM/GC will provide the District with a guaranteed maximum price (GMP) for the actual construction work. The GMP shall be defined as the Cost of Work plus the CM/GC's fee. The GMP shall be within the District's budget. By executing a GMP amendment to the contract, the CM/GC guarantees that the Cost of the Work shall not exceed the GMP. Should the Cost of the Work be less than the GMP, any such positive difference shall be realized as "savings" to the District at the end of the project. Although it is the intention of the District to save money on the project if at all possible, the District reserves the right to work with the CM/GC to use the anticipated savings to build additional necessary components of the project which may have been omitted from the original GMP scope and carried as alternates. If the CM/GC is unable to set a GMP within the budget and in the appropriate time, the District reserves the right, at the sole discretion of the District, to cancel the contract with the CM/GC and proceed immediately to negotiate a contract with the firm that was next ranked in this selection process. Should the contract with the initial CM/GC be so terminated, the firm will be compensated for its actual time and expenses.

2. **Phase I:** During Stage I, the CM/GC shall serve as a special consultant to the Project Team and will analyze the design and proposed modifications with the goal of providing the School District, in the time frame proposed, the highest quality facility within budget. Design related CM/GC activities will include detailed cost estimating, value engineering, constructability review, coordination review, and analysis of alternative materials and systems for the project. Construction related activities of the CM/GC during this Stage will include schedule refinement. Also, during Stage I the CM/GC will develop the Guaranteed Maximum Price Proposal, with detailed backup, for District consideration.
3. **Phase II:** During Stage II, the CM/GC shall provide and pay for all materials, tools, equipment, labor, and professional and non-professional services, and shall perform all other acts and supply all other items necessary to fully and properly perform and complete the Work, as required by the Contract Documents.

B. SPECIAL REQUIREMENTS

In order to implement the Guaranteed Maximum Price (GMP) method of procurement, the District will impose some special requirements to ensure a fair level of competition.

Proposers should note the following requirements concerning management of this GMP project:

1. A detailed description of items that make up the GMP is required from the Contractor. A complete copy of the GMP estimate, including all details, must be provided to the District's Project Manager and the Architect by the CM/GC.
2. The process used to award contracts by the CM/GC are to be monitored by the District's Project Manager and reported on a regular basis. The following minimum requirements apply:
 - a. The CM/GC shall solicit competitive bids from subcontractors, with the final selection approved by the District in writing.
 - b. When there are single fabricators of materials, special packaging requirements for subcontractor work, or work to be performed by the CM/GC, advance approval by the District's representative is required.
 - c. The CM/GC must obtain at least three competitive bids for each particular work sub-component to be completed, including work components which the CM/GC may be interested in self-performing.
 - d. The solicitation of subcontractors will be made pursuant to the following procedures:
 - 1) All bids are required to be sealed, written, and submitted to a specific location at a specific time.
 - 2) If less than three (3) bids are submitted for any work component, approval by the District's Representative is required to accept the bid.
 - 3) Solicitations will be advertised at least ten (10) days in advance in the Daily Journal of Commerce and at least one other newspaper.
 - e. The contractor will comply with the provisions as required by ORS 279C.800 through 279C.870 for the payment of Prevailing wages and comply with the applicable provisions of the Davis-Bacon Act.
 - f. The District may allow the CM/GC to perform some of the trade work if the CM/GC competes competitively with trade subcontractors for that work. In such cases, bids will need to be submitted to the District or an independent third party.

C. SPECIFIC SERVICES DESCRIPTION

1. **Stage I Services:** Consult with the District and the design team to determine design criteria; such consultation will include evaluation of alternatives from functional, performance, time, and cost perspectives.

Consult with the District in refining the project construction budget, and establishing and maintaining a detailed cost model for the work as the design evolves.

Assist in life cycle value analysis from drawings, specifications, other design criteria, and alternative designs as may be requested by the District.

Cost management and control services shall be provided to assist in keeping development costs within the project budget. These services shall include the following:

- a. The analysis, review and recommendation for all project contracts.
- b. Preparation of at least two (2) detailed estimates for probable construction cost (one at the end of Schematic Design Documents and one at the end of Design Development).

With the Design Team, develop a strategy for obtaining building permits in a timely fashion. Meet with building and other regulatory officials as appropriate. Attend all meetings pertaining to permitting, as required. It is anticipated that these functions will continue throughout all Stages of the project.

Prepare a detailed milestone schedule identifying the work to be performed by the Design Team, the District, and the CM/GC during this Stage. The CM/GC shall report progress bi-monthly against this schedule.

Review the plans and specifications on a continuous basis and advise the Design Team and the District whenever the estimated construction costs are tending to exceed line items from the model budget. In a timely fashion, provide the Design Team with alternatives that will bring the project cost within budget, without compromising the scope agreed to in the outline specification. Continually update the project cost.

Review architectural, civil, mechanical, electrical and structural plans as they are developed and make value engineering and constructability recommendations.

Review all design and specification documents for completeness, proper details, compliance with program and master plan requirements and adherence to codes or applicable agency requirements, reporting deficiencies, conflicts, and/or clarification questions identified to the Project Team

2. **Stage II Services:** Continue all reporting as described above.

Implement an accounting system for effective fiscal control and a monthly status report with budget recommendations. The monthly status report will include full schedule reporting as well as a summary of all major outstanding issues with proposed solutions. The cost of preparing the monthly reports is to be included within the CM/GC's fee. Prepare and put out to bid early bid packages as determined appropriately by the Team.

Prepare all bid packages, according to the contractual requirements and District procedures. Recommend to the District modification to existing procedures or implementation of new procedures where appropriate. Ensure that all bid packages, including those for early procurement, are within budget. It is the responsibility of the CM/GC to provide the Design Team with sufficient viable options, in a timely fashion, such that the bid packages will be within budget.

It is reasonable to assume that the CM/GC will issue multiple bid packages with multiple trade contracts within each bid package. The number of bid packages is not anticipated to exceed three (3).

Fully coordinate the work of all subcontractors and vendors. Provide regular and on-going quality inspection and assistance to the Design Team in ensuring that the work meets all specifications and applicable codes.

Review and expedite all change order requests, both included within the GMP and involving a change to the GMP.

Monitor compliance with payment of prevailing wages on all contracts and subcontracts, per ORS 279.C.800 through 279.C.870 and Davis-Bacon Act.

Maintain in a current condition all Project Records, including permits, construction documents, as-built records, meeting records, submittals, inspection reports, invoices, delivery receipts, daily activity logs, RFI's, ASI's, CO's, etc.

IV. PROPOSAL REQUIREMENTS

A. SUBMITTAL REQUIREMENTS

1. Date, time, and link: Interested CM/GC firms must submit their proposals no later than **March 5, 2025**, at 2:00 PM current local time. Proposals shall be less than 22mb and be emailed to:

mike.tiller@tillersschoolhouse.com
2. Late submission: A proposal shall be considered late if received at any time after 2:00 PM current local time, **March 5, 2025**. Proposals received after the specified time will be rejected.
3. Number and Form: Proposers shall submit: (1) PDF version, emailed to the address referenced above. The proposals shall be tabulated in separate sections in response to the detailed proposal requirements. All materials shall be in an 8 ½" by 11" format. Proposals are limited to twenty (20) pages single sided and minimum 12 pitch font (not including a cover letter, proposal section dividers, resumes of proposed personnel, and Attachment A). No other material should be submitted. Proposals shall be less than 22mb.
4. Proposal Certification Statement: A proposal certification statement (Attachment A) shall be filled out and signed and accompany each proposal. The certification shall bind the proposer to perform the services for the fees stated in their proposal and to complete the project within the scheduled dates proposed. Failure to submit a signed proposal certification form will result in disqualification of the proposing firm.
5. Modification or Withdrawal of Proposal: Prior to the date and time designated for receipt of proposals, any proposal may be modified or withdrawn by notice to the party receiving proposals at the place designated for receipt of proposals. Such notice shall be in writing over the signature of the Proposer and shall be delivered on or before the date and time set for receipt of proposals.
6. Written Questions and Addenda: Questions regarding the information contained in this request for proposal must be submitted to the Districts Project Manager (Mike Tiller) (mike.tiller@tillersschoolhouse.com) no later than 2:00 PM current local time **February 21, 2025**. All questions must be submitted in writing (or via electronic transmission) and received by the specified date and time. No oral questions will be accepted other than at the pre-proposal conference.

All questions received prior to the above date will be answered by addenda to this RFP. Anonymity of the source of the specific questions will be maintained in the written responses.

7. **Mandatory Pre-Proposal Conference:** A mandatory pre-proposal conference will be held at **February 18, 2025 @ 3:30pm at the Warm Springs K-8 School, 50 Chukar RD Warm Springs, Or 97761**. A representative of each proposer's firm is required to attend. The pre-proposal meeting will be the proposer's main opportunity to discuss the project with the School District, Architect, and Project Manager. An addendum will be issued following the meeting to formalize any District responses to proposer questions.

B. DETAILED PROPOSAL REQUIREMENTS

Every proposal must reply to each of the following items. Responses must be in the same order listed below. Concise and direct answers are encouraged. Proposals are limited to twenty (20) pages single sided and minimum 12 pitch font (not including a cover letter, proposal section dividers, resumes of proposed personnel, and Attachment A). No other material should be submitted.

All proposals from qualified firms that provide all the minimum required qualifications will be evaluated on the following criteria:

Background

1. Provide a brief description of your firm's history and its capabilities. Include your firm's financial capacity, bonding capacity and adequacy of equipment, physical plant.
2. Provide a general description of your firm's safety record, as well as your most recent Workers Compensation Insurance experience modifier.

Experience

3. **CM/GC Experience:** Provide three (3) recent examples of your firms/personnel's experience working on CM/GC projects. Describe how your firm/personnel used the CM/GC process to bring value to the project in both the preconstruction and construction phase.
4. **Educational Experience:** Describe your firm's/personnel's experience working on projects of similar type size and complexity. Provide details for three (3) examples. Include the following information:
 - * Building use
 - * Owner and contact information
 - * Architect and contact information
 - * Contract type (public CM/GC, Public Bid, Private Bid, etc.)
 - * Original and final contract amount
 - * Project time frame and completion date

Staffing

5. Provide an organizational chart showing your proposed staff. Indicate if they will be stationed in the home office or on site during the construction phase. Explain what percentage of their time will be dedicated to this project.
6. Describe your plan to effectively manage the project and who will be the lead Construction Manager for the initial portion of the project. This person must be experienced in all phases of commercial construction.
7. Provide brief resumes for all staff shown on the project organizational chart. Include information regarding their CM/GC and K-12 facility experience.

Approach

8. Describe your firm's approach to the CM/GC process and the project. Include the following information:
 - * Understanding of the project
 - * Level of project management and other related matters that could affect the cost and quality of work
 - * Ability to respond to the technical complexity and short schedule for the project
 - * Analyze and propose solutions or approaches to the project's complex problems
 - * Analyze and propose value-engineering methods
 - * Coordination of multiple disciplines on the project
 - * Effective utilization of time to complete the project, provide proposed milestone dates.

Local Conditions

9. Describe the firm's knowledge of the construction conditions, labor market & subcontractor/supplier pool within Central Oregon. Explain how you will use this knowledge to benefit the project.

Fees and Compensation

Provide the following fees and compensation for the project.

10. Provide a not-to-exceed price and breakdown of hourly rates for personnel involved in Stage 1 services. Also supply a list of reimbursables that would be charged and a not-to-exceed price for Stage 1 services. This information shall become the basis for the agreement. Should the District enter into a contract for Stage II with your firm, will this cost for Stage I become a part of your fee quoted in item #13? Refer to the sample contract (Article 6.2) items required within the Stage I fee maximum.

11. State the fee, as a percentage of the Guaranteed Maximum Price, for which your firm would contract to perform this project. For clarification of what is included in the fee, please list personnel time included as cost-of-work and/or included within the fee. Refer to Attachment D for items required to be included in the fee.
12. Based on the staffing described in item #5, provide a detailed estimate of the cost of your firms staffing, not included in the fee, that will be included within the GMP for managing and performing the construction. Based on a construction cost of ~~\$3,875,435.00~~, provide an estimated cost of total General Conditions. Refer to the sample contract (Article 8) and Attachment D for items required to be included within the General Conditions.

Provide four (4) references familiar with your firm and the members of your proposed team.

C. PROPOSAL EVALUATION CRITERIA

Criteria	Weight Reference
1. BACKGROUND	10%
2. EXPERIENCE	20%
3. STAFFING	20%
4. APPROACH	30%
5. LOCAL CONDITIONS	10%
6. FEES AND COMPENSATION	10%

Reference checks shall not be scored individually but will be used to supplement the scoring considerations of all categories.

D. INTERVIEW INFORMATION

In those cases where it is felt that a clearer understanding of any proposal is in order, the District, through the Evaluation Committee, reserves the right to invite up to three of the top ranked proposers to present their proposals, in person, to the Evaluation Committee or the District. If held, interviews will be conducted separately, and the Evaluation Committee will rank the interviewed proposers. Only the interview and resulting ranking will be considered in the selection of the CM/GC Firm.

E. FINAL SELECTION

Upon completion of the interviews, if any, the Evaluation Committee shall provide the District with the results of the scoring and ranking for each proposer. If the District does not cancel the RFP after it receives the results of the scoring and ranking for each proposer, the District will begin negotiating a Contract with the highest-ranked proposer. The District will negotiate a final contract that is in the best interest of the District. If the District cannot reach agreement with the highest-ranked proposer, the District reserves the right to terminate negotiations and enter into negotiations with lower-ranked proposers.

ATTACHMENT A

CONTRACTOR CERTIFICATION STATEMENT

I hereby certify that this RFP response is genuine, and I have not entered into collusion with any other vendor(s) or any other person(s).

Registered with Construction Contractors Board _____
(Yes or No)

If yes, Reg. # _____ Expiration Date _____

I agree to comply with the provisions as required by ORS 279C.800 through 279C.870 for the payment of Prevailing wages _____ (Yes or No)

This is a prevailing wage project that will use Federal Funds. I agree to comply with the applicable provisions of the Davis-Bacon Act. _____ (Yes or No)

A Resident Bidder _____ (Yes or No)

Receipt of addenda: _____

Number of Addenda Received _____

Company

Address

City State Zip Code

Telephone Fax

By: _____
Type or Print Title

Authorized Signature Date

Tax Identification Number

ATTACHMENT B

FINDINGS OF FACT FOR THE USE OF THE CONSTRUCTION MANAGER/GENERAL CONTRACTOR (CM/GC)

Before the Jefferson County School District 509J Board of Directors

WSK-8 HVAC Systems Replacement

- **Demolition of the existing VRF HVAC system**
- **Installation of a new hot water boiler plant and associated piping**
- **Installation of a new air cool chiller and associated piping**
- **Installation of new HVAC equipment**
- **Modification to HVAC controls as needed for new equipment**

SITUATION

On November 3, 2021, the voters of Jefferson County School District 509J approved a \$24,000,000 bond levy which was to improve health, safety and security, repair and update aging school buildings and expand vocational opportunities and early learning. Due to the schedule and complexity of this construction project, the on-site occupation of the building by students and staff during construction, and the timing of construction to meet the delivery schedule, the Facilities Department is recommending the School District use the Construction Manager/General Contractor (CM/GC) with a Guaranteed Maximum Price (GMP) construction delivery method. The use of this delivery method requires a specific exemption from the standard competitive bid process for a general contractor that allows the use of this alternative contracting method be granted by the Board.

The guiding applicable statutes are: ORS 279C.300 which requires, with certain exceptions, that all public improvement contracts be based on competitive bidding and, under ORS 279C.375, be awarded to the lowest responsive and responsible bidder. ORS 279A.050 and ORS 279A.060 permit the Board of Directors of the School District to act as the public contract review authority and to grant, under certain conditions, specific exemptions from the requirement for competitive bidding pursuant to ORS 279C.335(2) and ORS 279C.330. The Jefferson County District Model Procurement Rules, adopted June 26th, 2019, allow for alternative contracting methods, DJC-AR.

FINDINGS OF FACT

The School District makes the following findings regarding use of the CM/GC alternative contracting method for the above-referenced public improvement contract:

FINDING #1 – CM/GC WILL NOT DIMINISH COMPETITION NOR ENCOURAGE FAVORITISM

Finding: It is unlikely that the use of the CM/GC alternative contracting method will encourage favoritism, or substantially diminish competition, in the awarding of this public improvement contract.

FINDING #2 – CM/GC WILL RESULT IN SUBSTANTIAL COST SAVINGS

Finding: Use of the CM/GC alternative contracting method will result in substantial cost savings to the School District.

Information regarding the following was considered in justification of the School District's conclusion in reaching these findings:

1. Operational, Budget and Financial Data

Operational Data:

The CM/GC will be selected through a competitive process in accordance with a Request For Proposals (RFP) process authorized by the Board of Directors. Competition will not be inhibited, nor will favoritism be encouraged.

- A. SOLICITATION PROCESS: Pursuant to ORS 279C.360, the CM/GC solicitation will be advertised at least twice in the Daily Journal of Commerce.
- B. FULL DISCLOSURE: To ensure full disclosure of all information, the RFP solicitation package will include:
 - 1. Detailed Description of the Project
 - 2. Contractual Terms & Conditions
 - 3. Selection Process
 - 4. Evaluation Criteria
 - 5. Role of Evaluation Committee
 - 6. Provisions for Comments
 - 7. Complaint Process and Remedies Available
- C. SELECTION PROCESS: Other highlights of the selection process will include:
 - 1. A pre-proposal vendor conference will be announced and held. This conference will be open to all interested parties. During this pre-proposal conference, as well as any time prior to ten (10) days before the close of the solicitation, interested parties will be able to ask questions, request clarifications, and suggest changes in the solicitation documents if such parties believe that the terms and conditions of the solicitation are unclear, inconsistent with industry standards, or unfair and unnecessarily restrictive of competition.
 - 2. Proposals will be submitted to the Project Manager for the Jefferson County School District at the time specified in the advertisements and emailed to:

mike.tiller@tillersschoolhouse.com
 - 3. The evaluation process will determine whether a proposal meets the screening requirements of the RFP, and to what extent. The following process will be used:
 - a. Proposals will be evaluated for completeness and compliance with the screening requirements of the RFP. Those proposals that are materially incomplete or non-responsive will be rejected.
 - b. Proposals considered complete and responsive will be evaluated to determine if they meet and comply with the qualifying criteria of the RFP. If a proposal is unclear, the proposer may be asked to provide written clarification. Those proposals that do not meet all requirements will be rejected.
 - c. Proposals will be independently scored by the voting members of the Selection Committee. Scores will be tabulated and assigned to the proposals. Then a determination will be made by the committee to proceed with a Notice of Intent to Award to the highest-ranking proposer or if needed will proceed with an interview process.
 - d. If the Selection Committee chooses to move forward with interviews they will convene to select from the highest-scoring proposers, a group of at least three (3) finalists (if three (3) are available) for formal interviews.
 - e. The Selection Committee will conduct the interviews.
 - f. The Selection Committee will use the interview to confirm the scoring of the proposal and to clarify any questions. Based upon the revised scoring, the Selection Committee will rank the proposers and provide an award recommendation to the Project Manager who will seek acceptance from the School District's Board of Directors or designee.

- g. The Project Manager will negotiate a contract with the top-ranked firm. If an agreement cannot be reached, the School District will have the option to enter into an agreement with the second-ranked firm, and so forth.
4. Competing proposers will be notified in writing of the selection of the apparent successful proposal and will be given seven (7) calendar days after receipt of the notice to review the RFP file and evaluation report at the Superintendent's Office. Any questions or concerns about the selection process will be subject to the requirements of the School District's Model Procurement Rules, DJC-AR, must be in writing, and must be delivered to the School District's Superintendent within seven (7) calendar days after receipt of the selection notice. No protest of the award selection shall be considered after this time period.

Budget and Financial Data:

The contract achieved through the CM/GC process will require the CM/GC to use an open competitive selection process to bid all components of the job. The CM/GC's overhead and fee makes up 10-15% of the total cost and will be evaluated as one of the scoring criteria. Overhead, which includes supervision, bonding, insurance, and mobilization, must be within the industry standard range of approximately 10%. The CM/GC's fee must be within the industry standard range of 3-5%. Since these amounts will be scored as part of the competitive RFP process, the entire dollar value of the project will be awarded through open competitive processes, at either the general contractor or subcontractor level. The CM/GC process also provides the following benefits:

- A. **FEWER CHANGE ORDERS:** When the CM/GC participates in the design process, fewer change orders occur during project construction. This is due to the CM/GC's better understanding of the owner's needs and the architect's design intent. As a result, the project is more likely to be completed on time and within budget. In addition, fewer change orders reduce the administrative costs of project management for both the School District and the contractor.
This project will involve a complex remodel to the existing school. The use of a CM/GC will reduce the amount of change orders due to unforeseen circumstances. Prior to construction the CM/GC will assist the design team in determining locations of existing utilities.
- B. **GMP CHANGE ORDERS COST LESS:** The reduced number of CM/GC change orders discussed above are processed at a lower cost under the GMP. The design-bid-build method typically results in the contractor charging 15% markup on construction change orders. The GMP method applies a lower predetermined markup. An acceptable markup is in the range of 3-5%.
- C. **SAVINGS:** Under the GMP method the School District will enjoy the full savings if actual costs are below the GMP. When the CM/GC completes the project, any savings between the GMP and the actual cost accrue to the School District.
- D. **CONTRACTOR'S FEE IS LESS:** Contracts with CM/GC's are designed to create a better working relationship with the contractor. Consequently, the overhead and profit fee are generally in the 3-5% range, and contractors indicate this is slightly lower than the fee anticipated on similar design-bid-build contracts.

2. Public Benefits

Early selection of the CM/GC creates more informed, better quality decision making by the project construction team. A more efficient construction team saves the District money and provides other public benefits. The CM/GC method will reduce financial risk to the School District. Reduced risk provides a significant value and potential savings.

THE CM/GC CONTRACTING METHOD ESTABLISHES A MAXIMUM PRICE PRIOR TO COMPLETION OF DOCUMENTS: The CM/GC will be able to obtain a complete understanding of the School District's needs, the architect's design intent, the scope of the project, and the operational needs of the students, teachers, and administration of the school by participating in the design development phase. With the CM/GC participating in this phase they will be able to offer suggestions for improvements and make suggestions that will reduce costs. With the

benefit of this knowledge, the CM/GC will also be able to guarantee a maximum price to be paid by the School District for constructing the project.

3. Value Engineering

The CM/GC process offers a unique opportunity for value engineering that is not possible through the design-bid-build process.

- A. VALUE ENGINEERING AND CM/GC PARTICIPATION IN THE DESIGN PROCESS: An essential part of each construction project is the value engineering evaluation. Value engineering is the means used to determine the best project design that meets the needs and priorities of the owner, within the owner's budget. Value engineering is done most effectively by a team consisting of the owner, architect, consultants, and contractor. When the contractor participates, the team can render the most comprehensive evaluation of all factors that affect the cost, quality, and schedule of the project.
- B. VALUE ENGINEERING WITH THE DESIGN-BID-BUILD PROCESS: If the School District were to utilize the design-bid-build method the contractor would not participate in this evaluation; hence, value engineering would be conducted without the benefit of:
 - The ability to set the schedule.
 - The ability to sequence work; and
 - Commitment from the contractor to implement the design within the schedule and budget.

Through integrated participation, a project scope and design evolve that has greater value for the owner and is not likely to be the same project created by the design-bid-build method.

4. Specialized Expertise Required

The construction project is highly complex because it involves construction on an existing school site while the building is in use. Use of a CM/GC in conjunction with the team approach will result in a better coordinated project, speed the project completion, and minimize disruption to operations. The CM/GC: guarantees the maximum price to complete the project; determines the construction schedule; establishes the sequence of work; is contractually bound to implement the final project design within the GMP; and participates as an essential member of the project design and construction team. Several benefits of participation by the CM/GC on this project will be realized: developing the design documents to reflect the best work plan that accommodates both the School District and contractor; the best grouping of the bid packages that will help insure better trade coverage; the most efficient construction staging area on the school campus; the most cost-effective route through campus and buildings for the various utilities; and help with adjusting the work plan when the needs change along the way.

5. Public Safety

Because the site is in use during the construction process, safety is of critical importance. By being involved in all phases of the project, including the design and construction, understanding the structural peculiarities of the existing building, and knowing the scope and technical complexity of the project, the CM/GC will be able to provide a safe environment for the students, teachers, and school administration throughout the entire project.

6. Market Conditions

The School District's ability to accurately estimate the cost of this project is complicated by the multitude of construction market conditions that exist today in Oregon (e.g., competition of other projects, environmental issues that limit construction materials, shortage of qualified craftsman, etc.), as well as the difficulty in establishing the best work sequence. Because the project has a limited budget, it is essential to reduce the risk of cost overruns and secure a contractor who is committed to the project and schedule.

