

**THE URBAN RENEWAL AGENCY OF THE CITY OF WILSONVILLE**

**RESOLUTION NO. 90**

**A RESOLUTION OF THE URBAN RENEWAL AGENCY OF THE CITY OF WILSONVILLE ACTING IN ITS CAPACITY AS ITS LOCAL CONTRACT REVIEW BOARD AWARDING THE CONSTRUCTION MANAGER/GENERAL CONTRACTOR ("CM/GC") CONTRACT TO HOFFMAN CONSTRUCTION COMPANY OF OREGON FOR THE CONSTRUCTION OF THE PROJECT COMMONLY REFERRED TO AS THE WILSONVILLE CIVIC CENTER PARK AND CITY HALL PROJECT AND AUTHORIZING THE EXECUTIVE DIRECTOR TO SIGN THE CM/GC CONTRACT ON BEHALF OF THE AGENCY AND DIRECTING HER TO NEGOTIATE THE GUARANTEED MAXIMUM PRICE AND TO SIGN THE GMP AMENDMENT ON BEHALF OF THE AGENCY.**

WHEREAS, on June 3, 2002, the Wilsonville Urban Renewal Agency Board ("Agency") adopted Urban Renewal Resolution No. 81 adopting a budget and approving funds for fiscal year 2002-03 which included the capital improvement project commonly known as the Civic Center Park Project (#937); and

WHEREAS, on June 3, 2002, the Agency adopted Urban Renewal Resolution No. 84 amending the Urban Renewal Plan to include construction of a public building for City Hall offices and public meeting spaces as an Urban Renewal project in conjunction with the Civic Center Park Project; and

WHEREAS, on July 1, 2002, the Agency adopted Urban Renewal Resolution No. 85 amending the Urban Renewal Agency budget to increase capital appropriations necessary to provide adequate funding for construction of City Hall offices and public meeting spaces, designated as project #847; and

WHEREAS, on July 15, 2002, the Urban Renewal Agency adopted Resolution No. 86 designating the Urban Renewal Agency Board as the Local Contract Review Board for the Urban Renewal Agency; and

WHEREAS, on July 15, 2002, the Urban Renewal Agency Board held a public hearing to consider comments on the drafted findings for supporting and approving the use of the Construction Manager/General Contractor Competitive Selection Process as an alternative to the Public Contracting Requirements per ORS 279.015; and

WHEREAS, on July 15, 2002, the Agency Board acting in its capacity as its Local Contract Review Board adopted Urban Renewal Resolution No. 87 allowing the use of the CM/GC contract as an alternative bidding requirement for the Civic Center Park and City Hall and public meetings spaces projects; and authorizing the Executive Director to immediately solicit Requests for Qualifications from qualified construction managers/general contractors; and

WHEREAS, in Urban Renewal Resolution No. 87 the Urban Renewal Agency adopted findings to support alternative bidding under the CM/GC process, including finding (D), which states *Specialized Expertise Required: This project needs specialized knowledge and familiarity with construction of a building in a park or campus construction as an alternative. The CM/GC needs specific knowledge of project phasing, scheduling around inclement weather, coordination with utility companies and underground utility construction.*”and

WHEREAS, other findings in Urban Renewal Resolution No. 87 included the complex nature of the project *“involving grading, underground utility construction, concrete, framing, electrical, mechanical, information systems cabling and work space electrical, telephone and computer services. The start-up will need to be efficiently accomplished to minimize breaks in service to citizens.”*; and

WHEREAS, the Agency duly advertised the Request for Proposals, which included a ‘Pre-qualification Statement’ certifying that interested Respondents meet certain minimum pre-qualifications, in the Daily Journal of Commerce, a newspaper of general circulation, on July 19, 2002 and advertised a second time on July 22, 2002; and

WHEREAS, the RFP extrapolated the findings of Resolution No. 87 in providing the criteria for review of proposals in Section 12, including 12.1.3.1, which states: *“Describe your firm’s experience with projects of similar site, size, type, and complexity. Identify which project(s) you feel to be the most similar to this Project in terms of site, size and complexity, and for what reasons.”*; and

WHEREAS, six (6) sealed proposals were received prior to 2:00 p.m. Pacific Daylight Time, Thursday, August 14, 2002, at the Community Development Department, 8445 SW Elligsen Road, Wilsonville, Oregon and evaluated by the Technical Review Committee according to the criteria established in the RFP. A summary of the bid results marked ‘Exhibit A’ is attached hereto and incorporated herein; and

WHEREAS, based on the rankings, the Technical Review Committee invited the top three (3) respondents (Hoffman, J.E. Dunn and Swinerton) to be interviewed by the Committee on Tuesday, August 27, 2002; and

WHEREAS, all three (3) respondents were found to be qualified to provide CM/GC services for the Civic Center Park and City Hall project; and

WHEREAS, the Technical Review Committee, relying on the findings of the Urban Renewal Agency adopted in Resolution No. 87 and using all the Request For Proposals criteria Section 12, cited in part herein above, determined that Hoffman Construction Company had superior capability and experience with complex project construction, management, and understanding; and

WHEREAS, the Technical Review Committee determined that under the Request For Proposals criteria, Hoffman Construction Company of Oregon had greater experience and background with the specific listed project conditions having completed many public CM/GC projects of similar or greater size and complexity; and

WHEREAS, the Technical Review Committee concluded that overall the selection of Hoffman Construction Company of Oregon would best meet the Agency's and the City's goals including capability of experience, project understanding, project management, key personnel and cost; and

WHEREAS, the Technical Review Committee recommended that Hoffman Construction of Oregon be selected as the CM/GC firm for the Wilsonville Civic Center Park and City Hall project and, upon review, the Executive Director concurs in the selection of Hoffman Construction Company of Oregon; and

WHEREAS, URA Resolution No. 87 authorized the Executive Director and such persons as she may direct to negotiate a CM/GC contract and directed her to present a final contract to the Urban Renewal Agency Board acting as its Local Contractor Review Board no later than August 19, 2002; and

WHEREAS, in order to encourage greater competition from qualified CM/GC contractors the Executive Director authorized extending the solicitation period and therefore delaying the award of contract to the September 5, 2002, Special Urban Renewal Agency Board meeting; and

WHEREAS, the Urban Renewal Agency acting as Local Contract Review Board desires to execute a CM/GC contract in a timely manner; and

NOW, THEREFORE, THE URBAN RENEWAL AGENCY RESOLVES AS FOLLOWS:

1. The Urban Renewal Agency acting as its Local Contract Review Board finds and concludes the project was duly advertised and all proposals were received, opened, and approved as being complete, and that all Respondents were qualified for consideration or for awarding according to the provisions of ORS 279.015, Public Bids and Contracting; Wilsonville Code 2.314, Contracts With the City, adopted by Urban Renewal Agency Resolution No. 86; and the Attorney General's Model Public Contract Rules which the Agency has adopted as part of its contracting rules.
2. The Urban Renewal Board acting as its Local Contract Review Board adopts the determinations, conclusions, and recommendation of the Technical Review Committee as recited herein, and further selects Hoffman Construction Company of Oregon as the most qualified and responsive respondent to the Request for Proposals.
3. The Urban Renewal Board acting as its Local Contract Review Board ratifies the time extension for the Request for Proposals authorized by the Executive Director and hereby approves the form of the contract between the Urban Renewal Agency and Hoffman Construction Inc., as GM/GC a copy of which is attached hereto and incorporated herein as if fully set forth, and authorizes the Executive Director to sign the GM/GC contract as shown in Exhibit B.
4. The Urban Renewal Board acting as its Local Contract Review Board authorizes the Executive Director and such persons as she may direct to negotiate the Guaranteed Maximum Price (GMP) within the budgetary limits of Section 5 of this resolution and to sign the final GMP amendment with terms in substantial conformance with the GMP amendment as shown in Exhibit C.

5. Authorizes the expenditures for this contract not to exceed the following amounts:

<u>ACCOUNT</u>	<u>FY 2002/03</u>
900-49130-5000-847 (City Hall)	\$5,804,000
900-49130-5000-937 (Civic Center Park)	840,000
900-49130-5000-546 (Side Walk/Street Trees)	<u>246,000</u>
FY 2002/03 Budget	\$6,890,000

<u>ACCOUNT</u>	<u>FY 2003/04</u>
900-49130-5000-937 (Civic Center Park)	\$2,720,000
900-49130-5000-852 (Barn Restoration)	<u>300,000</u>
FY 2003/04 Budget	\$2,970,000

TOTAL BUDGET \$ 9,910,000

6. As required by state law and in keeping with annual budget appropriations, that portion of the total project cost not included in the FY 2002-03 budget shall be included in the FY 2003-04 budget.
7. This resolution is effective upon adoption.

ADOPTED by the Urban Renewal Agency of the City of Wilsonville at a special meeting thereof on the 5<sup>th</sup> of September 2002.

  
\_\_\_\_\_  
CHARLOTTE LEHAN, CHAIR

ATTEST:

*Sandra C. King*  
SANDRA C. KING, City Recorder

SUMMARY of Votes:

Charlotte Lehan, Chair	<u>Yes</u>
John Helser, Board Member	<u>No</u>
Alan Kirk, Board Member	<u>No</u>
Bruce Barton, Board Member	<u>Yes</u>
Benny Holt, Board Member	<u>Yes</u>

Attachments:

- Exhibit A – Civic Park and City Hall Summary of Combined Ratings
- Exhibit B – Construction Manager/General Contractor (CM/GC) Contract
- Exhibit C – GMP Amendment to Construction Manager/General Contractor (CM/GC) Contract
- Exhibit D – Conditions of the Contract

Last printed 9/6/2002 10:15 AM

**EXHIBIT "A"**  
**URA RESOLUTION NO. 90**  
**CIVIC PARK & CITY HALL**  
**SUMMARY OF COMBINED RATINGS**

		<b>PROPOSED FEES</b>		
Ratings	Respondents	Preconstruction Fee	CM/GC Fee	General Conditions
<b>1</b>	<b>Hoffman</b>	\$ 39,686.00	2.50%	\$ 382,325.00
<b>2</b>	<b>JE Dunn</b>	\$ 43,917.00	3.05%	\$ 574,484.00
<b>3</b>	<b>Swinerton</b>	\$ 54,970.00	2.00%	\$ 326,714.00
<b>4</b>	<b>Lease Crutcher</b>	\$ 35,000.00	3.50%	\$ 515,470.00
<b>5</b>	<b>Robinson</b>	\$ 39,250.00	3.40%	\$ 524,500.00
<b>6</b>	<b>Slayden</b>	\$ 30,000.00	3.90%	\$ 856,245.00

**EXHIBIT "B"**  
**URA RESOLUTION NO. 90**

**CITY OF WILSONVILLE URBAN RENEWAL AGENCY**  
**CONSTRUCTION MANAGER/  
GENERAL CONTRACTOR (CM/GC) CONTRACT**

**This Contract is between:**

**Owner:**

**THE CITY OF WILSONVILLE URBAN  
RENEWAL AGENCY**

**And**

**HOFFMAN CONSTRUCTION  
COMPANY OF OREGON**

**CONSTRUCTION MANAGER/  
GENERAL CONTRACTOR**  
(referred to in the Oregon Attorney General's  
Model Public Contract Rules Manual as Con-  
tractor and referred to herein as "the CM/GC"):

**The Project is:**

**WILSONVILLE CIVIC CENTER PARK &  
CITY HALL**

**The Architect is:**

**MILLER/HULL PARTNERSHIP**

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

**ARLENE LOBLE, EXECUTIVE  
DIRECTOR**



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

**ARTICLE 1**  
**DEFINITIONS**

The terms below are expressly defined as follows:

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

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

**1.3 Amendment:** Amendment shall mean a written modification of this Contract (including without limitation any agreed change to the GMP), identified as an Amendment, and executed by CM/GC, and the Owner's Authorized Representative, the Executive Director on behalf of the City of Wilsonville Urban Renewal Agency.

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

**1.5 Change Order:** Change Order shall mean a written modification of this Contract under Section 3.8 of the City of Wilsonville Urban Renewal General Conditions (including without limitation any agreed change to GMP), identified as a Change Order and executed by the Owner's Authorized Representative, CM/CC.

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

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

**1.8 Construction Documents:** Construction Documents shall have the meaning given in the City of Wilsonville Urban Renewal Agency Professional Services Agreement with the Architect for this Project.

**1.9 Construction Phase:** The Construction Phase shall mean the period commencing on the Owner's execution of a GMP Amendment.

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

**1.11 Contract Documents:** Contract Documents shall have the meaning given in Section 1.5 of the City of Wilsonville Urban Renewal Agency General Conditions, as supplemented by Article 2.1 below.

**1.12 Design Development Documents:** Design Development Documents shall have the meaning given in the City of Wilsonville Urban Renewal Agency Professional Services Agreement with the Architect for this Project.

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

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

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

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

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

**1.18 Owner:** The City of Wilsonville Urban Renewal Agency.

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

**1.20 Reconstruction Phase Services:** Preconstruction Phase Services shall mean all services described in Article 3.1, and any similar services described in the Request for Proposals, including such similar services as are described in the CM/GC's RFP Response to the extent they are accepted by Owner.

**1.21 Schematic Design Documents:** Schematic Design Documents shall have the meaning given in the City of Wilsonville Urban Renewal Agency Professional Services Agreement with the Architect for this Project.

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

## ARTICLE 2 CONTRACT DOCUMENTS

**2.1 Contract Documents:** For valuable consideration as stated below, Owner and the CM/GC agree to the terms of the contract that are set forth in the Contract Documents. As used in the City of Wilsonville Urban Renewal Agency General Conditions (Exhibit "D"), the "Public Improvement Contract" shall mean this CM/GC Contract (Exhibit "B").

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

**2.3 The Contract; Order of Precedence:** This Contract, together with the other Contract Documents, forms the entire agreement between the parties.

## ARTICLE 3 WORK OF THIS CONTRACT

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

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

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

- (a) The CM/GC shall consult with, advise, assist, and provide recommendations to the Owner and the design team on all aspects of the planning and design of the Work.

- (b) The CM/GC shall jointly schedule and attend regular meetings with the Owner, Owner's Authorized Representative, the Architect, and other designated Project consultants (the "Project Team"). The CM/GC shall consult with the Owner's Authorized Representative and other Project Team members regarding site use and improvements, and the selection of materials, building systems and equipment.
- (c) The CM/GC shall provide recommendations on construction feasibility; actions designed to minimize adverse effects of labor or material shortages; time requirements for procurement, installation and construction completion; and factors related to construction cost including estimates of alternative designs or materials, preliminary budgets and possible economies.
- (d) The CM/GC shall review in-progress design documents, including the documents generally described in the industry as Schematic Development Documents, Design Development Documents, and Construction Documents and provide input and advice on construction feasibility, alternative materials, and availability. CM/GC shall review these completed Schematic Development Documents, Design Development Documents, and Construction Documents and timely suggest modifications to improve completeness and clarity.

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

- (a) The CM/GC shall prepare, and update monthly, a preliminary Project schedule for the Project Team's review and the Owner's Authorized Representative's approval.
- (b) The CM/GC shall coordinate and integrate the preliminary Project schedule with the services and activities of the Owner and other Project Team members. As design proceeds, CM/GC shall update the preliminary Project schedule to indicate proposed activity sequences and durations, milestone dates for receipt and approval of pertinent information, submittal of a GMP proposal, preparation and processing of shop drawings and samples, delivery of materials or equipment requiring long-lead time procurement, and Owner's occupancy requirements showing portions of the Project having occupancy priority, provided that the date(s) of Substantial Completion shall not be modified without Owner's prior written approval. If preliminary Project schedule updates indicate that previously approved schedules may not be met, the CM/GC shall make appropriate recommendations to the Owner's Authorized Representative and other Project Team members.
- (c) All Project schedules shall be made available in electronic format as requested by the Owner.
- (d) Upon execution of the GMP Amendment, the CM/GC shall continue this scheduling activity throughout the Construction Phase.

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

3.1.5 Provide the following services relating to cost estimating:

- (a) The CM/GC shall verify, for the review of the Owner's Authorized Representative and other Project Team members and approval of the Owner, any preliminary cost estimates during the design phases.
- (b) When Construction Documents (CD) at the 50% submittal level have been prepared by the Architect and approved by the Owner, the CM/GC shall prepare a detailed cost estimate with supporting data for review by the Architect and Owner's Authorized Representative and approval by the Owner. During the preparation of the Construction Documents, the CM/GC shall update and refine this estimate at appropriate intervals agreed to by the Owner, Architect and Owner's Authorized Representative and CM/GC.
- (c) The CM/GC's cost estimate based on the 50% CD, will be reconciled with the Architect cost estimate to within 3%, or as otherwise approved by the Owner, for the basis of the final GMP. If any estimate submitted to the Owner exceeds previously approved estimates or the Owner's budget, the CM/GC shall make appropriate recommendations to the Architect and Owner's Authorized Representative to reduce costs.
- (d) CM/GC shall notify the Owner and the other Project Team members immediately if any construction cost estimate appears to be exceeding the construction budget.
- (e) The CM/GC otherwise shall work with the Architect and Owner to develop a GMP within the Target GMP Range and within Owner's schedule.

