

**APPENDIX A**

**OREGON STATE BOARD OF HIGHER EDUCATION (OSBHE)  
CM/GC AGREEMENT  
(Construction Manager/General Contractor)**

**THIS AGREEMENT IS BETWEEN:**

**OWNER:**

**The State of Oregon, acting by and  
through the Oregon State Board of  
Higher Education (OSBHE) on behalf of**

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**And**

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

**The Project is:**

**The Engineer is:**

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

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

**ARTICLE 1**  
**THE CONTRACT DOCUMENTS**

**1.1 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 that are enumerated in Article 15 below (the “Contract Documents”).

**1.2 Effective Date.** This CM/GC Agreement (hereafter the “Agreement”) shall become effective on the first date on which every party has signed this Agreement and it has received all necessary approvals, including approval for legal sufficiency by the Oregon Department of Justice.

**1.3 The Agreement; Order of Precedence.** This Agreement, together with the other Contract Documents enumerated in Article 15 below, form the entire contract between the parties. The order of precedence of the Contract Documents is established in Article 15 in the event there are inconsistent or conflicting terms among the Contract Documents. The parties understand and agree that one of the Contract Documents, the State of Oregon OSBHE Standard General Conditions, Division G (“General Conditions”) is used with a variety of alternative contracting methods, and that some of the terms of the General Conditions may not be applicable to a CM/GC contract. Owner and the CM/GC agree that the General Conditions to the extent not superceded by Supplemental General Conditions shall be subordinate to the terms of the Agreement and that in the event of any conflict or ambiguity between the General Conditions and the Agreement, the terms and conditions stated in the Agreement shall control. The General Conditions, to the extent not inconsistent with this Agreement, shall also apply to the work of all subcontractors pursuant to Article 10.2.2 below.

**ARTICLE 2**  
**THE WORK OF THIS AGREEMENT**

**2.1 Preconstruction Services.** Notwithstanding any other references to construction period services in this Agreement, this Agreement shall include preconstruction services only unless Owner accepts a Guaranteed Maximum Price (“GMP”) from the CM/GC pursuant to Article 2.2. The CM/GC agrees to provide those preconstruction services described in the Request for Proposals and in the CM/GC’s Proposal submitted in response thereto for an amount not to exceed the maximum compensation set forth in Article 5.1.1.

**2.2 Construction Period Services.** Owner may contract for construction period services by accepting a GMP from the CM/GC and executing an amendment with the CM/GC to include those services in the Agreement. In the event that a Contract amendment is executed adding construction period services, the CM/GC shall provide all

necessary construction period services to furnish to Owner a complete, fully functional facility, capable of being legally occupied and fully used for its intended purposes upon completion of the Agreement. **If construction period services are authorized by Contract amendment**, the CM/GC shall execute the entire Work as described in Article 3.2 and provide the following construction period services:

**2.2.1 Construction Management (CM) Services.** The CM/GC shall coordinate and manage the building process as a member of a team with the Owner, Owner's Authorized Representative, Architect and other project consultants. The CM/GC shall develop and deliver schedules, prepare construction estimates, perform value engineering, analyze alternative designs, study labor conditions, and coordinate and communicate the activities of the team throughout the construction phases to all members of the construction team.

**2.2.2 General Contractor (GC) Services.** The CM/GC shall provide construction services as described in Article 3.2 and shall pay for all materials, tools, equipment, labor and professional and non-professional services, and shall perform all other acts and supply all other things necessary to fully and properly perform and complete the Work, as required by the Contract Documents.

**2.3 Design Responsibility.** The CM/GC shall not be required to provide professional services which constitute the practice of Architecture. The CM/GC shall not assume any of the Architect's design liability or responsibilities as a result of any reviews or comments provided.

**2.4 Owner's Direct Construction Budget.** The CM/GC acknowledges Owner's Direct Construction Budget of \$\_\_\_\_\_ and agrees to work with the Architect and Owner to construct a project that meets all of Owner's requirements including budget and schedule.

### **ARTICLE 3** **RELATIONSHIP AND ROLES OF THE PARTIES**

**3.1 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.

**3.2 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 make best efforts 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. Owner shall furnish and approve in a timely manner information required to perform the Work.

**3.3 Design Consultants.** Owner has a separate agreement with the Architect to design the project and to provide construction administration services necessary to ensure that the construction conforms to the Contract Documents. 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 team among the CM/GC, Architect, and Owner's Authorized Representative.

**3.4 Owner's Authorized Representative.** Owner's Authorized Representative is the individual or entity designated by Owner to provide project management services. The CM/GC understands and agrees that Owner's Authorized Representative is Owner's exclusive representative to the CM/GC with respect to this Agreement, unless Owner designates another representative and notifies the CM/GC in writing of that designation. All instructions from Owner to the CM/GC will be issued or made through Owner's Authorized Representative. Owner's Authorized Representative shall have the authority to establish procedures, consistent with this Agreement, to be followed by the CM/GC and to call periodic conferences to be attended by the CM/GC throughout the term of this Agreement. Owner's Authorized Representative shall have no authority to amend the Agreement outside the change order process set forth in Section D.1 of the General Conditions.