7. Technical Complexity

A CM/GC is necessary to manage the complex design and construction of this project, as well as the on-site occupation of the building by students and staff and the critical timing of construction to meet delivery schedules. The construction of the WSK-8 HVAC Systems Replacement is anticipated to commence in June of 2026, and will need to be completed by the end of August 2026. In working with a CM/GC and staff, the schedule for the remodel work can be determined to minimize the impact to the operation of the school and still meet the anticipated completion date of August 2026.

8. Funding Sources

The School District’s voters approved a \$24,000,000 bond levy.

CONCLUSIONS OF LAW

Use of the CM/GC process for the Jefferson County School District 509J complies with the criteria outlined in ORS 279C.335(2), including the factors in ORS 279C.330:

1. It is unlikely the exemption will encourage favoritism or substantially diminish competition. The selection process will be fair and open to all interested proposers as established within above findings.
2. The exemption will result in substantial cost savings to the School District. Also, value will be added to the project that could not otherwise be obtained.
3. The CM/GC contracting method will allow the district to secure a qualified contractor committed to the project and schedule.

PROPOSED RESOLUTION

RESOLUTION _____ GRANTING BIDDING EXEMPTION, AUTHORIZING CONSTRUCTION OF A

- **Demolition of the existing VRF HVAC system**
- **Installation of a new hot water boiler plant and associated piping**
- **Installation of a new air cool chiller and associated piping**
- **Installation of new HVAC equipment**
- **Modification to HVAC controls as needed for new equipment**

BY MEANS OF A CONSTRUCTION MANAGER/GENERAL CONTRACTOR AND AUTHORIZING SELECTION BY REQUEST FOR PROPOSALS

WHEREAS, ORS Chapter 279A authorizes the School District’s Board of Directors to designate itself as the public contract review boards for the School District, and

WHEREAS, the Board of Directors of the Jefferson County School District 509J has designated itself as the public contract review board for the School District, and in that capacity has authority to exempt certain contracts from the competitive bidding requirements of ORS Chapter 279C, and

WHEREAS, ORS 279C.335(2) provides for a process of exempting certain public improvement contracts from competitive bidding and the School District’s Model Procurement Rules authorizes the selection of a contractor through the CM/CG process as set forth in DJC-AR, and

WHEREAS, the School District’s Board of Directors determines the WSK-8 HVAC Systems Replacement project should be constructed by a CM/GC.

The School District's Board of Directors finds as follows:

1. The School District's Board of Directors adopts the specific findings of fact set forth above.
2. The exemption of the CM/GC contract from competitive bidding will promote competition and will not encourage favoritism because the CM/GC will be chosen by the Request For Proposals process, and the major portion of the construction work will be performed by subcontractors chosen by competitive bidding.
3. The exemption of the CM/GC contract from competitive bidding will result in substantial cost savings to the School District, for the reasons set forth in the findings above.
4. The exemption of the CM/GC contract also appears to be in the best interest of the School District in that the use of the CM/GC process will permit the School District to complete the construction within a GMP and within a reasonable time with minimum redesign effort.

NOW, THEREFORE, the School District's Board of Directors resolves as follows:

The contract for construction of the WSK-8 HVAC Systems Replacement by a Construction Manager/General Contractor for a Guaranteed Maximum Price is exempted from competitive bidding, and the Construction Manager/General Contractor shall be selected by the Request for Proposal method in accordance with the School District's Model Procurement Rules, DJC-AR, and the process described in the above findings.

RECOMMENDATION

Board members are asked to review these Findings, Conclusions, and Proposed Resolution, ask questions, take public comments, and provide input at the School Board meeting on February 10, 2025. Board action on this proposal is recommended.

ATTACHMENT C

CM/GC SAMPLE CONTRACT

CONSTRUCTION MANAGER/GENERAL CONTRACTOR

JEFFERSON COUNTY SCHOOL DISTRICT 509J

CM/GC CONTRACT # 0119-25

THIS CONTRACT IS BETWEEN:

OWNER:

**JEFFERSON COUNTY SCHOOL DISTRICT 509J
445 SE Buff Street
Madras, Oregon 97741**

And

CONTRACTOR:

Contractor name and address

The Project is: WSK-8 HVAC Systems Replacement

The Architect is: Architect

The District's Authorized Representative: Mike Tiller, Tiller's Schoolhouse Consulting, LLC

The District's Target GMP Range is: \$3,875,435.00

**JEFFERSON COUNTY SCHOOL DISTRICT 509J
CM/GC CONTRACT**

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The District and the CM/GC agree as set forth below:

ARTICLE 1 DEFINITIONS

Except as expressly defined or modified below or elsewhere in this CM/GC Contract (this “Contract”), all capitalized terms used in this Contract will have the meanings set forth in Section A of the District General Conditions, attached as Exhibit A hereto (the “District General Conditions”). The terms below are expressly defined as follows:

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

1.2 Allowances. Allowances will mean the allowance amounts shown in the GMP Supporting Documents, as defined below, together with such further allowances as may be developed by the Parties as the Project progresses.

1.3 Amendment. Amendment will mean a written modification of this Contract (including without limitation any agreed change to the GMP), identified as an Amendment, and executed by the CM/GC, the District’s Authorized Representative and, where required, approved in writing on behalf of District by the District’s Superintendent.

1.4 Business Days. Business Days will mean every day except Saturday, Sunday, and legal holidays recognized for employees of the District.

1.5 Change Order. Change Order will mean a written modification of this Contract under Section D.1 of the District General Conditions (including without limitation any agreed change to GMP), identified as a Change Order and executed by the District’s Authorized Representative, CM/GC, where applicable, and, where required, approved in writing on behalf of District by the District’s Superintendent.

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

1.7 Construction Manager Services (“CM Services”). CM Services will have the meaning given in Article 3.3 below.

1.8 Construction Documents. Construction Documents will have the meaning given in the District’s Professional Services Agreement with the Architect for this Project.

1.9 Construction Phase. The Construction Phase will mean the period commencing on the District’s execution of a GMP Amendment or Early Work Amendment, each as defined below, together with the earlier of (i) issuance by the District of a Notice to Proceed, as defined below, with any on-site construction or (ii) execution of a subcontract or issuance of a purchase order for materials or equipment required for the Work.

1.10 Construction Phase Services. Construction Phase Services will mean all of the Work other than the Preconstruction Phase Services as defined below.

1.11 Contract Documents. Contract Documents will have the meaning given in Section A of the District General Conditions, as supplemented by Article 2.1 below.

1.12 Design Development Documents. Design Development Documents will have the meaning given in the District's Professional Services Agreement with the Architect for this Project.

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

1.14 Early Work Amendment. Early Work Amendment will mean an Amendment to this Contract executed by and between the Parties to authorize Early Work.

1.15 Fixed Cost for GC Work. Fixed Cost for GC Work will mean that fixed sum identified in Article 8.8 for GC Work, as defined below.

1.16 General Conditions Work ("GC Work"). GC Work will mean (i) that portion of the Work required to support construction operations that is not included within overhead or general expense but is called out as GC Work, and (ii) any other specific categories of Work approved in writing by the District's Authorized Representative as forming a part of the GC Work.

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

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

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

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

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

1.22 Schematic Design Documents. Schematic Design Documents will have the meaning given in the District Professional Services Agreement with the Architect for this Project.

1.23 Scope Change. Scope Change will mean only (i) changed site conditions not reasonably inferable from information available to the CM/GC at the time of execution of the GMP Amendment, and (ii) significant Work

modifications (including additions, substitutions, and deletions), application of Allowances, and selection of alternates, all as approved by the District under this Contract beyond that identified or inferable from the GMP Supporting Documents (but in the case of Allowance items, the GMP will increase only if the cost to the District of the Allowance items exceeds the total amount of the Allowances).

ARTICLE 2 CONTRACT DOCUMENTS

2.1 Contract Documents. For valuable consideration as stated below, District and the CM/GC agree to the terms of the Contract that are set forth in the Contract Documents. As used in the District General Conditions, the “Public Improvement Contract” shall mean this Contract.

2.2 Effective Date. This Contract will become effective as of the date upon which every party has signed this Contract and District has received all necessary approvals, including approval for legal sufficiency by District.

2.3 The Contract; Order of Precedence. This Contract, together with all other Contract Documents, forms the entire agreement between the Parties. Except as expressly otherwise provided herein, the order of precedence of the Contract Documents is established in Section A.3 of the District General Conditions, if there are inconsistent or conflicting terms among the Contract Documents.

2.4 Intent of Contract Documents. The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the CM/GC. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the CM/GC shall be required to the extent consistent with the Contract Documents and reasonably inferable from the Contract Documents as being necessary to produce the indicated results. In case of any conflict, the CM/GC is deemed to have included the better quality and larger quantity of the Work. In the event of inconsistencies within or between parts of the Contract Documents, or between the Contract Documents and applicable standards, codes, and ordinances, the Contractor shall (i) provide the better quality or greater quantity of Work or (ii) comply with the more stringent requirement: either or both in accordance with the Architect’s interpretation. The terms and conditions of the Section 2.4, however, shall not relieve the CM/GC of any obligation to review the Contract Documents and timely inform District and Architect of any potential issues.

2.5 Review by CM/GC. The CM/GC acknowledges and warrants that it has and will closely examine the Contract Documents and that they are and will at all times in the future be suitable and sufficient to enable the CM/GC to timely complete all the Work for the Contract Sum unless the CM/GC promptly notifies the District and Architect in writing of any defect or deficiency in the Contract Documents promptly before proceeding with execution of any Agreement related to the Construction Phase or any Work subject to the relevant Contract Document.

ARTICLE 3 WORK OF THIS CONTRACT

3.1 Preconstruction Phase Services. The CM/GC will provide all of the Preconstruction Phase Services described below on an ongoing basis in support of, and in conformance with, the time frames described in the District’s RFP for CM/GC Services for this Project. Commencement of the Construction Phase will not excuse the CM/GC from completion of the Preconstruction Phase Services, if such services have not been fully performed at commencement of the Construction Phase. Preconstruction Phase Services will include all CM Services performed during the Preconstruction Phase.

3.1.1 The CM/GC will provide a preliminary evaluation of the District’s program and budget requirements, each in terms of the other.

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

(a) The CM/GC will consult with, advise, assist, and provide recommendations to the District and the Architect on all aspects of the planning and design of the Work.

(b) The CM/GC will jointly schedule and attend regular meetings with the Architect and District's Authorized Representative. The CM/GC will consult with the District, the Architect, and the District's Authorized Representative regarding site use and improvements, and the selection of materials, building systems and equipment.

(c) The CM/GC will provide recommendations on construction feasibility; actions designed to minimize adverse effects of labor or material shortages; time requirements for procurement, installation and construction completion; and factors related to construction cost including estimates of alternative designs or materials, preliminary budgets and possible economies.

(d) The CM/GC will review in-progress design documents, including the documents generally described in the industry as Schematic Design Documents, Design Development Documents, and Construction Documents and provide input and advice on construction feasibility, alternative materials, and availability. The CM/GC will review these completed Schematic Design Documents, Design Development Documents, and Construction Documents and timely suggest modifications to the Architect in an effort to improve completeness and clarity of the documents.

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

(a) The CM/GC will prepare, and periodically update, a preliminary Project schedule for the Architect's and the District's Authorized Representative's review and the District's Authorized Representative's approval.

(b) The CM/GC will coordinate and integrate the preliminary Project schedule with the services and activities of the District, the Architect, and the CM/GC. As design proceeds, the CM/GC 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, and the District's occupancy requirements showing portions of the Project having occupancy priority, provided that the date(s) of Substantial Completion will not be modified without the District's prior written approval. If preliminary Project schedule updates indicate that previously approved schedules may not be met, the CM/GC will make appropriate recommendations to the District's Authorized Representative and the Architect.

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

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

(a) The CM/GC will prepare, for the review of the Architect and the District's Authorized Representative and approval of the District, a preliminary cost estimate utilizing area, volume or similar conceptual estimating techniques.

(b) When Schematic Design Documents have been prepared by the Architect and approved by the District, the CM/GC will prepare for the review of the District's Authorized Representative and the Architect and approval of the District, a more detailed estimate with supporting data. During the preparation of the Design Development Documents, the CM/GC will update and refine this estimate at appropriate intervals agreed to by the District, the Architect, the District's Authorized Representative, and the CM/GC.

(c) When Design Development Documents have been prepared by the Architect and approved by the District, the CM/GC will prepare a detailed estimate with supporting data for review by the Architect and the District's Authorized Representative and approval by the District. During the

preparation of the Construction Documents, the CM/GC will update and refine this estimate at appropriate intervals agreed to by the District, the District's Authorized Representative, the Architect and the CM/GC.

(d) If any estimate submitted to the District exceeds previously approved estimates or the District's budget, the CM/GC will make appropriate recommendations to the District's Authorized Representative and the Architect.

(e) The CM/GC will notify the District and the Architect immediately if any construction cost estimate appears to exceed the construction budget.

(f) The CM/GC otherwise will work with the Architect and the District to develop a GMP within the Target GMP Range and within the District's schedule.

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

(a) The CM/GC will develop Subcontractor and supplier interest in the Project, consistent with applicable legal requirements, and will furnish to the District's Authorized Representative and the Architect for their information a list of possible Subcontractors and suppliers, including suppliers who may furnish materials or equipment fabricated to a special design, from whom competitive bids, quotes, or proposals (collectively, "Offers") will be requested for each principal portion of the Work. The CM/GC's 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 the District, District's Authorized Representative, or Architect to investigate the qualifications of proposed Subcontractors and suppliers, nor will it waive the right of the District or Architect later to object to or reject any proposed Subcontractor, supplier, or method of procurement.

(b) The CM/GC will provide input to the District and the Architect regarding current construction market bidding climate, status of key subcontract markets, and other local economic conditions. The CM/GC will determine the division of work to facilitate bidding and award of trade contracts, considering such factors as bidding climate, improving or accelerating construction completion, minimizing trade jurisdictional disputes, and related issues.

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

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

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

3.1.10 The CM/GC shall timely attend regular meetings with the District's Authorized Representative and Architect. The CM/GC shall timely consult with the District's Authorized Representative and Architect regarding site use and improvements and the selection of materials, building systems and equipment. The CM/GC shall timely provide written recommendations on construction feasibility; actions designed to minimize adverse effects of labor, equipment or material shortages; time requirements for procurement, installation and construction completion; and factors related to construction cost, including estimates of alternative designs or materials or equipment, preliminary budgets and possible economies.

3.2 Construction Phase Services.

3.2.1 Upon execution of an Early Work Amendment or GMP Amendment, the CM/GC will provide Construction Phase Services as provided in the Contract Documents, including without limitation providing and paying for all materials, tools, equipment, labor and professional and non-professional services, and performing all other acts and supplying all other things necessary to fully and properly perform and complete the Work, as required by the Contract Documents, to furnish to the District 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 CM Services performed during the Construction Phase.

3.2.2 Notwithstanding any other references to Construction Phase Services in this Contract, this Contract will include Preconstruction Phase Services only unless (i) the Parties execute a GMP Amendment or (ii) the Parties execute an Early Work Amendment, defined above.

3.2.3 The Parties may execute one or more Early Work Amendments identifying specific Construction Phase Services that must be performed in advance of establishment of the GMP, without exceeding a not-to-exceed budget, a not-to-exceed guaranteed maximum price, or a fixed price (“Early Work Price”) to be stated in such Amendment, with such Amendment including all necessary District approvals where required. If the Early Work Price is a not-to-exceed budget, then the CM/GC will be obligated to perform the Early Work only to the extent that the Cost of Work therefor, together with the CM/GC Fee, does not exceed the Early Work Price; however, if the CM/CG performs Early Work with a cost in excess of the Early Work Price the CM/GC will pay such excess cost without reimbursement. If one or more Early Work Amendments are executed, the CM/GC will diligently continue to work toward development of a GMP Amendment acceptable to the District, which will incorporate the Early Work Amendments. If the District thereafter terminates the Contract prior to execution of a GMP Amendment, the provisions of Section J.5 of the District 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, CM/GC will provide to the District a full performance bond and a payment security bond as required by Section G of the District General Conditions in the amount of the GMP. If an Early Work Amendment is executed, the CM/GC will provide such bond in the amount of the Early Work Price under the Early Work Amendment. The CM/GC will provide to the District additional or replacement bonds at the time of execution of any subsequent Early Work Amendment or GMP Amendment, in each case prior to execution of the Amendment and the supplying of any labor or materials for the prosecution of the Work covered by the Amendment, and in each case in a sufficient amount so that the total bonded sum equals or exceeds the total Early Work Price or the GMP, as the case may be. In the event of a Scope Change that increases the GMP, the CM/GC will provide to the District an additional or supplemental bond in the amount of such increase prior to performance of the additional Work.

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

3.3.1 Providing all Preconstruction Phase Services described above.

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

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

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

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

3.3.6 Holding and conducting periodic meetings with the District and the Architect to coordinate, update and ensure progress of the Work.

3.3.7 Submitting monthly written report(s) to the District's Authorized Representative. Each report shall include, but shall not be limited to, Project updates including: (i) actual costs and progress for the reporting period as compared to the estimate of costs and Project schedule; (ii) explanations of significant variations; (iii) work completed; (iv) work in progress; (v) changes in the work; and (vi) other information as determined to be appropriate by the District. The CM/GC will provide oral or written updates to the District as deemed appropriate by the CM/GC or as requested by the District.

3.3.8 Maintaining a daily log containing a record of weather, Subcontractors working on the site, number of workers, Work accomplished, problems encountered, safety violations and incidents of personal injury and property damage, and other similar relevant data as the District may reasonably require. The log will be available to the District and the Architect on request.

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

3.3.10 Cooperating with any and all consultants hired by the District.

3.3.11 At the District's request, cooperating and performing warranty and inspection Work for the Project through the expiration date of the applicable warranty period.

3.3.12 Assisting the District with start-up of the Project. Such start-up may occur in phases due to phased occupancy.

3.3.13 Incorporating commissioning and inspection agents' activities into the Project schedule and coordinating Subcontractors required to participate in the commissioning and inspection process.

3.3.14 Performing all other obligation and providing all other services set forth in the Contract Documents; and performing all other acts and supplying all other things necessary to fully and properly perform and complete the Work as required by this Contract.

ARTICLE 4 RELATIONSHIP AND ROLES OF THE PARTIES

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

4.2 Performance of Work. **The CM/CG will: cooperate with the Architect and the District's Authorized Representative and utilize the CM/GC's professional skill, efforts and judgment in furthering the interests of the District; to furnish efficient business administration and supervision; furnish at all times an adequate**

supply of workers and materials; and to perform the Work in conformance with the terms and conditions of the Contract Documents and in an expeditious and economical manner consistent with the interests of the District. The CM/GC will be required to adhere to the Warm Springs TERO policies (see Contract Exhibit C).

4.3 Design Consultants. The District has a separate contract with the Architect related to the Project. Both the CM/GC and the Architect will be given direction by the District through the District's Authorized Representative. The CM/GC will support the District's efforts to create a collaborative and cooperative relationship among the CM/GC, the District's Authorized Representative, the Architect, and other Project consultants.

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

4.5 CM/GC's Project Staff. The "CM/GC's Project Staff" will consist of the following personnel:

4.5.1 Project Manager and Assistant Project Manager: (Insert Name) will be the CM/GC's Project Manager and (Insert Name) will be the CM/GC's Assistant Project Manager and one or both will supervise and coordinate all Construction Phase and Preconstruction Phase Services of the CM/GC and participate in all meetings throughout the Project term unless otherwise directed by the District. The CM/GC represents that each of the Project Manager and Assistant Project Manager have authority to execute Change Orders and Contract Amendments on behalf of the CM/GC.

4.5.2 Job Superintendent: If Construction Phase Services are requested and accepted by the District, (Insert Name) will be the CM/GC's on-site job superintendent throughout the Project term.

4.6 Key Persons. The CM/GC's personnel identified in Article 4.5 will be considered "Key Persons." The CM/GC will not replace Key Persons during the Project without the written permission of the District, which will not be unreasonably withheld. If the CM/GC intends to substitute personnel, the CM/GC will submit a written request to the District at least 30 Days (or such shorter period as permitted by the District) prior to the intended time of substitution. When replacements have been approved by the District, the CM/GC will provide a transition period of at least 10 Business Days during which the CM/GC will use the original and replacement personnel on the Project concurrently. Replacement personnel will be deemed Key Persons.

4.7 Notice to Proceed. If Construction Phase Services are added to the Contract as set forth in Article 3.2, the District will issue a notice to proceed to begin the designated or full Construction Phase Services (the "Notice to Proceed"). It is anticipated that the Notice to Proceed will be issued on or about September 1, 2025. The District will issue a separate Notice to Proceed for any and every Early Work Amendment.

4.8 Completion of Project. The CM/GC will achieve Substantial Completion of the entire Work not later than August 21, 2026, and will achieve Final Completion not later than 30 Days after the earlier of (i) Substantial Completion or (ii) the required date for Substantial Completion.

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

4.10 Time Extensions. Notwithstanding provisions for Contract Time extensions in Section D.2 of the District General Conditions, timely completion of the Work is essential to the success of the Project. The District will grant approval for time extension only as a last resort. The CM/GC will make every effort to recover "lost" time.

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

4.11.1 The liquidated damages incurred by the Owner due to the Contractor’s failure to Substantially Complete the Project within the Contract Time, including any extensions thereof, shall be Zero dollars (\$) per day. The liquidated damages incurred by the Owner due to the Contractor’s failure to finally complete the Project within the Contract Time, including any extensions thereof, shall be Zero dollars (\$) per day for each consecutive day beyond the Time for Final Completion.

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

ARTICLE 5 CONTRACT SUM AND GMP

5.1 Contract Sum. **If a GMP Amendment or Early Work Amendment is executed, the District will pay the CM/GC, as payment for the Work, the “Contract Sum” which will equal the sum of the Preconstruction Fee, the CM/GC Fee, and the actual Cost of the Work, all as defined below, up to the amount of the GMP.**

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

$$\begin{array}{rccccccc} \text{Preconstruction Fee} & & \pm & \text{CM/GC Fee} & \pm & \text{Estimated Cost of the Work (Est. COW)} & \equiv & \text{GMP} \\ \text{Insert fee} & & & 2.5\% & & \text{Fixed Cost for GC Work TBD} & & \end{array}$$

District will pay the CM/GC the Preconstruction Fee on a cost reimbursement basis up to a maximum sum of Insert Fee which will cover constructability review, value engineering, cost estimating, development of GMP, and all other Preconstruction Phase Services, as described in Article 3. If the CM/GC’s costs for provision of Preconstruction Phase Services exceed the maximum Preconstruction Fee, the CM/GC will absorb such additional cost without reimbursement. The CM/GC will not be entitled to any CM/GC Fee beyond the Preconstruction Fee. The District will pay the Preconstruction Fee on a cost-reimbursement basis with each application for payment during the Preconstruction Phase. If the total actual Preconstruction Fee is less than the maximum Preconstruction Fee used for initial calculation of the GMP as provided above, the District may reduce the GMP by the difference or apply 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 may expressly agree to the contrary in the GMP Amendment, no Preconstruction Fee or other fee, compensation or reimbursement will be payable to the CM/GC with respect to Preconstruction Services performed after execution of the GMP Amendment.

5.2 Establishment of CM/GC Fee; Adjustments to CM/GC Fee.

5.2.1 The “CM/GC Fee” is a fixed dollar lump sum to be identified in the GMP Amendment and is calculated as 2.5% of the Estimated Cost of the Work at the time of establishment of the GMP. In making such calculation, the Estimated Cost of the Work will exclude the Preconstruction Fee, the CM/GC Fee itself, and any other cost or charge for which this Contract states is not to be included in calculating the CM/GC Fee, but will include Allowances, selected alternates, Fixed Cost for GC Work, and reasonable CM/GC contingencies as designated in the GMP Supporting Documents. The CM/GC Fee is inclusive of profit, overhead, and all other indirect or non-reimbursable costs. The District will pay the CM/GC Fee ratably with each application for payment during the Construction Phase. In the case of Early Work, the CM/CG Fee will be the above percentage multiplied by the actual Cost of the Early Work, until such time as a GMP Amendment is executed, at which time such CM/GC Fee payments will be credited against the CM/GC Fee fixed therein.

5.2.2 Notwithstanding any provision of Section D.1.3 of the District 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 the multiplying the percentage shown in Article 6.3.1 by the change in the Estimated Cost of the Work reflected in such approved Amendment or Change Order. In addition, if the Contract is terminated for any reason prior to full completion of the Work (including, without limitation, termination during or following performance of Early Work), the CM/GC Fee will be limited to the total CM/GC Fee multiplied by the percentage of Work completed and accepted at the time of termination. The CM/GC Fee will not be subject to adjustment for any other reason, including, without limitation, schedule extensions or adjustments, Project delays, unanticipated costs, or unforeseen conditions.