3.1.6 Perform the following services relating to Subcontractors and suppliers:

- (a) The CM/GC shall seek to develop Subcontractor and supplier interest in the Project, consistent with applicable legal requirements, and shall furnish to the Owner's Authorized Representative and Architect for their information a list of possible Subcontractors and suppliers, including suppliers who may furnish materials or equipment fabricated to a special design, from whom competitive bids, quotes, or proposals (collectively, "Offers") will be requested for each principal portion of the Work. Submission of such list is for information and discussion purposes only and not for prequalification. The receipt of such list shall not require the Owner, Owner's Authorized Representative or Architect to investigate the qualifications of proposed Subcontractors and suppliers, nor shall it waive the right of the Owner or Architect later to object to or reject any proposed Subcontractor, supplier, or method of procurement.

- (b) The CM/GC shall provide input to the Owner and the design team regarding current construction market bidding climate, status of key subcontract markets, and other local economic conditions. CM/GC shall determine the division of work to facilitate bidding and award of trade contracts, considering such factors as bidding climate, improving or accelerating construction completion, minimizing trade jurisdictional disputes, and related issues.
- 3.1.7 The CM/GC shall recommend to the Owner's Authorized Representative and Architect a schedule for procurement of long-lead time items which will constitute part of the Work as required to meet the Project schedule, which shall be procured by the CM/GC upon execution of a GMP Amendment covering such procurement, and approval of such schedule by the Owner's Authorized Representative. The CM/GC shall expedite the delivery of long-lead time items.
- 3.1.8 The CM/GC shall work with the Owner in identifying critical elements of the Work that may require special procurement processes, such as prequalification of Offerors or alternative contracting methods.
- 3.1.9 The CM/GC shall work with the Owner and the design team to maximize energy efficiency in the Project, including without limitation providing estimating and value engineering support to the Owner's analysis and application for energy related incentive programs offered by local utilities.
- 3.2 Construction Phase Services.
  - 3.2.1 Upon execution of the GMP Amendment, the CM/GC shall provide Construction Phase Services as provided in the Contract Documents, including without limitation providing and paying for all materials, tools, equipment, labor and professional and non-professional services, and performing all other acts and supplying all other things necessary to fully and properly perform and complete the Work, as required by the Contract Documents, to furnish to Owner a complete, fully functional Project, capable of being legally occupied and fully used for its intended purposes upon completion of the Contract. Construction Phase Services shall include CM Services performed during the Construction Phase.
  - 3.2.2 Prior to commencement of the Construction Phase, and in any event not later than mutual execution of the GMP Amendment, CM/GC shall provide to Owner a full performance bond and a payment security bond as required by Section 4.1 of the City of Wilsonville Urban Renewal Agency General Conditions in the amount of the GMP. CM/GC shall provide to Owner additional or replacement bonds at the time of execution of any subsequent GMP Amendment, 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 a sufficient amount so that the total bonded sum equals or exceeds the total the GMP. In the event of a Scope Change that increases the GMP, CM/GC shall provide to Owner an additional or supplemental bond in the amount of such increase prior to performance of the additional Work.

3.2.3 Upon execution of the GMP Amendment, the CM/GC shall continue the scheduling activities started in the Preconstruction Phase and provide the Owner's Authorized Representative with monthly schedule updates.

**3.3 Construction Management (CM) Services:** Throughout the Preconstruction Phase and Construction Phase of the Project, the CM/GC shall provide CM Services, generally consisting of coordinating and managing the building process as an independent contractor, in cooperation with the Project Team. 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 Project Team throughout the Construction Phase to all members of the Project Team;

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

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

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

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

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

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



- 3.3.9 Developing and implementing a system of cost control for the Work acceptable to Owner's Authorized Representative, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The CM/GC shall identify variances between actual and estimated costs and report the variances to the Owner and Architect at regular intervals;
- 3.3.10 Cooperating with any and all consultants hired by Owner;
- 3.3.11 At Owner's request, cooperating and performing warranty and inspection work for the Project through the expiration date of the applicable warranty period;
- 3.3.12 Assisting Owner with start-up of the Project. Such start-up may occur in phases due to phased occupancy;
- 3.3.13 Incorporating commissioning and inspection agents' activities into the Project schedule and coordinating Subcontractors required to participate in the commissioning and inspection process;
- 3.3.14 Performing all other obligations and providing all other services set forth in the Contract Documents; and performing all other acts and supplying all other things necessary to fully and properly perform and complete the Work as required by the Contract.

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

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

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

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

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

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

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

4.5.2 Job Superintendent: Jeff Stewart shall be the CM/GC's on-site job superintendent throughout the Project term.

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

#### ARTICLE 5

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

5.1 **Notice to Proceed:** When Construction Phase Services are authorized as set forth in Article 3.2, then a notice to proceed will be issued by Owner to begin the designated or full Construction Phase Services ("Notice to Proceed").

5.2 **Completion of Project:** The CM/GC shall achieve Substantial and Final Completion of the entire Work as required by the GMP Amendment. Owner shall have the right to take possession and occupancy of the Project in phases, and the CM/GC agrees that such partial occupancy shall not be grounds for adjustment of the GMP or the Substantial or Final Completion Dates".

5.3 **Time Extensions:** Notwithstanding provisions for Contract time extensions in Section 3.12 of the City of Wilsonville Urban Renewal Agency General Conditions, Owner and CM/GC agree that timely completion of the Work is essential to the success of the Project, and that approval for time extension shall be granted only as a last resort. CM/GC agrees to make every effort to recover "lost" time.

5.4 **Liquidated Damages:** The CM/GC acknowledges that the Owner 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, additional Project Team costs and use of temporary facilities. The CM/GC and the Owner acknowledge that the actual amount of damages would be difficult to determine accurately and agree that that the following liquidated damages figure represents a reasonable estimate of such damages and is not a penalty.

5.5 Liquidated Damages shall be \$500.00 for each day that Substantial Completion exceeds the required date of Substantial Completion.

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

## ARTICLE 6 CONTRACT SUM AND GMP

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

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

$$\begin{array}{l} \text{Preconstruction Fee} + \text{CM/GC Fee} + \text{Estimated Cost of the Work (Est. COW)} = \text{GMP} \\ \text{Cost Reimbursement} \qquad \qquad \qquad \% \text{ of Est. COW} \qquad \text{Includes CM/GC's Contingency and the} \\ \$ \text{_____ Maximum} \qquad \qquad \text{Becomes Lump Sum} \qquad \text{Fixed Cost for GC Work} \end{array}$$

6.2 **Preconstruction Fee:** The Preconstruction Fee shall be payable to CM/GC on a cost reimbursement basis up to a maximum sum of **\$39,686.00** which shall cover constructability review, value engineering, cost estimating, development of GMP, and all other Preconstruction Phase Services, as described in Article 3. If CM/GC's costs for provision of Preconstruction Phase Services exceed the maximum Preconstruction Fee, CM/GC shall pay such additional cost without reimbursement. CM/GC shall not be entitled to any CM/GC Fee upon the Preconstruction Fee. Owner shall pay the Preconstruction Fee on a cost-reimbursement basis with each application for payment during the Preconstruction Phase. If the total actual Preconstruction Fee is less than the maximum Preconstruction Fee used for initial calculation of the GMP as provided above, the GMP shall be reduced by the difference; provided that Owner may direct instead that any applied portion of the maximum Preconstruction Fee be applied to Construction Phase Services, in which case the GMP shall not be reduced by the portion so applied. Except to the extent the parties may expressly agree to the contrary in the GMP Amendment, no Preconstruction Fee or other fee, compensation or reimbursement shall be payable to CM/GC with respect to Preconstruction Services performed after execution of the GMP Amendment.

6.3 **Establishment of CM/GC Fee; Adjustments to CM/GC Fee:**

6.3.1 The "CM/GC Fee" shall be a fixed dollar lump sum to be identified in the GMP Amendment, and shall be calculated as 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 shall exclude the Preconstruction Fee, the CM/GC Fee itself, and any other cost or charge for which this Contract states is not to be included in calculating the CM/GC Fee,

but shall include Allowances, selected alternates, Fixed Cost for GC Work, and reasonable CM/GC contingencies as designated in the GMP Supporting Documents. The CM/GC Fee is inclusive of profit, overhead, and all other indirect or nonreimbursable costs. Owner shall pay the CM/GC Fee ratably with each application for payment during the Construction Phase. In the case of Early Work, the CM/CG Fee shall be the above percentage multiplied by the actual Cost of the Early Work, until such time as a GMP Amendment is executed, at which time such CM/GC Fee payments shall be credited against the CM/GC Fee fixed therein.

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

#### 6.4 **Determination of GMP:**

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

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

6.4.3 The CM/GC shall include with its GMP proposal a written statement of its basis (the "GMP Supporting Documents"), which shall include:

6.4.4 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.

6.4.5 A list of allowances and a statement of their basis.

6.4.6 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.

6.4.7 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.

- 6.4.8 The Date of Substantial Completion upon which the proposed GMP is based, and a schedule of the Construction Documents issuance dates upon which the date of Substantial Completion is based.
- 6.4.9 The CM/GC shall meet with the Owner and Architect to review the GMP proposal and the written statement of its basis. If the Owner or Architect discovers any inconsistencies or inaccuracies in the information presented, they shall promptly notify the CM/GC, who shall make appropriate adjustments to the GMP proposal, its basis or both.
- 6.4.10 Prior to the Owner's acceptance of the CM/GC's GMP proposal and issuance of a Notice to Proceed, the CM/GC shall not incur any cost to be reimbursed as part of the Cost of the Work.
- 6.4.11 The Owner shall authorize and cause the Architect to revise the Plans and Specifications to the extent necessary to reflect the agreed-upon assumptions and clarifications contained in the GMP Amendment. Such revised Plans and Specifications shall be furnished to the CM/GC in accordance with schedules agreed to by the Owner, Architect and CM/GC. The CM/GC shall promptly notify the Architect and Owner if such revised Plans and Specifications are inconsistent with the agreed-upon assumptions and clarifications.
- 6.4.12 The GMP shall include in the Cost of the Work only those taxes which are enacted at the time the GMP is established.
- 6.4.13 The Estimated Cost of the Work shall include the CM/GC's contingency, a sum established by the CM/GC for the CM/GC's exclusive use to cover additional development of Plans and Specifications and unforeseen costs which are properly reimbursable as Cost of the Work but which are not the basis for a Change Order.
- 6.4.14 The CM/GC shall work with the Architect and Owner to identify and confirm components and systems not specifically shown but required for a complete, fully functional Project. Owner will direct the Architect to complete the final Construction Documents in accordance with the Project scope agreed upon by all parties at the time the GMP is established.
- 6.4.15 Notwithstanding the level of detail represented in the GMP Supporting Documents, the CM/GC shall represent and warrant, at the time that it submits the GMP, that the GMP includes the entire cost of all components and systems required for a complete, fully functional facility.
- 6.4.16 In developing the GMP, the CM/GC shall include and identify such contingencies within the GMP as may be necessary to pay for unforeseen elements that are required for a complete, fully functional facility.

**6.5 Failure to Furnish an Acceptable GMP:** If the CM/GC does not furnish a GMP acceptable to Owner within Owner's Target GMP Range, or if Owner determines at any time in its sole discretion that the parties may fail to reach a timely agreement on a GMP acceptable to Owner, Owner may terminate this Contract without liability, and the CM/GC shall not receive additional compensation beyond the Preconstruction Fee under this Contract.. Termination under

this provision shall proceed under Section 1.11 of the City of Wilsonville Urban Renewal Agency General Conditions as a termination for Owner's convenience. CM/GC further agrees that Owner shall not be liable for any damages whether actual, consequential or otherwise for termination of the Contract under this provision.

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

**6.7 Owner Savings:** If the sum of the Preconstruction Fee, plus the CM/GC Fee, plus the actual and final Cost of the Work (the Contract Sum as defined in Article 6.1), is less than the GMP, not less than 85% of the savings shall be accrued to the Owner and up to 15% may be offered as an incentive to the CM/GC based on final negotiations of the GMP.

**6.8 Allowance Work:**

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

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

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

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

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

**6.9 Adjusting CM/GC's Contingency after Bid (Offer) Buyout:** As soon as possible after the awarding of the Work to the primary Subcontractors, CM/GC shall review projected costs and provide the Owner with a buy-out status report showing any projected cost under runs, reconciling accepted Offers and other reasonably anticipated costs, to the cost estimate used by CM/GC to establish the GMP. CM/GC shall include with its report any underlying documentation requested by Owner used to develop or support such report. CM/GC shall also consider the reduced risk associated with known subcontracting costs, and the impact that reduced risk has on the amount of the CM/GC's Contingency. The parties shall negotiate in good faith to execute a Change Order moving some or all of any projected under run to an Owner-controlled contingency fund to be held within the GMP to pay for additional costs arising from (a) any Owner-directed or approved change to the Work, (b) schedule changes that would otherwise entitle CM/GC to an increase in the GMP, (c) Allowance items after exhaustion of all

Allowances, (d) selection by Owner of more expensive alternates than those used for calculation of the GMP, (e) Owner selection of substitutions that increase the Cost of the Work, or (f) any other costs which otherwise would entitle CM/GC to an increase in the GMP.

## ARTICLE 7 CHANGES IN THE WORK

**7.1 Price Adjustments:** Adjustments to the Estimated Cost of the Work required by changes in the Work shall be determined by any of the methods listed in Section 3.8 of the City of Wilsonville Urban Renewal Agency General Conditions, except that, unless the adjustment is based upon fixed pricing or unit pricing:

**7.1.1** The overhead and profit markup for the CM/GC shall be limited to the CM/GC Fee adjustment, if any, permitted under Article 6.3.2 of this Contract;

**7.1.2** The increase or decrease in the Estimated Cost of the Work, other than for subcontract work, shall be calculated pursuant to Articles 8 and 9 of this Contract, instead of being based on CM/GC's Direct Costs as defined in the City of Wilsonville Urban Renewal Agency General Conditions; and

**7.1.3** In calculating adjustments to subcontracts, unless the parties agree otherwise, the change shall be limited to the Subcontractor's Direct Costs plus the supplemental mark-up provided in Section 3.8.3 of the City of Wilsonville Urban Renewal Agency General Conditions, and shall not be modified by Articles 8 and 9 of this Contract.

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

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

**7.2.2** Changes to the GMP shall be initiated by written notice by one party to the other ("GMP Change Request"). CM/GC shall deliver any such GMP Change Request to Architect and Owner's Authorized Representative promptly after becoming aware of any Scope Change if, in CM/GC's opinion, it constitutes grounds for adjustment of the GMP. Any GMP Change Request shall include a proposal as to the appropriate GMP adjustment with respect to the Scope Change at issue.

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

- 7.2.4 Owner may, at any time, submit a GMP Change Request requesting a reduction of the GMP, which shall include Owner's basis for such request, which may include, for example, reduction of the CM/GC's Contingency after further development of the Plans and Specifications that form the basis for the original GMP Amendment, and/or unused Allowances.
- 7.2.5 CM/GC shall work with Architect to reconcile all differences in its GMP Change Request with Architect within seven days from the date of submission of the GMP Change Request. "Reconciled" means that the CM/GC and Architect have verified that their assumptions about the various categories are the same, and that identifies the reason for differences in the GMP Change Request and the Architect's position. CM/GC shall submit the Reconciled GMP Change Request to Owner, which submission shall be a condition to any CM/GC claim for a GMP increase.
- 7.2.6 If the Reconciled GMP Change Request is not acceptable to Owner, CM/GC agrees to work with the Owner and the Architect to provide a GMP Change Request that is acceptable to Owner.
- 7.2.7 CM/GC agrees to make all records, calculations, drawings and similar items relating to GMP Change Request available to Owner and to allow Architect and Owner access and opportunity to view such documents at CM/GC's offices. Upon Owner's reasonable notice, CM/GC shall deliver two copies of such documents to Owner and Architect at any regular meeting or at the Site.
- 7.2.8 GMP increases, if any, shall not exceed the increased Cost of the Work arising from the Scope Change (whether based on agreed fixed pricing, or the estimated Cost of the Work increase based on cost-reimbursable pricing), reconciled in accordance with the above provisions, as arising from the incident justifying the GMP increase, plus or minus the CM/GC Fee applicable to such change in the Cost of the Work.
- 7.2.9 Except as provided in this Article 7.2, adjustments to the GMP shall be reconciled in accordance with Section 3.3.3 of the City of Wilsonville Urban Renewal Agency General Conditions.
- 7.3 **Execution by Owner:** If Architect is the Owner's Authorized Representative, then notwithstanding any provision in the Contract to the contrary, Architect has no authority to execute Change Orders or Amendments on behalf of Owner, and only duly authorized personnel of Owner may do so.