5.3 Determination of GMP.

5.3.1 The CM/GC will deliver to the District a proposed GMP and GMP Supporting Documents at a time designated by the District during the Preconstruction Phase. If any actual subcontract Offers are available at the time the GMP is being established, the CM/GC will use those subcontract Offers in establishing the GMP.

5.3.2 As the Plans and Specifications may not be developed to the stage of biddable design documents at the time the GMP proposal is prepared, the CM/GC will provide in the GMP for further development of the Plans and Specifications by the Architect that is consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include such things as changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which, if required, will be incorporated by Change Order or Amendment with a corresponding GMP adjustment.

5.3.3 The CM/GC will include with its GMP proposal a written statement of its basis (the “GMP Supporting Documents”), which will include:

- (a) A list of the Plans and Specifications, including all addenda thereto and the conditions of the Contract, which were used in preparation of the GMP proposal.
- (b) A list of any and all inclusions, exclusions, allowances, and a statement of their basis.
- (c) A list of the clarifications and assumptions made by the CM/GC in the preparation of the GMP proposal to supplement the information contained in the Plans and Specifications.
- (d) The proposed GMP, including a statement of the estimated cost organized by trade categories, Allowances, contingency, and other items and the associated fees that comprise the GMP.
- (e) the Date of Substantial Completion upon which the proposed GMP is based, and a critical path methodology schedule and schedule of the Construction Documents issuance dates upon which the date of Substantial Completion is based.

5.3.4 The CM/GC will meet with the District and the Architect to review the GMP proposal and the written statement of its basis. The District and/or the Architect if and when it discovers any inconsistencies or inaccuracies in the information presented, they will promptly notify the CM/GC. The CM/GC will then make appropriate adjustments to the GMP proposal, its basis or both.

5.3.5 Prior to the District’s acceptance of the CM/GC’s GMP proposal and issuance of a Notice to Proceed, the CM/GC 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.

5.3.6 The District 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. The District will provide the CM/GC with revised Plans and Specifications in accordance with schedules agreed to by the District, the Architect, and the CM/GC. The CM/GC will promptly notify the Architect and the District if such revised Plans and Specifications are inconsistent with the agreed-upon assumptions and clarifications.

5.3.7 The GMP will include in the Cost of the Work only those taxes which are enacted at the time the GMP is established.

5.3.8 The Estimated Cost of the Work will include the CM/GC's contingency, a sum established by the CM/GC for the CM/GC's use to cover additional development of Plans and Specifications and unforeseen costs which are properly reimbursable as Cost of the Work but are not the basis for a Change Order. The use of this contingency will be subject to the District's reasonable approval.

5.3.9 The CM/GC will work with the Architect and the District to identify and confirm components and systems not specifically shown, but required for a complete, fully functional Project. The District 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.

5.3.10 Notwithstanding the level of detail represented in the GMP Supporting Documents, the CM/GC will represent and warrant that at the time that it submits the GMP, the GMP includes the entire cost of all components and systems required for a complete, fully functional facility.

5.3.11 In developing the GMP, the CM/GC will include and identify such contingencies within the GMP as may be necessary to pay for unforeseen elements that are required for a complete, fully functional facility. The contingency amount, based on a percentage of the cost of the Work, shall be subject to District's reasonable approval.

5.4 Failure to Furnish an Acceptable GMP. **If the CM/GC does not furnish a GMP acceptable to the District within the District's Target GMP Range, or if the District determines at any time in its sole discretion that the Parties may fail to reach a timely agreement on a GMP acceptable to the District, the District may terminate this Contract without liability, and the CM/GC will not receive additional compensation beyond the Preconstruction Fee under this Contract and sums due under any Early Work Amendment. Termination under this provision will proceed under Section J.5 of the District General Conditions as a termination for the District's convenience. The CM/GC further agrees that the District will not be liable for any damages whether actual, consequential or otherwise for termination of the Contract under this provision.**

5.5 Acceptance of GMP. **Upon acceptance of the GMP by the District, the Parties will execute a GMP Amendment.**

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

5.7 Allowance Work.

5.7.1 The CM/GC will not perform any Allowance Work without prior execution by the District of a Change Order approving the Specifications for the Allowance Work and the price thereof.

5.7.2 The District may apply any Allowance line items that are not fully expended to other line item Allowances that have been fully expended, without any resulting increase in the GMP.

5.7.3 If the total Cost of the Allowance Work exceeds the total Allowances within the GMP, the CM/GC will not perform any Allowance Work in excess of such amount until either (i) the Parties agree that the additional Allowance work will be performed within the then-current GMP or (ii) a GMP Amendment is executed to increase the GMP by the excess cost of the Allowance work.

5.7.4 The Contract Sum 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.

5.7.5 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.

5.8 Reallocating Projected Cost Underruns after Bid (Offer) Buyout. **Awarding of the Work to the primary Subcontractors (Buyout), shall be complete within thirty days (30) of the solicitation of the Work to primary Subcontractors, once complete the CM/GC will review projected costs and provide the District with a buy-out status report showing any projected cost underruns, reconciling accepted Offers and other reasonably anticipated costs, to the cost estimate used by the CM/GC to establish the GMP. The CM/GC will include with its report any underlying documentation requested by the District used to develop or support such report. The CM/GC will also consider the reduced risk associated with known subcontracting costs, and the impact that reduced risk has on the amount of the CM/GC's Contingency. The Parties will negotiate in good faith to transfer an appropriate portion of any projected cost underruns to a District-controlled contingency fund to be held within the GMP to pay for additional costs arising from (a) any District-directed or approved change to the Work, (b) schedule changes that would otherwise entitle the CM/GC to an increase in the GMP, (c) Allowance items after exhaustion of all Allowances, (d) selection by the District of more expensive alternates than those used for calculation of the GMP, (e) the District selection of substitutions that increase the Cost of the Work, or (f) any other costs which otherwise would entitle the CM/GC to an increase in the GMP. Any transfer of projected cost underruns from the CM/GC's contingency to the District-controlled contingency fund will not affect the CM/GC's obligation to complete the Project within the GMP.**

5.9 GMP and Contract Time are Reasonable. **By agreeing to any existing or future GMP for all or any given portion of the Work, the CM/GC represents and acknowledges that each GMP is a reasonable compensation for any and all Work provided or performed and any and all costs and expenses related or associated therewith. Further, CM/GC represents and acknowledges that the Contract Time is reasonable and adequate for the completion of the Project and each part thereof; that CM/GC has fully examined the Contract Documents, and the site, and is fully satisfied with the nature, quality, restrictions, location and character of the Project.**

ARTICLE 6 CHANGES IN THE WORK

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

6.1.1 The overhead and profit markup for the CM/GC will be limited to the CM/GC Fee. Adjustment, if any, permitted under Article 6.3.2 of this Contract.

6.1.2 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 the CM/GC's Direct Costs as defined in the District General Conditions; and

6.1.3 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 District General Conditions and will not be modified by Articles 8 and 9 of this Contract.

6.2 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:**

6.2.1 The CM/GC will review subsequent iterations of the Plans and Specifications as they are prepared to determine whether, in the opinion of the CM/GC, they result in a Scope Change so that it can be determined if an adjustment to the GMP is warranted.

6.2.2 Changes to the GMP will be initiated by written notice by one party to the other ("GMP Change Request"). The CM/GC will deliver any such GMP Change Request to the Architect and the District's Authorized Representative promptly after becoming aware of any Scope Change if, in the CM/GC's opinion,

it constitutes grounds for adjustment of the GMP. Any GMP Change Request will include a proposal as to the appropriate GMP adjustment with respect to the Scope Change at issue.

6.2.3 The CM/GC will submit its GMP Change Requests as soon as possible, and the CM/GC will not be entitled to claim a GMP increase unless the CM/GC submits a GMP Change Request to the District's Authorized Representative and to the Architect within the earlier of (a) 30 Days after the CM/GC has received the information constituting the basis for the claim, or (b) as to Work not yet bid or proposed, prior to submission of solicitations for such Work and as to Work already solicited, prior to commencement of the portion of the Work for which the CM/GC intends to claim a Scope Change; and (c) in any event, prior to the CM/GC's signing of a Change Order for the Scope Change.

6.2.4 The District may, at any time, submit a GMP Change Request requesting a reduction of the GMP, which will include the District's basis for such request, which may include, for example, reduction of the CM/GC's Contingency after further development of the Plans and Specifications that form the basis for the original GMP Amendment, and/or unused Allowances.

6.2.5 The CM/GC will work with the Architect to reconcile all differences in its GMP Change Request with the Architect within seven Days from the date of submission of the GMP Change Request. "Reconciled" means that the CM/GC 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. The CM/GC will submit the Reconciled GMP Change Request to the District, which submission will be a condition to any CM/GC claim for a GMP increase.

6.2.6 If the Reconciled GMP Change Request is not acceptable to the District, the CM/GC agrees to work with the District and the Architect to provide a GMP Change Request that is acceptable to the District.

6.2.7 The CM/GC will make all records, calculations, drawings, and similar items relating to GMP Change Request available to the District and will allow the Architect and the District access and opportunity to view such documents at the CM/GC's offices. Upon the District's reasonable notice, the CM/GC will deliver two copies of such documents to the District and the Architect at any regular meeting or at the Site.

6.2.8 GMP increases, if any, will not exceed the increased Cost of the Work arising from the Scope Change (whether based on agreed fixed pricing, or the estimated Cost of the Work increase based on cost-reimbursable pricing), reconciled in accordance with the above provisions, as arising from the incident justifying the GMP increase, plus or minus the CM/GC Fee applicable to such change in the Cost of the Work. GMP increases, if any, will not increase the CM/GC's contingency.

6.2.9 If the Change Order work is not performed or provided by or through the CM/GC, in no instance shall the District be obligated to pay more than 10% plus CM/GC's percentage above what the Cost of the Work would have been had the Work at issue actually been performed or provided directly by the CM/GC. Provided, further, in no instance shall the District be liable to pay any other increase or premium for overtime work or any other work supplied in connection with a Change Order which would cause the amount due to employees to increase above the base rate.

6.2.10 Except as provided in this Article 7.2, adjustments to the GMP will be reconciled in accordance with Section D of the District General Conditions.

6.3 Execution by District. **If Architect is the District'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 the District, and only duly authorized personnel of the District may do so.**

ARTICLE 7 COST OF THE WORK (To Be Reimbursed)

7.1 Cost of the Work. **The term “Cost of the Work” will include only those items necessarily and reasonably incurred by the CM/GC in the proper performance of the Work and specifically identified in this Article 8, and only to the extent that they are directly related to the Project, including:**

7.2 Labor Costs.

7.2.1 Wages of construction workers directly employed by the CM/GC to perform the construction of the Work at the site.

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

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

7.2.4 District shall only be obligated to make payments based upon base rates. If the District specifically authorizes and agrees to pay overtime, it shall be paid on the basis of the increased wage payment to the employee only, plus the direct increased cost of fringe benefits and taxes directly applicable to such an increased wage payment, if any, and not upon any increased percentages in base rates.

7.3 Subcontract Costs.

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

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

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

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

7.5 Costs of Miscellaneous Equipment and Other Items; Equipment Rental Charges.

7.5.1 Costs, including transportation, installation, maintenance, dismantling and removal, of materials, supplies, temporary facilities, machinery, equipment, and hand tools not customarily owned by the construction workers, which are provided by the CM/GC at the site and fully consumed in the performance of the Work; and cost less salvage value on such items if not fully consumed, whether sold to others or retained by the CM/GC; provided that the District at the District’s option may require that the CM/GC deliver to the District (at no charge) at the end of the Project any of such items procured for this Project. Cost for

items previously used by the CM/GC will mean fair market value. The CM/GC will charge no additional administrative or other mark-up for purchased items. The CM/GC 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 \$100.00. A copy of such disposition log will accompany the payment application whenever these items are included in the application.

7.5.2 Rental charges for temporary facilities, machinery, equipment, and hand tools not customarily owned by the construction workers, which are provided by the CM/GC at the site, whether rented from the CM/GC or others, and costs of transportation, installation, minor repairs and replacements, dismantling and removal thereof. Rates and quantities of equipment rented will be according to industry standards, will not exceed 100% of the rental rates of local rental companies, in effect at the time of rental, will not exceed acquisition costs, and for individual items exceeding \$10,000.00 will be subject to District's prior approval. The CM/GC will deliver to District a list of published rates from time to time at District's request. For all items rented or leased, the CM/GC will charge the District only the rental charge incurred by the CM/GC with no additional administrative or other mark-up. The CM/GC 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 the District. Efforts will include, but not be limited to, providing the District with a rent/buy analysis so that the District may elect for the CM/GC to procure the item in lieu of rental if the facility at issue is expected to be rented for six months or longer. Such rent/buy analysis will include, where available, a leasing rate commensurate with the expected term of rental of the facility at issue. Inclusions to and exclusions from rental rates will be made in accordance with District standards.

7.5.3 Costs of removal of debris from the site.

7.5.4 Cost of 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.

7.5.5 That portion of the travel and subsistence expenses of the CM/GC's personnel determined by the District to be reasonable and necessary, at the District approved rates, incurred while traveling in discharge of duties connected with the Work. Main office staff travel will not be reimbursed unless approved in advance by the District. These travel costs will be reimbursed only to the extent allowed under the District travel reimbursement guidelines (the "District Travel Rules") applicable to the District and only at approved the District travel rates. The CM/GC personnel who are scheduled to work at the Project site for less than six months may receive a subsistence per diem approved by the District in accordance with District Travel Rules if their place of residence is greater than 60 miles from the Project site; provided no such personnel will be entitled to such per diem reimbursement beyond such six-month period.

7.6 Other Costs.

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

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

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

7.6.4 The CM/GC deposits lost for causes other than the CM/GC's fault or negligence.

7.6.5 Costs of Plans, Specifications and other documents required to complete the Work, except as provided by the District or the Architect.

7.6.6 Other costs incurred in the performance of the Work if and to the extent approved in advance in writing by the District.

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

7.8 Fixed Cost for General Conditions Work. **The CM/GC will be paid a fixed sum of TBD (TBD) Dollars, as payment for the GC Work, including all labor, materials, and direct and indirect costs thereof. To the extent any GC Work is otherwise described above in this Article 8, the CM/GC's compensation for the same is included in the Fixed Cost for GC Work and will not otherwise be charged as 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 scheduled Construction Phase. However, no adjustment in the amount payable for General Conditions Work will be made if the actual construction period is shorter or longer than the number of months scheduled for the Construction Phase, unless the construction period is extended because of a District-requested delay.**

ARTICLE 8 COSTS EXCLUDED FROM COST OF WORK (Not To Be Reimbursed)

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

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

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

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

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

8.1.5 Rental cost of machinery and equipment, except as provided in Article 8.5.2.

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

8.1.7 Costs due to the fault or negligence of the CM/GC, Subcontractors, suppliers, anyone directly or indirectly employed by any of them, or for whose acts any of them may be liable.

8.1.8 The cost of correction of any repair work, nonconforming or defective work, or warranty work.

8.1.9 Merit, safety, or other incentive payments, bonuses or awards, or any expenses in connection therewith, except as provided in Article 8.6.6.

8.1.10 Fines and penalties.

8.1.11 Except for Early Work, the cost of Preconstruction Phase Services.

8.1.12 The Cost of the Work for GC Work in excess of the Fixed Cost for GC Work.

8.1.13 Any costs in excess of the GMP.

8.1.14 Any legal, accounting, or other professional services fees incurred by the CM/GC in executing its obligations under this Contract.

8.1.15 Food and other entertainment.

ARTICLE 9 DISCOUNTS, REBATES AND REFUNDS

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

9.2 Amounts Credited to District. **Amounts which accrue to the District in accordance with the provisions of Article 10.1 will be credited to the District as a deduction from the Cost of the Work.**

ARTICLE 10 SUBCONTRACTS AND OTHER CONTRACTS

10.1 General Subcontracting Requirements.

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

10.1.2 The CM/GC will comply with Oregon Administrative Rules (“OAR”) 580-050-0040, OAR 580-050-0041, and OAR 580-050-0042 in all respects for the solicitation of Minority, Women and Emerging Small Business Enterprises. Compliance will include pass-through requirements for Subcontractor demonstrations of good faith efforts for all subcontractor Offer packages, for which set goals will not be utilized.

10.1.3 The CM/GC will report to the District on the results of the good faith efforts of compliance required in Article 11.1.2 following award of all subcontracts.

10.2 CM/GC’s Obligations under Subcontracts.

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

10.2.2 The CM/GC 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 District General Conditions, fully effective as applied to Subcontractors. The CM/GC will indemnify the District for any additional cost based on a subcontractor claim which results from the failure of the CM/GC to incorporate the provisions of this Contract in each subcontract. The CM/GC will provide all necessary Plans, Specifications, and instructions to its suppliers and Subcontractors to enable them to properly perform their work.

10.2.3 Retainage from Subcontractors. Except with the District’s prior approval, payments to Subcontractors will be subject to retainage of 5%. The District and the CM/GC will agree upon a mutually acceptable procedure for review and approval of payments and retainage for Subcontractors.

10.3 Subcontractor Selection.

10.3.1 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.

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

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

(a) Solicitations will be advertised at least 10 Days prior to opening in the Daily Journal of Commerce and at least one other newspaper. The CM/GC also agrees to advertise in a local community newspaper in the area in which the Project is located, and the Central Oregon Builders Association website, in order to allow for local participation in the solicitation process.

(b) Unless specific other prior arrangement has been made with District, all Offers will be written, and submitted to a specific location at a specific time. The CM/GC will time-stamp all Offers as received. The CM/GC 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.

(c) If fewer than three (3) Offers are submitted in response to any solicitation (inclusive of any Offer submitted by the CM/GC), prior written approval by the District will be required to accept the Offer.

(d) The CM/GC may develop and implement a prequalification process for particular solicitations, followed by selection of successful Offers among those Offerors that the CM/GC determines meet the prequalification standards, with the District's prior written approval of such prequalification process.

(e) The CM/GC will comply, and require Subcontractor compliance with, State of Oregon Bureau of Labor & Industries prevailing wage rates as specified in the RFP.

(f) The District may, at its sole discretion, require the CM/GC to re-solicit for Offers based on the same or modified documents.

(g) The CM/GC 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) The CM/GC will document any and all discussions, questions and answers, modifications and responses to or from any Offeror and ensure that the same are distributed to all Offerors, and the District will be entitled to inspect such documentation on request.

(i) The CM/GC will determine the lowest Offer for each solicitation that meets the CM/GC's reasonable performance standards for the components of the Work at issue; provided that if the CM/GC determines it is unable to execute a suitable subcontract with such Offeror, the CM/GC may, with the District's prior approval, execute a subcontract with the second-lowest Offeror pursuant to Article 11.3.4 below.

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

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

10.3.6 The CM/GC will notify all Offerors for a particular subcontract of the selected Subcontractor in writing.

10.3.7 To the extent permitted by law, the CM/GC's subcontracting records will not be considered public records; provided, however, that the District and other authorized agencies of the State will retain the right to audit and monitor the subcontracting process in order to protect the District's interests.

10.4 CM/GC Field Work.

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

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

10.5 Subcontracting by CM/GC.

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

10.5.2 For those items for which the CM/GC or any of its subsidiaries intends to submit an Offer, such intent must be publicly announced with the solicitation for Offers required by Article 11.3.1, and the District notified in writing. All Offers for this work will be delivered to the District and publicly opened by the District at an announced time, date, and place. In transmitting information on Offers, the CM/GC shall disclose which Offers were submitted by the CM/GC or an Affiliate.

10.5.3 Except as provided in Article 11.4, the CM/GC may not self-perform any portion of the Work or subcontract with an Affiliate through a non-competitive process unless the CM/GC provides a written justification for the need to use an alternative contracting method and has received prior written approval from the District's Authorized Representative. [OAR 137-049-0690(5)(m)]

10.6 Unsuccessful Offerors. **Upon written request by an Offeror(s) not selected by the CM/GC to perform a particular subcontract, the CM/GC shall 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. The CM/GC need only hold a briefing meeting if the written request is**

submitted within 60 Days from the CM/GC's notice of award for a particular subcontract. The CM/GC shall set a briefing meeting within 45 Days of the written request. [ORS 279C.337(3)(e), OAR 137-049-0690(5)(n)].

10.7 Protests. The CM/GC, acting as an independent 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 the District. The CM/GC will be solely responsible for resolving the procurement protests of Subcontractors and suppliers. The CM/GC will indemnify, defend, protect and hold harmless the District from and against any such procurement protests and resulting claims or litigation. The CM/GC will act as an independent contractor, and not an agent of the District, in connection with any procurement protest. The provisions of this Article 11 are solely for the benefit of the District, and do not grant any rights or remedies (including third party beneficiary rights) to any Offeror or other protester, in connection with any procurement protest or claim.

ARTICLE 11 ACCOUNTING RECORDS

11.1 Accounting; Audit Access. The CM/GC 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 the District. The District and the District's representatives, including the District's accountants and auditors, will be afforded reasonable and regular access to the CM/GC's records, books, correspondence, instructions, drawings, receipts, subcontracts, purchase orders, vouchers, memoranda and other data relating to this Contract, and the CM/GC will preserve these for a period of three years after final payment, or for such longer period as may be required by law.

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

ARTICLE 12 PROGRESS PAYMENTS

12.1 Integration with District 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 District General Conditions. In the event of conflict between the provisions of Articles 13 and 14 and Section E, the provision more favorable to the District 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 District General Conditions.

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

12.3 Percentage of Completion. In its applications for payment, the CM/GC 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 (i) the percentage of that portion of the Work which has actually been completed; or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the CM/GC on account of that portion of the Work for which the CM/GC has made or intends to make actual payment prior to the next application for payment by (b) the share of the GMP allocated to that portion of the Work in the Schedule of Values.

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

12.4.1 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 the District of changes in the Work, amounts not in dispute will be included.

12.4.2 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 District General Conditions.

12.4.3 Add the CM/GC's Fee. The portion of the CM/GC's Fee payable will be an amount that bears the same ratio to the CM/GC Fee as sum of the amounts in the two preceding Clauses bears to the estimated probable Cost of the Work described in Article 6.1.2, but in no event causing total CM/GC Fee payments to exceed the total CM/GC Fee.

12.4.4 Subtract the aggregate of previous payments made by and retained by the District.

12.4.5 Subtract the shortfall, if any, indicated by the documentation required to substantiate prior applications for payment, or resulting from errors subsequently discovered by the District in such documentation.

12.4.6 Subtract any amounts for which the District's Authorized Representative has withheld or nullified payment as provided in the Contract Documents; and

12.4.7 Subtract 5% retainage on the entire progress payment.

ARTICLE 13 FINAL PAYMENT

13.1 Final Payment Accounting. **The CM/GC will submit to the District a final detailed accounting of the Cost of the Work together with the CM/GC's final application for payment.**

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

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

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

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

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

13.4 Payment Disputes. **If the District's written report of the Cost of the Work as substantiated by the CM/GC's final accounting is less than that claimed by the CM/GC or if the District's Authorized Representative declines to approve any duly submitted payment request by the CM/GC, the CM/GC will be**

entitled to demand a review by the District's highest contracting authority of the disputed amount. Such demand will be made by the CM/GC within 30 Days after the CM/GC's receipt of a copy of the rejection of the application for payment; failure to demand additional review within this 30-Day period will result in the substantiated amount reported by the District's accountants becoming binding on the CM/GC. In addition, if the District or any other state agency performs a subsequent audit of the Cost of the Work and determines any item therein to have been unsubstantiated or that the CM/GC was otherwise overpaid, the CM/GC will have 30 Days after delivery of request for reimbursement by the District to demand additional review by the District's highest contracting authority; failure to make such demand within this 30 Day period will result in the requested reimbursement becoming unconditionally due and payable by the CM/GC. If the CM/GC timely submits a protest to the Agency's highest contracting authority, the CM/GC's Claim will be subject to the claims review process in Section D.3 of the District General Conditions. Pending a final resolution, the District will pay the CM/GC the amount of the application for payment approved by the District's Authorized Representative.

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

ARTICLE 14 TERMINATION OR SUSPENSION

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

14.2 District's Termination for Convenience after GMP Amendment. After the GMP Amendment is executed by the Parties, the Contract may be terminated by the District without penalty for convenience pursuant to Section J.5 of the District General Conditions in which case the CM/GC 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's Fee prorated based on the actual Cost of the Work to the date of termination, but in any event not in excess of the GMP.

14.3 District's Termination for Cause. In the event of termination of this Contract by the District for cause pursuant to Section J.4 of the District General Conditions, the amount, if any, to be paid to the CM/GC after application of the District General Conditions and the District's rights at law will not exceed the amount the CM/GC would be entitled to receive under Article 15.2.