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

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



## **8.2 Labor Costs:**

- 8.2.1 Wages of construction workers directly employed by the CM/GC to perform the construction of the Work at the site.
- 8.2.2 Wages and salaries of the CM/GC's supervisory and administrative personnel (i) stationed at the site, or (ii) engaged at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work with Owner, or otherwise engaged and off the site when specifically related to the Project, in each case under this clause (iii) only with Owner's prior written approval, and only for that portion of their time directly required for the Work.
- 8.2.3 Fringe benefit costs paid or incurred by the CM/GC for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining contracts and, for personnel not covered by such contracts, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Articles 8.2.1 through 8.2.2.

## **8.3 Subcontract Costs:**

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

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

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

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

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

shall document the disposition of small tools which have an individual price that exceeds \$100. A copy of such disposition log shall accompany the payment application whenever these items are included in the application.

**8.5.2** Rental charges for temporary facilities, machinery, equipment and hand tools not customarily owned by the construction workers, which are provided by the CM/GC at the site, whether rented from the CM/GC or others, and costs of transportation, installation, minor repairs and replacements, dismantling and removal thereof. Rates and quantities of equipment rented shall be according to industry standards, shall not exceed 100% of the rental rates published from time to time by the American Association of Equipment dealers in effect at the time of rental, shall not exceed acquisition costs, and for individual items exceeding \$5,000, will be subject to Owner's prior approval. CM/GC shall deliver to Owner a list of published rates from time to time at Owner's request. For all items rented or leased, the CM/GC shall charge Owner only the rental charge incurred by CM/GC with no additional administrative or other mark-up. CM/GC shall make efforts and use its best skills and judgment to procure equipment in the most expeditious and economical manner consistent with the interest of the Owner. Efforts shall include, but not be limited to, providing Owner with a rent/buy analysis so that Owner may elect for CM/GC to procure the item in lieu of rental if the facility at issue is expected to be rented for six months or longer. Such rent/buy analysis shall include, where available, a leasing rate commensurate with the expected term of rental of the facility at issue. Inclusions to and exclusions from rental rates will be made in accordance with American Association of Equipment Dealer standards.

**8.5.3** Costs of removal of debris from the site.

**8.5.4** Cost of telegrams and long-distance telephone calls, postage and parcel delivery charges, telephone service at the site and reasonable petty cash expenses of the site office, which are solely for the benefit of the Work.

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

**8.6 Other Costs:**

**8.6.1** That portion of premiums for insurance directly attributable to this Contract, including deductible for builders all/risk insurance (but excluding premiums for comprehensive general liability, automobile and worker's compensation coverage that is not directly attributable to this Contract), and payment and performance bonds as required by

Section 4 of the City of Wilsonville Urban Renewal Agency General Conditions (but excluding premiums for Subcontractor bonds unless authorized by Owner).

- 8.6.2 Sales, use or similar excise taxes imposed by a governmental authority which are directly related to the Work and for which the CM/GC is liable.
  - 8.6.3 Fees and assessments for the building permit and for other permits, licenses and inspections for which the CM/GC is required by the Contract Documents to pay.
  - 8.6.4 CM/GC deposits lost for causes other than the CM/GC's fault or negligence.
  - 8.6.5 Costs of drawings, Specifications and other documents required to complete the Work, except as provided by Owner or Architect.
  - 8.6.6 Other costs incurred in the performance of the Work if and to the extent approved in advance in writing by Owner.
- 8.7 **Costs to Prevent Damage, Injury or Loss:** The Cost of the Work shall also include costs which are incurred by the CM/GC in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property.

8.8 **Fixed Cost For General Conditions Work:** CM/GC shall be paid a fixed sum of **\$382,325.00** as payment for the GC Work, including all labor, materials, and direct and indirect costs thereof. To the extent any GC Work is otherwise described above in this Article 8, CM/GC's compensation for the same is included in the Fixed Cost for GC Work and shall not otherwise be charged as Cost of the Work. The Fixed Cost for GC Work, less 5% retainage thereon, shall be paid in equal installments monthly over the number of months of the scheduled Construction Phase, commencing with the first progress billing after commencement of the scheduled Construction Phase.

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

- 9.1 **Costs Excluded from Cost of Work:** The following shall not be included in the Cost of the Work:
- 9.1.1 Salaries and other compensation of the CM/GC's personnel stationed at the CM/GC's principal office or offices other than the site office except as allowed under Articles 8.2.2 and 8.2.3.
  - 9.1.2 Expenses of the CM/GC's principal office and offices other than the site office.
  - 9.1.3 Any overhead and general expenses, except as may be expressly included in Article 8.
  - 9.1.4 CM/GC's capital expenses, including interest on the CM/GC's capital employed for the Work.
  - 9.1.5 Rental cost of machinery and equipment, except as provided in Article 8.5.2

- 9.1.6 Any cost associated with the Project not specifically and expressly described in Article 8.
- 9.1.7 Costs due to the fault or negligence of the CM/GC, Subcontractors, suppliers, anyone directly or indirectly employed by any of them, or for whose acts any of them may be liable.
- 9.1.8 The cost of correction of any repair work, nonconforming or defective work, or warranty work.
- 9.1.9 Merit, safety, or other incentive payments, bonuses or awards, or any expenses in connection therewith, except as provided in Article 8.6.5.
- 9.1.10 Fines and penalties.
- 9.1.11 Except for Early Work, the cost of Preconstruction Phase Services.
- 9.1.12 The Cost of the Work for GC Work in excess of the Fixed Cost for GC Work.
- 9.1.13 Any costs in excess of the GMP.

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

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

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

- 11.1 **General Subcontracting Requirements:**
  - 11.1.1 Other than Work performed pursuant to Articles 11.4 or 11.5 of this Contract, CM/GC shall subcontract the Work to Subcontractors other than the CM/GC and its Affiliates.
- 11.2 **CM/GC's Obligations under Subcontracts:**
  - 11.2.1 No use of a Subcontractor or supplier shall relieve the CM/GC of any of its obligations or liabilities under the Contract. Except as may expressly otherwise be provided in this Contract, the CM/GC shall be fully responsible and liable for the acts or omissions of all Subcontractors and suppliers including persons directly or indirectly employed by them. The CM/GC shall have sole responsibility for managing and coordinating the operations of its Subcontractors and suppliers, including the settlement of disputes with or between the CM/GC and any such Subcontractor or supplier.

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

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

### 11.3 Subcontractor Selection:

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

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

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

- (a) Unless specific other prior arrangement has been made with Owner, all Offers will be written, and submitted to a specific location at a specific time. CM/GC shall time-stamp all Offers as received. Subcontractors must be qualified to perform the Work for this Project by being appropriately registered with the City of Wilsonville Construction Contractors Board.

- (b) If fewer than three (3) Offers are submitted in response to any solicitation (inclusive of any Offer submitted by CM/GC), prior written approval by Owner shall be required to accept the Offer.
- (c) CM/GC may develop and implement a prequalification process for particular solicitations, followed by selection of successful Offers among those Offerors that CM/GC determines meet the prequalification standards, with Owner's prior written approval of such prequalification process.
- (d) CM/GC shall comply, and require Subcontractor compliance with, State of Oregon Bureau of Labor & Industries prevailing wage rates as specified in the RFP.
- (e) Owner may at its sole discretion, require CM/GC to re-solicit for Offers based on the same or modified documents.
- (f) CM/GC shall review all Offers and shall work with Offerors to clarify Offers, reduce exclusions, verify scope and quantities, and seek to minimize work subsequently awarded via the Change Order process.
- (g) The CM/GC will document any and all discussions, questions and answers, modifications and responses to from any Offeror and ensure that the same are distributed to all Offerors, and Owner shall be entitled to inspect such documentation on request.
- (h) CM/GC shall determine the lowest Offer for each solicitation that meets CM/GC's reasonable performance standards for the components of the Work at issue; provided that if CM/GC determines it is unable to execute a suitable subcontract with such Offeror, CM/GC may, with Owner's prior approval, execute a subcontract with the second-lowest Offeror pursuant to Article 11.3.4 below.

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

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

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

**11.4 CM/GC Field Work:**

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

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

**11.5 Subcontracting by CM/GC:**

11.5.1 The CM/GC or its Affiliates may submit an Offer in accordance with Article 11.3 to do Work with its own forces.,

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

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

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

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

12.2 **Periodic and Final Audits:** Owner may, at its discretion, perform periodic audits of the Cost of the Work and any other reimbursable costs associated with the Project. Owner intends to conduct a final audit of reimbursable costs prior to the Contract closeout. The CM/GC shall

cooperate fully with Owner in the performance of such audits. Disputes over audit findings or conclusions shall be subject to the process set forth in Article 14.4.

### ARTICLE 13 PROGRESS PAYMENTS

#### **City of Wilsonville Urban Renewal Agency General Conditions.**

**13.1 Integration with City of Wilsonville Urban Renewal Agency General Conditions:** The requirements of this Article 13 and Article 14 are in addition to, and not in lieu of, the requirements of Section 5 of the City of Wilsonville Urban Renewal Agency General Conditions. In the event of conflict among the provisions of Articles 13 and 14, and Section 5, the provision more favorable to Owner shall control.

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

**13.3 Percentage of Completion:** applications for payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the application for payment. The percentage of completion shall 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.

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

- (a) Take that portion of the GMP properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work under the Schedule of Values by the share of the GMP allocated to that portion of the Work in the Schedule of Values. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included;
- (b) Add that portion of the GMP properly allocable to materials and equipment delivered and suitably stored and otherwise in compliance with Section 5.3 of the City of Wilsonville Urban Renewal Agency General Conditions;
- (c) Add the CM/GC's Fee. The portion of the CM/GC's Fee payable shall be an amount that bears the same ratio to CM/GC Fee as sum of the amounts in the two preceding Clauses bears to the estimated probable Cost of the Work described in Article 6.1.2, but in no event causing total CM/GC Fee payments to exceed the total CM/GC Fee;



- (d) Subtract the aggregate of previous payments made by and retained by the Owner;
- (e) Subtract the shortfall, if any, indicated by the documentation required to substantiate prior applications for payment, or resulting from errors subsequently discovered by the Owner in such documentation;
- (f) Subtract any amounts for which the Owner's Authorized Representative has withheld or nullified payment as provided in the Contract Documents; and
- (g) Subtract 5% retainage on the entire progress payment.

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

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

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

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

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

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

**14.3 Final Payment Review:** Owner or its accountants will review and report in writing on the CM/GC's final accounting within 15 Business Days after delivery of the final accounting by the CM/GC. Based upon such Cost of the Work as Owner or Owner's accountants report to be substantiated by the CM/GC's final accounting, and provided the other conditions of this Contract have been met, the Owner's Authorized Representative will, within 5 Business Days after receipt of the written report of Owner's accountants, either issue to Owner an approval of CM/GC's final application for payment with a copy to the CM/GC or notify the CM/GC and Owner in writing of the Owner's Authorized Representative's reasons for withholding approval of any part of the application for payment, which disapproval shall include Owner's Authorized Representative's estimate of the amount that is due Contractor under the application for payment.

**14.4 Payment Disputes:** If Owner's accountants report the Cost of the Work as substantiated by the CM/GC's final accounting to be less than claimed by the CM/GC or if Owner's Authorized Representative declines to approve any duly submitted payment request by CM/GC, the CM/GC shall be entitled to demand a review by the Owner's highest contracting authority of the disputed amount. Such demand shall be made by the CM/GC within 30 days after the

CM/GC's receipt of a copy of the rejection of the application for payment; failure to demand additional review within this 30-day period shall result in the substantiated amount reported by Owner's accountants becoming binding on the CM/GC. In addition, If Owner performs a subsequent audit of the Cost of the Work and determines any item therein to have been unsubstantiated or that CM/GC was otherwise overpaid, CM/GC shall have 30 days after delivery of request for reimbursement by Owner to demand additional review by Owner's highest contracting authority; failure to make such demand within this 30 day period shall result in the requested reimbursement becoming unconditionally due and payable by CM/GC. If CM/GC timely submits a protest to the Agency's highest contracting authority, CM/GC's Claim shall be subject to the claims review process in Section 3.13 of the City of Wilsonville Urban Renewal Agency General Conditions. Pending a final resolution, Owner shall pay the CM/GC the amount of the application for payment approved by the Owner's Authorized Representative.

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

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

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

**15.2 Owner's Right to Terminate after GMP Amendment:** Notwithstanding Urban Renewal Agency General Conditions, including Section 1.11, the provisions of this article shall prevail in the event of termination by owner. After the GMP Amendment is executed by both parties, upon seven days written notice the owner may terminate the Contract without penalty in which case CM/GC shall be entitled to payment of the amount stated in Article 15.1 together with the actual Cost of the Work, plus the CM/GC's Fee prorated based on the actual Cost of the Work to the date of termination, but in any event not in excess of the GMP.

**15.3 Owner's Termination for Cause:** In the event of termination of this Agreement by Owner for cause pursuant to Section 1.11.4 of the City of Wilsonville Urban Renewal Agency General Conditions, the amount, if any, to be paid to the CM/GC after application of the City of Wilsonville Urban Renewal Agency General Conditions and Owner's rights at law shall not exceed the amount the CM/GC would be entitled to receive under Article 15.2.

**15.4 CM/GC Termination for Cause:** CM/GC acknowledges that disputes regarding payments and Change Orders may occur as part of the CM/GC process, and that Owner's declining to pay disputed amounts shall not be grounds for suspension of the Work or termination for cause by CM/GC. If CM/GC terminates this Contract for Owner's material breach, the amount to be paid to CM/GC shall not exceed the amount CM/GC would have been

entitled to receive under Article 13 above through termination and demobilization from the Project, with the CM/GC Fee prorated based on the actual Cost of the Work through the date of termination.

**15.5 Assignment of Subcontracts:** Each subcontract and supply contract for any portion of the Work is hereby irrevocably assigned by the CM/GC to the Owner, provided that such assignment is effective only after termination of this Contract by the Owner, and only for those subcontracts and supply contracts which the Owner accepts by notifying the Subcontractor/supplier and CM/GC in writing. For those subcontracts and supply contracts accepted by Owner, if the Work has been suspended for more than 30 days, the Subcontractor's/supplier's compensation shall be equitably adjusted for increases in cost resulting from the suspension. CM/GC shall include a provision in each subcontract and supply agreement whereby the Subcontractor/supplier acknowledges Owner's rights under this Article 15.5. With respect to any subcontracts/supply contracts that are not accepted by Owner, the provisions of Section 1.7 of the City of Wilsonville Urban Renewal Agency General Conditions shall apply.

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

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

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

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

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

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

- 16.1.5 There is no action, proceeding, suit, investigation or inquiry pending that questions the validity of the Contract or that would prevent or hinder the consummation of the transactions contemplated hereby; and
- 16.1.6 CM/GC's Project Manager and Assistant Project Manager identified in Article 4 are duly appointed representatives and each has the authority to bind the CM/GC to any and all duties, obligations and liabilities under the Contract Documents and any Amendments thereto.

**ARTICLE 17**  
**MISCELLANEOUS**

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

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

17.3 **Coordination and Communications:**

17.3.1 CM/GC shall work jointly with the Owner's Authorized Representative and PM to review the roles and responsibilities of the parties related to the Project and assist in developing procedures so that each party has a clear understanding of the roles of the CM/GC and the members of the Owner's Project Team.

17.3.2 CM/GC shall work with the Owner to establish electronic communications, including but not limited to an e-mail system network for the project. CM/GC shall utilize electronic formats for all practical facets of the Project and Project related communications and provide, as requested by Owner, any applicable deliverables in electronic format to support an Owner goal of "reduced paper projects."

17.3.3 At Owner's option, CM/GC shall attend meetings with Owner and the PM to assure integration of changes brought about by RFI's/Change Order(s) of applicable on the overall site approved design documents, or for other similar reasons.

17.4 **Owner's Commissioning Plan:**

17.4.1 The CM/GC shall coordinate commissioning activities when requested of the Work and sequence Subcontractor commissioning deliverables with the Owner's Commissioning Agent. In conjunction with other scheduled design and construction meetings, CM/GC shall attend and participate in meetings with the Commissioning Agent to review CM/GC's design decisions concerning systems options, systems testing requirements and systems specifications during design development phases. CM/GC shall observe commissioning activities during "start up and performance runs," of each type of

equipment, mechanical, electrical and low voltage. CM/GC shall provide for regular on-site attendance to confer with the Project Team during "start-up and performance runs" to evaluate performance of equipment, to accomplish equipment adjustments and review re-runs of "start-up and performance testing," etc., in concert with the Project Team to meet the commissioning schedule.

**17.5 Closeout Guidelines for the Project:**

**17.5.1** The CM/GC shall assist the Owner with the development of a Project closeout plan in accordance with Owner's procedures. CM/GC shall incorporate a formal Project closeout plan (including, but not be limited to CM/GC's participation in Project closeout planning meetings), into Project schedules prior to the Construction Phase.

**17.5.2** The CM/GC shall jointly develop and assist the Owner in coordination of the use of an Owner-approved Project closeout plan utilizing tracking logs and checklist(s) in a form approved by the Owner.

**17.5.3** CM/GC acknowledges and shall comply with Owner's expectations relating to the requirements of Section 6 of the City of Wilsonville Urban Renewal Agency General Conditions related to Closeout as more fully defined in the Project Close out planning meetings.

**17.6 Special Studies and Research:**

**17.6.1** CM/GC shall assist in obtaining, coordinating, and managing services for investigation, research and analysis of the Owner's special requirement(s) for the Project and provide documentation of findings, conclusions and recommendations.

**17.7 Energy Efficiency:**

**17.7.1** Owner places special emphasis on minimizing the long-term operating costs of the City facility. CM/GC shall assist the Architect to ensure that design decisions will incorporate analysis of energy and operating cost impacts.

**17.7.2** CM/GC shall provide input to Architect on the special analyses of the requirements to meet Portland General Electric Company (PGE) Earth Advantage™ Certification Program. Owner's goal is to strive toward design elements that would meet Platinum certification criteria. CM/GC shall assist Architect to track and report efforts related to Earth Advantage™ Platinum certification and how the efforts toward design elements that address Earth Advantage™ certification requirements compare to the actual requirements of this certification level.

**17.8 Recyclable Products:** Vendors shall use recyclable products to the maximum extent economically feasible in the performance of the contract work set forth in this document.

**17.9 Equal Opportunity Employer:** The CM/GC shall endeavor to achieve a workforce that represents the diversity of Oregon and strive to be a leader in providing fair and equal employment opportunity for all interested applicants and employees.

**17.10 Owner's Security Precautions:** The CM/GC shall at all times have access to the Work, subject to Owner's security precautions.

**17.11 Requirements for all Reports and Deliverables:**

**17.11.1** CM/GC shall deliver all reports and other items to be delivered by CM/GC pursuant to this Contract and other procedures developed by Owner in writing and in the form required by the Owner. Any itemization of deliverables in this Contract is nonexclusive, and CM/GC acknowledges that the required deliverables include all documents and/or tasks necessary or appropriate for full performance of the Work. If requested by Owner, CM/GC shall deliver all Deliverables to Owner in draft form for Owner's prior comment. All deliverables shall be subject to Owner's comment and final acceptance. CM/GC shall correct any deficient deliverable at no additional charge to Owner. Owner's comment upon or acceptance of a deliverable shall not be considered a waiver of defects in the deliverable or relieve CM/GC from its obligations regarding such deliverable.

**17.11.2** CM/GC shall note in writing any limitations on the reliability and scope of any deliverable. CM/GC shall clearly identify its opinions as such. Each Deliverable, regardless of the format in which it is presented, shall clearly identify qualifications to its conclusions. CM/GC shall prepare all Deliverables in accordance with industry standards, except to the extent superior performance specifications are stated herein or in subsequent Owner-developed procedures.

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

**OWNER: CITY OF WILSONVILLE  
URBAN RENEWAL AGENCY**

**CM/GC FIRM: HOFFMAN CONSTRUCTION  
COMPANY OF OREGON**

By: \_\_\_\_\_  
Arlene Loble, Executive Director  
Authorized Representative

By: \_\_\_\_\_  
Wayne Drinkward, President  
Authorized Representative

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Sandra C. King  
City Recorder

APPROVED AS TO FORM:

\_\_\_\_\_  
Michael E. Kohlhoff  
City Attorney

State of Oregon            )  
  )SS  
County of \_\_\_\_\_)

On this \_\_\_\_ day of \_\_\_\_\_, 2002, before me personally appeared whom I know personally, whose identity I proved on the basis of \_\_\_\_\_ whose identity I proved on the oath/affirmation of \_\_\_\_\_ a credible witness to be the signer of the above document, and he/she acknowledge that he/she executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal on the day and year above written.

\_\_\_\_\_  
NOTARY PUBLIC FOR OREGON  
My Commission Expires: \_\_\_\_\_

Employer ID No. \_\_\_\_\_

State of Oregon            )  
  )SS  
County of \_\_\_\_\_)

On this \_\_\_\_ day of \_\_\_\_\_, 2002, before me personally appeared whom I know personally, whose identity I proved on the basis of \_\_\_\_\_ whose identity I proved on the oath/affirmation of \_\_\_\_\_ a credible witness to be the signer of the above document, and he/she acknowledge that he/she executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal on the day and year above written.

\_\_\_\_\_  
NOTARY PUBLIC FOR OREGON  
My Commission Expires: \_\_\_\_\_  
Employer ID No. \_\_\_\_\_



**EXHIBIT "C"**

**CITY OF WILSONVILLE URBAN RENEWAL AGENCY  
CONSTRUCTION MANAGER/  
GENERAL CONTRACTOR (CM/GC) CONTRACT**

**This Contract is between:**

**Owner:**

**THE CITY OF WILSONVILLE URBAN  
RENEWAL AGENCY**

**And**

**HOFFMAN CONSTRUCTION  
COMPANY OF OREGON**

**CONSTRUCTION MANAGER/  
GENERAL CONTRACTOR**  
(referred to in the Oregon Attorney General's  
Model Public Contract Rules Manual as Con-  
tractor and referred to herein as "the CM/GC"):

**The Project is:**

**WILSONVILLE CIVIC PARK & CITY HALL**

**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:

<b>Preconstruction Fee:</b>	<b>\$39,686.00</b>
<b>Estimated Cost of Work (Est. COW):</b>	\$ _____
<b>CM/GC Fee (2.5% of Est. COW):</b>	\$ _____
<b>GMP (Total of above categories):</b>	\$ _____

For purposes of determining the GMP, the Estimated Cost of the Work includes the CM/GC's Contingency, the Fixed Cost of 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 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 be those stated in the Attachment C: Critical Date Schedule.

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

**OWNER: CITY OF WILSONVILLE  
URBAN RENEWAL AGENCY**

**CM/GC FIRM: HOFFMAN CONSTRUCTION  
COMPANY OF OREGON**

By: \_\_\_\_\_  
Arlene Loble, Executive Director  
Authorized Representative

By: \_\_\_\_\_  
Wayne Drinkward, President  
Authorized Representative

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

State of Oregon            )  
  )SS  
County of \_\_\_\_\_)

On this \_\_\_\_ day of \_\_\_\_\_, 2002, before me personally appeared whom I know personally, whose identity I proved on the basis of \_\_\_\_\_ whose identity I proved on the oath/affirmation of \_\_\_\_\_ a credible witness to be the signer of the above document, and he/she acknowledge that he/she executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal on the day and year above written.

\_\_\_\_\_  
NOTARY PUBLIC FOR OREGON  
My Commission Expires: \_\_\_\_\_

ATTEST:

Employer ID No. \_\_\_\_\_

\_\_\_\_\_  
Sandra C. King  
City Recorder

APPROVED AS TO FORM:

\_\_\_\_\_  
Michael E. Kohlhoff  
City Attorney

**URA RESOLUTION NO. 90 EXHIBIT "D"**

**CONDITIONS OF THE CONTRACT**

**1 GENERAL**

**1.1 SCOPE OF THE WORK**

- 1.1.1 The intent of the Contract Documents is to provide for the construction and completion in every detail of the Work described.
- 1.1.2 The CM/GC shall execute the entire work; including 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.
- 1.1.3 All work shall be performed in a professional manner by skilled, qualified persons fully experienced and familiar with the best current industry practices. The CM/GC shall employ methods that are generally accepted and used by the industry, in accordance with industry standards unless the means or methods of performing a task are specified elsewhere in the Contract Documents.

**1.2 DEFINITIONS**

In the Contract Documents terms shall be as defined below:

- 1.2.1 APPLICATION FOR PAYMENT: a written request from CM/GC for payment of amount due on account for work performed or materials suitably stored on the site.
- 1.2.2 ARBITRATION: an impartial group that is chosen by the parties to solve a dispute between them. The arbitrators are vested with power to make a final determination concerning the controversy.
- 1.2.3 ARCHITECT/ENGINEER (A/E): the person, firm, or corporation, so identified, appointed by the Owner to prepare drawings and specifications and to provide contract administration of the Work contemplated by the Contract. Reference is herein made, for convenience only and without special signification to the ARCHITECT/ENGINEER as singular.
- 1.2.4 ARCHITECT'S SUPPLEMENTAL INSTRUCTIONS (ASI): directions or clarifications to the CM/GC without affecting the cost of the Project or project schedule.
- 1.2.5 CHANGE ORDER: a written order signed by the CM/GC, the A/E, and the Owner's Representative authorizing a change in the scope, schedule, and/or Contract Price after execution of the Contract.
- 1.2.6 CLAIM: a resubmitted change request which has been previously denied by the Owner's Representative.
- 1.2.7 CONDITIONS OF THE CONTRACT: this document, also called the "Conditions".

- 1.2.8 CM/GC: the individual, firm, or corporation awarded the Contract for the Work. The primary CM/GC, also known as the "Prime CM/GC" or "Prime".
- 1.2.9 CONSTRUCTION SCHEDULE: the schedule, developed by the CM/GC in cooperation with the Owner and the A/E and prior to beginning construction, which shall be the basis of the actual progress of construction.
- 1.2.10 CONTRACT: the written agreement between the Owner and the CM/GC describing the Work to be done and the obligations between the parties.
- 1.2.11 CONTRACT DOCUMENTS: Public Notice, Instruction to Bidders, Proposal, Bid Schedule, Bid Bond, the Contract, these Conditions of the Contract, Drawings, Specifications, Addenda (if any) Performance Bond, Notices, approved shop drawings, and approved Change Orders, other documents listed in these Conditions and the Contract, and modifications issued after execution of the Contract. These items form the Contract Documents and are as fully a part of the Contract as if attached to it or repeated therein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. No oral agreement or conversation with any officer, agent, or personnel of the Owner, or with the A/E, either before or after the execution of this Contract, shall affect or modify any of the terms or obligations herein contained. If anything in the other Contract Documents is inconsistent with these Conditions of the Contract, these Conditions shall govern. The order of precedence of the documents shall be as defined in paragraph 1.5 of these Conditions.
- 1.2.12 CONTRACT PERIOD: the period of time from the execution of the Contract until the Final Acceptance of the Work by Owner. As set forth in these Contract Documents, this project shall commence on the date of the execution of the Contract. The date of commencement of the construction work is established by Notice to Proceed with Construction issued by the Owner and concludes upon Final Acceptance.
- 1.2.13 CONTRACT PRICE: the fixed sum dollar amount authorized by the Contract unless modified by executed Change Order(s).
- 1.2.14 CSI: the Construction Specifications Institute that has developed standardized formatting and categories for description of construction services and materials.
- 1.2.15 DAYS: calendar days, including weekdays, weekends and holidays, unless otherwise specified.
- 1.2.16 DRAWINGS: the A/E plans, sections, elevations, details, and schedules which show the location, type, dimensions, and details of the Work to be done under the Contract.
- 1.2.17 FIELD ORDER: a written order from the Owner's Representative to the CM/GC for a change in the Work not affecting the scope of the Work, the completion date, or the Contract Price. Acceptance of the Field Order by signature of the superintendent or other designated representative of the CM/GC constitutes acceptance of the terms of the Field Order and of this paragraph.

- 1.2.18 FINAL COMPLETION/ACCEPTANCE: shall be the date following Substantial Completion when the CM/GC has satisfied all the requirements of the Contract to the Owner's satisfaction and may request final payment.
- 1.2.19 FORCE MAJEURE: an inevitable act, event happening, or occurrence which results entirely from natural causes including without limitation of fire, riot, acts of God, sovereign, war, public enemy, freight embargoes or strikes and is in no sense attributable to human agency and which is beyond the control of the parties.
- 1.2.20 NOTICE OR NOTIFICATION TO OWNER: a written communication delivered by hand or mailed as indicated in Section 1.14.
- 1.2.21 NOTICE TO PROCEED WITH CONSTRUCTION: official written notice from the Owner indicating that the Contract has been fully executed and all required terms and conditions precedent to construction have been met.
- 1.2.22 OWNER: the City of Wilsonville Urban Renewal Agency.
- 1.2.23 OWNER'S REPRESENTATIVE: the City of Wilsonville Building Department, or those individuals identified in writing by the Owner to act on behalf of the Owner for the Work.
- 1.2.24 PROJECT: the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner or by separate CM/GCs.
- 1.2.25 PROPOSAL REQUEST (PR): written direction by the A/E for the CM/GC to prepare a Proposed Change Order for changes to the Work.
- 1.2.26 PROPOSED CHANGE ORDER (PCO): a written request for a change in the Work submitted by the CM/GC to the Owner's Representative. If the change requires a Change Order, and if the Owner's Representative approves the change, he will refer the Proposed Change Order to the A/E who will prepare a Change Order form. The Proposed Change Order form will be given to the CM/GC for signature and then submitted to the Owner's Representative for final approval and processing. If the Proposed Change Order does not require a Change Order, and the Owner's Representative approves the change, he will issue a Field Order. If he does not approve the change, he will respond verbally and in writing.
- 1.2.27 PUNCH LIST: a formal list prepared by the A/E and Owner reflecting items discovered to be incomplete, incorrect, or deficient during an inspection performed following the Notice of Substantial Completion. The Punch List is not guaranteed to be complete and/or exhaustive; additional items may be added to the Punch List as they are discovered at any time prior to Final Acceptance. After Final Acceptance, deficiencies will be treated as Warranty work.
- 1.2.28 REQUEST FOR FINAL PAYMENT: a request from the CM/GC toward the end of the construction period to submit a final pay request for all money due including retention.
- 1.2.29 SPECIFICATIONS: this document, also referred to as a "Project Manual" and all documents to which are referred in this document including the A/E's drawings and specifications, supplemental drawings

and specifications, special provisions, and documents referred to and/or bound with the Contract Documents; together with all signed, written agreements pertaining to the method and manner of doing the Work, or to the quantities or qualities of materials to be furnished under the Contract.

- 1.2.30 STANDARD SPECIFICATIONS, MANUALS, OR CODES: any technical society, organization or association, or 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 or laws or regulations in effect in the jurisdiction where the Project is occurring on the first published date of the Invitation to Bid, except as may be otherwise specifically stated.
- 1.2.31 SUBCM/GC: the individual, firm, or corporation having a direct contract with the CM/GC, or another subCM/GC, to perform a portion of one or more items of the Work, but does not include one who merely furnishes material not so worked (supplier).
- 1.2.32 SUBSTANTIAL COMPLETION: date of issuance of a Temporary Certificate of Occupancy.
- 1.2.33 SUBSTITUTIONS: items that are the same or better in function, performance, reliability, quality, and general configuration as the product(s) specified and so certified by the A/E. Approval of the substitute item will be solely determined by the Owner's Representative. The decision of the Owner's Representative is final.
- 1.2.32 WORK (the Work): the construction and services required by the Contract Documents, whether completed or partially completed, and includes all labor, materials, equipment, and services provided or to be provided by the CM/GC, by subCM/GCs, materials suppliers, or any other entity for whom the CM/GC is responsible and which are necessary to fulfill the CM/GC's obligations. The Work may constitute a whole or a part of the Project.

### **1.3 RELATIONSHIP OF THE PARTIES**

- 1.3.1 GENERAL: CM/GC accepts the relationship of trust and confidence established by this Contract with the Owner. The CM/GC further agrees to cooperate with the A/E and utilize the CM/GC's best skills, efforts, and judgment in furthering the interest of the Owner; to furnish efficient business administration and supervision; to make best efforts to furnish at all times an adequate supply of workers and materials; and to perform the Work in the best, most expeditious, and economical manner. The Owner agrees to enable the CM/GC to perform the Work in the best way and most expeditious manner by furnishing and approving timely information required by the CM/GC and making payments to the CM/GC in accordance with the requirements of the Contract Documents.
- 1.3.2 ARCHITECT/ENGINEER (A/E):
  - 1.3.2.1 The Owner has separately contracted for Architectural and Engineering (A/E) services with the firm of Miller/Hull Partnership to provide design and specification services for the Work and to provide construction administration and inspection services necessary to insure that the construction conforms to the drawings and specifications.
  - 1.3.2.2 Both the CM/GC and the A/E shall be given direction by the Owner or the Owner's Representative.

- 1.3.2.3 The relationship between the CM/GC and the A/E is intended to be cooperative and proactive, both participating on the same team with the Owner to ensure that the Project attains the Owner's goals.

#### **1.4 PROVISION OF DRAWINGS AND SPECIFICATIONS**

The A/E will furnish to the CM/GC without charge 25 sets of Drawings and Specifications. The CM/GC shall pay for additional copies that are required.

#### **1.5 INTERPRETATION OF THE DOCUMENTS**

- 1.5.1 The 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 priorities:

- a. Contract, and Amendments to same, with those of later date having precedence over those of an earlier date;
- b. Change Orders, Field Directives, and Clarifications issued in writing by the Owner's Representative;
- c. Conditions of the Contract;
- d. Schedules;
- e. Specifications;
- f. Large Scale Drawings;
- g. Smaller Scale Drawings;
- h. Invitation to Bid and Addenda;
- i. CM/GC's Proposal.

- 1.5.2 In the case of an inconsistency between the Drawings and Specifications or within either document not clarified by addendum, the better quality or greater quantity of Work shall be provided.