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

14.5 Assignment of Subcontracts. Each subcontract and supply contract for any portion of the Work is hereby irrevocably assigned by the CM/GC to the District, provided that such assignment is effective only after termination of this Contract by the District, and only for those subcontracts and supply contracts which the District accepts by notifying the Subcontractor/supplier and the CM/GC in writing. For those subcontracts and supply contracts accepted by the District, if the Work has been suspended for more than 30 Days, the Subcontractor's/supplier's compensation will be equitably adjusted for increases in cost resulting from the suspension. The CM/GC will include a provision in each subcontract and supply agreement whereby the Subcontractor/supplier acknowledges the District's rights under this Article 15.5. With respect to any subcontracts/supply contracts that are not accepted by the District, the provisions of Section J.6.1 of the District General Conditions will apply.

ARTICLE 15 REPRESENTATIONS AND WARRANTIES

15.1 Representations. The CM/GC represents and warrants to the District as of the effective date of this Contract:

15.1.1 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.

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

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

15.1.4 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 the CM/GC or its consummation of the transactions contemplated hereby.

15.1.5 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

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

ARTICLE 16 MISCELLANEOUS

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

16.2 Merger. The Contract Documents constitute the entire understanding 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. Except for those exhibits, attachments, and appendices that are expressly identified in this Contract, which are hereby incorporated herein by reference, there are no other understandings, agreements, or representations, oral or written, regarding the Contract. The CM/GC, by signature of its representative, hereby acknowledges that it has read the Contract, understands it and agrees to be bound by its terms and conditions.

16.3 Severability. Nothing contained herein shall be construed so as to require the commission of any act contrary to law, and wherever there is any conflict between any provision contained herein and any applicable law, the provision of the Agreement which is affected shall be curtailed and limited only to the extent necessary to bring it within the requirements of the law. To the extent that applicable law requires the inclusion of any terms or conditions, such terms or conditions are incorporated by this reference herein.

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

CM/GC:

Contractor

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

Construction Contractor's Board Registration No.:

Signature of Authorized Representative of CM/GC

Title: _____

Date: _____

DISTRICT:

JEFFERSON COUNTY SCHOOL DISTRICT 509J

Signature of District's Authorized Representative

Title _____

Date _____

EXHIBITS:

Contract Exhibit A – District General Conditions

Contract Exhibit B - Form of GMP Amendment

Contract Exhibit C – TERO Ordinance – Confederated Tribes of the Warm Springs Indian Reservation

Contract Exhibit A

JEFFERSON COUNTY SCHOOL DISTRICT 509J

GENERAL CONDITIONS FOR PUBLIC IMPROVEMENT CONTRACTS

INSTRUCTIONS: The attached Jefferson County School District 509J, **general conditions** (“**General Conditions**”) apply to all designated public improvement contracts. Changes to the General Conditions (including any additions, deletions or substitutions) should only be made by attaching Supplemental General Conditions. The text of these General Conditions should not otherwise be altered.

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**JEFFERSON COUNTY SCHOOL DISTRICT 509J
GENERAL CONDITIONS FOR PUBLIC IMPROVEMENT CONTRACTS
("General Conditions")**

**SECTION A
GENERAL PROVISIONS**

A.1 DEFINITION OF TERMS

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

ARCHITECT/ENGINEER, means the Person appointed by the Owner to make Plans and Specifications and to provide contract administration of the Work contemplated by the Contract to the extent provided herein or by supplemental instruction of Owner (under which Owner may delegate responsibilities of the Owner's Authorized Representative to the Architect/Engineer), in accordance with ORS Chapter 671 (Architects) or ORS Chapter 672 (Engineers) and administrative rules adopted thereunder.

CHANGE ORDER, means a written order issued by the Owner's Authorized Representative to the Contractor requiring a change in the Work within the general scope of the Contract Documents, issued under the changes provisions of Section D.1 in administering the Contract, including Owner's written change directives as well as changes reflected in a writing executed by the parties to this Contract and, if applicable, establishing a Contract Price or Contract Time adjustment for the changed Work.

CLAIM, means a demand or assertion by Contractor seeking, as a matter of right, adjustment or interpretation of Contract terms, payment of money, extension of Contract Time or other relief pursuant to Section D.3.

CONTRACT, means the written agreement between the Owner and the Contractor comprised of the Contract Documents that describe the Work to be done and the obligations between the parties.

CONTRACT DOCUMENTS, means the Solicitation Document and any addenda thereto, Instructions to Offerors, Supplemental Instructions to Offerors, the Public Improvement Contract, General Conditions, Supplemental General Conditions, if any, the accepted Offer, Plans, Specifications, amendments and Change Orders.

CONTRACT PERIOD, as set forth in the Contract Documents, means the period beginning with the issuance of the Notice to Proceed and concluding upon Final Completion.

CONTRACT PRICE, means the total of the awarded Offer amount, as increased or decreased by the price of approved alternates and Change Orders.

CONTRACT TIME, means any incremental period of time allowed under the Contract to complete any portion of the Work as reflected in the project schedule.

CONTRACTOR, means the Person awarded the Contract for the Work contemplated.

DAYS, are calendar days, including weekdays, weekends and holidays, unless otherwise specified.

DIRECT COSTS, means, unless otherwise provided in the Contract Documents, the cost of materials, including sales tax, cost of delivery; cost of labor, including social security, old age and unemployment insurance, and fringe benefits required by agreement or custom; worker's compensation insurance; project specific insurance; bond premiums, rental cost of equipment, and machinery required for execution of the work; and the additional costs of field personnel directly attributable to the Work.

FINAL COMPLETION, means the final completion of all requirements under the Contract, including Contract Closeout as described in Section K but excluding Warranty Work as described in Section I.2, and the final payment and release of all retainage, if any, released.

FORCE MAJEURE, means an act, event or occurrence caused by fire, riot, war, acts of God, nature, sovereign, or public enemy, strikes, freight embargoes or any other act, event or occurrence that is beyond the control of the party to this Contract who is asserting Force Majeure.

NOTICE TO PROCEED, means the official written notice from the Owner stating that the Contractor is to proceed with the Work defined in the Contract Documents. Notwithstanding the Notice to Proceed, Contractor shall not be authorized to proceed with the Work until all initial Contract requirements, including the Contract, performance bond and payment bond, and certificates of insurance, have been fully executed and submitted to Owner in a suitable form.

OFFER, means a bid in connection with Instructions to Bidders and a proposal in connection with a Request for Proposals.

OFFEROR, means a bidder in connection with Instructions to Bidders and a proposer in connection with a Request for Proposals.

OVERHEAD, means those items that may be included in the Contractor's markup (general and administrative expense and profit) and that shall not be charged as Direct Costs of the Work, including without limitation such Overhead expenses as wages or salary of personnel above the level of foreman (i.e., superintendents and project managers), and expenses of Contractor's offices at the job site (e.g. job trailer) including expenses of personnel staffing the job site office.

OWNER, means the Jefferson County School District 509J

OWNER'S AUTHORIZED REPRESENTATIVE, means those individuals identified in writing by the Owner to act on behalf of the Owner for this project. Owner may elect, by written notice to Contractor, to delegate certain duties of the Owner's Authorized Representative to more than one party, including without limitation, to an Architect/Engineer. However, nothing in these General Conditions is intended to abrogate the separate design professional responsibilities of Architects under ORS Chapter 671 or of Engineers under ORS Chapter 672.

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

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

PUBLIC IMPROVEMENT CONTRACT, means the project-specific agreement between Owner and Contractor containing the specific terms and conditions for the Work.

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

RECORD DOCUMENT, means the as-built Plans, Specifications, testing and inspection records, product data, samples, manufacturer and distributor/supplier warranties evidencing transfer to Owner, operational and maintenance manuals, shop drawings, Change Orders, correspondence, certificate(s) of occupancy, and other documents listed in Subsection B.9.1 of these General Conditions, recording all Services performed.

SOLICITATION DOCUMENT, means Instructions to Bidders or Offerors or a Request for Proposal or a Request for Quotes.

SPECIFICATION, means any description of the physical or functional characteristics of the Work, or of the nature of a supply, service or construction item. Specifications may include a description of any requirement for inspecting, testing or preparing a supply, service or construction item for delivery and the quantities or qualities of materials to be

furnished under the Contract. Specifications generally will state the results or products to be obtained and may, on occasion, describe the method and manner of doing the work to be performed. Specifications may be incorporated by reference and/or may be attached to the Contract.

SUBCONTRACTOR, means a Person having a direct contract with the Contractor, or another Subcontractor, to perform one or more items of the Work.

SUBSTANTIAL COMPLETION, means the date when the Owner accepts in writing the construction, alteration or repair of the improvement to real property or any designated portion thereof as having reached that state of completion when it may be used or occupied for its intended purpose. 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.

SUBSTITUTIONS, means items that in function, performance, reliability, quality, and general configuration are the same or better than the product(s) specified. Approval of any substitute item shall be solely determined by the Owner's Authorized Representative. The decision of the Owner's Authorized Representative is final.

SUPPLEMENTAL GENERAL CONDITIONS, means those conditions that remove from, add to, or modify these General Conditions. Supplemental General Conditions may be included in the Solicitation Document or may be a separate attachment to the Contract.

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

A.2 SCOPE OF WORK

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

A.3 INTERPRETATION OF CONTRACT DOCUMENTS

A.3.1 Unless otherwise specifically defined in the Contract Documents, words which have well-known technical meanings or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings. Contract Documents are intended to be complementary. Whatever is called for in one, is interpreted to be called for in all. However, in the event of conflicts or discrepancies among the Contract Documents, interpretations will be based on the following descending order of precedence:

- (a) Contract amendments and Change Orders, with those of later date having precedence over those of an earlier date;
- (b) The Supplemental General Conditions, if any;
- (c) The Public Improvement Contract;
- (d) The General Conditions;
- (e) Division One (General Requirements) of the Specifications;
- (f) Detailed Schedules of finishes, equipment and other items included in the Specifications;
- (g) Plans and Specifications (other than Division One and the Detailed Schedules to the Specifications);
- (h) Large-scale drawings on Plans;
- (i) Small-scale drawings on Plans;

(j) Dimension numbers written on Plans shall prevail and take precedence over dimensions scaled from Plans;

(k) The Solicitation Document, including Instructions to Offerors and Supplemental Instructions to Offerors, and any addenda thereto;

(l) The accepted Offer.

A.3.2 In the case of an inconsistency between Plans and Specifications or within either document not clarified by addendum, the better quality or greater quantity of Work shall be provided in accordance with the Owner or Owner's Authorized Representative's interpretation in writing.

A.3.3 If the Contractor finds discrepancies in, or omissions from the Contract Documents, or if the Contractor is in doubt as to their meaning, the Contractor shall at once notify the Owner or Owner's Authorized Representative. Matters concerning, and interpretation of requirements of, the Contract Documents will be decided by the Owner's Authorized Representative, who may delegate that duty in some instances to the Architect/Engineer. Responses to Contractor's requests for interpretation of Contract Documents will be made in writing by Owner's Authorized Representative (or the Architect/Engineer) within any time limits agreed upon or otherwise with reasonable promptness. Interpretations and decisions of the Owner's Authorized Representative (or Architect/Engineer) will be consistent with the intent of and reasonably inferable from the Contract Documents. Except in cases where Contractor reasonably believes immediate action is required for the safety of persons or property, Contractor shall not proceed without direction in writing from the Owner's Authorized Representative (or Architect/Engineer).

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

A.4 EXAMINATION OF PLANS, SPECIFICATIONS, AND SITE

A.4.1 It is understood that the Contractor, before submitting an Offer, has made a careful examination of the Contract Documents; has become fully informed as to the quality and quantity of materials and the character of the Work required; and has made a careful examination of the location and conditions of the Work and the sources of supply for materials. Contractor acknowledges receipt of all information necessary to construct the Work. The Owner will in no case be responsible for any loss or for any unanticipated costs that may be suffered by the Contractor as a result of the Contractor's failure to acquire full information in advance in regard to all conditions pertaining to the Work. No oral agreement or conversation with any officer, agent, or personnel of the Owner, or with the Architect/Engineer either before or after the execution of this Contract, shall affect or modify any of the terms or obligations herein contained.

A.4.2 Should the Plans or Specifications fail to particularly describe the materials, kind of goods, or details of construction of any aspect of the Work, Contractor shall have the duty to make inquiry of the Owner and Architect/Engineer as to what is required prior to performance of the Work. Absent Specifications to the contrary, the materials or processes that would normally be used to produce first quality finished Work shall be considered a part of the Contract requirements.

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

A.4.4 Since the Contract Documents are complementary, before starting each portion of the Work, the Contractor shall carefully study and compare the various Plans, Specifications, and other Contract Documents relative to that portion of the Work, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. Any errors, inconsistencies, or omissions known, recognized, or discovered by the Contractor shall be reported promptly to the Architect, in writing, as a request for information in such form as the Architect/Engineer may require.

A.4.5 If the Contractor believes that additional cost or Contract Time is involved because of clarifications or instructions issued by the Owner's Authorized Representative (or Architect/Engineer) in response to the Contractor's notices or requests for information, the Contractor must submit a written request to the Owner's Authorized Representative, setting forth the nature and specific extent of the request, including all time and cost impacts against the Contract as soon as possible, but no later than thirty (30) Days after receipt by Contractor of the clarifications or instructions issued. If the Contractor does not concur with the decision of the Owner's Authorized Representative regarding time and cost impacts of the clarifications or instructions, the Contractor may proceed to file a Claim under Section D.3, Claims Review Process. If the Contractor fails to perform the obligations of Sections A.4.1 to A.4.3, the Contractor shall pay such costs and damages to the Owner as would have been avoided if the Contractor had performed such obligations.

A.5 INDEPENDENT CONTRACTOR STATUS

The service or services to be performed under this Contract are those of an independent contractor as defined in ORS 670.600. Contractor represents and warrants that it is not an officer, employee or agent of the Owner as those terms are used in ORS 30.265.

A.6 RETIREMENT SYSTEM STATUS AND TAXES

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

A.7 GOVERNMENT EMPLOYMENT STATUS

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

A.7.2 Contractor represents and warrants that Contractor is not an employee of the State of Oregon for purposes of performing Work under this Contract.

SECTION B

ADMINISTRATION OF THE CONTRACT

B.1 OWNER'S ADMINISTRATION OF THE CONTRACT

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

B.1.2 The Owner's Authorized Representative will visit the site at intervals appropriate to the stage of the Contractor's operations (1) to become generally familiar with and to keep the Owner informed about the progress and quality of the portion of the Work completed, (2) to endeavor to guard the Owner against defects and deficiencies in the Work, and (3) to determine in general if Work is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. The Owner's Authorized Representative will not make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Owner's Authorized Representative will neither have control over or charge of, nor be responsible for the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work.

B.1.3 Except as otherwise provided in the Contract Documents or when direct communications have been specifically authorized, the Owner and Contractor shall endeavor to communicate with each other through the Owner's Authorized Representative or designee about matters arising out of or relating to the Contract. Communications by and with the Architect/Engineer's consultants shall be through the Architect/Engineer. Communications by and with Subcontractors and material suppliers shall be through the Contractor. Communications by and with separate contractors shall be through the Owner's Authorized Representative.

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

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

B.2.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures.

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

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

B.3 MATERIALS AND WORKMANSHIP

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

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

B.3.3 Work done and materials furnished shall be subject to inspection and/or observation and testing by the Owner's Authorized Representative to determine if they conform to the Contract Documents. Inspection of the Work by the Owner's Authorized Representative does not relieve the Contractor of responsibility for the Work in accordance with the Contract Documents.

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

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

B.4 PERMITS

Contractor shall obtain and pay for all necessary permits and licenses, except for the building permit, for the construction of the Work, for temporary obstructions, enclosures, opening of streets for pipes, walls, utilities,

environmental Work, etc., as required for the project. Contractor shall be responsible for all violations of the law, in connection with the construction or caused by obstructing streets, sidewalks or otherwise. Contractor shall give all requisite notices to public authorities. The Contractor shall pay all royalties and license fees. The Contractor shall defend all suits or claims for infringement of any patent or other proprietary rights and shall hold the Owner (and its departments, division, members and employees) and Architect/Engineer harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Contract Documents or where the copyright violations are contained in Plans, Specifications or other documents prepared by the Owner or Architect. However, if the Contractor has reason to believe that the required design, process or product is an infringement of a copyright or a patent, the Contractor shall be responsible for such loss unless such information is promptly furnished to the Architect/Engineer in writing.

B.5 COMPLIANCE WITH GOVERNMENT REGULATIONS

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

(i) Title VI and VII of Civil Rights Act of 1964, as amended; (ii) Section 503 and 504 of the Rehabilitation Act of 1973, as amended; (iii) the Health Insurance Portability and Accountability Act of 1996; (iv) the Americans with Disabilities Act of 1990, as amended; (v) ORS Chapter 659A; as amended; (vi) all regulations and administrative rules established pursuant to the foregoing laws; and (vii) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.

B.5.2 Contractor shall comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations, as well as “Division AA – Affirmative Action Requirements For Bids To The Board of Higher Education”; and

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

(b) Contractor shall maintain, in current and valid form, all licenses and certificates required by law, regulation, or this Contract when performing the Work.

B.5.3 Unless contrary to federal law, Contractor shall certify that it shall not accept a bid from Subcontractors to perform Work as described in ORS 701.005 under this Contract unless such Subcontractors are registered with the Construction Contractors Board in accordance with ORS 701.035 to 701.055 at the time they submit their bids to the Contractor. B.5.4 Unless contrary to federal law, Contractor shall certify that each landscape contractor, as defined in ORS 671.520(2), performing Work under this Contract holds a valid landscape contractor’s license issued pursuant to ORS 671.560.

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

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

B.6 SUPERINTENDENCE

Contractor shall keep on the site, during the progress of the Work, a competent superintendent and any necessary assistants who shall be satisfactory to the Owner and who shall represent the Contractor on the site. Directions given to the superintendent by the Owner’s Authorized Representative shall be confirmed in writing to the Contractor.

B.7 INSPECTION

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

B.7.2 Inspection of the Work will be made by the Owner's Authorized Representative at its discretion. The Owner's Authorized Representative will have authority to reject Work that does not conform to the Contract Documents. Any Work found to be not in conformance with the Contract Documents, in the discretion of the Owner's Authorized Representative, shall be removed and replaced at the Contractor's expense.

B.7.3 Contractor shall make or obtain at the appropriate time all tests, inspections and approvals of portions of the Work required by the Contract Documents or by laws, ordinances, rules, regulations or orders of public authorities having jurisdiction. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work. The Contractor shall give the Owner's Authorized Representative timely notice of when and where tests and inspections are to be made so that the Owner's Authorized Representative may be present for such procedures. Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Owner's Authorized Representative.

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

B.7.5 If directed to do so any time before the Work is accepted, the Contractor shall uncover portions of the completed Work for inspection. After inspection, the Contractor shall restore such portions of Work to the standard required by the Contract. If the Work uncovered is unacceptable or was done without sufficient notice to the Owner's Authorized Representative, the uncovering and restoration shall be done at the Contractor's expense. If the Work uncovered is acceptable and was done with sufficient notice to the Owner's Authorized Representative, the uncovering and restoration will be paid for as a Change Order.

B.7.6 If any testing or inspection reveals failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure, including those of repeated procedures and compensation for the Owner's Authorized Representative's and Architect/Engineer's services and expenses, shall be at the Contractor's expense.

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

B.8 SEVERABILITY

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

B.9 ACCESS TO RECORDS

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

B.9.2 Contractor shall retain and the Owner and its duly authorized representatives shall have access, for a period not less than three (3) years, to all Record Documents, financial and accounting records, and other books, documents, papers and records of Contractor which are pertinent to the Contract costs, for the purpose of making audit, examination, excerpts and transcripts. If for any reason, any part of the Contract is involved in litigation, Contractor shall retain all

pertinent records until all litigation is resolved. The Owner and/or its agents shall continue to be provided full access to the records during litigation.

B.10 WAIVER

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

B.11 SUBCONTRACTS AND ASSIGNMENT

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

B.11.2 At Owner's request, Contractor shall submit to Owner prior to their execution either Contractor's form of subcontract, or the subcontract to be executed with any particular Subcontractor. If Owner disapproves such form, Contractor shall not execute the form until the matters disapproved are resolved to Owner's satisfaction. Owner's review, comment upon or approval of any such form shall not relieve Contractor of its obligations under this Agreement or be deemed a waiver of such obligations of Contractor.

B.11.3 Contractor shall not assign, sell, or transfer its rights, or delegate its responsibilities under this Contract, in whole or in part, without the prior written approval of the Owner. No such written approval shall relieve Contractor of any obligations of this Contract, and any transferee shall be considered the agent of the Contractor and bound to perform in accordance with the Contract Documents. Contractor shall remain liable as between the original parties to the Contract as if no assignment had occurred. Approval by Owner of an assignment shall not be deemed approval of future assignment.

B.12 SUCCESSORS IN INTEREST

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

B.13 OWNER'S RIGHT TO DO WORK

Owner reserves the right to perform other or additional work at or near the project site with other forces than those of the Contractor. If such work takes place within or next to the project site, Contractor will coordinate work with the other contractors or forces, cooperate with all other contractors or forces, carry out the Work in a way that will minimize interference and delay for all forces involved, place and dispose of materials being used so as not to interfere with the operations of another, and join the Work with the work of the others in an acceptable manner and perform it in proper sequence to that of the others. The Owner's Authorized Representative will resolve any disagreements that may arise between or amongst Contractor and the other contractors over the method or order of doing all work (including the Work). In case of unavoidable interference, the Owner's Authorized Representative will establish work priority (including the Work) that generally will be in the sequence that the contracts were awarded.

B.14 OTHER CONTRACTS

In all cases and at any time, the Owner has the right to execute other contracts related to or unrelated to the Work of this Contract. The Contractor of this Contract will fully cooperate with any and all other contractors without additional cost to the Owner in the manner described in section B.13.

B.15 GOVERNING LAW

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

B.16 LITIGATION

Any Claim between Owner and Contractor that arises from or relates to this Contract and that is not resolved through the Claims Review Process in Section D.3 shall be brought and conducted solely and exclusively within the Circuit Court of Jefferson County for the State of Oregon; provided, however, if a Claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. CONTRACTOR BY EXECUTION OF THIS CONTRACT HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF THE COURTS REFERENCED IN THIS SECTION B.16.

B.17 ALLOWANCES

B.17.1 The Contractor shall include in the Contract Price all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct.

B.17.2 Unless otherwise provided in the Contract Documents:

(a) when finally reconciled, allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;

(b) Contractor's costs for unloading and handling at the site, labor, installation costs, Overhead, profit and other expenses contemplated for stated allowance amounts shall be included in the Contract Price but not in the allowances;

(c) whenever costs are more than or less than allowances, the Contract Price shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (i) the difference between actual costs and the allowances under Section B.17.2(a) and (2) changes in Contractor's costs under Section B.17.2(b).

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

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

B.18.1 The Contractor shall prepare and keep current, for the Architect's/Engineer's approval (or for the approval of Owner's Authorized Representative if approval authority has not been delegated to the Architect/Engineer), a schedule and list of submittals which is coordinated with the Contractor's construction schedule and allows the Architect/Engineer reasonable time to review submittals. Owner reserves the right to finally approve the schedule and list of submittals. Submittals include, without limitation, Shop Drawings, Product Data, and Samples which are described below:

(a) Shop Drawings are drawings, diagrams, schedules and other data specially prepared for the Work by the Contractor or a Subcontractor (including any sub-subcontractor), manufacturer, supplier or distributor to illustrate some portion of the Work.

(b) Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

(c) Samples are physical examples that illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

B.18.2 Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. The purpose of their submittal is to demonstrate, for those portions of the Work for which submittals are required by the Contract Documents, the way by which the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents. Review of submittals by the Architect/Engineer is not conducted for the purpose of determining the accuracy and quantities, or for substantiating instructions for installation or performance of

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

B.18.3 The Contractor shall review for compliance with the Contract Documents, approve and submit to the Architect/Engineer Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of separate contractors. Submittals which are not marked as reviewed for compliance with the Contract Documents and approved by the Contractor may be returned by the Architect/Engineer without action.

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

B.18.5 The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal has been approved by the Architect/Engineer.

B.18.6 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Architect/Engineer's review or approval of Shop Drawings, Product Data, Samples or similar submittals unless the Contractor has specifically informed the Architect/Engineer in writing of such deviation at the time of submittal and (i) the Architect/Engineer has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order has been executed by Owner authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by the Architect/Engineer's review or approval thereof.

B.18.7 In the event that Owner elects not to have the obligations and duties described under this Section B.18 performed by the Architect/Engineer, or in the event no Architect/Engineer is employed by Owner on the project, all obligations and duties assigned to the Architect/Engineer hereunder shall be performed by the Owner's Authorized Representative.

B.19 SUBSTITUTIONS

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

B.20 USE OF PLANS AND SPECIFICATIONS

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

B.21 NO THIRD PARTY BENEFICIARIES

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

**SECTION C
*WAGES AND LABOR***

The contractor will comply with the provisions as required by ORS 279C.800 through 279C.870 for the payment of Prevailing wages and comply with the applicable provisions of the Davis-Bacon Act.