- 1.5.3 If the CM/GC finds discrepancies in, or omissions from the Contract Documents, or if the CM/GC is in doubt as to their meaning, the CM/GC shall at once notify the A/E and the Owner's Representative. CM/GC shall not proceed without direction in writing from the Owner's Representative. Such discrepancies or omissions shall not be the basis for a Change Order.

#### **1.6 CM/GC REGISTRATION**

The CM/GC, all CM/GCs, and all subCM/GCs performing work on this project must be registered with the State of Oregon CM/GC's Board prior to the execution of a Contract.

#### **1.7 ASSIGNMENT/SUBCONTRACT**

CM/GC shall not assign, subcontract, sell, or transfer rights, or delegate responsibilities under this Contract, in whole or in part, without the prior written consent of the Owner. No such written consent shall relieve the CM/GC of any obligations of this Contract and the CM/GC shall remain liable as



between the original parties to the Contract as if no assignment, subcontract, sale, transfer or delegation had occurred.

## **1.8 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: only the particular provision shall be stricken; 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.

## **1.9 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.

## **1.10 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 successors and assigns.

## **1.11 TERMINATION OF THE WORK**

### **1.11.1 TERMINATION BY THE OWNER**

The Owner may without prejudice to any other right or remedy and after giving CM/GC seven (7) days written notice and opportunity to cure, terminate the Contract if cure is not completed within seven (7) days after notice is sent under the conditions including but not limited to those listed below:

- a. if CM/GC should voluntarily or involuntarily seek protection under the United States Bankruptcy Code and its Debtor in Possession or Trustee for the estate fail to assume the Contract within a reasonable time;
- b. if CM/GC should make a general assignment for the benefit of CM/GC's creditors;
- c. if a receiver should be appointed on account of CM/GC's insolvency;
- d. if CM/GC should refuse or fail, after two written warnings, 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 pursue the Work in a timely manner;
- e. if CM/GC should fail, after two written warnings, to make prompt payment to subCM/GCs for material or labor, or should disregard laws, ordinances or the instructions of the Owner or its representative;
- f. if CM/GC is otherwise in material breach of any part of the Contract.

1.11.1.2 Upon termination as provided in this section, the Owner may take possession of the premises and of all materials and appliances and finish the Work by whatever method the Owner may deem expedient.

- 1.11.1.3 Upon termination as provided in this section, the CM/GC shall not be entitled to receive any payment until the Work is completed. If the unpaid balance of the Contract Price shall exceed the Owner's cost of finishing the Work (with compensation for added managerial and administrative services), such excess shall be paid to CM/GC. If the Owner's cost of finishing the Work exceeds the unpaid balance of the Contract Price, CM/GC shall pay the difference to the Owner.
- 1.11.1.4 Upon receiving a Notice of Termination, and except as directed otherwise by the Owner, CM/GC shall immediately cease placing further subcontracts or orders for materials, services, or facilities. In addition, CM/GC shall terminate all subcontracts or orders to the extent they relate to the Work terminated and, with the prior approval of the Owner, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts and orders.
- 1.11.1.5 As directed by the Owner, CM/GC shall upon termination transfer title and deliver to the Owner all project documents, information, and other property that, if the Contract had been completed, would be required to be furnished to the Owner.
- 1.11.1.6 The Owner will provide the CM/GC and the CM/GC's surety seven (7) days prior written notice of a termination for public convenience. After such notice, the CM/GC and the CM/GC's surety shall provide the Owner with immediate and peaceful possession of the premises; materials located on and off the premises for which the CM/GC received progress payment; compensation for work terminated by the Owner under this provision will be according to Section 1.11.3.2. In no circumstances shall CM/GC be entitled to lost profits due to termination.
- 1.11.1.7 Upon receiving a Notice of Termination, and except as directed otherwise by the Owner, CM/GC shall immediately cease placing further subcontracts or orders for materials, services, or facilities. In addition, CM/GC shall terminate all subcontracts or orders to the extent they relate to the Work terminated and, with the prior approval of the Owner, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts and orders.
- 1.11.1.8 As directed by the Owner, CM/GC shall upon termination transfer title and deliver to the Owner all project documents, information, and other property that, if the Contract had been completed, would be required to be furnished to the Owner.

#### 1.11.2 TERMINATION BY FORCE MAJEURE

- 1.11.2.1 Neither party of this Contract shall be held responsible for delay or default caused by Force Majeure. The Owner may terminate this Contract upon written notice after determining such delay or default will reasonably prevent successful performance of the Contract.
- 1.11.2.2 In the event Force Majeure impacts this Project, the Owner may grant a reasonable extension of time, there shall be no additional compensation paid to the CM/GC.

#### 1.11.3 TERMINATION BY CM/GC

- 1.11.3.1 The CM/GC may terminate the Contract if the Work is stopped for ninety (90) days through no act or fault of the CM/GC or of its subCM/GC(s) or sub-subCM/GC(s) or their agents or employees or any

other persons performing portions of the Work under Contract with the CM/GC, for any of the following reasons:

- a. issuance of an order of a court or other public authority having jurisdiction;
- b. an act of government, such as a declaration of national emergency, making material unavailable;
- c. because the Owner has not made payment within ninety (90) days of the time stated in the Contract Documents.

1.11.3.2 If one of the above reasons exists, the CM/GC may, upon seven (7) days written notice to the Owner and A/E, terminate the Contract and recover from the Owner payment for work executed and for proven loss with respect to materials, equipment, tools, and construction equipment and machinery, including reasonable subCM/GC overhead, profit, and damages.

1.11.3.3 Failure to comply with any or all of the requirements of Section 1.11.3.1 and 1.11.3.2 shall be a breach of Contract and constitute grounds for Contract termination. Damages or costs resulting from such noncompliance shall be the responsibility of CM/GC.

#### 1.11.4 GENERAL/SUSPENSION

1.11.4.1 The Owner and/or the Owner's Representative has the authority to suspend portions or all of the Work due to causes including, but not limited to:

- a. failure of the CM/GC to correct unsafe conditions;
- b. failure of the CM/GC to carry out any provision of the Contract;
- c. conditions in the opinion of the Owner's Representative which are unsuitable for performing the Work;
- d. time required to investigate differing site conditions;
- e. any reason considered to be in the public interest.

1.11.4.2 CM/GC's Responsibilities in event of suspension:

- a. For the duration of a suspension, CM/GC shall be responsible to continue maintenance at the Project just as if the Work was 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.
- b. When the Work is re-commenced after a suspension, the CM/GC shall replace or renew any work damaged during the suspension, remove any materials or facilities used as part of temporary maintenance, and complete the Project in every respect as though it had been continuous and without suspension.

1.11.4.3 Compensation for Suspension: Depending on the reason for suspension of the Work, the CM/GC or the Owner may be due compensation by the other party. If the CM/GC caused the suspension, the Owner may assess the CM/GC actual costs of the suspension in terms of administration, remedial work by the Owner's forces or another CM/GC 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 the Owner, the CM/GC shall be due compensation which shall be defined using Section 3.8, Changes in the Work. If the suspension was required through no fault of the CM/GC or the Owner, neither party shall owe the other for the costs resulting from suspension.

## 1.12 DISPUTES

1.12.1 If a dispute arises between Owner and CM/GC regarding any part of the Contract or Contract Documents, or the parties' obligations or performance thereunder, either Party may institute the dispute resolution procedures set herein. The Parties shall continue performance of their respective obligations notwithstanding the existence of a dispute.

### 1.12.2 DISPUTE RESOLUTION PROCESS:

- a. Authorized Representatives: If a controversy or claim should arise, CM/GC's and Owner's Authorized Representatives will meet at least once to attempt to resolve the matter. Either Authorized Representative may request the other to meet within fourteen (14) days, at a mutually agreed time and place.
- b. Senior Executives: If the matter has not been resolved within twenty (20) days of their first meeting, the Authorized Representatives shall refer the matter to senior executives, who shall have authority to settle the dispute. Thereupon, the Authorized Representatives shall promptly prepare and exchange memoranda stating the issues in dispute and their positions, summarizing the negotiations that have taken place and attaching relevant documents. The senior executives will meet for negotiations within fourteen (14) days of the end of the twenty (20) day period referenced to above, at a mutually agreed time and place.
- c. Mediation: If the matter has not been resolved within thirty (30) days of the meeting of the senior executives, the Parties will attempt in good faith to resolve the controversy or claim by mediation.
- d. Arbitration: If the matter has not been resolved pursuant to the aforesaid mediation procedures within sixty (60) days of the commencement of such procedure or if either Party will not participate in mediation and if the matter involves an amount less than \$1,000,000, the Parties agree that such dispute shall be arbitrated in accordance with the Large, Complex Construction Cases procedures set forth in the Construction Industry Panel Arbitration Rules of the American Arbitration Association. The Arbitration panel shall consist of three arbitrators each of whom shall be on the American Arbitration Association's panel of arbitrators for Large, Complex Construction Cases. Each Party shall appoint one arbitrator: the two arbitrators shall choose the third arbitrator as the presiding arbitrator. Each Party shall appoint its respective arbitrator within thirty (30) calendar days of the delivery of the notice of arbitration. The two arbitrators thus appointed shall choose the third arbitrator within thirty (30) calendar days after they have both been appointed. Should the Parties fail to appoint their respective arbitrators or should the two arbitrators fail to appoint the third arbitrator within the time periods specified above, the President of the American Arbitration Association shall make such appointment.

The decision of the arbitration panel shall be final, binding and conclusive upon the Parties and subject to appeal only on those grounds for which arbitrations in Oregon are subject to appeal and may be confirmed or embodied in an order or judgment of any court having jurisdiction. The arbitrators appointed pursuant to this Contract shall not have the power to award punitive damages or rescind this Contract.

- e. Litigation: If the matter has not been resolved pursuant to the aforesaid mediation procedure within sixty (60) days of the commencement of such procedure, or if either Party will not participate in mediation and if the matter involves an amount of \$1,000 or more, either Party may initiate litigation.
- f. Deadlines: All deadlines specified in this Section may be extended by mutual agreement.
- g. Required Process: The procedures specified in this Section shall be the sole and exclusive procedures for the resolution of disputes between the Parties arising out of or relating to this Contract; provided, however, that a Party may seek a preliminary injunction or other preliminary judicial relief if in its judgment such action is necessary to avoid irreparable damage. Despite such action, the Parties will continue to participate in good faith in the procedures specified in this Section 1.12.
- h. Continued Performance: Design/Builder shall continue work during any dispute and shall not have the right to suspend performance or terminate this Contract so long as Owner is operating in good faith.
- i. Exclusive Forum: Any arbitration or litigation between the parties arising out of or relating to this Contract shall be brought exclusively in Clackamas County, Oregon.

**1.13 AMERICANS WITH DISABILITIES ACT COMPLIANCE**

The CM/GC shall comply with all applicable provisions of the Americans with Disabilities Act of 1990, 42 USC Section 12101 et. seq.

**1.14 NOTICE**

Any notice provided for under this Contract shall be sufficient if in writing and delivered personally to the following addressee or deposited in the United States Mail, postage prepaid, addressed as follows, or to such other address as the receiving party hereafter shall specify in writing:

City of Wilsonville, Building Department  
 Attn: Martin Brown  
 30000 SW Town Center Loop East  
 Wilsonville, Oregon 97070

**1.15 NOTICE TO CM/GC**

Any notice provided for under this Contract shall be sufficient if in writing and delivered personally to the following addressee or deposited in the United States Mail, postage prepaid, addressed as follows, or to such other address as the receiving party hereafter shall specify in writing:

TO: CM/GC at the address provided in the response to the Invitation to Bid (Proposal).

**2 WORK OF THE CONTRACT**

**2.1 CONTRACT PERIOD**

- 2.1.1 Time is of the essence on this Contract. The CM/GC shall at all times carry on the Work diligently, without delay and punctually fulfill all requirements herein.
- 2.1.2 Unless specifically extended by Change Order, all Work shall be complete by the date contained in the Contract Documents.
- 2.1.3 The CM/GC warrants that it has the expertise, forces, and equipment to complete the Work within the Contract Period. It further agrees that its Bid includes all overhead and profit for the entire Contract Period.
- 2.1.4 The Owner shall not waive any rights under the Contract by permitting the CM/GC to continue or complete the Work or any part of it after the dates defined in the Final Schedule or after Final Acceptance.
- 2.1.5 Any claim for additional time shall be based on written notice as specified in Section 3.13, delivered to the Owner's Representative, in accordance with Section 1.15 of this conditions of Contract. As a part of this notice, the CM/GC shall provide an estimate of the probable effect of such delay on the progress of the Work and Final Acceptance of the Project. Failure to submit a conforming notice within the specified time period will result in the waiver of CM/GC's right to request additional time for that particular cause of delay.

## 2.2 SCHEDULE

### 2.2.1 PRECONSTRUCTION CONFERENCE:

The CM/GC shall meet with the Owner and A/E for a preconstruction conference at a time mutually agreed upon. The meeting may include representative of the Owner, A/E, CM/GC, subCM/GC, affected utility companies, and other affected agencies. The purpose of the conference will be to discuss the construction schedule, items of the work which require special coordination or documentation and any other appropriate review of the plans and specification pertaining to the Work.

### 2.2.2 CONSTRUCTION SCHEDULE:

- a. CM/GC shall provide a detailed schedule before commencing construction.
- b. Schedules shall be updated monthly to indicate progress of the Work and to reveal potential problems or delays, and shall be submitted with the monthly payment application and reviewed at the weekly meetings.
- c. Any positive difference between the CM/GC's scheduled completion and the Final Acceptance date is float owned by the Project. Use of the float will be negotiated. In no case shall the CM/GC make a claim for delay if the Work is completed within the Contract time but after CM/GC's scheduled completion.
- d. Acceptance of the Schedule by the Owner does not constitute agreement by the Owner, as to the CM/GC's sequencing, means, methods, or duration.

## 2.3 CRITICAL DATES

- 2.3.1 DATE OF COMMENCEMENT shall be defined as stated in Section 1.2.12, Contract Period.

2.3.2 SUBSTANTIAL COMPLETION of the Project shall be achieved on or before the date agreed to by the Owner and the CM/GC in the Contract subject to adjustments of the contract time as provided in the Contract Documents or by Change Order.

## 2.4 CONSTRUCTION RELATED ACTIVITIES

- a. Provide a schedule and conduct regular site progress meetings, at least weekly.
- b. Fully coordinate the Work of all subCM/GCs and vendors. Provide regular and on-going quality inspection and assistance to the A/E to ensure that the Work meets all specifications and applicable codes.
- c. Prepare and expedite Proposed Change Orders. Ensure that all Change Orders receive the Owner's prior approval before the execution of work and that all costs are either on a lump sum basis or a time and materials basis with a not-to-exceed limit. No time and material work shall occur without a not-to-exceed limit. For work performed on a time and material basis, monitor and insure that accurate records are maintained.
- d. In the event that interpretation of the meaning and intent of the Contract Documents becomes necessary, expedite consultation and resolution with the A/E and Owner's Representative.
- e. Carefully complete all payment requests, make physical inspections of the Work to assure accuracy and completeness of each payment request, and certify that each payment request is an accurate reflection of the Work completed.
- f. Review all requests for time extensions. Work with the subCM/GCs, A/E, and the Owner to find solutions, wherever possible, to avoid delay.
- g. Keep on site at all times a set of project and record documents to include one copy of: bid documents (consisting of Project Manual, Drawings), contract forms, project manual, contract drawings, addenda, construction change authorizations, change orders, reviewed shop drawings, office sample, field test records, project schedule and monthly reports along with the Architect's Supplemental Instructions.
  - (1) Store documents and samples in CM/GC's field office separate from documents used for construction.
  - (2) Keep current the record documents and label "Project Record". Record location of concealed items and utility lines; field changes in dimensions, details and changes in materials on the Project record documents. Record changes from Architect's Supplemental Instructions, change orders, construction change authorizations, and details not on contract drawings.
  - (3) CM/GC will be required to certify, at final submittal, that the Record Documents note all changes made during construction from the initial Contract Documents and that the record drawings show the location of all concealed systems installed during construction.
  - (4) Project Record Documents will be reviewed monthly as part of the CM/GC application for payment process. The CM/GC is to review the subCM/GCs' record drawings to confirm that they are updated and all subCM/GCs record documents will be reviewed monthly along with the CM/GC record drawings. Failure to keep project record documents current will delay the CM/GC's Application for Payment until the Project record drawings are brought current.

- h. Monitor compliance with payment of prevailing wages on all Contracts and subcontracts. Provide documentation to the State of Oregon Wage and Hour Division as required by ORS 279 with duplicates to the Owner's Representative.
- i. The CM/GC shall at all times maintain the Project in a reasonably clean and orderly condition. Should the Owner find the condition of the Project unacceptable, it shall require the CM/GC, at the CM/GC's expense, to clean up and remove all refuse and unused materials of any kind resulting from the Work. If CM/GC 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 CM/GC and deducted from the Contract Price.
- j. Compile a schedule in conjunction with the Owner to permit a coordinated occupancy program following completion of each phase of construction.

#### 2.4.1 CLOSE-OUT / POST-CONSTRUCTION

- a. Notification: CM/GC shall provide Owner written notice of both Substantial and Final Acceptance.
- b. Prior to issuance of Notice of Substantial Completion, CM/GC shall inspect all elements; test operable systems and items of equipment; identify deficiencies; and complete adjustment of operable systems and equipment for proper operation.
- c. Prior to final inspection the CM/GC shall perform the following:
  - (1) Remove grease, dust, dirt, stains, manufacturer's labels, fingerprints, etc. from sight-exposed surfaces. Repair, patch and touch up marred surfaces.
  - (2) Clean heating and cooling ducts, blowers, coils, fixtures, equipment, piping and grilles. Replace air filter and provide clean filters at the time of Owner acceptance.
  - (3) Broom clean exterior paved surfaces and walks. Rake clean landscaped areas. Vacuum clean interior spaces. Wash interior and exterior glazing and mirrors.
  - (4) Maintain in cleaned condition until Final Acceptance.
  - (5) Keep all drains during the course of construction protected from the washing of mortar, plaster and construction debris.
- d. Record Drawings: As a condition of final payment CM/GC shall provide record drawings of the entire project to A/E. Record drawings shall depict the Project as constructed and shall reflect each and every change, modification, and deletion made during the construction. Record drawings are part of the Work and shall be provided prior to the Owner's issuance of final payment. Record drawings include all modifications to the Work and variations from the Construction Drawings unless otherwise directed.
- e. Operations and Maintenance Manuals (O & M Manuals):
  - (1) As part of the Work, CM/GC shall submit two (2) completed sets of operation and maintenance manuals for review by the Owner's 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, etc. The A/E will review and return one O & M Manual for any modifications or additions required. Prior to submission of the final pay request, five (5) complete and approved sets of O & M Manuals shall be delivered to the Owner's Representative by the CM/GC.

- (2) Form and content of the O & M Manuals to be as stated in Sections 01340 and 01730 and Divisions 15 and 16 of the Specifications.

f. Warranties:

- (1) Provide all warranty certificates, bonds, and service and maintenance contracts executed by each manufacturer, supplier, and subCM/GC bound in a loose-leaf notebook with an indexed listing showing dates of commencement and expiration. Include a letter or certificate warranting the entire Work for the period specified herein.
- (2) For those items not complete or fully functioning at the time of substantial completion, see Section 7.2.1.

g. Instructional Walk-Through: Provide a walk-through for maintenance personnel after Substantial Completion but before Final Acceptance for the purpose of familiarizing them in detail with building systems and components.

h. Training: As part of the Work, and prior to submission of the request for final payment, the CM/GC shall provide assistance in the establishment of an in-house program of operation and maintenance of the physical plant and equipment, and schedule with the maintenance manager training sessions for all equipment and systems, as required in the individual specifications sections. CM/GC shall schedule training sessions at least two weeks in advance of the date of training to allow Owner's 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. Duration and quality of training shall be sufficient to allow Owner's personnel to operate all equipment without further assistance.

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

j. CM/GC shall label packages and deliver spare parts and maintenance materials to Owner's storage area and submit quantity specified in each product section of the Specifications.

k. Certificate of Occupancy: The CM/GC shall not be granted Final Acceptance or receive final payment until the Owner has received an unconditioned Certificate of Occupancy.

l. Certificates: CM/GC shall provide certificates for products or systems installed, where required, prior to final acceptance by the architect and project manager.

## 2.5 CM/GC USE OF PREMISES

2.5.1 Limitations on Use: The CM/GC shall have use of only the property shown on the Contract Documents for performance of the Work up to and including the date of substantial completion.

2.5.2 Non-Interference with Service Utilities:

- a. Consult with public and private utility companies for location and extent of all utilities before commencing work.
- b. Provide all services required. Protect and maintain existing utilities, active electrical conductors, sewers, pipes, and other active lines on property or in street excavations.
- c. Arrange for and pay cost of disconnecting, removing, relocating, capping, replacing or abandoning of public and private utilities in the way of construction operations in accordance with serving utilities, local regulations, and governing codes. Utilities, pipes, sewers, electrical conductors, and the like to be abandoned shall be capped in accordance with instructions of governing authority or as directed.
- d. Protections: Protect sidewalks, paved areas, adjacent vehicles, and adjacent buildings from spillage of materials used in carrying out the Work. Exercise care to preclude materials from clogging catch basins and yard drains. Leave all drainage items clean and in proper working condition. Provide street washing capabilities if necessary and protect all open trenches. Protect open trenches and general work areas from access by the public.
- e. Trash management to include but not limited to: The use of covered dumpsters, routine disposal of dumpsters, policing premises daily for debris, maintain construction site appearance to Owner's satisfaction, pursue all necessary precautions to preserve the image and functionality of the Owner's operations, and review the status of implemented procedures with Owner weekly.

## **2.6 CONTINUOUS OPERATION**

Not applicable.

## **3 ADMINISTRATION OF THE CONTRACT**

### **3.1 PERMITS**

- 3.1.1 CM/GC shall obtain all necessary permits and licenses for the construction of the Work, including without limitation temporary obstructions, enclosures, opening of streets for pipes, walls, utilities, environmental, etc., as required for the Project. CM/GC shall be responsible for all violations of the law, in connection with the construction or caused by obstructing streets, sidewalks or otherwise. CM/GC shall give all requisite notices to public authorities. The CM/GC shall pay all royalties and license fees.
- 3.1.2 Owner will pay for all permits and fees except those associated with the electrical permit which shall be the responsibility of the CM/GC.
- 3.1.3 All CM/GCs and SubCM/GCs shall have obtained a City of Wilsonville Business License, or provide proof of a current METRO Business License prior to commencing work on the Project at their own initiative and expense.

### **3.2 COMPLIANCE WITH GOVERNMENT REGULATIONS**

- 3.2.1 CM/GC shall comply with federal, state and local laws, codes, regulations and ordinances applicable to the Work.

- 3.2.2 CM/GC shall comply with applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations; and
- 3.2.3 CM/GC shall not discriminate against minority, women or emerging small business enterprises in the awarding of subcontracts (ORS 279.111).
- 3.2.4 CM/GC shall maintain, in current and valid form, all licenses and certificates required by law, regulation, or the Contract Documents when performing the Work.
- 3.2.5 Unless contrary to federal law, CM/GC shall certify that it shall not accept a bid or proposal from subCM/GCs to perform work as described in ORS 701.005 under this Contract unless such subCM/GCs are registered with the Construction CM/GCs Board in accordance with ORS 701.035 et seq. at the time they submit their bids or proposals to the CM/GC.
- 3.2.6 Manufacturer's Material Safety and Data Sheets (MSDS sheets): CM/GC shall provide information and instructions in conformance with current regulations, and provide notification to employees and on-site public as required.

### **3.3 OWNER ACCESS TO RECORDS**

- 3.3.1 CM/GC shall keep, at all times on the Work site, a copy of the complete Contract Documents and current as-builts, and shall at all times give the A/E and the Owner's Representative access thereto.

#### **3.3.2 GENERAL RECORDS**

The Owner and its duly authorized representatives shall have access, for a period not less than three (3) years, to books, documents, papers and records of CM/GC which are pertinent to the Project including records pertaining to overhead and indirect cost pools, for the purpose of making audit, examination, excerpts and transcripts. If for any reason, any part of the Project is involved in litigation, CM/GC shall retain all pertinent records until all litigation is resolved. The Owner and/or its employees or agents shall continue to be provided full access to the records during litigation.

#### **3.3.3 ACCOUNTING RECORDS**

- a. The CM/GC shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under this Contract; the accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's Representative, accountants and auditors, shall be afforded reasonable and regular access to the CM/GC's records, books, correspondence, instructions, drawings, receipts, subcontracts, purchase orders, vouchers, memoranda, and other data relating to the Project, and the CM/GC shall preserve these for a period of three years after final payment, or for such longer period as may be required by law.
- b. During the period from when the Contract is executed until completion of the Project, the CM/GC shall provide, on at least a monthly basis, a complete and comprehensive cost-accounting to the Owner of the status of all actual and budgeted costs within the Contract Price. The accounting shall be provided in a format acceptable to the Owner, and shall, at a minimum, include, but not be limited to, all of the following: all individual budget line items for bid or proposal packages

(contingencies, general conditions work; actual expenses subCM/GC contracts and all change orders), and direct purchases and expenses; a listing of all changes to the Work authorized by the Owner (including changes to the Contract Price and changes within the Contract Price) and a reconciliation with the original budget.

**3.4 SUPERINTENDENCE**

CM/GC shall keep on the site, at all times, 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 CM/GC on the site.

**3.5 STAFFING**

3.5.1 The CM/GC agrees to assign the following principal office project management staff to this project, for the duration of the entire project except if they leave employment with the CM/GC, in which case prior approval by the Owner of substitution with individuals of comparable expertise will be required: *(to be completed by the CM/GC prior to Contract execution)*

_____	_____
(Name)	(Position)
_____	_____
(Name)	(Position)
_____	_____
(Name)	(Position)
_____	_____
(Name)	(Position)

3.5.2 The CM/GC agrees that the superintendent and all other such personnel or subCM/GCs' representatives as are required to assure normal progress of the Project shall attend all construction meetings on at least a weekly basis for the duration of the Project.

**3.6 OWNER'S INSPECTION**

- 3.6.1 The A/E and the Owner's Representative shall have access to the Work at all times.
- 3.6.2 Inspection of the Work will be made by the A/E and/or the Owner's Representative at their discretion. Any work found to be not in conformance with the Contract Documents, in the discretion of the Owner's Representative, shall be removed and replaced at the CM/GC's expense.
- 3.6.3 Work done or material used without inspection or testing by the Owner's Representative may be ordered removed at the CM/GC's expense.
- 3.6.4 If directed to do so any time before the Work is accepted, the CM/GC shall uncover portions of the completed Work for inspection. After inspection, the CM/GC shall restore such portions of work to the standard required by the Contract Documents. If the Work uncovered is unacceptable or was done

without sufficient notice to the Owner's Representative, the uncovering and restoration shall be done at the CM/GC's expense. If the Work uncovered is acceptable or was done with sufficient notice to the Owner's Representative, the uncovering and restoration will be paid for as a Change Order.

3.6.5 Work done and materials furnished shall be subject to inspection and/or observation to determine if they conform to the Contract Documents. Inspection of the Work by the A/E or Owner's Representative does not relieve the CM/GC of responsibility for the Work in accordance with the Contract Documents.

3.6.6 CM/GC shall furnish adequate facilities, as required, for the A/E and the Owner's Representative to have safe access to the Work. (Walkways, railings, ladders, tunnels, platforms, etc.) Producers, suppliers, and fabricators shall also provide proper facilities and access to their facilities.

### 3.7 CM/GC'S TESTING

CM/GC shall engage a Special Inspection firm approved by the Owner for those portions of the Project requiring Special Inspections as identified in the Project plans.

### 3.8 CHANGES IN THE WORK

3.8.1 It is mutually agreed that changes in drawings, quantities, or details of construction are inherent to the nature of construction and may be necessary or desirable during the course of construction. The CM/GC is hereby notified that changes are anticipated and that there will be no compensation made to the CM/GC directly related to the number of changes. Each change will be evaluated for extension of Contract time and increase or decrease in compensation based on its own merit.

3.8.2 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order. A Change Order is a written instrument signed by the CM/GC, A/E and Owner stating their agreement on changes in the Work; the amount of the adjustment, if any, in the Contract Price; and the extent of the adjustment, if any, in the Contract Time.

3.8.3 If the Change Order provides for an adjustment to the Contract Price, the adjustment shall be based on one of the following methods:

- a. mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- b. cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee, or
- c. the cost to the Owner resulting from extra work shall be determined by an agreed price which shall include overhead and profit, or shall be the actual cost of the additional direct labor, materials, and subcontract work involved, plus an allowance for overhead and profit as follows:

- |   |     |
|---|-----|
| (1) Work items less than \$1,000 in value:        | 15% |
| (2) Work items valued between \$1,000 and \$5,000 | 12% |
| (3) Work items in excess of \$5,000               | 10% |

- d. the credit to the Owner resulting from a deduction of work shall be determined by an agreed price, or the actual cost of direct labor, materials, and subcontract work involved.
- e. Cost and credits shall be submitted by the CM/GC to the A/E in a complete breakdown form, showing cost, overhead and profit.

### 3.9 SUBMITTALS

3.9.1 The CM/GC shall submit the following to the A/E: shop drawings, certificates, product data, samples, schedule of values, and record drawings for each specification section, product data: manufacturer's catalog sheets, brochures, diagrams, schedules, performance charts, illustrations, and other standard descriptive data. The A/E will review submittals for design concept and conformance with Contract Documents.

3.9.2 Substitutions:

- a. Submit to the A/E a complete summary of the deviation from the Contract Documents including Supplemental Drawings and supporting data necessary to fully describe using the Substitution Request Form defined in Section 3.9.2.
- b. No requests for substitutions will be accepted without submission of the completed Substitution Request Form and appropriate product information.
- c. The CM/GC is responsible for deviations from the Contract Documents; therefore, it is responsible to fully demonstrate to the Owner's Representative's complete satisfaction the acceptability of such deviations.
- d. Submit all Substitution Requests to the A/E in the following quantities:
  - (1) Architectural Products - three (3) copies.
  - (2) Landscape, Structural, Mechanical, or Electrical Products - four (4) copies.
  - (3) All costs of substitutions, including but not limited to testing, engineering, and construction will be at the expense of the CM/GC.
  - (4) No deviations from the Contract Documents are permitted without written approval from the Owner's Representative.

### 3.10 SUBSTITUTION AND PRODUCT OPTIONS

3.10.1 SUBSTITUTION

- a. The A/E and Owner's Representative may consider a substitution request if it is submitted with the completed Substitution Request Form and meets one or more of the following conditions:
  - (1) specified product does not comply with final code interpretation requirements or insurance regulation;
  - (2) specified product is unavailable through no fault of the CM/GC;
  - (3) specified product is unable to perform properly or fit designated space;

- (4) manufacturer or fabricator refuses to certify or guarantee performance of specified product, as required;
  - (5) substitution saves substantial cost or time and substituted product is identical or superior to specified product;
  - (6) substituted product is superior to specified product;
  - (7) Owner's Representative or A/E requests substitution.
- b. In making a request for substitution, the CM/GC represents:
- (1) that it has personally investigated the proposed product and, in its opinion, it is equal to and indistinguishable from, or superior in all respects to the product specified;
  - (2) that it will coordinate installation of the accepted substitution and guarantees to complete it in all respects,
  - (3) that it has coordinated any changes required to the Work to accommodate the substituted product;
  - (4) that it will provide the same guarantee for the substituted product as is required for the specified product;
  - (5) that it waives all claims for additional costs related to the substitution which subsequently become apparent;
  - (6) and that cost data is complete and includes all related costs under its Contract, including A/E fees which may be required to investigate the product and/or assure that the Work is modified as required to accommodate installation of the product.
- c. Substitutions will not be considered if:
- (1) they are only indicated on shop drawings or other project data submittals, without proper notice and submittal of a completed substitution request form;
  - (2) acceptance will require substantial revisions of Contract Documents.

**SUBSTITUTION REQUEST FORM**

TO: City of Wilsonville  
Attn: Martin Brown  
30000 SW Town Center Park  
Wilsonville, Oregon 97070  
(503) 682-4960

**PROJECT: Wilsonville Civic Park & City Hall Project**

We hereby submit for your consideration the product described below as a substitute for the specified product indicated:

1. Specified Product

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

Section: \_\_\_\_\_ Paragraph: \_\_\_\_\_

2. Proposed Substitution:

a. Brand Name: \_\_\_\_\_

b. Model/Catalog No.: \_\_\_\_\_

c. Manufacturer: \_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Address) (Zip) (Telephone)

d. Distributor: \_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Address) (Zip) (Telephone)

e. Substitute Product Meets the Following Standards:

ANSI \_\_\_\_\_ F.S. \_\_\_\_\_ ASTM \_\_\_\_\_

Others: \_\_\_\_\_

and is superior to the above in the following ways: \_\_\_\_\_

f. Substitute product will require the following changes in the Work:

1) Space requirements: \_\_\_\_\_

2) Dimensions on drawings: \_\_\_\_\_

3) Adjacent work: \_\_\_\_\_

4) Installation procedures: \_\_\_\_\_



g. Substitute product differs from specified product in the following way: \_\_\_\_\_  
\_\_\_\_\_

3. Supporting Data: The following laboratory tests, performance and test data, certifications, guarantees/warranties, and other supporting technical data are attached.

4. Guarantees: Manufacturer's guarantees of the proposed and specified items are: \_\_\_ Same  
\_\_\_ Different (explain on attachment)

5. Certifications: The undersigned certifies that the proposed product is equal or superior in all respects to the product specified.