C.1 MINIMUM WAGE RATES ON PUBLIC WORKS

Contractor shall comply fully with the provisions of ORS 279C.800 through 279C.870. Documents establishing those conditions, as determined by the Commissioner of the Bureau of Labor and Industries (BOLI), are included as attachments to the Contract Documents. Contractor shall pay workers at not less than the specified minimum hourly rate of wage, and shall include that requirement in all subcontracts.

C.2 PAYROLL CERTIFICATION AND FEE REQUIREMENTS

C.2.1 In accordance with ORS 279C.845, the Contractor and every Subcontractor shall submit written certified statements to the Owner's Authorized Representative, on the form prescribed by the Commissioner of the Bureau of Labor and Industries, certifying the hourly rate of wage paid each worker which the Contractor or the Subcontractor has employed on the project and further certifying that no worker employed on the project has been paid less than the prevailing rate of wage or less than the minimum hourly rate of wage specified in the Contract, which certificate and statement shall be verified by the oath of the Contractor or the Subcontractor that the Contractor or Subcontractor has read such statement and certificate and knows the contents thereof and that the same is true to the Contractor's or Subcontractor's best knowledge and belief. The certified statements shall accurately and completely set out the payroll records for the prior week including the name and address of each worker, the worker's correct classification, rate of pay, daily and weekly number of hours worked, deductions made and actual wages paid. Certified statements for each week during which the Contractor or Subcontractor has employed a worker on the project shall be submitted once a month, by the fifth business day of the following month. The Contractor and Subcontractors shall preserve the certified statements for a period of three (3) years from the date of completion of the Contract.

C.2.2 Pursuant to ORS 279C.845(7), the Owner shall retain 25 percent of any amount earned by the Contractor on this public works project until the Contractor has filed the certified statements required by section C.2.1. The Owner shall pay to the Contractor the amount retained under this subsection within 14 Days after the Contractor files the required certified statements, regardless of whether a Subcontractor has failed to file certified statements.

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

C.3 PROMPT PAYMENT AND CONTRACT CONDITIONS

C.3.1 As a condition to Owner's performance hereunder, the Contractor shall:

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

C.3.1.2 Pay all contributions or amounts due the State Industrial Accident Fund from such Contractor or Subcontractor incurred in the performance of the Contract.

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

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

C.3.2 As a condition to Owner's performance hereunder, if Contractor fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to the Contractor of a Subcontractor by any person in connection with the project as such claim becomes due, the proper officer(s) representing the Owner may pay the claim and charge the amount of the payment against funds due or to become due Contractor under this Contract. Payment of claims in this manner shall not relieve the Contractor or the Contractor's surety from obligation with respect to any unpaid claims.

C.3.3 Contractor shall include in each subcontract for property or services entered into by the Contractor and a first-tier subcontractor, including a material supplier, for the purpose of performing a construction contract, a payment clause that obligates the Contractor to pay the first-tier Subcontractor for satisfactory performance under its subcontract within ten (10) Days out of such amounts as are paid to the Contractor by the public contracting agency under such contract.

C.3.4 All employers, including Contractor, that employ subject workers who work under this Contract in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage, unless such employers are exempt under ORS 656.126. Contractor shall ensure that each of its Subcontractors complies with these requirements.

C.4 PAYMENT FOR MEDICAL CARE

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

C.5 HOURS OF LABOR

As a condition to Owner's performance hereunder, no person shall be employed to perform Work under this Contract for more than ten (10) hours in any one day or forty (40) hours in any one week, except in cases of necessity, emergency or where public policy absolutely requires it. In such instances, Contractor shall pay the employee at least time and a half pay:

(a) For all overtime in excess of eight (8) hours a day or forty (40) hours in any one week when the work week is five consecutive Days, Monday through Friday; or

(b) For all overtime in excess of ten (10) hours a day or forty (40) hours in any one week when the work week is four consecutive Days, Monday through Friday; and

(c) For all Work performed on Saturday and on any legal holiday specified in ORS 279C.540.

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

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

SECTION D CHANGES IN THE WORK

D.1 CHANGES IN WORK

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

D.1.2 It is mutually agreed that changes in Plans, Specifications, quantities, or details of construction are inherent in the nature of construction and may be necessary or desirable during the course of construction. Within the general scope of this Contract, the Owner’s Authorized Representative may at any time, without notice to the sureties and without impairing the Contract, require changes consistent with this Section D.1. All Change Order Work shall be executed under the conditions of the Contract Documents. Such changes may include, but are not limited to:

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

Deductive changes are those that reduce the scope of the Work, and shall be made by mutual agreement whenever feasible. In cases of suspension or partial termination under Section J, Owner reserves the right to unilaterally impose a deductive change and to self perform such Work, for which the provisions of B.13 (Owner’s Right to Do Work) shall then apply. Adjustments in compensation shall be made under the provisions of D.1.3, in which costs for deductive changes shall be based upon a Direct Costs adjustment together with the related percentage markup specified for profit, Overhead and other indirect costs, unless otherwise agreed to by Owner.

D.1.3 The Owner and Contractor agree that Change Order Work shall be administered and compensated according to the following:

(a) Unit pricing may be utilized at the Owner’s option when unit prices or solicitation alternates were provided that established the cost for additional Work, and a binding obligation exists under the Contract on the parties covering the terms and conditions of the additional Work.

(b) If the Owner elects not to utilize unit pricing, or in the event that unit pricing is not available or appropriate, fixed pricing may be used for Change Order Work. In fixed pricing the basis of payments or total price shall be agreed upon in writing between the parties to the Contract, and shall be established before the Work is done whenever feasible. The mark-ups set forth in D.1.3(c) shall be utilized by the parties as a guide in establishing fixed pricing, and will not be exceeded by Owner without adequate justification. Cost and price data relating to Change Orders shall be supplied by Contractor to Owner upon request, but Owner shall be under no obligation to make such requests.

(c) In the event that unit pricing and fixed pricing are not utilized, then Change Order Work shall be performed on a cost reimbursement basis for Direct Costs. Such Work shall be compensated on the basis of the actual, reasonable and allowable cost of labor, equipment, and material furnished on the Work performed. In addition, the following markups shall be added to the Contractor’s or Subcontractor’s Direct Costs as full compensation for profit, Overhead and other indirect costs for Work directly performed with the Contractor’s or Subcontractor’s own forces:

- On Labor 10%
- On Equipment. 10%
- On Materials..... 10%

When Change Order Work under D.1.3(c) is invoiced by an authorized Subcontractor at any level, each ascending tier Subcontractor or Contractor will be allowed a supplemental mark-up on each piece of subcontract Work covered by such Change Order as 5% of the cost.

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

D.1.4 Any necessary adjustment of Contract Time that may be required as a result of a Change Order must be agreed upon by the parties before the start of the Change Order Work unless Owner's Authorized Representative authorizes Contractor to start the Work before agreement on Contract Time adjustment. Contractor shall submit any request for additional compensation (and additional Contract Time if Contractor was authorized to start Work before an adjustment of Contract Time was approved) as soon as possible, but no later than thirty (30) Days after receipt of the Change Order. If Contractor's request for additional compensation or adjustment of Contract Time is not made within the thirty (30) Day time limit, Contractor's requests pertaining to that Change Order are barred. The thirty (30) Day time limit for making requests shall not be extended for any reason, including without limitation Contractor's claimed inability to determine the amount of additional compensation or adjustment of Contract Time, unless an extension is granted in writing by Owner. If Contractor and Owner's Authorized Representative cannot agree on additional compensation or additional Contract Time needed to perform Change Order Work, Contractor may proceed to file a Claim under Section D.3, Claims Review Process. No other reimbursement, compensation, or payment will be made, except as provided in Section D.1.5.

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

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

If the Contractor does not concur with the decision of the Owner's Authorized Representative, the Contractor may proceed to file a Claim under Section D.3, Claims Review Process.

D.1.6 No request or Claim by the Contractor for additional costs or an adjustment of Contract Time shall be allowed if made after receipt of final payment application under this Contract. Final payment application must be made by Contractor within the time required under Section E.6.4.

D.1.7 It is understood that changes in the Work are inherent in construction of this type. The number of changes, the scope of those changes, and the effect they have on the progress of the original Work cannot be defined at this time.

The Contractor is notified that numerous changes may be required and that there will be no compensation made to the Contractor directly related to the number of changes. Each change will be evaluated for extension of Contract Time and increase or decrease in compensation based on its own merit.

D.2 DELAYS

D.2.1 Delays in construction include “Avoidable Delays”, which are defined in Section D.2.1.1, and “Unavoidable Delays”, which are defined in Section D.2.1.2. The effect of Avoidable Delays is described in Section D.2.2 and the effect of Unavoidable Delays is described in Section D.2.3.

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

(a) Could have been avoided by the exercise of care, prudence, foresight, and diligence on the part of the Contractor or its Subcontractors.

(b) Affect only a portion of the Work and do not necessarily prevent or delay the prosecution of neither other parts of the Work nor the completion of the whole Work within the Contract Time.

(c) Do not impact activities on the accepted critical path schedule.

(d) Are associated with the reasonable interference of other contractors employed by the Owner that do not necessarily prevent the completion of the whole Work within the Contract Time.

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

(a) Caused by any actions of the Owner, Owner’s Authorized Representative, or any other employee or agent of the Owner, or by separate contractor employed by the Owner, except as otherwise provided in Section D.2.1.1.

(b) Caused by any site conditions that differ materially from what was represented in the Contract Documents or from conditions that would normally be expected to exist and be inherent to the construction activities defined in the Contract Documents. The Contractor shall notify the Owner’s Authorized Representative immediately of differing site conditions before the area has been disturbed. The Owner’s Authorized Representative will investigate the area and make a determination as to whether or not the conditions differ materially from either the conditions stated in the Contract Documents or those that could reasonably be expected in execution of this particular Contract. If Contractor and the Owner’s Authorized Representative agree that a differing site condition exists, any additional compensation or additional Contract Time will be determined based on the process set forth in Section D.1.5 for Change Order Work. If the Contractor does not concur with the decision of the Owner’s Authorized Representative and/or believes that it is entitled to additional compensation or Contract Time, or both, the Contractor may proceed to file a Claim under Section D.3, Claims Review Process.

(c) Caused by Force Majeure acts, events or occurrences that could not have been avoided by the exercise of care, prudence, foresight, and diligence on the part of the Contractor or its Subcontractors.

(d) Caused by adverse weather conditions. Any adverse weather conditions must be substantiated by documentary evidence that weather conditions were abnormal for the specific time period claimed, could not have been anticipated by the Contractor, and adversely impacted the project in a manner that could not be avoided by rescheduling the Work or by implementing measures to protect against the weather so that the Work could proceed. A rain, windstorm, high water, or other natural phenomenon for the specific locality of the Work, which might reasonably have been anticipated from the previous 10-year historical records of the general locality of the Work, shall not be construed as abnormal. The parties agree that rainfall greater than the following levels cannot be reasonably anticipated:

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

(ii) daily rainfall equal to, or greater than, 0.75 inch at any time.

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

D.2.2 Contractor shall not be entitled to additional compensation or additional Contract Time for Avoidable Delays.

D.2.3 In the event of Unavoidable Delays, based on principles of equitable adjustment, Contractor may be entitled to the following:

(a) Contractor may be entitled to additional compensation or additional Contract Time, or both, for Unavoidable Delays described in Section D.2.1.2 (a) and (b).

(b) Contractor may be entitled to additional Contract Time for Unavoidable Delays described in Section D.2.1.2(c) and (d).

In the event of any requests for additional compensation or additional Contract Time, or both, as applicable, arising under this Section D.2.3 for Unavoidable Delays, other than requests for additional compensation or additional Contract Time for differing site conditions for which a review process is established under Section D.2.1.2 (b), Contractor shall submit a written notification of the delay to the Owner's Authorized Representative within two (2) Days of the occurrence of the cause of the delay. This written notification shall state the cause of the potential delay, the project components impacted by the delay, and the anticipated additional Contract Time extension or the additional compensation, or both, as applicable, resulting from the delay. Within seven (7) Days after the cause of the delay has been mitigated, or in no case more than thirty (30) Days after the initial written notification, the Contractor shall submit to the Owner's Authorized Representative, a complete and detailed request for additional compensation or additional Contract Time, or both, as applicable, resulting from the delay. If the Contractor does not concur with the decision of the Owner's Authorized Representative and/or believes that it is entitled to additional compensation, or additional Contract Time, or both, as applicable, the Contractor may proceed to file a Claim under Section D.3, Claims Review Process. If Contractor does not timely submit the notices required under this Section D.2.1.2(b), then unless otherwise prohibited by law, Contractor's Claim shall be barred.

D.3 CLAIMS REVIEW PROCESS

D.3.1 All Contractor Claims shall be referred to the Owner's Authorized Representative for review. Contractor's Claims, including Claims for additional compensation or additional Contract Time, shall be submitted in writing by Contractor to the Owner's Authorized Representative within five (5) Days after Contractor's initial request has been denied. Within thirty (30) Days after the initial Claim, Contractor shall submit to the Owner's Authorized Representative, a complete and detailed description of the Claim (the "Detailed Notice") that includes all information required by Section D.3.2. Unless the Claim is made in accordance with these time requirements, it shall be waived.

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

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

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

D.3.5 The decision of the Owner shall be final and binding unless the Contractor delivers to the Owner its request for mediation, which shall be a non-binding process, within fifteen (15) Days of the date of the Owner's decision. The mediation process will be considered to have commenced as of the date the Contractor delivers the request. Both parties acknowledge and agree that participation in mediation is a prerequisite to commencement of litigation of any disputes relating to the Contract. Both parties further agree to exercise their best efforts in good faith to resolve all disputes within sixty (60) Days of the commencement of the mediation through the mediation process set forth herein.

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

D.3.6 Should the parties arrive at an impasse regarding any Claims or disputed Claims, it is agreed that the parties shall participate in mediation as specified in Section D.3.5. The mediation process will be considered to have been commenced as of the date one party delivers to the other its request in writing to mediate. The mediator shall be an individual mutually acceptable to both parties, but in the absence of agreement each party shall select a temporary mediator and the temporary mediators shall jointly select the permanent mediator. Each party shall pay its own costs for the time and effort involved in mediation. The cost of the mediator shall be split equally between the two parties. Both parties agree to exercise their best effort in good faith to resolve all disputes in mediation. Participation in mediation is a mandatory requirement of both the Owner and the Contractor. The schedule, time and place for mediation will be mutually acceptable, or, failing mutual agreement, shall be as established by the mediator. The parties agree to comply with Owner's administrative rules governing the confidentiality of mediation, if any, and shall execute all necessary documents to give effect to such confidentiality rules. In any event, the parties shall not subpoena the mediator or otherwise require the mediator to produce records, notes or work product, or to testify in any future proceedings as to information disclosed or representations made in the course of mediation, except to the extent disclosure is required by law.

D.3.7 Unless otherwise directed by Owner's Authorized Representative, Contractor shall proceed with the Work while any Claim of Contractor is pending, including a Claim for additional compensation or additional Contract Time resulting from Change Order Work. Regardless of the review period or the final decision of the Owner's Authorized Representative, the Contractor shall continue to diligently pursue the Work as identified in the Contract Documents. In no case is the Contractor justified or allowed to cease Work without a written stop work order from the Owner or Owner's Authorized Representative.

SECTION E PAYMENTS

E.1 SCHEDULE OF VALUES

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

E.2 APPLICATIONS FOR PAYMENT

E.2.1 Owner shall make progress payments on the Contract monthly as Work progresses. Payments shall be based upon estimates of Work completed and the Schedule of Values. All payments shall be approved by the Owner's Authorized Representative. A progress payment shall not be considered acceptance or approval of any Work or waiver of any defects therein. Owner shall pay to Contractor interest on the progress payment, not including retainage, at the rate of three times the discount rate on 90-day commercial paper in effect at the Federal Reserve Bank in the Federal Reserve district that includes Oregon as of the date that interest commences for a particular progress payment. The interest shall commence on the earlier of either:

(a) thirty (30) Days from the date of the receipt of the invoice from the Contractor, the date of the initial application for payment if no invoice is received, or from the date the Claim is made certain by agreement of the parties or by operation of law, whichever is later, or

(b) fifteen (15) Days after the payment is approved by the Owner's Authorized Representative.

Notwithstanding the foregoing, in instances when an application for payment is filled out incorrectly, or when there is any defect or impropriety in any submitted application or when there is a good faith dispute, Owner shall so notify the Contractor within fifteen (15) Days stating the reason or reasons the application for payment is defective or improper or the reasons for the dispute. A defective or improper application for payment, if corrected by the Contractor within seven (7) Days of being notified by the Owner, shall not cause a payment to be made later than specified in this section unless interest is also paid. Payment of interest will be postponed when payment on the principal is delayed because of disagreement between the Owner and the Contractor.

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

"I, the undersigned, hereby certify that the above bill is true and correct, and the payment therefore has not been received.

Signed: _____

E.2.3 Generally, applications for payment will be accepted only for materials that have been installed. Under special conditions, applications for payment for stored materials will be accepted at Owner's sole discretion. Such a payment, if made, will be subject to the following conditions:

(a) The request for stored material shall be submitted at least thirty (30) Days in advance of the application for payment on which it appears. Applications for payment shall be entertained for major equipment, components or expenditures only.

(b) The Contractor shall submit applications for payment showing the quantity and cost of the material stored.

(c) The material shall be stored in a bonded warehouse and Owner's Authorized Representative shall be granted the right to access the material for the purpose of removal or inspection at any time during the Contract Period.

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

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

(f) Within sixty (60) Days of the application for payment, the Contractor shall submit evidence of payment covering the material stored.

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

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

E.2.4 The Owner reserves the right to withhold all or part of a payment, or may nullify in whole or part any payment previously made, to such extent as may be necessary in the Owner's opinion to protect the Owner from loss because of:

(a) Work that is defective and not remedied, or that has been demonstrated or identified as failing to conform with the Contract Documents,

(b) third party claims filed or evidence reasonably indicating that such claims will likely be filed unless security acceptable to the Owner is provided by the Contractor;

(c) failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment (in which case Owner may issue checks made payable jointly to Owner and such unpaid persons under this provision, or directly to Subcontractors and suppliers at any level under Section C.3.2.1);

(d) reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Price;

(e) damage to the Owner or another contractor;

(f) reasonable evidence that the Work will not be completed within the Contract Time required by the Contract, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;

(g) failure to carry out the Work in accordance with the Contract Documents; or

(h) assessment of liquidated damages, when withholding is made for offset purposes.

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

(a) Take that portion of the Contract Price properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the total Contract Price allocated to that portion of the Work in the Schedule of Values, less retainage as provided in Section E.5. Pending final determination of cost to the Owner of changes in the Work, amounts not in the dispute may be included even though the Contract Price has not yet been adjusted by Change Order;

(b) Add that portion of the Contract Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction (or, if approved in advance by the Owner pursuant to Section E.2.3, suitably stored off the site at a location agreed upon in writing), less retainage as provided in Section E.5;

(c) Subtract the aggregate of previous payments made by the Owner; and

(d) Subtract any amounts for which the Owner's Authorized Representative has withheld or nullified payment as provided in the Contract Documents.

E.2.6 Contractor's applications for payment may not include requests for payment for portions of the Work for which the Contractor does not intend to pay to a Subcontractor or material supplier.

E.2.7 The Contractor warrants to Owner that title to all Work covered by an application for payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an application for payment, all Work for which payments are received from the Owner shall be free and clear of liens, claims, security interests or encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

E.2.8 If Contractor disputes any determination by Owner's Authorized Representative with regard to any application for payment, Contractor nevertheless shall continue to prosecute expeditiously the Work. No payment made hereunder shall be or be construed to be final acceptance or approval of that portion of the Work to which such partial payment relates or shall relieve Contractor of any of its obligations hereunder.

E.3 PAYROLL CERTIFICATION REQUIREMENT

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

E.4 DUAL PAYMENT SOURCES

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

E.5 RETAINAGE

E.5.1 Retainage shall be withheld and released in accordance with ORS 279C.550 - .570 and OAR 137-049-0820.

E.5.1.1 Owner may reserve as retainage from any progress payment an amount not to exceed 5 percent of the payment. As Work progresses, Owner may reduce the amount of the retainage and may eliminate retainage on any remaining monthly Contract payments after 50 percent of the Work under the Contract is completed if, in the Owner's opinion, such Work is progressing satisfactorily. Elimination or reduction of retainage shall be allowed only upon written application by the Contractor, which application shall include written approval of Contractor's surety; except that when the Work is 97-1/2 percent completed the Owner may, at its discretion and without application by the Contractor, reduce the retained amount to 100 percent of the value of the Work remaining to be done. Upon receipt of written application by the Contractor, Owner shall respond in writing within a reasonable time.

E.5.1.2 Contractor may request in writing:

(a) to be paid amounts that would otherwise have been retained from progress payments where Contractor has deposited acceptable bonds and securities of equal value with Owner or in a custodial account or other mutually-agreed account satisfactory to Owner, with an approved bank or trust company to be held in lieu of the cash retainage for the benefit of Owner;

(b) that retainage be deposited in an interest bearing account in a bank, savings bank, trust company or savings association for the benefit of Owner, with earnings from such account accruing to the Contractor; or

(c) that the Owner allow Contractor to deposit a surety bond for the benefit of Owner, in a form acceptable to Owner, in lieu of all or a portion of funds retained, or to be retained. Such bond and any proceeds therefrom shall be made subject to all claims and liens in the manner and priority as set forth for retainage under ORS 279C.550 to ORS 279C.625.

When the Owner has accepted the Contractor's election of option (a) or (b), Owner may recover from Contractor any additional costs incurred through such election by reducing Contractor's final payment. Where the Owner has agreed to Contractor's request for option (c), Contractor shall accept like bonds from Subcontractors and suppliers on the project from which Contractor has required retainage.

E. 5.1.3 The retainage held by Owner shall be included in and paid to the Contractor as part of the final payment of the Contract Price. The Owner shall pay to Contractor interest at the rate of one and one-half percent per month on the

final payment due Contractor, interest to commence thirty (30) Days after the Work under the Contract has been completed and accepted and to run until the date when final payment is tendered to Contractor. The Contractor shall notify Owner in writing when the Contractor considers the Work complete and Owner shall, within fifteen (15) Days after receiving the written notice, either accept the Work or notify the Contractor of Work yet to be performed on the Contract. If Owner does not within the time allowed notify the Contractor of Work yet to be performed to fulfill contractual obligations, the interest provided by this subsection shall commence to run thirty (30) Days after the end of the 15-Day period.

E.5.1.4 Owner shall reduce the amount of the retainage if the Contractor notifies the controller of the Owner that the Contractor has deposited in an escrow account with a bank or trust company, in a manner authorized by the Owner's Authorized Representative, bonds and securities of equal value of a kind approved by the Owner's Authorized Representative.

E.5.1.5 Contractor agrees that if Contractor elects to reserve a retainage from any progress payment due to any Subcontractor or supplier, such retainage shall not exceed five percent of the payment, and such retainage withheld from Subcontractors and suppliers shall be subject to the same terms and conditions stated in Subsection E.5 as apply to Owner's retainage from any progress payment due to Contractor.

E.5.2 As provided in subsections C.2.2 and C.2.3, additional retainage in the amount of 25% of amounts earned shall be withheld and released in accordance with ORS 279C.845(7) when the Contractor fails to file certified statements as required by section C.2.1.

E.6 FINAL PAYMENT

E.6.1 Upon completion of all the Work under this Contract, the Contractor shall notify the Owner's Authorized Representative, in writing, that Contractor has completed Contractor's part of the Contract and shall request final payment. Upon receipt of such notice the Owner's Authorized Representative will inspect the Work, and if acceptable, submit to the Owner a recommendation as to acceptance of the completed Work and as to the final estimate of the amount due the Contractor. If the Work is not acceptable, Owner will notify Contractor within fifteen (15) Days of Contractor's request for final payment. Upon approval of this final estimate by the Owner and compliance by the Contractor with provisions in Section K AFFIDAVIT/RELEASE OF LIENS AND CLAIMS, and other provisions as may be applicable, the Owner shall pay to the Contractor all monies due under the provisions of these Contract Documents.

E.6.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Owner's Authorized Representative (1) a notarized affidavit/release of liens and claims in a form satisfactory to Owner that states that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least thirty (30) Days' prior written notice has been given to the Owner, (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment and (5), if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

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

E.6.4 Contractor agrees to submit its final payment application within ninety (90) Days after Substantial Completion, unless written extension is granted by Owner. Contractor shall not delay final payment application for any reason,

including without limitation nonpayment of Subcontractors, suppliers, manufacturers or others not a party to this Contract, or lack of resolution of a dispute with Owner or any other person of matters arising out of or relating to the Contract. If Contractor fails to submit its final payment application within ninety (90) Days after Substantial Completion, and Contractor has not obtained written extension by Owner, all requests or Claims for additional costs or an extension of Contract Time shall be waived.

SECTION F JOB SITE CONDITIONS

F.1 USE OF PREMISES

F.1.1 When Work is performed in or on School Sites, Contractor shall comply with the following:

- a. No Unsupervised Contact with Students. Unsupervised contact with students means contact with students that provide the person opportunity and probability for personal communication or touch when not under direct supervision. Contractor will ensure that Contractor, any subcontractors, and their officers, agents and employees will have no direct unsupervised contact with students while on District property. Contractor will work with the District to ensure compliance with this requirement. If Contractor is unable to ensure through a security plan that none of its officers, agents or employees will have direct, unsupervised, contact with students in a particular circumstance or circumstances, Contractor shall so notify the District prior to beginning any Work that could result in such contact. Contractor authorizes District to obtain information about Contractor and Contractor's history and to conduct a criminal background check, including fingerprinting, of any officer, agent or employee of Contractor that will have unsupervised contact with students. Contractor also agrees to cause Contractor's employees and/or subcontractors, if any, to authorize District to conduct such background checks. Contractor shall pay all fees assessed by Oregon Department of Education for processing the background check. District may deduct the cost of such fees from a progress or final payment to the Contractor under this contract, unless the Contractor elects to pay such fees directly.
- b. Confidentiality. Contractor will not disclose any information or records regarding students or their families that Contractor may learn or obtain in course and scope of Contractor's performance of this Contract.
- c. Child Abuse Reporting Act. Contractor shall comply with the child abuse reporting law (ORS 491B.005 through 491B.050) as if Contractor were a mandatory abuse reporter. Contractor shall immediately report to the proper state or law enforcement agency circumstances supporting reasonable cause to believe that any child has been abused. Contractor shall report to the Principal or designated school authority the circumstances supporting reasonable cause to believe that any child has been abused.

F.1.2 Contractor shall confine equipment, storage of materials and operation of Work to the limits indicated by Contract Documents, law, ordinances, permits or directions of the Owner's Authorized Representative. Contractor shall follow the Owner's Authorized Representative's instructions regarding use of premises, if any.

F.2 PROTECTION OF WORKERS, PROPERTY AND THE PUBLIC

F.2.1 Contractor shall maintain continuous and adequate protection of all of the Work from damage, and shall protect the Owner, Owner's Authorized Representative, Owner's workers and property from injury or loss arising in connection with this Contract. Contractor shall remedy, in a manner acceptable to the Owner, any damage, injury, or loss, except such as may be directly due to errors in the Contract Documents or caused by authorized representatives or personnel of the Owner. Contractor shall adequately protect adjacent property as provided by law and the Contract Documents.

F.2.2 Contractor shall take all necessary precautions for the safety of all personnel on the job site, and shall comply with the Contract Documents and all applicable provisions of federal, state and municipal safety laws and building codes to prevent accidents or injury to persons on, about or adjacent to the premises where the Work is being performed. Contractor shall erect and properly maintain at all times, as required by the conditions and progress of the Work, all necessary safeguards for protection of workers and the public against any hazards created by construction. Contractor shall designate a responsible employee or associate on the Work site, whose duty shall be the prevention of accidents. The name and position of the person designated shall be reported to the Owner's Authorized Representative. The Owner's Authorized Representative has no responsibility for Work site safety. Work site safety is the responsibility of the Contractor.

F.2.3 Contractor shall not enter upon private property without first obtaining permission from the property owner or its duly authorized representative. Contractor shall be responsible for the preservation of all public and private property along and adjacent to the Work contemplated under the Contract and shall use every precaution necessary to prevent damage thereto. In the event the Contractor damages any property, the Contractor shall at once notify the property owner and make, or arrange to make, full restitution. Contractor shall report, immediately in writing, to the Owner's Authorized Representative, all pertinent facts relating to such property damage and the ultimate disposition of the claim for damage.

F.2.4 Contractor is responsible for protection of adjacent work areas including impacts brought about by activities, equipment, labor, utilities, and materials on the site.

F.2.5 Contractor shall at all times direct its activities in such a manner as to minimize adverse effects on the environment. Handling of all materials will be conducted so no release will occur that may pollute or become hazardous.

F.2.6 In an emergency affecting the safety of life or of the Work or of adjoining property, the Contractor, without special instruction or authorization from the Owner's Authorized Representative, shall act reasonably to prevent threatened loss or injury, and shall so act, without appeal, if instructed by the Owner's Authorized Representative. Any compensation claimed by the Contractor on account of emergency work shall be determined in accordance with section D.

F.3 CUTTING AND PATCHING

F.3.1 Contractor shall be responsible for coordinating all cutting, fitting, or patching of the Work to make its several parts come together properly and fit to receive or be received by work of other contractors or Subcontractors shown upon, or reasonably implied by, the Contract Documents. F.3.2 Contractor shall be responsible for restoring all cut, fitted, or patched surfaces to an original condition; provided, however, that if a different condition is specified in the Contract Documents, then Contractor shall be responsible for restoring such surfaces to the condition specified in the Contract Documents.

F.4 CLEANING UP

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

F.5 ENVIRONMENTAL CONTAMINATION

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

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

F.5.1.2 Contractor shall obtain the Owner's written consent prior to bringing onto the Work site any Hazardous Substances. Notwithstanding such written consent from the Owner, the Contractor, at all times, shall:

(a) properly handle, use and dispose of all Hazardous Substances brought onto the Work site, in accordance with all applicable federal, state, or local statutes, rules, or ordinances;

(b) be responsible for any and all spills, releases, discharges, or leaks of (or from) Hazardous Substances or materials that Contractor has brought onto the Work site; and

(c) promptly clean up, without cost to the Owner, such spills, releases, discharges, or leaks of Hazardous Substances to the Owner's satisfaction and in compliance with all applicable federal, state, or local statutes, rules or ordinances.

F.5.2 Contractor shall report all reportable quantity releases to applicable federal, state, and local regulatory and emergency response agencies. Reportable quantities are found in 40 CFR Part 302, Table 302.4 for Hazardous Substances and in OAR Chapter 340 Division 142 for all products addressed therein. Upon discovery, regardless of quantity, Contractor must telephonically report all releases to the Owner. A written follow-up report shall be submitted to Owner within 48 hours of the telephonic report. Such written report shall contain, as a minimum:

(a) Description of items released (identity, quantity, manifest no., and all other documentation required by law.)

(b) Whether amount of items released is EPA/DEQ reportable, and, if so, when it was reported.

(c) Exact time and location of release, including a description of the area involved.

(d) Containment procedures initiated.

(e) Summary of communications about the release Contractor has had with members of the press or public officials other than Owner.

(f) Description of cleanup procedures employed or to be employed at the site, including disposal location of spill residue.

(g) Personnel injuries, if any, resulting from, or aggravated by, the release.

F.6 ENVIRONMENTAL CLEAN-UP

F.6.1 Unless disposition of Hazardous Substances is specifically a part of this Contract, or was caused by the Contractor (reference F.5 Environmental Contamination), Contractor shall immediately notify Owner of any Hazardous Substance(s) that Contractor discovers or encounters during performance of the Work required by this Contract. "Hazardous Substance(s)" means any hazardous, toxic, dangerous, or radioactive materials and those substances defined as "hazardous substances," "hazardous materials," "hazardous wastes," "toxic substances," or other similar designations in any federal, state, or local law, regulation, or ordinance, including without limitation asbestos, polychlorinated biphenyl (PCB), or petroleum, (and its fractions) and any substances, materials or wastes regulated in 40 CFR, Part 261 and defined as hazardous in 40 CFR S 261.3. In addition to notifying Owner of any Hazardous Substance(s) discovered or encountered, Contractor shall immediately cease working in any particular area of the project where a Hazardous Substance(s) has been discovered or encountered if continued work in such area would present a risk or danger to the health or well being of Contractor's or any Subcontractor's work force.

F.6.2 Upon being notified by Contractor of the presence of Hazardous Substance(s) on the project site, Owner shall arrange for the proper disposition of such Hazardous Substance(s).

F.7 FORCE MAJEURE

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

SECTION G
INDEMNITY, BONDING, AND INSURANCE

G.1 RESPONSIBILITY FOR DAMAGES / INDEMNITY

G.1.1 Contractor shall be responsible for all damage to property, injury to persons, and loss, expense, inconvenience, and delay that may be caused by, or result from, the carrying out of the Work to be done under this Contract, or from any act, omission or neglect of the Contractor, its Subcontractors, personnel, or agents.

G.1.2 To the fullest extent permitted by law, Contractor shall indemnify, defend (with counsel approved by Owner) and hold harmless the Owner, Owner's Authorized Representative, Architect/Engineer, Architect/Engineer's consultants, and their respective officers, directors, agents, employees, partners, members, stockholders and affiliated companies (collectively "Indemnitees") from and against all liabilities, damages, losses, claims, expenses (including reasonable attorney fees), demands and actions of any nature whatsoever which arise out of, result from or are related to, (a) any damage, injury, loss, expense, inconvenience or delay described in this Section G.1.2, (b) any accident or occurrence which happens or is alleged to have happened in or about the project site or any place where the Work is being performed, or in the vicinity of either, at any time prior to the time the Work is fully completed in all respects, (c) any failure of the Contractor to observe or perform any duty or obligation under the Contract Documents which is to be observed or performed by the Contractor, or any breach of any agreement, representation or warranty of the Contractor contained in the Contract Documents or in any subcontract, (d) the negligent acts or omissions of the Contractor, a Subcontractor or anyone directly or indirectly employed by them or any one of them or anyone for whose acts they may be liable, except to the extent such claim, damage, loss or expense is caused in part by a party indemnified hereunder (and otherwise as allowed under ORS 30.140), and (e) any lien filed upon the project or bond claim in connection with the Work. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Section G.1.2.

G.1.3 In claims against any person or entity indemnified under this Section G.1.2 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under Section G.1.2 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

G.2 PERFORMANCE AND PAYMENT SECURITY

G.2.1 When the Contract Price is \$100,000.00 or more (or \$50,000.00 or more in the case of Contracts for highways, bridges and other transportation projects) the Contractor shall furnish and maintain in effect at all times during the Contract Period, a performance bond in a sum equal to the Contract Price, and a separate payment bond also in a sum equal to the Contract Price. The bonds may be required if the Contract Price is less than the above thresholds, if required by the Contract Documents. Performance and payment bonds may also be required of Subcontractors, in a sum equal to the subcontract price, as determined by the Owner or as recommended by Contractor.

G.2.2 Bond forms furnished by the Owner and notarized by the awarded Contractor's surety company authorized to do business in Oregon are the only acceptable forms of performance and payment security, unless otherwise specified in the Contract Documents.

G.2.3 Before starting Work the Contractor shall file with the Construction Contractors Board, and maintain in full force and effect, the separate public works bond required by ORS 279C.836, and OAR 839-025-0015, unless otherwise exempt under those provisions. The Contractor shall also include in every subcontract a provision requiring the Subcontractor to have a public works bond filed with the Construction Contractors Board before starting Work, unless otherwise exempt, and shall verify that the Subcontractor has filed a public works bond before permitting the Subcontractor to start Work.

G.3 INSURANCE

G.3.1 Primary Coverage: Insurance carried by Contractor under this Contract shall be the primary coverage, and the Owner's insurance is excess and solely for damages or losses for which the Owner is responsible. The coverages indicated are minimums unless otherwise specified in the Contract Documents.

G.3.2 Workers' Compensation: All employers, including Contractor, that employ subject workers who work under this contract in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage, unless such employers are exempt under ORS 656.126. This shall include Employer's Liability Insurance with coverage limits of not less than \$100,000.00 for each accident. Contractors who perform the Work without the assistance or labor of any employee need not obtain such coverage if the Contractor certifies so in writing. Contractor shall ensure that each of its Subcontractors complies with these requirements. The Contractor shall require proof of such Workers' Compensation by receiving and keeping on file a certificate of insurance from each Subcontractor or anyone else directly employed by either the Contractor or its Subcontractors.

G.3.3 – Property Insurance (Builder's Risk Insurance)

G.3.3.1 Unless otherwise provided, the Owner shall purchase and maintain property insurance upon the entire Work at the site to the full insurable value thereof. This insurance shall include the interests of the Owner, the Contractor, Subcontractors and Sub-subcontractors in the Work and shall insure against the perils of fire and extended coverage and shall include "all risk" insurance for physical loss or damage including, without duplication of coverage, theft, vandalism and malicious mischief. All contractors, subcontractors, and sub-subcontractors will be financially responsible for their own equipment, tools, machinery, and supplies during the course of this project. If the Owner does not intend to purchase such insurance for the full insurable value of the entire Work, it shall inform the Contractor in writing prior to commencement of the Work. The Contractor may then effect insurance which will protect the interests of itself, its Subcontractors and the Sub-subcontractors in the Work, and by appropriate Change Order the cost thereof shall be charged to the Owner. If the Contractor is damaged by failure of the Owner to purchase or maintain such insurance and to so notify the Contractor, then the Owner shall bear all reasonable costs properly attributable thereto. If not covered under the all risk insurance or other wise provided in the Contract Documents, the Contractor shall effect and maintain similar property insurance on portions of the Work stored off the site or in transit.

G.3.3.2 Any loss insured under Subparagraph G.3.3.1 is to be adjusted with the Owner and made payable to the Owner as trustee for this insured, as their interests may appear, subject to the requirements of any applicable mortgagee clause and of Subparagraph G.3.3.8. The Contractor shall pay each Subcontractor a just share of any insurance monies received by the Contractor, and by appropriate agreement, written where legally required for validity, shall require each Subcontractor to make payments to its Sub-subcontractor in similar manner.

G.3.3.3 The Owner and Contractor waive all rights against each other for damages caused by fire or other perils to the extent covered by insurance obtained pursuant to this Paragraph G.3.3 or any other property insurance applicable to the Work, except such rights as they may have to the proceeds of such insurance held by the Owner as trustee. The Contractor shall require, by appropriate agreement, written where legally required for validity, similar waivers in favor of the Owner and the Contractor by Subcontractors and Sub-subcontractors. With respect to the waiver of rights of recovery, the term Owner shall be deemed to include, to the extent covered by property insurance applicable thereto, its consultants, employees and agents, including the Construction Project Manager and the Architect and their consultants, officers, employees and agents. The Contractor waives as against any separate contractor described in Section B all rights for damages caused by fire or other perils in the same manner as is provided above as against the Owner. The Owner shall require, by appropriate agreement, written where legally required for validity, similar waivers in favor of the Contractor by any separate contractor and its Subcontractors and Sub-subcontractors.

G.3.3.4 If required in writing by any party in interest, the Owner as trustee shall, upon the occurrence of an insured loss, give bond for the proper performance of its duties. It shall deposit in a separate account any money so received, and it shall distribute it in accordance with such agreement as the parties in interest may reach, or in accordance with a court order or award. If after such loss no other special agreement is made, replacement of damaged work shall be covered by an appropriate Change Order.

G.3.3.5 The Owner as trustee shall have power to adjust and settle any loss with the insurers unless one of the parties in interest shall object in writing within five days after the occurrence of loss to the Owner's exercise of this power, and if such objection be made, the matter shall be decided by a court of competent jurisdiction or as the parties in interest

otherwise agree. The Owner as trustee shall, in that case, make settlement with the insurers in accordance with the directions of such arbitrators. If distribution of the insurance proceeds by arbitration is required, the arbitrators will direct such distribution.

G.3.3.6 If the Owner finds it necessary to occupy or use a portion or portions of the Work prior to Substantial Completion thereof, Contractor shall obtain the consent of the insurance company or companies providing the property insurance, by endorsement to the policy or policies. No insurance required by this Article G.3 shall be canceled or lapsed on account of such partial occupancy or use.

G.3.3.7 In the event Contractor neglects, refuses or fails to provide the insurance required under the Contract Documents, or if such insurance is canceled for any reason, the Owner shall have the right but not the duty to procure the same, and the cost thereof shall be deducted from monies then due or thereafter to become due to Contractor.

G.3.3.8 Contractor will be responsible for a deductible carried by the Owner on Property Insurance policies referenced in G.3.3.1. This deductible level will be \$25,000 per occurrence.

G.3.4 **Liability Insurance:**

G.3.4.1 Contractor shall obtain, at Contractor's expense, and keep in effect during the term of this Contract, Commercial General Liability Insurance covering bodily injury and property damage in a form and with coverages that are satisfactory to the Owner. This insurance shall include personal injury liability, products and completed operations, and contractual liability coverage for the indemnity provided under this Contract (to the extent contractual liability coverage for the indemnity is available in the marketplace), and shall be issued on an occurrence basis. Combined single limit per occurrence shall not be less than \$2,000,000.00 for each job site or location. Each annual aggregate limit shall not be less than \$2,000,000.00.

G.3.4.2 Automobile Liability: Contractor shall obtain, at Contractor's expense, and keep in effect during the term of this Contract, Automobile Liability Insurance covering owned, non-owned and/or hired vehicles, as applicable. The coverage may be written in combination with the Commercial General Liability Insurance. Combined single limit per occurrence shall not be less than \$2,000,000.00, or the equivalent.

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

G.3.5 Additional Insured: The liability insurance coverage, except professional liability if included, required for performance of this Contract shall include the Owner, its departments, divisions, officers, and employees, as Additional Insureds.

G.3.6 Notice of Cancellation or Change: There shall be no cancellation, material change, potential exhaustion of aggregate limits or intent not to renew insurance coverages without thirty (30) Days' written notice from the Contractor or its insurer(s) to the Owner.

G.3.7 Certificate(s) of Insurance: As evidence of the insurance coverage required by this Contract, the Contractor shall furnish certificate(s) of insurance to the Owner prior to its issuance of a Notice to Proceed. The certificate(s) will specify all of the parties who are Additional Insureds or Loss Payees. Insurance coverage required under this Contract shall be obtained from insurance companies or entities acceptable to the Owner that are allowed to provide such insurance under Oregon law. Eligible insurers include admitted insurers that have been issued a certificate of authority from the Oregon Department of Consumer and Business Services authorizing them to do an insurance business in the State of Oregon, and certain non-admitted surplus lines insurers that satisfy the requirements of applicable Oregon law and are approved by the Owner. The certificates will also specify that there shall be no cancellation, material change, potential exhaustion of aggregate limits or intent not to renew insurance coverages without thirty (30) Days' written

notice from the insurer(s) to the Owner. To the extent Certificates of Insurance contain words to the effect that Contractor shall “endeavor to send notice of cancellation” or similar language, Contractor shall require its insurer to send such notice by making sure that the words “endeavor to” or similar words are removed from the Certificate. The Contractor shall be financially responsible for all deductibles, self-insured retentions and/or self-insurance included hereunder. Any deductible, self-insured retention and/or self-insurance in excess of \$50,000.00 shall be approved by the Owner in writing prior to issuance of a Notice to Proceed and is subject to Owner’s approval.

SECTION H

SCHEDULE OF WORK

H.1 CONTRACT PERIOD

H.1.1 Time is of the essence on this Contract. The Contractor shall at all times carry on the Work diligently, without delay and punctually fulfill all requirements herein. Contractor shall commence Work on the site within fifteen (15) Days of Notice to Proceed, unless directed otherwise.

H.1.2 Unless specifically extended by Change Order, all Work shall be complete by the date contained in the Contract Documents. The Owner shall have the right to accelerate the completion date of the Work, which may require the use of overtime. Such accelerated Work schedule shall be an acceleration in performance of Work under Section D.1.2 (f) and shall be subject to the Change Order process of Section D.1.

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

H.2 SCHEDULE

H.2.1 Contractor shall provide, by or before the pre-construction conference, a detailed schedule for review and acceptance by the Owner. The submitted schedule must illustrate Work by significant project components, significant labor trades, and long lead items broken down by building and/or floor where applicable. Each schedule item shall account for no greater than 5% of the monetary value of the project or 5% of the available Contract Time. Schedules with activities of less than one Day or valued at less than 1% of the Contract will be considered too detailed and will not be accepted. Schedules lacking adequate detail, or unreasonably detailed, will be rejected. Included within the schedule are the following: Notice to Proceed, Substantial Completion, and Final Completion. Schedules will be updated monthly and submitted with the monthly payment application. Acceptance of the Schedule by the Owner does not constitute agreement by the Owner, as to the Contractor’s sequencing, means, methods, or durations. Any positive difference between the Contractor’s scheduled completion and the Contract completion date is float owned by the Owner. Owner reserves the right to negotiate the float if it is deemed to be in Owner’s best interest to do so. In no case shall the Contractor make a Claim for delays if the Work is completed within the Contract Time but after Contractor’s scheduled completion.

H.3 PARTIAL OCCUPANCY OR USE

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

SECTION I

CORRECTION OF WORK

I.1 CORRECTION OF WORK BEFORE FINAL PAYMENT

The Contractor warrants to the Owner that materials and equipment furnished under the Contract will be of good quality and new unless otherwise required or permitted by the Contract Documents, that the Work will be free from defects, and that the Work will conform to the requirements of the Contract Documents. Work failing to conform to these requirements shall be deemed defective. Contractor shall promptly remove from the premises and replace all defective materials and equipment as determined by the Owner's Authorized Representative, whether incorporated in the Work or not. Removal and replacement shall be without loss or expense to the Owner, and Contractor shall bear the cost of repairing all Work destroyed or damaged by such removal or replacement. Contractor shall be allowed a period of no longer than thirty (30) Days for completion of defective (Punchlist) work. At the end of the thirty-day period, or earlier if requested by the Contractor, Owner shall arrange for inspection of the Work by the Architect/Engineer. Should the work not be complete, and all corrections made, the costs for all subsequent reinspections shall be borne by the Contractor. If Contractor fails to complete the Punchlist work within the thirty (30) Day period, without affecting Contractor's obligations Owner may perform such work and Contractor shall reimburse Owner all costs of the same within ten (10) Days after demand.

I.2 WARRANTY WORK

I.2.1 Neither the final certificate of payment nor any provision of the Contract Documents shall relieve the Contractor from responsibility for defective Work and, unless a longer period is specified, Contractor shall correct all defects that appear in the Work within a period of one year from the date of issuance of the written notice of substantial completion by the Owner except for latent defects which will be remedied by the Contractor at any time they become apparent. The Owner shall give Contractor notice of defects with reasonable promptness. Contractor shall perform such warranty work within a reasonable time after Owner's demand. If Contractor fails to complete the warranty work within such period as Owner determines reasonable, or at any time in the event of warranty work consisting of emergency repairs, without affecting Contractor's obligations, Owner may perform such work and Contractor shall reimburse Owner all costs of the same within ten (10) Days after demand. The Contractor shall perform the warranty Work by correcting defects within twenty-four (24) hours of notification by Owner, unless otherwise specified in the Contract Documents. Should the Contractor fail to respond within the specified response time, the Owner may, at its option, complete the necessary repairs using another contractor or its own forces. If Owner completes the repairs using Owner's own forces, Contractor shall pay Owner at the rate of one and one-half (1½) times the standard hourly rate of Owner's forces, plus related overhead and any direct non-salary costs. If Owner completes the repairs using another contractor, Contractor shall pay Owner the amount of Owner's direct costs billed by the other contractor for the work, plus the direct salary costs and related overhead and direct non-salary expenses of Owner's forces who are required to monitor that contractor's work. Work performed by Owner using Owner's own forces or those of another contractor shall not affect the Contractor's contractual duties under these provisions, including warranty provisions. If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

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

I.2.3 In addition to Contractor's warranty, manufacturer's warranties shall pass to the Owner and shall not take effect until affected Work has been accepted in writing by the Owner's Authorized Representative.

I.2.4 The one-year period for correction of Work shall be extended with respect to portions of Work performed after Substantial Completion by the period of time between Substantial Completion and the actual performance of the Work, and shall be extended by corrective Work performed by the Contractor pursuant to this Section, as to the Work

corrected. The Contractor shall remove from the site portions of the Work which are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

I.2.5 Nothing contained in this Section I.2 shall be construed to establish a period of limitation with respect to other obligations that the Contractor might have under the Contract Documents. Establishment of the period for correction of Work as described in this Section I.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

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

SECTION J

SUSPENSION AND/OR TERMINATION OF THE WORK

J.1 OWNER'S RIGHT TO SUSPEND THE WORK

J.1.1 The Owner and/or the Owner's Authorized Representative has the authority to suspend portions or all of the Work due to the following causes:

- (a) Failure of the Contractor to correct unsafe conditions;
- (b) Failure of the Contractor to carry out any provision of the Contract;
- (c) Failure of the Contractor to carry out orders;
- (d) Conditions, in the opinion of the Owner's Authorized Representative, which are unsuitable for performing the Work;
- (e) Time required to investigate differing site conditions;
- (f) Any reason considered to be in the public interest.

J.1.2 The Owner shall notify Contractor and the Contractor's surety shall be notified in writing of the effective date and time of the suspension and shall notify Contractor and its surety in writing to resume Work.