6. Submitted By:

Firm: \_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Address) (Zip) (Telephone)

By: \_\_\_\_\_ Title: \_\_\_\_\_  
(Please type or print)

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

**END OF SUBSTITUTION REQUEST FORM**

**3.11 CONCEALED CONDITIONS:** If the CM/GC discovers site conditions which differ 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 CM/GC shall notify the Owner's Representative immediately and before the area has been disturbed. The Owner's Representative will investigate the area and make a determination as to whether or not the conditions differ from either the conditions stated in the Contract Documents or those which could reasonably be expected in execution of this particular Contract. If it is determined that a differing site condition exists, any compensation or credit will be determined based on Section 3.8 Changes in the Work.

**3.12 DELAYS**

**3.12.1 NOTICE:** If the CM/GC is delayed by any actions of the Owner, Owner's Representative, or any other employee or agent of the Owner or by Force Majeure (defined in paragraph 1.2.19), the CM/GC shall submit a written notification of the delay to the Owner's Representative within two (2) working days of the beginning of the delay. This notice shall state the cause of the potential delay, the Project components impacted by the delay, and the anticipated time extension necessary to compensate for the delay. The CM/GC shall submit a change request for the delay according to the provisions of Section 3.12.5.

**3.12.2 AVOIDABLE DELAYS:** Include delays which could have been avoided by the exercise of care, prudence, foresight, and diligence on the part of the CM/GC or its CM/GCs or subCM/GCs, including, but not limited to, the following:

- a. Delays which may in themselves be unavoidable but which affect only a portion of the Work and do not necessarily prevent or delay the execution of other parts of the Work nor the completion of the whole Work within the Contract Period.

**3.12.3 UNAVOIDABLE DELAYS:**

- a. Unavoidable delays include those which result from causes beyond the control of the CM/GC and which could not have been avoided by the exercise of care, prudence, foresight, and diligence on the part of the CM/GC or its CM/GC or subCM/GCs. Delays caused by Force Majeure (defined in paragraph 1.2.19), despite the CM/GC's reasonable efforts to avoid them, shall be considered as unavoidable.
- b. **COMPENSATION FOR DELAY:** The Owner may grant a time extension for avoidable delay if the Owner deems it is in its best interest. Except as otherwise provided by law, time extensions for avoidable or unavoidable delays shall not be compensable. Only delays within the reasonable control of the Owner shall be compensable.

**3.12.4 ADVERSE WEATHER:** Claims by the CM/GC based on adverse weather conditions must be substantiated by documentation that weather conditions were abnormal for the specific time period claimed, could not have been anticipated by the CM/GC, and adversely impacted the Project. Rain, windstorm, high water, or other natural phenomenon for the specific locality of the Work, which might reasonably have been anticipated from the previous ten (10) years historical records of the general

locality of the Work, shall not be construed as abnormal. It is hereby agreed that rainfall greater than the following cannot be reasonably anticipated:

- a. Daily rainfall equal to, or greater than, 0.50 inch during a month when the monthly rainfall exceeds the normal monthly average by twenty-five percent (25%) or more.
- b. Daily rainfall equal to, or greater than, 0.75 inch at any time.
- c. The office of the Environmental Data Service of the National Oceanic and Atmospheric Administration (NOAA) of the U.S. Department of Commerce nearest the Project site shall be considered the official agency of record for weather information.

#### 3.12.5 CHANGE REQUESTS DUE TO DELAYS:

- a. All Change Requests for Concealed Conditions, Unavoidable Delays, and Adverse Weather shall be submitted to the Owner's Representative not more than ten (10) days from the date of the occurrence of the event which gives rise to the request or not more than ten (10) days from the date that the CM/GC knew or should have known of the problem.
- b. For those requests that take longer than ten (10) days to prepare, The CM/GC shall submit a Notification of Intent to Submit a Change Request not more than ten (10) days from the date of the occurrence of the event which gives rise to the request or not more than ten (10) days from the date that the CM/GC knew or should have known of the problem. The Notification of Intent will state the nature of the Change Request, the date(s) of the occurrence of the event which gives rise to the request, the delay anticipated, and the date the Change Request will be submitted.
- c. Unless the Change or Notification is made in accordance with these time requirements, it shall be waived.

### 3.13 CLAIMS

- 3.13.1 All CM/GC claims shall be referred to the Owner's Representative for review. All claims shall be made in writing to the Owner's Representative not more than ten (10) days from the date the Owner's Representative rejects a Proposed Change Order. Unless the claim is made in accordance with these time requirements, it shall be waived.
- 3.13.2 All claims shall be submitted in writing and shall include a detailed, factual statement of the basis of the claim, pertinent dates, Contract provisions which support or allow the claim, reference to or copies of any documents which support the claim, the exact dollar value of the claim, and specific time extension requested for the claim. If the claim involves work to be completed by subCM/GCs, the CM/GC will analyze and evaluate the merits of the subCM/GC claim prior to forwarding it and the analysis and evaluation to the Owner's Representative. The Owner's Representative and the Owner will not consider direct claims from subCM/GCs, suppliers, manufacturers, or others not a party to this Contract.
- 3.13.3 The A/E and Owner's Representative will review all claims and take one or more of the following preliminary actions within ten (10) days of receipt of a claim:

- a. request additional supporting information from the CM/GC;
- b. inform the CM/GC in writing of the time required for adequate review and response;
- c. reject the claim in whole or in part and identify the reasons for rejection;
- d. recommend approval of all or part of the claim; or
- e. propose an alternate resolution.

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

3.13.5 The decision of the Owner shall be final and binding unless the CM/GC requests mediation within fifteen days of receipt of the Owner's decision. Both the Owner and the CM/GC are obligated to participate in the mediation process defined in Section 3.14.6 prior to either or both proceeding to litigation. The mediation process is non-binding.

3.13.6 Should the parties arrive at an impasse regarding any claims or disputed claims, it is agreed that the parties shall submit to mediation prior to the commencement of litigation. The mediator shall be an individual mutually acceptable to both parties. Should the parties lack specific recommendations for a mediator, the parties will look to the local circuit court or the Oregon Dispute Resolution Commission. Each party will 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 efforts in good faith to resolve all disputes in mediation. Participation in mediation is a mandatory requirement on both the Owner and the CM/GC. The schedule and time allowed for mediation will be mutually acceptable.

3.13.7 Regardless of the review period or the final decision of the Owner's Representative, the CM/GC shall continue to diligently pursue the Work as identified in the Contract Documents. In no case is the CM/GC justified or allowed to cease work without a written stop work order from the Owner or Owner's Representative.

### **3.14 MINIMUM WAGE RATES / PAYROLL CERTIFICATION**

3.14.1 State of Oregon prevailing wage rates, attached as Appendix A, shall apply for this Contract and all subcontracts.

3.14.2 When any contract or subcontract price exceeds \$25,000, the CM/GC, CM/GC, or subCM/GC shall comply fully with the provisions of ORS 279.348 through 279.365.

3.14.3 The CM/GC is required to pay a fee to the Bureau of Labor and Industries pursuant to the provisions of ORS 279.352(2) and section 5(1), Ch 594, 1995 Oregon Laws. The fee is one-tenth of one percent of the price of this contract, but not less than \$100 nor more than \$5,000 regardless of the contract price.

- 3.14.4 The CM/GC shall pay a fee equal to one-tenth of one percent (.001 of 1%) of the price of this contract. The fee shall be paid on or before the first progress payment or 60 calendar days from the date work first began on the contract, whichever comes first. The fee is payable to the Bureau of Labor and Industries and shall be mailed or otherwise delivered to the Bureau at the following address:

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

### **3.15 PROMPT PAYMENT**

- 3.15.1 The CM/GC shall make payment promptly, as due, to all persons supplying to CM/GC labor or materials for the prosecution of the Work provided for in this Contract Documents. Further, CM/GC shall include the following provisions in each subcontract for property, materials, or services:

- a. payment clause that obligates the CM/GC to pay the subCM/GC or material supplier for satisfactory performance under its subcontract within 10 days out of such amounts as are paid to CM/GC by Owner;
- b. clause requiring the CM/GC to pay the subCM/GC an interest penalty on amounts due and unpaid under Section 3.15.1. at the rate of one and one-half percent per month from the day after the required payment date until the day of actual payment and;
- c. clause which requires each of CM/GC's subCM/GCs to include, in each of their contracts with lower-tier subCM/GCs or suppliers, provisions to the effect that the subCM/GC shall pay its lower-tier subCM/GCs and suppliers in accordance with the provisions of Subsections 3.15.1.a and 3.15.1.b above, and requiring each of their subCM/GCs and suppliers to include such clauses in their subcontracts and supply contracts.

- 3.15.2 If CM/GC fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to the CM/GC or a subCM/GC by any person in connection with the Project as such claim becomes due, Owners Representative may pay the claim and charge the amount of the payment against funds due or to become due CM/GC under this Contract. Payment of claims in this manner shall not relieve the CM/GC or the CM/GC's surety from obligation with respect to any unpaid claims.

- 3.15.3 With each application for payment, the CM/GC shall include certification that all subCM/GCs whose work was identified in the previous application for payment have been paid the full amount due less not more than 5% Retainage.

### **3.16 PROTECTION OF WORKERS, PROPERTY, AND PUBLIC**

- 3.16.1 The CM/GC shall be responsible for the actions of all personnel, laborers, suppliers, CM/GCs and subCM/GCs to the Project.

3.16.2 CM/GC shall maintain continuous and adequate protection of all of its Work from damage, and shall protect the Owner's Representative, Owner's workers, agents, employees, CM/GCs, and property from injury or loss arising in connection with this Contract. CM/GC shall remedy to the satisfaction of the Owner, any damage, injury, or loss, except such as may be directly due to errors in the Contract Documents or caused by authorized representatives or personnel of the Owner. CM/GC shall adequately protect adjacent property as provided by law and the Contract Documents.

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

#### 3.16.4 ENVIRONMENTAL HAZARDS

- a. Unless disposition of environmental pollution and/or hazardous materials are specifically a part of this Contract, CM/GC shall immediately notify Owner of any hazardous substance(s) which CM/GC discovers or encounters during performance of the Work required by this Project. "Hazardous substance(s)" are those substances, materials or wastes defined in ORS 465.200(9). In addition to notifying Owner of any hazardous substance(s) discovered or encountered, CM/GC shall immediately cease working in any particular area of the Project where a hazardous substance(s) has been discovered or encountered if continued work in such area would present a bona fide risk or danger to the health or well being of CM/GC's or any subCM/GC's work force.
- b. Upon being notified by CM/GC of the presence of hazardous substance(s) on the Project site, Owner shall arrange for the proper disposition of such hazardous substance(s).

#### 3.16.5 SPILL RESPONSIBILITY

- a. CM/GC will be held responsible for any and all releases of environmental pollution during performance of the Project which occur as a result of, or are contributed by, actions of its agent, personnel, or subCM/GCs. CM/GC agrees to promptly address such contamination to satisfaction of the 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.
- b. CM/GC shall obtain the Owner's written consent prior to bringing onto the Work site any hazardous substances or materials, as the same or reasonably similar terms are used in any applicable federal, state, or local statutes, rules or ordinances. Notwithstanding such written consent from the Owner, the CM/GC, at all times, shall:

- (1) properly handle, use and dispose of all hazardous substances or materials brought onto the Work site, in accordance with all applicable federal, state, or local statutes, rules, or ordinances;
  - (2) be responsible for any and all spills, releases, discharges, or leaks of (or from) hazardous substances or materials which CM/GC has brought onto the Work site; and;
  - (3) promptly clean up, without cost to the Owner, such spills, releases, discharges, or leaks to the Owner's satisfaction and in compliance with all applicable federal, state, or local statutes, rules or ordinances.
- c. CM/GC shall be liable for any and all costs, expenses, damages, claims, and causes of action, related to or arising out of a spill, release, discharge, or leak of (or from) any hazardous substance, to the extent such spill, release, discharge, or leak was caused or contributed to by CM/GC's negligence or failure to perform in accordance with the Contract Documents.
- (1) CM/GC shall report all reportable quantity releases to applicable federal, state, and local regulatory and emergency response agencies. Reportable quantities are found in 40 CFR, Part 302, Table 302.4 for hazardous substances and in OAR 34.108 for petroleum products. Upon discovery, regardless of quantity, CM/GC must telephonically report all releases to the Owner's Representative. A written follow-up report shall be submitted to the Owner's Representative within 48 hours of the telephonic report. Such written report shall contain, at a minimum:
    - (a) Description of items released (identity, quantity, manifest number, and all other documentation required by law).
    - (b) Whether amount of items released is EPA/DEQ reportable, and, if so, when it was reported.
    - (c) Exact time and location of release, including a description of the area involved.
    - (d) Containment procedures initiated.
    - (e) Summary of communications about the release CM/GC has had with members of the media or government officials other than Owner's Representative.
    - (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.

3.16.6 EMERGENCIES: In an emergency affecting the safety of life or injury or of the Work or of adjoining property, the CM/GC, without special instruction or authorization from the Owner's Representative, shall act reasonably to prevent threatened loss or injury, and shall so act, without appeal, if instructed by the Owner's Representative. Any compensation claimed by the CM/GC on account of emergency work shall be equitably determined.

3.16.7 FIRE SAFETY: CM/GC shall take all precautions to prevent the possibility of fire resulting from construction operations. CM/GC shall maintain one or more fire extinguishers's on site; avoid hazardous accumulations of rubbish and unsecured flammable materials; store volatile wastes in covered metal containers, remove from premises daily and provide adequate ventilation. CM/GC shall not start vertical construction until fire hydrants have been installed within 250 feet of proposed building.

3.16.8 SITE MAINTENANCE: Off site disposal of all non-salvageable items including trash and debris shall be completed at the earliest practicable date. Trash shall be disposed of at the end of each day in a receptacle provided by the CM/GC. Disposal on site either by burning or by burying is prohibited.

### 3.17 WARRANTY

3.17.1 The CM/GC shall fully warranty all its work for at least one (1) full year from the date of final acceptance of the entire project by Owner, including each component of the Work regardless of manufacturers or installers' warranties.

3.17.2 Should the Owner waive the requirement for completion of a subsystem in accepting Final Acceptance, the warranty of the subject subsystem shall commence on the date the subsystem is fully functioning and complete and accepted as complete by the Owner's Representative.

3.17.3 Neither the final certificate of payment nor any provision of the Contract Documents shall relieve the CM/GC from responsibility for its defective Work and, unless otherwise specified, CM/GC shall correct any defects that appear in its Work within a period of two (2) years from the date of Final Acceptance except for latent defects which will be remedied by the CM/GC at any time they become apparent. The Owner shall give CM/GC notice of defects with reasonable promptness.

3.17.4 This provision does not negate guarantees for periods longer than two (2) years such guarantees required by other sections of the Contract Documents for specific installations, materials, processes, equipment or fixtures.

3.17.5 In addition to CM/GC's warranty, manufacturer's warranties shall pass to the Owner and shall not take effect until affected Work has been accepted in writing by the Owner's Representative. Systems, such as HVAC or Generators, will not be accepted as complete until they have been fully tested and shown to be operating as designed.

3.17.6 If, within the warranty period, repairs or changes are required in connection with the Work, the CM/GC shall promptly, without expense to the Owner:

- a. place in satisfactory condition all guaranteed work;
- b. correct all damage to the building, site, equipment or contents which is the result of the use of materials, equipment or workmanship which are inferior, defective, or not in accordance with the terms of the Contract; and,
- c. correct any work, material, equipment, or contents of building, structure or site disturbed in fulfilling the guarantee.

3.17.6 Repairs, replacements or changes made under the warranty requirements shall be warranted for the specified warranty period, or for one year, beginning on the date of the acceptance of the repairs, replacements or changes.



3.17.7 If the CM/GC fails within ten days to proceed to complete with the terms of this warranty, the Owner may have the defects corrected. The CM/GC and CM/GC's surety shall be liable for all expense incurred. In case of an emergency where delay would cause serious loss or damage, repairs may be made without notice to the CM/GC and the CM/GC or CM/GC's surety shall pay the cost.

### **3.18 LIENS AND CLAIMS**

CM/GC shall not permit any lien or claim to be filed or prosecuted against the Owner on account of any labor or material furnished.

### **3.19 EMPLOYEE TAXES**

The CM/GC shall pay and/or assure that the CM/GC and subCM/GCs pay to the Department of Revenue all sums required to be withheld from employees pursuant to ORS 316.167.

## **4 INDEMNIFICATION, BONDING AND INSURANCE**

### **4.1 PERFORMANCE SECURITY**

The CM/GC shall furnish and maintain in effect at all times during the Contract Period, a performance and payment bond, in a form acceptable to the Owner, for the full Contract Price.

### **4.2 INDEPENDENT CM/GC STATUS**

The service or services to be rendered under this Contract are those of an independent CM/GC and the CM/GC shall be responsible for any federal, state and local taxes and fees applicable to payments hereunder. The CM/GC, its subCM/GCs and their employees are not employees of the Owner and are not eligible for any benefits through the Owner including, without limitation, federal social security, health benefits, workers' compensation, unemployment compensation and retirement benefits.

### **4.3 INDEMNIFICATION**

CM/GC shall save, defend, indemnify and hold harmless the City of Wilsonville, its officers, agents (including A/E), and employees, from all claims, demands, suits, or actions of whatsoever nature (including all attorney's fees and costs) resulting from or arising out of the activities of CM/GC, or its CM/GC, subCM/GCs, agents, or employees under this Contract.