J.1.3 The right of the Owner to suspend the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, nor, except as otherwise expressly provided in the Contract Documents, give rise to any Claim by the Contractor for additions to the Contract Price or Contract Time.

J.2 CONTRACTOR'S RESPONSIBILITIES

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

J.2.2 When the Work is recommenced after the suspension, the Contractor shall replace or renew any Work damaged during the suspension, remove any materials or facilities used as part of temporary maintenance, and complete the project in every respect as though its prosecution had been continuous and without suspension.

J.3 COMPENSATION FOR SUSPENSION

J.3.1 Depending on the reason for suspension of the Work, the Contractor or the Owner may be due compensation by the other party. If the suspension was required due to acts or omissions of Contractor, the Owner may assess the Contractor actual costs of the suspension in terms of administration, remedial work by the Owner's forces or another contractor to correct the problem associated with the suspension, rent of temporary facilities, and other actual costs related to the suspension. If the suspension was caused by acts or omissions of the Owner, the Contractor shall be due compensation, which shall be defined using Section D, Changes in Work. If the suspension was required through no fault of the Contractor or the Owner, neither party owes the other for the impact.

J.4 OWNER'S RIGHT TO TERMINATE CONTRACT

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

(a) If Contractor should voluntarily or involuntarily, seek protection under the United States Bankruptcy Code and Contractor as debtor-in-possession or the Trustee for the estate fails to assume the Contract within a reasonable time;

(b) If Contractor should make a general assignment for the benefit of Contractor's creditors;

(c) If a receiver should be appointed on account of Contractor's insolvency;

(d) If Contractor should repeatedly refuse or fail to supply an adequate number of skilled workers or proper materials to carry on the Work as required by the Contract Documents, or otherwise fail to perform the Work in a timely manner;

(e) If Contractor should repeatedly fail to make prompt payment to Subcontractors or for material or labor, or should disregard laws, ordinances or the instructions of the Owner or its Authorized Representative; or

(f) If Contractor is otherwise in material breach of any part of the Contract.

J.4.2 At any time that any of the above occurs, Owner may exercise all rights and remedies available to Owner at law or in equity, and in addition, Owner may take possession of the premises and of all materials and appliances and finish the Work by whatever method it may deem expedient. In such case, the Contractor shall not be entitled to receive further payment until the Work is completed. If the Owner's cost of finishing the Work exceeds the unpaid balance of the Contract Price, Contractor shall pay the difference to the Owner.

J.5 TERMINATION FOR CONVENIENCE

J.5.1 Owner may terminate the Contract in whole or in part whenever Owner determines that termination of the Contract is in the best interest of the public.

J.5.2 The Owner will provide the Contractor with seven (7) Days' prior written notice of a termination for public convenience. After such notice, the Contractor shall provide the Owner with immediate and peaceful possession of the premises and materials located on and off the premises for which the Contractor received progress payment under Section E. Compensation for Work terminated by the Owner under this provision will be according to Section E. In no circumstance shall Contractor be entitled to lost profits for Work not performed due to termination.

J.6 ACTION UPON TERMINATION

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

J.6.2 As directed by the Owner, Contractor shall, upon termination, transfer title and deliver to the Owner all Record Documents, information, and other property that, if the Contract had been completed, would have been required to be furnished to the Owner.

SECTION K

CONTRACT CLOSE OUT

K.1 RECORD DOCUMENTS

As a condition of final payment (refer also to section E.6), Contractor shall comply with the following: Contractor shall provide to Owner's Authorized Representative, Record Documents of the entire project. Record Documents shall depict the project as constructed and shall reflect each and every change, modification, and deletion made during the construction. Record Documents are part of the Work and shall be provided prior to the Owner's issuance of final payment. Record Documents include all modifications to the Contract Documents unless otherwise directed.

K.2 OPERATION AND MAINTENANCE MANUALS

As part of the Work, Contractor shall submit two completed operation and maintenance manuals ("O & M Manuals") for review by the Owner's Authorized Representative prior to submission of any pay request for more than 75% of the Work. No payments beyond 75% will be made by the Owner until the O & M Manuals have been received. The O & M Manuals shall contain a complete set of all submittals, all product data as required by the Specifications, training information, phone list of consultants, manufacturers, installer and suppliers, manufacturer's printed data, record and shop drawings, schematic diagrams of systems, appropriate equipment indices, warranties and bonds. The Owner's Authorized Representative shall review and return one O & M Manual for any modifications or additions required. Prior to submission of its final pay request, Contractor shall deliver three (3) complete and approved sets of O & M Manuals to the Owner's Authorized Representative.

K.3 AFFIDAVIT/RELEASE OF LIENS AND CLAIMS

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

K.4 COMPLETION NOTICES

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

K.4.2 Substantial Completion of a facility with operating systems (e.g., mechanical, electrical, HVAC) shall be that degree of completion that has provided a minimum of thirty (30) continuous Days of successful, trouble-free operation, which period shall begin after all performance and acceptance testing has been successfully demonstrated to the Owner's Authorized Representative. All equipment contained in the Work, plus all other components necessary to enable the Owner to operate the facility in the manner that was intended, shall be complete on the Substantial Completion date. The Contractor may request that a Punchlist be prepared by the Owner's Authorized Representative with submission of the request for the Substantial Completion notice.

K.5 TRAINING

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

K.6 EXTRA MATERIALS

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

K.7 ENVIRONMENTAL CLEAN-UP

As part of the Final Completion notice, or as a separate written notice submitted with or before the notice of Final Completion, the Contractor shall notify the Owner that clean-up of all Hazardous Substances performed as a part of this Contract, and disposal of all Hazardous Substances, have been completed in accordance with all applicable rules, regulations, laws, and statutes of all agencies having jurisdiction over such Hazardous Substances. The notice shall reaffirm the indemnification given under Section F.5.1 above.

K.8 CERTIFICATE OF OCCUPANCY

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

K.9 OTHER CONTRACTOR RESPONSIBILITIES

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

K.10 SURVIVAL

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

END OF GENERAL CONDITIONS

CONTRACT EXHIBIT B

GMP AMENDMENT FORM

JEFFERSON COUNTY SCHOOL DISTRICT 509J

THIS AMENDMENT IS BETWEEN:

OWNER: Jefferson County School District 509J
445 SE Buff St.
Madras Or 97741

And

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

WSK-8 HVAC Systems Replacement

- **Demolition of the existing VRF HVAC system**
- **Installation of a new hot water boiler plant and associated piping**
- **Installation of a new air cool chiller and associated piping**
- **Installation of new HVAC equipment**
- **Modification to HVAC controls as needed for new equipment**

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

Date of this Amendment:

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

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

Preconstruction Fee: \$ _____

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

CM/GC Fee (___ % of Est. COW): \$ _____

GMP (Total of above categories): \$ _____

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

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

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

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

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

CM/GC:

Name of Firm: _____

Address: _____

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

Construction Contractor's Board Registration No.: _____

Signature of Authorized Representative of CM/GC

Title _____

Date _____

OWNER:

Jefferson County School District 509J

Signature of Owner's Authorized Representative

Title _____

Date _____

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

Attachment B Allowance items, pages ____ through ____ dated _____.

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

Attachment D Completion schedule, pages ____ through ____, dated _____.

Attachment E Alternate prices, pages ____ through ____, dated _____.

Attachment F Unit prices, pages ____ through ____, dated _____

**TRIBAL EMPLOYMENT RIGHTS ORDINANCE
(TERO)**

**CONFEDERATED TRIBES
OF THE
WARM SPRINGS INDIAN RESERVATION**

February 24, 2015

**TRIBAL EMPLOYMENT RIGHTS ORDINANCE
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TRIBAL EMPLOYMENT RIGHTS OFFICE ORDINANCE

CHAPTER 1: GENERAL PROVISIONS

Section 1.01: TITLE

This Code shall be known as the Tribal Employment Rights Ordinance.

Section 1.02: PURPOSE

The purposes of this Code are:

- A. To prevent employment related discrimination against American Indians;
- B. To ensure compliance with this Code that is intended to give preference in employment, contracting and sub-contracting, and training to American Indians; and
- C. To maximize utilization of Indian workers in all employment opportunities on and near the Warm Springs Indian Reservation.
- D. To ensure the Indian workforce on the Warm Springs Indian Reservation are trained and equipped to enter the workforce and maintain employment of their choosing.

Section 1.03: STATEMENT OF POLICY

The Tribal Council of the Confederated Tribes of the Warm Springs Reservation of Oregon finds that:

- A. Jobs in the private employment sector on and near the Warm Springs Reservation are an important resource for Indians residing on and near the Reservation.
- B. In order to attract private employers to locate on the Warm Springs Reservation, Indians residing on or near the Reservation need to have the training and skills those employers require.
- C. This Code is consistent and supplemental to existing federal and tribal law prohibiting employment discrimination against Indians and providing employment and contract preference to individual Indians and Indian-owned enterprises.
- D. Indian unemployment on the Reservation continues to be a problem of sufficient magnitude to warrant the enactment and implementation of this Code which is designed to improve training and employment opportunities for Indians living on and near the Reservation.
- E. Many unemployed Indians on the Reservation may have social barriers to employment such as poor education, substance abuse, the lack of vocational training or the lack of tools and other equipment needed by their preferred vocation that need to be addressed.

Section 1.04: JURISDICTION

- A. This Code shall apply to all Employers and Construction Employers located on or engaged in work on the Reservation as set forth in this Code. This Code shall also apply to ODOT Contractors engaged in work on and near the Reservation as permitted by this Code and applicable federal and state law as identified in the Memorandum of Understanding.
- B. This Code shall not apply to any direct employment by the Tribe, its enterprises or tribally owned corporations, or by federal, state, or other governments; however, construction contractors and subcontractors of these governmental entities shall be subject to the Code.
 - 1. This Code is not intended to pre-empt or interfere with the rights or obligations set forth in the Tribes' Personnel Policies and Procedures, or the personnel manuals of Tribal enterprises now or later established. The employees of the Tribe and Tribal enterprises shall be limited to the rights and remedies provided in the duly adopted manuals or procedures enacted by the Tribe for those employees. This Code shall not apply to or be enforced against Tribal enterprises established and owned by the Tribe. Indian employment preference shall be provided at each Tribal enterprise in personnel manuals developed for each enterprise.
 - 2. Contract disputes between contractors and their subcontractors or their employees are outside the scope or jurisdiction of this Code and are not subject to enforcement, compliance or the issuance of a citation under this Code. Contract disputes shall be resolved through specified contract procedures for such disputes or through a court of competent jurisdiction.

SECTION 1.05: DEFINITIONS

- A. COMMISSION - shall mean the Warm Springs Tribal Employment Rights Commission.
- B. COMMISSIONER - shall mean a member of the Warm Springs Tribal Employment Rights Commission.
- C. COMMISSION CHAIRPERSON - shall mean the Chairperson of the Commission which shall be elected by the Commission on an annual basis. The Chairperson of the Commission shall preside at all meetings of the Commission.
- D. COMPLIANCE AGREEMENT - an agreement between a Employer, Construction Employer, or ODOT Contractor and the Tribal Employment Rights Office, setting forth how the employer will meet Indian preference hiring and subcontracting goals and that they will comply with this Code. The Compliance Agreement must be executed prior to commencement of any portion of a construction contract or sub-contract within the Reservation, or in the case of an ODOT Contractor, within or near the Reservation.

- E. CORE CREW - means the essential, permanent employees of an Employer or Construction Employer. Core Crew employees must have been regular employees of the Employer for at least six (6) months. "Core Crew" requests must be submitted to the Office in writing, showing that each Core Crew member meets these criteria before the start of any project work, and approved by TERO Program Manager.
- F. CONSTRUCTION EMPLOYER - shall mean any person, company, contractor, subcontractor, or entity located or engaged in construction work on the Reservation including new construction, remodeling, repair, or maintenance of structures, infrastructure, equipment and support facilities. The term shall include construction contractors and subcontractors of federal, state, county, and other local governments, but shall not include the Tribe, federal, state, or local governments or Tribal enterprises when they are employers.
- G. EMERGENCY RELIEF ORDER - shall have the meaning set forth in Section 4.04 of the Code.
- H. EMPLOYER - shall mean any person, company, contractor, subcontractor, or entity located on or engaged in work on the Reservation.
- I. ENGAGED IN WORK ON THE RESERVATION - an Employer or Construction Employer is "engaged in work on the reservation" if during any portion of a business enterprise or specific project, contract or subcontract, he or any of his employees spends time performing work within the exterior boundaries of the Reservation.
- J. INDIAN - shall mean any person enrolled in a federally recognized tribe and recognized by the United States pursuant to its trust responsibility to American Indians.
- K. INDIAN OWNED BUSINESS - a business that is at least 51% owned, operated, and controlled by an Indian.
- L. INDIAN PREFERENCE - shall mean a preference for enrolled Indians in all aspects of employment, including but not limited to, hiring, training, promotions, layoffs, contracting, and subcontracting for work on or near the Reservation. Qualified, available Indians shall receive an Indian preference in accordance with this code and negotiated Compliance Agreements.
- M. LOCATED ON THE RESERVATION - an Employer or Construction Employer is "located on the Reservation" if during any portion of a contract it maintains a temporary or permanent office or facility within the exterior boundaries of the Reservation.
- N. MEMORANDUM OF UNDERSTANDING - shall mean the agreement between the Tribe and the Oregon Department of Transportation providing Indian preference in employment for Indians on ODOT transportation projects and authorizing the Office to impose a compliance fee on ODOT contractors.

- O. NEAR THE RESERVATION - shall mean jobs within 60 miles of the exterior boundaries of the Warm Springs Indian Reservation.
- P. ODOT - shall mean the Oregon Department of Transportation.
- Q. ODOT CONTRACTOR - shall mean a transportation construction contractor, and all related subcontractors, to ODOT that are subject to the TERO Indian employment and subcontracting preference and Compliance Agreement under the Memorandum of Understanding.
- R. OFFICE - shall mean the Warm Springs Tribal Employment Rights Office.
- S. PROGRAM MANAGER - shall mean the Program Manager of the Warm Springs Tribal Employment Rights Office.
- T. PROGRAM MANAGER DECISION - shall have the meaning set forth in Section 4.03 and 4.05 of the Code.
- U. RESERVATION - shall mean the Warm Springs Indian Reservation.
- V. TERO - shall mean this Tribal Employment Rights Ordinance.
- W. TRIBE or TRIBAL - shall mean the Confederated Tribes of the Warm Springs Indians of Oregon.
- X. TRIBAL COUNCIL - shall mean the governing body of the Confederated Tribes of the Warm Springs Indian Reservation.
- Y. TRIBAL COURT - shall mean the Warm Springs Tribal Court.
- Z. WORKFORCE DEVELOPMENT - shall be the training and employment component of the TERO program.

CHAPTER 2: TRIBAL EMPLOYMENT RIGHTS OFFICE

Section 2.01: PROGRAM MANAGER

The Program Manager of the Tribal Employment Rights Office shall be responsible for administering the provisions of this Code and provide direction, leadership and oversight to Office staff.

Section 2.02: GENERAL AUTHORITIES

The Program Manager shall have the authority to hire staff, to obtain and expend funds from tribal, federal, state, or other sources to carry out the purposes of this Code as provided in the annual budget of the Tribe, to establish Employer, Construction Employer, and ODOT Contractor record-keeping requirements, to implement a workforce development program plan to consult with the Commission

on policy issues related to the implementation of this Code, and to take such other actions as are necessary for the fair and vigorous enforcement of this Code. The Program Manager will report TERO activities in the Human Resource Department Annual Work Plan for Tribal Council review.

Section 2.03: SPECIFIC AUTHORITIES

The Program Manager shall have the authority to implement and enforce this code, including but not limited to:

- A. Enter Compliance Agreements with Employers, Construction Employers, and ODOT Contractors;
- B. Investigate violations of and impose penalties on Employers, Construction Employers, and ODOT Contractors who violate the provisions of the Code;
- C. Assist the Commission to develop and promulgate regulations necessary to implement the provisions of this Code;
- D. For purposes of Compliance Agreements, develop and impose numerical hiring goals and timetables that reflect the available Indian labor pool and other employment opportunities for each craft and skill category.
- E. Require Employers, Construction Employers, and ODOT Contractors that have established training or apprentice programs to provide preference to Indians.
- F. Establish and maintain a tribal hiring hall that maintains a record of qualified, employable Indians that is to be used by employers to fill vacancies.
- G. Prohibit any Employer, Construction Employer, and ODOT Contractor from imposing employment qualification criteria that serve as barriers to Indian employment unless it can be demonstrated that such criteria are required by business necessity.
- H. To work cooperatively with other Tribal programs, including, but not limited to, Warm Springs Health & Wellness Center, Department of Children & Family Services, and Education to establish counseling, education and training, substance abuse treatment, and other support programs for Indian workers to assist them in acquiring and retaining employment.
- I. To enter into cooperative agreements with federal and state agencies to minimize employment discrimination against Indians both on or near the Reservation, to promote Indian Preference in hiring, training, and contracting and to otherwise ensure compliance with this Code.
- J. Through required payroll reports, from Construction Employers and ODOT Contractors, monitor wage scale and salaries to ensure equitable compensation of Indian workers.

- K. To assess fees on Construction Employers and ODOT Contractors to support the operation of the Office.
- L. To apply for federal funding to provide workforce training opportunities for Indians living on or near the Reservation pursuant to the Indian Employment, Training, and Related Services Demonstration Act of 1992, as amended, Public Law 102-477.
- M. To address the needs of Indian persons living on or near the Reservation that are now unemployed or underemployed and/or dependent on public assistance, through the linkage of employment and vocational training, substance abuse counseling and other needed social services. Specifically, the Office will provide, or facilitate the provision of, special services to enable such Indian persons to receive the education, training, and other medical and social services they need to become productive employees in the workforce. The Program Manager shall carry out these duties as set forth in Chapter 9 of this Code.
- N. Advertise, collect data, investigate, communicate, and make recommendations to the Commission regarding any application or re-certification process on the Indian Owned Business Directory. The Office will ensure each applicant has been reviewed and certified and shall make a recommendation to deny or approve the application to the Commission. The Office will ensure each Indian Owned Business on the Directory will be re-certified every 2 years and update the Commission on an annual basis.

CHAPTER 3: TRIBAL EMPLOYMENT RIGHTS PROGRAM

Section 3.01: SCOPE

All Construction Employers located on or engaged in work on the Reservation shall and ODOT contractors engaged in work on or near the Reservation shall:

- A. Give preference to Indians in hiring, promotion, training and all other aspects of employment, contracting and subcontracting, business opportunities;
- B. Comply with the Compliance Agreement executed under this Code; and
- C. Shall comply with the terms of the Code and its implementation regulations.

Section 3.02. COMPLIANCE AGREEMENT

- A. Each Employer, Construction Employer, and ODOT Contractor shall be required to meet with the Program Manager to negotiate, execute, and comply with a Compliance Agreement which sets forth:
 - 1. The minimum number of Indians that shall be hired for any particular project while the Employer or Construction Employer is located on or engaged in work on the Reservation, or an ODOT Contractor is engaged in work on or near the Reservation, numerical goals

and timetables for each craft, skill area, job classification, etc., used by the Employer, Construction Employer or ODOT Contractor including, but not limited to: general labor, skilled, administrative, supervisory, and professional categories;

2. Applicable wage scale provisions, prevailing wage standards, and salary compensation terms that may be applicable to a project or contract under applicable federal or state law, or Tribal law, provided that any Tribal Minimum Wage or Prevailing Wage has been promulgated as provided in Section 3.12 of this Code;
 3. Periodic reporting requirements to the Program Manager on the number of Indians employed, a record of persons hired, fired, or promoted during the reporting period, and a statement regarding compliance with the hiring goals set forth in the Compliance Agreement.
 4. Preference for training programs where the Employer, Construction Employer or ODOT Contractor has an established program.
 5. In the Program Manager's discretion, procedures and remedies for the enforcement and/or violations of the Compliance Agreement or the Code that may vary from the procedures and remedies set forth in this Code.
- B. The numerical goals set forth in the Compliance Agreement shall be based upon surveys conducted by the Program Manager of the available and qualified Indian work force and of projected employment opportunities on or near the Reservation.
1. Compliance Agreements shall be reviewed periodically and revised as necessary to reflect changes in the number of Indians available or changes in Employer, Construction Employer or ODOT Contractor hiring plans.
 2. At the Program Manager's discretion, no Employer, Construction Employer or ODOT Contractor shall commence work or site mobilization until a Compliance Agreement has been negotiated and executed.
 3. Any violation of an executed Compliance Agreement shall be a violation of this Code.
 4. When an Office employee referral to an Employer, Construction Employer or ODOT Contractor is unable to continue working, the Employer, Construction Employer or ODOT Contractor shall immediately notify the Office who shall provide a substitute referral within three (3) business days or notify the Employer, Construction Employer or ODOT Contractor that it has no referrals for the position, after which time the Employer, Construction Employer or ODOT Contractor will be authorized to hire a permanent replacement.

Section 3.03: JOB QUALIFICATIONS AND PERSONNEL REQUIREMENTS

Employer, Construction Employer or ODOT Contractor shall not use qualification criteria or other personnel requirements that serve as barriers to Indian employment unless the Employer, Construction Employer or ODOT Contractor is able to demonstrate that such criteria or requirements are required by business necessity.

Section 3.04: TRIBAL HIRING HALL

The Program Manager shall establish and maintain a hiring hall to assist Employers, Construction Employers and ODOT Contractors and all other employers doing business on the Reservation in placing qualified Indians in job positions.

- A. Construction Employer and ODOT Contractors shall not hire a non-Indian in violation of the Compliance Agreement until the Program Manager has certified within a reasonable time that no qualified Indian is available to fill the vacancy. For purposes of this section, "reasonable time" for construction jobs shall mean that the Program Manager shall have 48 hours from time of notice of manpower needs to locate and refer a qualified Indian.
- B. The Program Manager may waive the 48-hour time period upon a showing by the Construction Employer or ODOT Contractor that such time period imposes an undue burden upon the Construction Employer or ODOT Contractor, the business or the construction project in question

Section 3.05: UNIONS

Construction Employers with collective bargaining agreements with a union are responsible for informing such unions of this Code, its rules and regulations and their Compliance Agreement. ODOT Contractors with collective bargaining agreements with a union are responsible for informing such unions of this Code, the Memorandum of Understanding and their Compliance Agreement. Unions will give absolute preference to Indians in job referrals regardless of which referral list they are on. Temporary work permits will be granted to Indians who do not wish to join a union. Nothing herein shall constitute official tribal recognition of any union or tribal endorsement of any union activities on or near the Warm Springs Indians.

Section 3.06: CONTRACTORS AND SUBCONTRACTORS

Where the general contractor on a project is a Construction Employer, that general contractor shall ensure that all its subcontractors comply with this Code. The general contractor who is a Construction Employer may be held liable for violations of this Code by its subcontractors.

Section 3.07: PREFERENCE IN CONTRACTING AND SUBCONTRACTING

- A. For Construction Employers. Construction Employers located on or engaged in work on the Reservation shall give preference to Indian Owned Businesses in the award of contracts or subcontracts to the extent permitted by applicable law. The Program Manager shall maintain a list of Indian Owned Businesses ("Indian Owned Business Directory") which shall be supplied

to Construction Employers and ODOT Contractors upon request. Indian Owned Businesses shall be certified by the Program Manager to ensure that they meet the requirements of such an entity as set forth in section 1.05(I) of this Code. Indian Owned Businesses will submit re-certification applications every two (2) years to remain active.

- B. All other Employers. All other Employers located on the Reservation shall give preference to Indian Owned Businesses in the award of contractor subcontracts to the maximum extent feasible as permitted by federal law and the law, budget, and fiscal policies of the Tribe.

Section 3.08: LAYOFFS

In all layoffs and reductions in force for a Construction Employer and ODOT Contractors, no Indian worker shall be terminated if a non-Indian worker in the same job classification is still employed. The non-Indian shall be terminated first if the Indian possesses threshold qualifications for the job classification. If a Construction Employer or ODOT Contractor lays off workers by crews, all qualified Indian workers shall be transferred to crews to be retained so long as non-Indians in the same job classification are employed elsewhere on the job site, except for non-Indians hired as Core Crew pursuant to negotiated Compliance Agreements.

Section 3.09: PROMOTION

Each Construction Employer and ODOT Contractor shall give Indians preferential consideration for all promotion opportunities and shall encourage Indians to seek such opportunities. For each promotion or supervisory position filled by a non-Indian, the Construction Employer or ODOT Contractor shall file a report with the Program Manager stating what efforts were made to inform Indian workers about the position, what Indians, if any, applied for the position and if an Indian was not chosen, the reasons therefore.

Section 3.10: COMPLIANCE FEES

The Program Manager shall assess and collect a compliance fee as follows:

- A. Every Construction Employer with a construction, renovation, improvement, or expansion contract in the sum of ten thousand dollars (\$10,000) or more shall pay a fee of 2.5 percent of the total amount of the contract. Such fee shall be paid by the Construction Employer prior to commencing work on the Reservation.
- B. The Program Manager may develop a sliding scale fee that reduces the 2.5 percent fee applicable to Construction Employers based upon the Construction Employer meeting Indian Preference goals and Indian Owned Business subcontracting targets, provided that the fee shall not be reduced below 1.5 percent. All TERO compliance fee adjustments must be presented to the Program Manager for approval.
- C. The Program Manager shall be authorized to assess a compliance fee on ODOT Contractors engaged in construction projects on or near the Reservation as may be permitted by the

Memorandum of Agreement or federal transportation agency managing the transportation construction project.

- D. Compliance fees shall be used for the Office operating budget. Compliance fees shall be appropriated by the Tribes' annual budget process.

- F. The Program Manager shall be authorized to do the following in connection with the payment of the compliance fee:
 - 1. Permit the employer to pay the compliance fee pursuant to a payment schedule over the lifetime of the project (for on reservation non-ODOT projects only) being constructed, provided that such payment shall be fully paid within twenty years; and

 - 2. Provide credit to Construction Employer (for on reservation non-ODOT projects only) for the payment of the compliance fee when the Construction Employer makes contributions to the Tribal scholarship, vocational training or workforce development programs that are similar to the education and training functions of the Office, or when the Construction Employer establishes and funds an apprenticeship program providing job training for Indians.

- G. The Program Manager shall receive a copy of each compliance fee payment. The Program Manager shall be responsible for collecting the fees and may request that the Commission promulgate such regulations as are necessary to ensure a fair and timely fee collection process. For Construction Employers working on projects that begin off and end on, or begin on and end off the Reservation, will be considered one hundred percent on-Reservation, thus subject to the full compliance fee. However, if fifty percent (50%) or more of the work is off-Reservation, the Program Manager is authorized to negotiate an appropriate compliance fee based upon the percentage of the work performed on the Reservation.

Section 3.11: ON SITE INSPECTIONS

The Program Manager shall have the authority to make on-site inspections during regular working hours in order to monitor compliance with this Code and the applicable Compliance Agreement by a Construction Employer or ODOT Contractor. The Program Manager and any authorized Office staff shall have the right to inspect and copy all relevant records of a Construction Employer or ODOT Contractor, of any signatory union or subcontractor of a Construction Employer or ODOT Contractor, and shall have the right to speak to workers and to conduct an investigation on the job site. All information collected by the Program Manager and/or Office staff shall be kept confidential unless disclosure is necessary or ordered as part of any federal or tribal judicial or administrative proceeding.

Section 3.12: TRIBAL MINIMUM OR PREVAILING WAGE

- A. The Program Manager may promulgate a Tribal Minimum Wage or Prevailing Wage as provided in this Section. Such Tribal Minimum or Prevailing Wage shall only apply to

Construction Employers. A Tribal Minimum or Prevailing Wage established under this subsection may be included in a Compliance Agreement pursuant to Section 3.02 of this Code.

- B. Definitions. For purposes of this Section, the terms “Minimum Wage” and “Prevailing Wage” are defined as follows:
1. Minimum Wage: Shall mean the lowest wage that the Construction Employer can pay any employee, which Minimum Wage shall not be less than the federal minimum wage;
 2. Prevailing Wage: Shall mean the lowest wage that a Construction Employer can pay any employee by trade or craft. A Prevailing Wage need not limit or put a cap on all employees in a particular craft or trade.
- C. If the Program Manager elects to promulgate a proposed Minimum Wage or Prevailing Wage, the following factors shall be taken into consideration:
1. The prevailing wage for each job classification in the Oregon or Washington wage classifications;
 2. The prevailing wages established by other Northwest Indian tribes;
 3. The number of Indian persons living on or near the Reservation with the particular craft or trade skills;
 4. The Reservation unemployment rate – especially the unemployment rate for the particular craft or trade;
 5. Local labor and market conditions;
 6. The potential impact of the Prevailing Wage to attract businesses or Construction Employers to do business on the Warm Springs Indians; and
 7. The potential impact of the Prevailing Wage in raising the costs of Tribal facilities.
- D. The draft Minimum or Prevailing Wage shall be published in the Spilyay Tymoo with notice of the comment opportunity and comment deadline date and distributed to all Tribal governmental departments, enterprises, and to persons or entities that are known to the Office that could be impacted by such a proposal for review and comment. The record shall be kept open for at least sixty (60) days to permit comments to be submitted.
- E. Within thirty (30) days of the closing of the record for comments, the Program Director shall either prepare a draft Minimum or Prevailing Wage, submit the proposed Minimum or Prevailing Wage to the Commission for its approval, or shall withdraw the proposal.

- F. Upon receipt of Commission approval, the draft Minimum or Prevailing Wage shall be submitted to the Tribal Council for approval. The Minimum or Prevailing Wage shall become final upon Tribal Council approval of the Minimum or Prevailing Wage.

CHAPTER 4: VIOLATION PROCEDURES

Section 4.01: INVESTIGATION BY THE PROGRAM MANAGER

Whenever a violation of this Code or a Compliance Agreement has been alleged and is brought to the attention of the Program Manager, the Program Manager shall ensure a prompt and thorough investigation of the alleged violation. The Program Manager shall seek to achieve an informal settlement of the alleged violation, with a written report of findings provided to the Commission.

Section 4.02: ISSUANCE OF CITATION

- A. If the Program Manager determines that a violation of the Code or a Compliance Agreement exists, and an informal settlement cannot be achieved, the Program Manager shall issue a warning to the Employer, Construction Employer or ODOT Contractor. This warning shall specify the nature of the violation and direct that the violation be corrected within three (3) days or sooner where warranted.
- B. If the violation is not corrected within the time specified, the Program Manager shall issue a citation to the Employer, Construction Employer or ODOT Contractor which shall:
 - 1. Be in writing and in the name of the Confederated Tribes of the Warm Springs Indian Reservation;
 - 2. State the name of the violator;
 - 3. Bear the signature of the Program Manager or the authorized representative;
 - 4. State the name and section number of the Code provision or Compliance Agreement violated;
 - 5. State a brief summary of facts constituting the violation; and
 - 6. State a time and place the Construction Employer or ODOT Contractor must appear to answer to the violation at a Program Manager hearing.

Section 4.03: PROGRAM MANAGER HEARING

Any Employer, Construction Employer or ODOT Contractor that receives a citation shall be entitled to a hearing before the Program Manager no later than ten (10) working days after receipt of a citation. Hearing procedures shall comply with the requirements of due process, but will not be bound by the formal rules of evidence. The Employer, Construction Employer or ODOT Contractor shall be entitled

to present evidence and to call witnesses to demonstrate that it has complied with the requirements of this Code or Compliance Agreement or that it made its best effort to do so and therefore should not be subject to sanctions. On the basis of evidence presented at the hearing, and the information collected by the Office, the Program Manager shall determine whether or not the Employer, Construction Employer or ODOT Contractor complied with this Code. If the Employer, Construction Employer or ODOT Contractor fails to attend the hearing set before the Program Manager, the Program Manager shall base its determination on the facts before the Program Manager. If the Program Manager determines that the Employer, Construction Employer or ODOT Contractor is out of compliance and has not made a best effort to comply, the Program Manager shall impose one or more of the sanctions provided for in this Code, as appropriate, and shall order the Employer, Construction Employer or ODOT Contractor to take such corrective action as is necessary to remedy any harm done to the Tribe or individual Indians caused by the non-compliance. The Program Manager shall send written notice of its decision (“Program Manager Decision”) to all parties within ten (10) days after its decision in the matter.

Section 4.04: EMERGENCY RELIEF

When the Program Manager determines that a violation has occurred that is of a critical nature requiring immediate remedial action, the Program Manager may issue a citation without delay, stating sanctions to be placed on the offending Employer, Construction Employer or ODOT Contractor (“Emergency Relief Order”). The Employer, Construction Employer or ODOT Contractor shall have the right to appeal the Emergency Relief Order and any imposition of emergency sanctions to the Commission. The Commission shall schedule a hearing on any appeal of an Emergency Relief Order within seven (7) working days.

Section 4.05: INDIVIDUAL COMPLAINT PROCEDURE

- A. Any Indian who believes that an Employer, Construction Employer or ODOT Contractor has failed to comply with this Code or applicable Compliance Agreement, or who believes that they have been discriminated against by an Employer, Construction Employer or ODOT Contractor because they are Indian, may file a complaint with the Office. The complainant shall be responsible for providing the Office with evidence of the discriminatory practices. Upon receipt of a complaint supported by sufficient evidence of discrimination against an Indian complainant, the Office shall conduct an investigation of the charge, which shall include interviews of the project manager for the Employer, Construction Employer or ODOT Contractor and any person(s) allegedly responsible for the discriminatory conduct, and shall attempt to achieve an informal settlement of the matter. If voluntary conciliation cannot be achieved, the Program Manager shall hold a hearing on the matter, shall make a determination on the validity of the charge, and shall issue a Program Management Decision as is necessary to make whole any Indian who is harmed by the Employer’s, Construction Employer’s or ODOT Contractor’s non-compliance or discriminatory behavior. The Program Management Decision shall be in writing and shall be sent to all parties within seven (7) working days.

- B. In conducting the hearing, the Program Manager shall have the same powers, and shall be bound by the same hearing requirements as provided in Sections 4.03, 4.04 and 4.06 of this Chapter.

Section 4.06: APPEALS OF PROGRAM MANAGER DECISIONS

- A. The following may file an appeal:
 - 1. A party;
 - 2. Any person adversely affected by a Program Manager Decision or Emergency Relief Order; and
 - 3. A person entitled to notice and to whom no notice was mailed.
- B. Program Manager Decisions or Emergency Relief Orders not timely appealed as set forth in WSTC Sections 4.03, 4.04, 4.05(A), and 7.01 shall be final agency orders subject to enforcement by any legal means, including in Warm Springs Tribal Court.

CHAPTER 5. PENALTIES AND ENFORCEMENT

Section 5.01: PENALTIES FOR VIOLATION

- A. Employer, Construction Employer, or ODOT Contractor who violates this Code or a Compliance Agreement shall be subject to penalties including, but not limited to:
 - 1. Denial of the right to commence or continue business on the Reservation;
 - 2. Suspension of operations on the Reservation for Employers or Construction Employers or on or near the Reservation for ODOT Contractors;
 - 3. Payment of back pay and/or damages to compensate any injured party;
 - 4. An order to summarily remove employees hired in violation of this Code or a Compliance Agreement;
 - 5. Imposition of monetary civil penalties pursuant to a schedule of penalties promulgated by the Commission, which penalties shall take into consideration the severity of the violation, whether any other penalty pursuant to this section was imposed and whether the person or entity that is subject to the fine has any prior history of violating this Code; or
 - 6. An order specifying requirements for employment, promotion, and training Indians injured by the violation.

Section 5.02: MONETARY FINES

The maximum monetary penalty that may be imposed for a violation is five hundred dollars (\$500). For purposes of the imposition of penalties determined by the Court or sanction by the Program Manager, each day during which a violation exists shall constitute a separate violation.

Section 5:03: ENFORCEMENT

- A. The Program Manager shall be entitled to pursue the enforcement of any final agency order under this Code by any legal means, including Tribal Court enforcement.
- B. Costs associated with the enforcement of final agency orders issued pursuant to this Code shall be assessed against the Employer, Construction Employer, or ODOT Contractor that is out of compliance. These may include, but are not limited to: document reproduction costs, filing fees, attorney fees and costs incurred by the Tribe or the Project Manager or Commission related to securing enforcement of the order.
- C. Employers or Construction Employers that do not comply with the provisions of this Code, and leave the Reservation before enforcement orders are issued or penalties are imposed and collected or an enforcement order is issued by the Commission or the Court, shall be denied the right of contracting or doing further business on the Reservation.

CHAPTER 6: TRIBAL EMPLOYMENT RIGHTS OFFICE COMMISSION

Section 6.01: ESTABLISHMENT

The Tribal Employment Rights Office Commission (“Commission”) is hereby established to perform the duties and responsibilities set forth in this Code.

- A. Membership - the Commission shall be comprised of 5 members appointed by the Tribal Council. The members shall hold office for a period of 1 and 2 years, terms to be determined by the Tribal Council. There is no limitation on the number of terms a member may serve.
- B. Qualification - any Indian 18 years and older who works or resides on the Reservation is qualified to be appointed to the Commission.
- C. Commission Chairperson - the Commission shall elect annually a Chairperson from its membership. The Chairperson shall preside at all meetings of the Commission and shall be authorized to sign required documents in accordance with the powers of the Commission.
- D. Duties and Powers - the Commission shall be responsible for conducting hearings on tribal employment rights matters in accordance with this Code. In addition to all specific powers set forth in this Code, the Commission shall also have the following powers:
 - 1. Review contractor applications to certify that applicant is eligible for inclusion on Indian Owned Business Directory.

2. Certify On-The-Job training hours as recorded by Office staff for Tribal Apprenticeship Programs.
 3. The Commission may conduct on-site visits if such visits are a part of their investigation for the decision making process for appeals.
 4. Develop procedures necessary to implement the provisions of this Code that are consistent with this Code.
 5. Conduct an annual review of the Code.
- E. The Commission will hold regular meetings at 1:30 pm, on the first and third Tuesday of every month. Times and procedures for hearings will be set as necessary, when an appeal is filed on a sanction or decision of the Program Manager. The Commission shall attempt whenever possible to execute its powers by consensus. If a consensus cannot be achieved, the affirmative vote of a majority of the 5 Commissioners shall be required to take Commission action. The Chairperson shall be entitled to vote on any decision or action. All written agreements or plans, directives, complaints, and appeals which the Commission authorized or required to issue or file, shall bear the signature of at least 2 Commissioners. The Commission will not supervise Tribal Employment Rights and Workforce Development personnel.

CHAPTER 7. COMMISSION APPEALS AND HEARINGS

Section 7.01: FILING AN APPEAL

- A. Program Manager Decisions and Emergency Relief Orders may be appealed to the Commission.
- B. To initiate an appeal, the person or entity appealing a sanction or decision of the Program Manager shall:
 1. File a completed notice of appeal on a form prescribed by the Commission along with an appeal fee established independently by the Commission.
 2. The notice of appeal and appeal fee must be received at the Commission office no later than 5:00 PM on the ninth (9th) day following mailing of the decision.
 3. The notice of appeal shall be accompanied by a written statement of appeal describing the nature of the Program Manager's action or decision being appealed, summarizing the factual and legal basis for the appeal and identifying the relief requested and by a copy of the Program Manager's written decision, if any.
 4. In the circumstance of an appeal by a party who was entitled to notice but did not receive notice, the notice of appeal and appeal fee must be received by the Commission no later than 5:00 PM on the twentieth (20th) day following mailing of the decision.

Section 7.02: SCHEDULING APPEAL HEARING

Upon receipt of an appeal that has been timely filed, the Commission shall establish a hearing date, time, and place and shall notify in writing the appealing party and the Program Manager. Each party shall be responsible for ensuring that their witnesses attend the hearing. A hearing on an appeal of a grant of emergency relief pursuant to Section 4.04 of this Code shall be scheduled within seven (7) working days of the filing of the appeal. All other hearings shall be scheduled as soon as possible.

Section 7.03: REQUEST TO RESCHEDULE COMMISSION HEARING

Upon receipt of a request by a party to a Commission appeal hearing requesting the rescheduling of a Commission hearing, the Commission shall promptly rule on such request and immediately notify the parties of its decision.

Section 7.04: COMMISSION HEARING PARTICIPANTS

Only the party filing the appeal, the Program Manager and the witnesses that may be called by the parties in the hearing may attend the hearing. The Commission shall be responsible for maintaining an administrative record of the proceedings including providing for audio recording of the hearing or other appropriate recording of the hearing. Both the appealing party and the Program Manager may be represented by counsel at the hearing.

Section 7.05: HEARING PROCEDURE

- A. Hearing procedures shall comply with the requirements of due process, but will not be bound by the formal rules of evidence.
- B. Both parties will be afforded the opportunity to present written arguments and opening statements with respect to what they intend to present to the Commission. Following opening statements, first the appellant and then the Program Manager may present witnesses and evidence in support of their position on the issues being appealed.
- C. The Commission Chairperson or his/her Commission delegate will preside over the hearing and will take whatever action is necessary to ensure an equitable and expeditious hearing. Parties will abide by the presiding official's rulings. The Chairperson may limit the number of witnesses when testimony would be unduly repetitious, and exclude any person from the hearing for contemptuous or inappropriate misbehavior that obstructs the hearing.

Section 7.06: COMMISSION DECISION

- A. The Commission will render a written decision and order ("Order") within ten (10) working days from the date of the hearing. Such decision shall include a statement of facts and a statement of legal authority on which the decision is based. Orders shall be delivered to the party for whom the hearing was held and shall include information and instructions for appealing the decisions pursuant to WSTC 8.01.

- B. Orders not appealed to the Court of Appeals as set forth by WSTC 203.100 within thirty (30) days of the date of the Order shall be considered final agency orders of the Commission and subject to enforcement by any legal means, including Warm Springs Tribal Court.

Section 7.07: COMMISSION TRAINING

The Commission will be afforded annual training on hearing procedures and decision making techniques.

CHAPTER 8: TRIBAL COURT ENFORCEMENT AND JUDICIAL REVIEW

Section 8.01: APPEALS OF COMMISSION DECISIONS

- A. Any party to the Commission proceeding under Chapter 7 may appeal an Order of the Commission.
- B. The Warm Springs Court of Appeals (“Court of Appeals”), established pursuant to WSTC Chapter 203, is hereby granted exclusive jurisdiction to hear appeals from Orders of the Commission and shall act as the final reviewing body for an Order of the Commission under this ordinance.
- C. All notices of appeal and proceedings shall follow the established rules of the Court of Appeals.
- D. The Court of Appeals shall initiate an expedited review procedure and shall issue decisions on appeals of Commission Final Orders within 45 days of the filing of the notice of appeal.

Section 8.02: TRIBAL COURT ENFORCEMENT OF FINAL AGENCY ORDERS

The Tribal Courts are hereby conferred exclusive jurisdiction and shall have the authority to issue any order, enter any judgment or take any action necessary to enforce any final agency order under this ordinance including without limitation the authority to assess and collect civil penalties, to enjoin or mandate actions to enforce the provisions of this Code, and to provide any other relief the Tribal Court deems lawful and equitable; provided that nothing in this Code shall be construed as a waiver of the sovereign immunity of the Confederated Tribes. Accordingly, nothing in this Code shall be construed as any authority for a claim for money damages against the Tribe, the Office or Tribal officials and employees acting pursuant to their authority under this Code.

CHAPTER 9: WORKFORCE DEVELOPMENT

Section 9.01: AUTHORIZATION

The Program Manager shall prepare for Tribal Council approval of a Workforce Development Plan pursuant to the Indian Employment, Training and Related Services Demonstration Act of 1992, 25

U.S.C. §3404 et seq. The Plan shall be submitted to the Department of Interior for its review, approval and funding. The Plan shall be developed by the Program Manager in consultation with the Tribal Secretary-Treasurer/CEO, the Tribal Human Resources Director, the Warm Springs Health & Wellness Chief Executive Officer, and the Directors of the Department of Children and Family Services, and the Department of Education.

Section 9.02: WORKFORCE DEVELOPMENT PLAN

The Workforce Development Plan shall, at a minimum, include the following elements:

- A. Identification of the members of the Tribe and other enrolled Indians living on the Reservation between the ages of 18 and 65 who are either unemployed or underemployed;
- B. The employment opportunities for members of the Tribe and enrolled Indians within the Reservation, including a listing of each enterprise, the types and number of employment positions available;
- C. The education, vocational training, scholarships, and other training opportunities that might be available to increase the job skills of Indians living on the Reservation;
- D. Identification of the employment obstacles experienced by unemployed and underemployed Indians residing on the Reservation;
- E. Description of Tribal government departments, programs, and services that are available to address the obstacles preventing employment by Reservation Indians;
- F. A comprehensive strategy to address and remove the employment obstacles experienced by Reservation Indians, the utilization of Tribal departments, programs, and services to address these obstacles and the education, training and employment opportunities available for Indians;
- G. Additional funding and personnel needed to implement the Plan; and
- H. Means to provide incentives for Indian persons to receive the services, education, or training needed to remove employment obstacles and seek gainful employment, which may include the removal of governmental benefits in the event that able bodied persons are unwilling to participate in Workforce Development programs or services to enable the participant to gain employment or, if such services or training have been provided, to pursue such employment.

Section 9.03: TRAINING

- A. The Program Manager shall identify training programs necessary in order to increase the pool of qualified Indians for employment on the Reservation.
- B. The Program Manager may initiate and sponsor training programs for employers to participate in, or the Program Manager may work with employers to establish and sponsor their own

training programs to assist Indians to become qualified in the various job classifications used by employers.

- C. The ratio of Indian trainees to fully qualified workers shall be negotiated as part of the Compliance Agreement. For construction projects, the number of Indian trainees shall be no less than the minimum ratio established by the Department of Labor.

Section 9.04: INTER-DEPARTMENTAL PARTICIPATION AND COOPERATION

Removing employment obstacles experienced by Reservation Indians will require the participation and cooperation by all Tribal departments and enterprises. While the Program Manager is charged with developing and implementing the Workforce Development Plan, all Tribal department directors and enterprise managers shall cooperate in the implementation of the Plan to the fullest extent practicable.

Section 9.05: REPORTING

The Program Manager shall report quarterly to the Trustees on the status of and progress in developing and implementing the Workforce Development Plan. Such reporting shall include information on the following:

- A. Status of development of Workforce Development Plan;
- B. Status of Department of Interior of Workforce Development Plan;
- C. Amount of federal funding received, expended, and available for the implementation of the Workforce Development Plan;
- D. Number of Indian persons receiving services or training pursuant to Workforce Development Plan;
- E. Number of Indian persons who, after receiving Workforce Development services or training, have been employed;
- F. A discussion of problems encountered in addressing employment obstacles experienced by Reservation Indians under the Workforce Development Plan.

CM/GC Cost Matrix

Attachment D

	Direct Cost of Work	General Conditions	CM/GC Fee	Owner Cost
Project Superintendent		X		
Senior Project Manager (for project specific time only)		X		
Project Manager		X		
Assistant Project Manager		X		
Project Engineers		X		
Field Engineers		X		
On site Clerical support		X		
Scheduler (for project specific time only)		X		
MEP Coordinator (for project specific time only)		X		
Safety Coordinator (for project specific time only)		X		
Employee fringes, vacation and sick leave		X		
Project related travel, lodging, meals, per diem, etc.		X		
Jobsite office and storage trailer rental		X		
Job office furniture, equipment and expendables		X		
Job office security and cleaning		X		
Costs for project based vehicles		X		
Postage and Shipping		X		
Project photos		X		
Computers, Copiers, Printers, Fax Machines		X		
Document printing		X		
Warranty and correction of non-conforming work	X			
Commissioning coordination		X		
Cost estimating		X		
Value engineering		X		
Temporary toilets		X		
Drinking water		X		
Contractor signage		X		
Safety equipment for CM/GC personnel		X		
First aid supplies & Fire Extinguishers		X		
Substance abuse testing/monitoring		X		
CM/GC mobilization/demobilization		X		
Jobsite security		X		
GM/GC parking/shuttles		X		
Phone & Internet installation & line charges		X		
Telephones, cell phones, radios, pagers		X		
Small tools for CM/GC usage		X		
Area Superintendents			X	
Project Executive			X	
CM/GC principals(s) in charge			X	

CM/GC Cost Matrix

Attachment D

	Direct Cost of Work	General Conditions	CM/GC Fee	Owner Cost
Payroll/Accounting/Data Processing			X	
Bonuses			X	
Corporate safety officer			X	
Home office administration			X	
Corporate IT support			X	
Computer Software			X	
Home office payroll costs, fringes, bonuses, etc.			X	
Soils report				X
Initial site survey				X
Special inspections and testing				X
Planning and building permits and fees				X
Development fees				X
Performance/payment bond		X		
Subcontractor bonds	X			
Builder's risk insurance		X		
General liability insurance		X		
Subcontractor Default Insurance		X		
Contractor Controlled Insurance Program (CCIP)		X		
Construction surveying/building layout	X			
Subcontracts	X			
Wages for trade labor	X			
Labor burden for trade labor	X			
Materials and equipment for site logistics	X			
Rental equipment used on site	X			
Temporary fencing	X			
Barricades	X			
Temporary enclosures	X			
Temporary stairs	X			
Opening protection	X			
Safety railings and fall protection	X			
Weather protection	X			
Temporary utilities hookup	X			
Temporary utility bills	X			
Periodic cleanup	X			
Dump fees	X			
Final cleanup	X			
Flagging/traffic control	X			
Dust control	X			
Trade permits (if not included in subcontracts)	X			