### **4.4 INSURANCE**

4.4.1 The CM/GC shall furnish and maintain in effect at all times during the Contract Period, Public Liability and Property Damage Insurance, in a form acceptable to the Owner, for the amounts specified below. Nothing contained in this Section shall be construed as limiting the extent of the CM/GC's responsibility for payment of damages from CM/GC's operations under this Contract.

4.4.2 The CM/GC shall deliver to the Owner within ten (10) days of the announcement of award of the Contract Documents, policies of Insurance or Insurance Certificates as required by the Contract Documents. The CM/GC shall also deliver copies of all forms and certificates to the Owner's Representative.

4.4.3 CM/GC's failure or refusal to furnish insurance policies or certificates, and other required documents in a form satisfactory to the Owner and the A/E within the time stated above shall result in cancellation of the Contract.

4.4.4 PUBLIC LIABILITY AND PROPERTY DAMAGE INSURANCE

- a. The CM/GC shall provide and continuously maintain public liability and property damage insurance that protects the CM/GC and the Owner and its officers, agents and employees from any and all claims, demands, actions and suits for damage to property or personal injury, including death, arising from the CM/GC's work under this Contract. The insurance shall provide coverage for not less than \$500,000 for personal injury to each person, \$1,000,000 for each occurrence, and \$1,000,000 for each occurrence involving property damage; or a single limit policy of not less than \$1,000,000 covering all claims per occurrence. The limits of the insurance shall be subject to statutory changes as to maximum limits of liability imposed on municipalities of the State of Oregon during the term of the Contract. The coverage must apply as to claims between insureds on the policy. The insurance shall provide that the insurance shall not terminate or be cancelled without thirty (30) days written notice first being given to the Owner. If the insurance is cancelled or terminated prior to completion of the Contract, the CM/GC shall provide a new policy with the same terms. The CM/GC agrees to maintain continuous, uninterrupted coverage for the duration of the Contract. The insurance shall include coverage for any damages or injuries arising out of the use of automobiles or other motor vehicles by the CM/GC.
- b. The CM/GC shall maintain on file with the Owner a certificate of insurance certifying the coverage required under subsection (a). The adequacy of the insurance shall be subject to the approval of the City Attorney. Failure to maintain liability insurance shall be cause for immediate termination of this Contract by the City.
- c. Such insurance shall be without prejudice to coverage otherwise existing, and shall name as additional insured the Owner and all other governmental bodies with jurisdiction in the area involved in the Work, their officers, agents, and employees, and shall further provide that the policy shall not be terminated or be canceled prior to the completion of this Contract without thirty (30) days written notice to the Owner which notice shall be subject to the approval of the City Attorney; said notice to commence to run from the date notice is actually received at the office of the Owner.
- d. Notwithstanding the naming of additional insured, said policy shall protect each insured in the same manner as though a separate policy had been issued to each; but nothing herein shall operate to increase the insurer's liability as set forth elsewhere in the policy beyond the amount or amounts for which the insurer would have been liable if only one person or interest had been named as insured.

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

#### 4.4.5 BUILDERS RISK ALL RISK INSURANCE

- a. The CM/GC shall insure the Work on an increasing basis so as to continually cover 100 percent (100%) of the replacement value thereof for the life of the Contract against all loss or damage by fire, smoke, explosion, hail, flood, lightening, theft, vandalism, malicious mischief, wind, collapse, aircraft, landslide, faulty workmanship and earthquake with an insurance company or companies acceptable to Owner. The amount of the insurance may vary with the extent of the Work completed but shall at all times be at least equal to the replacement value of all work performed as the Project progresses and to include coverage for that part of the Work which has not been incorporated into the Project but which has been included and paid for in progress payment as well as for work and materials installed and delivered, but not yet paid for by Owner. The insurance policy or policies shall be held jointly in the name of the Owner and CM/GC as their respective interests may appear. The loss, if any, shall be made adjustable with, and payable to Owner as trustee for whom it may concern. Any payments made under any such policy shall inure to the benefit of Owner to the extent of any loss suffered by Owner and to the CM/GC as to any remaining balance, for replacement of the loss suffered. The policy of insurance shall provide that it shall not be terminated or be canceled prior to completion of this Contract without thirty (30) days written notice to the Owner. The CM/GC shall be responsible for all damage to its work under construction, whether from fire, water, high winds or other cause, during construction and until Final Acceptance and acceptance, even though partial payments or progress payments have been made under the Contract.
- b. If the Owner finds it necessary to occupy or use a portion or portions of the Work prior to Substantial Completion thereof, such occupancy shall not commence prior to a time mutually agreed to by the Owner and the CM/GC and to which the insuring company has consented by endorsement to the policy. This insurance shall not be canceled or lapsed on account of such partial occupancy. The CM/GC and the insuring company shall not unreasonably withhold consent to such partial occupancy.

#### 4.4.6 WORKERS' COMPENSATION INSURANCE

- 4.4.6.1 The CM/GC shall provide workers' compensation insurance coverage for all persons employed on the Work to be done under the contract and assure that all workers will receive the compensation for compensable injuries provided in ORS Chapter 656 either by:
  - a. Contributing to the State Accident Insurance Fund as a contributing employer; or
  - b. Qualifying as a direct responsibility employer under ORS 656.403 to 656.443
- 4.4.6.2 In the event the CM/GC or any of the SubCM/GCs shall elect to fulfill this responsibility by qualifying as a direct responsibility employer under ORS 656.403 to 656.443, satisfactory proof of such fact shall be required. In the event that the certification as a direct responsibility employer is withdrawn, the

CM/GC or any SubCM/GC shall thereafter on the effective date of the withdrawal of certification, become a contributing employer. CM/GC shall provide Owner with written assurance that subject worker of CM/GC and all SubCM/GCs and their beneficiaries will receive compensation for all compensable injuries as provided by ORS 656 and that CM/GC and all SubCM/GCs will perform all duties and pay other obligations required under ORS Chapter 656.

4.4.6.3 CM/GC shall hold harmless and indemnify City for any claims, suits or actions by CM/GC's and all subCM/GC's employees including their dependents, and including investigations, adjusting or litigation of said claims, be they valid or not occasioned by any work and/or service furnished or carried on under the terms of this contract. CM/GC shall maintain workers' compensation insurance to the full extent provided by Oregon Worker's Compensation law.

#### 4.4.7 EMPLOYER'S LIABILITY INSURANCE

4.4.7.1 In addition, CM/GC shall provide employee's liability insurance including insurance for bodily injury caused by disease in an amount not less than \$500,000.

### 5 PAYMENTS

#### 5.1 GENERAL

Requests for Payment are received by the Owner's Representative after certification by the A/E. Expenditures are processed by the City Building Department. Disbursements are made by the Owner's Accounts Payable Department.

#### 5.2 PROGRESS PAYMENTS

5.2.1 The Form of Application for Payment shall be AIA Documents G702 and G703.

5.2.2 Based upon Application for Payment submitted to the A/E by the CM/GC and Certificates for Payment issued by the A/E, the Owner shall make progress payments on account of the Contract Sum to the CM/GC as provided below and elsewhere in the Contract Documents. A progress payment shall not be considered acceptance or approval of any work or waiver of any defects therein.

5.2.3 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month.

5.2.4 Provided an acceptable Certificate and Application for Payment is received by the A/E not later than the fifth day of a month, the Owner shall make payment to the CM/GC in accordance with the requirements of ORS 279.435.

5.2.5 Failure by the CM/GC to submit complete and clear documentation will delay payment.

#### 5.3 APPLICATION FOR PAYMENT

5.3.1 SCHEDULE OF VALUES: The CM/GC shall submit, at least ten (10) days prior to submission of its first application for progress payment, a Schedule of Values for the contracted Work. Such schedule shall be largely in the format of AIA form G703. This schedule shall provide a breakdown of values for the contracted Work and will be the basis for progress payments. The breakdown will follow CSI categories with further divisions into reasonable, identifiable, and measurable components of the Work as required for clarity and as reflects the Work of individual subCM/GCs.

#### 5.3.2 APPLICATION FORM

- a. The Application for Payment shall be made on AIA forms G702-703.
- b. The CM/GC shall submit to the Owner's Representative an application for each payment with copies of lien waivers from subCM/GCs and suppliers showing evidence of payments for materials and labor including payments to CM/GCs and subCM/GCs for the payment period prior to the period addressed by the application (for example, if there is a complete application for payment in December, 2000 and another one in January, 2001, the January, 2001 application would include lien waivers for the CM/GC, subCM/GCs and suppliers that had been covered by the December, 2000 payment, and a list of all the subCM/GCs and suppliers that are covered by the January, 2001 application).

#### 5.3.3 STORED MATERIALS

Generally, request for payment will be accepted only for materials which have been installed. Under special conditions, payment requests for stored materials will be accepted. Such a payment will be subject to the following conditions:

- a. The request for stored material shall be submitted at least fifteen (15) days in advance of the Application for Payment on which it appears. Requests for payment shall be entertained for major equipment, components or expenditures only.
- b. The CM/GC shall submit invoices showing the quantity and cost of the material stored.
- c. The material shall be stored in a bonded warehouse and Owner's 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. Payments shall be made for material only. The submitted invoice amount shall be reduced by the cost of transportation and for an inspector to check the delivery at out of town storage sites.
- e. The CM/GC shall submit evidence of payment covering the material stored with the Application for Payment.
- f. 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.
- g. All required documentation must be submitted with the respective Application for Payment.

#### 5.3.4 PAYROLL CERTIFICATION REQUIREMENT

- a. According to the provisions of Section 3.1.5, of this document, CM/GC and its subCM/GCs shall submit complete weekly-certified statements of all payrolls for the pay period reflected in the Application for Payment.

Certified Statements:

- (1) Originals must be submitted to the Bureau of Labor and Industries.
  - (2) One copy must be submitted with each Application for Payment.
- b. Payroll and certified statement records must be kept by the CM/GC for three (3) years from the date of Final Acceptance of the Contract.

## **6 CLOSEOUT & FINAL PAYMENTS**

### **6.1 GENERAL (Section 2.4.1 Closeout/Post Construction)**

### **6.2 COMPLETION NOTICES**

#### **6.2.1 NOTICE OF SUBSTANTIAL COMPLETION**

- a. The CM/GC shall provide four (4) copies of the notice of Substantial Completion to the Owner's Representative who shall refer it to the A/E.
- b. The following shall be provided with the notice of Substantial Completion:
  - (1) reports and inspections made in preparation for the notice of Substantial Completion
  - (2) a list of any remaining deficiencies for interior, exterior and site items, including operable systems and equipment
  - (3) written certification that Contract Documents have been reviewed, Project has been inspected, Work is completed in accordance with Contract Documents, equipment and systems have been tested, as specified, in the presence of the Owner's Representative and are operational, and Work is ready for final inspection.
  - (4) provide all required submittals and in addition to those listed in the Contract Documents, all reports of all tests evidencing satisfactory function of all operable items; submittal of certifications of mechanical and electrical inspections; elevator acceptance, fire marshal's inspection and other certificates required by the Contract Documents. All certificate submittals, required for the Project, are to be bound in a single 3-ring binder with a table of contents and individually tabbed.
- c. Upon receipt of the notice of Substantial Completion, the A/E shall inspect the Work, and if acceptable, certify the Work as substantially complete.
- d. Work failing to conform to the Contract Documents shall be deemed defective. CM/GC shall promptly correct all defective materials as determined by the A/E as failing to conform to the Contract Documents. Correction shall be without loss or expense to the Owner, and CM/GC shall bear the cost of making corrections and repairing all Work damaged during the corrections.

- e. If the A/E finds the Work unacceptable or incomplete, it will issue a Punch List of items to be corrected prior to acceptance of the Work and return the notice of Substantial Completion to the CM/GC.
- f. The CM/GC may request a preliminary Punch List approximately two (2) weeks prior to the anticipated date of Substantial Completion. Such Punch List will be issued solely as a courtesy and shall not be binding on the A/E and Owner, nor shall it substitute for the Punch List identified in paragraph 6.2.1.e above.
- g. The CM/GC is responsible for correcting errors and deficiencies noted in the Punch List before the Work will be accepted for Final Acceptance.
- h. Upon completion of the Punch List Items, the CM/GC may resubmit the Notice of Substantial Completion and shall attach to it a copy of the Final Punch List certified by the A/E stating that each item has been completed to his satisfaction.
- i. The A/E will provide one (1) reinspection following issuance of the Punch List. Should the errors and deficiencies noted in the Punch List not be completely corrected, the CM/GC shall compensate the Architect for the time required for any additional reinspections. The A/E's fees to perform such inspections shall be billed hourly, and shall be deducted from the contract by Change Order.
- j. When certified by the A/E, the Owner's Representative may accept the Notice of Substantial Completion by signature. The Owner's Representative shall be the final signature on the Notice and the Notice shall take effect on the date it is signed by the Owner's Representative.

## 6.2.2 NOTICE OF FINAL ACCEPTANCE

- a. Upon Final Acceptance, the CM/GC shall submit four copies of a written notice of Final Acceptance, two copies of a request for final payment, and a final accounting of project costs and fees to the Owner's Representative who shall, within fifteen (15) days, verify that the CM/GC has fulfilled the requirements of the Contract.
- b. If the CM/GC has fulfilled the requirements of the Contract, final payment may be released.
- c. If the CM/GC has not fulfilled all the requirements of the Contract, the Owner's Representative shall notify the CM/GC in writing of the deficiencies and return the notice of Final Acceptance and Request for Final Payment. When any such deficiencies have been corrected, the CM/GC may resubmit the notice of Final Acceptance.
- d. The Final Acceptance notice must be certified by the A/E and signed by the Owner's Representative upon verification of the completeness and accuracy of the notice and accompanying documents to be valid. The Owner's Representative shall be the final signature on the notice. The notice shall take effect on the date it is signed by the Owner's Representative.

## 6.3 FINAL PAYMENT

- 6.3.1 Final payment shall be made by the Owner to the CM/GC when:

- a. the Contract has been fully performed by the CM/GC except for the CM/GC's responsibility to correct defective or nonconforming Work, and to satisfy other requirements, if any, which necessarily survive final payment;
- b. the final application for payment and final accounting for the cost of the Work have been submitted by the CM/GC and reviewed by the Owner; and
- c. a final certificate for payment has then been issued by the A/E. Such final payment shall be made by the Owner not more than thirty (30) days after the issuance of the A/E's final certificate for payment, or as indicated by the provisions of section 7.2.
- d. when final O&M Manuals have been submitted and approved.

6.3.2 The amount of final payment shall be calculated as follows:

- a. take the sum of the Cost of the Work substantiated by the CM/GC's final accounting, but not more than the contract amount as amended by approved Change Orders;
- b. subtract the aggregate of the previous payments made by the Owner to the CM/GC.

6.3.3 The Owner will review and report in writing on the CM/GC's final accounting within thirty (30) days after delivery of the final accounting to the Owner by the CM/GC. Based upon such cost of the Work as the Owner reports to be substantiated by the CM/GC's final accounting, and provided the other conditions of paragraph 7.2 have been met, the A/E will, within seven (7) days after receipt of the written report from the Owner, either issue to the Owner a final certificate for payment with a copy to the CM/GC or notify the CM/GC and Owner in writing of the A/E's reasons for withholding a certificate.

6.3.4 If the Owner reports the cost of the Work as substantiated by the CM/GC's final accounting to be less than claimed by the CM/GC, the CM/GC shall be entitled to demand arbitration of the disputed amount. Such demand for arbitration shall be made by the CM/GC within thirty (30) days after the CM/GC's receipt of a copy of the A/E's final Certificate for Payment; failure to demand arbitration within this 30-day period shall result in the substantiated amount reported by the Owner's accountants becoming binding on the CM/GC. Pending a final resolution by arbitration, the Owner shall pay the CM/GC the amount certified in the A/E's final Certificate for Payment.

6.3.5 The acceptance by the CM/GC of the final payment shall release the Owner and the A/E from all claims and all liability to the CM/GC for all things done or furnished in connection with the Work, and for every act of the Owner and others relating to or arising out of the Work.

#### **6.4 RELEASE OF LIENS AND CLAIMS**

As a condition of final payment, the CM/GC shall submit to the Owner a notarized Release of Liens and Claims Form which states that all subCM/GCs 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 CM/GC's knowledge, there are no claims of any kind outstanding against the Project. The CM/GC shall furnish complete



and valid releases or waivers, satisfactory to the Owner, of all liens arising out of or filed in connection with the Work.

**6.5 ENVIRONMENTAL CLEANUP**

As part of the Final Acceptance Notice, or as a separate written notice submitted with or before the notice of Final Acceptance, the CM/GC shall notify the Owner that all environmental pollution clean-up, if any, which was performed as a part of this Contract has been disposed of in accordance with all applicable rules, regulations, laws, and statutes of all agencies having jurisdictions over such environmental pollution.

**6.6 OTHER CM/GC RESPONSIBILITIES**

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

**END OF CONDITIONS OF THE CONTRACT**