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

**3.5.1** Project Manager; Assistant Project Manager: \_\_\_\_\_ shall be the CM/GC's project manager and \_\_\_\_\_ will be the Assistant Project Manager and one or both will participate in all meetings throughout the project term. For off-site and on-site involvement specifically related to the project, their salaries shall be considered to be reimbursable expenses under Article 7.

**3.5.2** Job Superintendent: **In the event that construction period services are requested and accepted by Owner,** \_\_\_\_\_ shall be the CM/GC's on-site job superintendent throughout the project term. For off-site and on-site involvement specifically related to the project, the job superintendent's salary shall be considered to be a reimbursable expense under Article 7.

**3.6 Key Persons.** The CM/GC's personnel identified in Article 3.5 shall be considered Key Persons and shall not be replaced during the project without the written permission of Owner, which shall not be unreasonably withheld. If the CM/GC intends to substitute personnel, a request must be given to Owner at least 30 days 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 working 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 4**

## DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

**4.1 Notice to Proceed.** In the event that construction period services are added to the Contract as set forth in Article 2.2, a Notice to Proceed will be issued by Owner to begin the post-GMP construction period services. It is anticipated that the Notice to Proceed will be issued on or about \_\_\_\_\_, 2000.

**4.2 Completion of Project.** The CM/GC shall achieve Substantial Completion and Final Completion by the dates stated in Article 16.

**4.3 Time is of the Essence.** All time limits stated in the Contract Documents are of the essence. No provision of this Agreement shall preclude recovery of actual damages for delay by either party. Foreseeable actual damages incurred by Owner in the event of late completion include but are not limited to: costs of temporary facilities, professional fees and charges, administrative expenses.

**4.4 Time Extensions.** Notwithstanding provisions for Contract time extensions in Section D.2 of the General Conditions, Owner and CM/GC agree that timely completion of the Work is essential to the success of the project, and that approval for time extension shall be granted only as a last resort. Both parties agree to make every effort to recover "lost" time.

## ARTICLE 5 GUARANTEED MAXIMUM PRICE

**5.1 Contract Sum; GMP.** In the event that a contract amendment is executed adding construction period services, 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. The Contract Sum shall not include any Owner Contingency or Allowance Items.

The CM/GC guarantees that the Contract Sum shall not exceed the Guaranteed Maximum Price ("GMP"). The GMP shall be determined in accordance with the formula set forth below and as described in Article 5.2. The "Cost of the Work" is defined in Article 7. Costs that exceed the established GMP shall be paid by the CM/GC without reimbursement by Owner. Changes to the GMP shall only be authorized by amendment.

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

\* The GMP must be within Owner's Direct Construction Budget of \$ \_\_\_\_\_.

**5.1.1** The Preconstruction Fee under this Agreement is a maximum of \$ \_\_\_\_\_ covering constructability review, value engineering, cost estimating, development

of GMP, and other preconstruction services, as described in Article 2, and shall be limited to all actual, allowable, reasonable and necessary expenses. This amount is payable on a cost reimbursement basis with each application for payment during the preconstruction phase.

**5.1.2** The CM/GC Fee under this Agreement is [ ]%, expressed as a percentage of the Cost of the Work, and reduced to a lump sum upon acceptance of the GMP. This amount is payable with each application for payment during the construction phase, as a percentage of the Work complete.

**5.2 Determination of GMP.** The GMP shall be proposed at a time designated by Owner during the construction document phase of the project. The GMP will be based on incomplete design documents. 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.

**5.2.1** Notwithstanding the level of detail represented in the GMP supporting design 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.

**5.2.2** 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.

**5.3 Failure to Furnish an Acceptable GMP.** In the event that the CM/GC is unable to furnish a GMP within Owner's budget, or if Owner determines at any time in its sole discretion, that the parties may fail to reach a timely agreement on a GMP acceptable to Owner, Owner may terminate this Agreement without liability, and the CM/GC shall not receive additional compensation beyond the Preconstruction Fee under this Agreement. Upon termination of this Agreement under this provision, the parties shall have no further obligations or liabilities under the Agreement. CM/GC further agrees that Owner shall not be liable for any damages whether actual, consequential or otherwise for termination of the Agreement under this provision.

**5.4 Acceptance of GMP.** Upon acceptance of the GMP by Owner, an amendment will be issued to establish the GMP and incorporate construction period services in the Agreement as provided in Article 2.2. The amendment will incorporate additional documents into the Agreement. The full performance/payment security required by the General Conditions shall cover the GMP plus additive amendments, if any.

**5.5 Owner Savings.** In the event that the sum of the Preconstruction Fee, plus the CM/GC Fee, plus the actual and final Cost of the Work is less than the GMP, the

budgetary difference [ remains accrued] to Owner. The process for determining final payment is described in Article 13.

## **ARTICLE 6** **CHANGES IN THE WORK**

Adjustments to the GMP required by changes in the Work beyond the stated scope may be determined by any of the methods listed in Section D of the General Conditions, except that the overhead and profit markup for the CM/GC shall be limited to the CM/GC Fee percentage as noted in Article 5.1.2 of this Agreement.

## **ARTICLE 7** **COST OF THE WORK** **(To be reimbursed)**

**7.1 Cost of the Work.** The term "Cost of the Work" shall mean costs necessarily and reasonably incurred by the CM/GC in the proper performance of the Work. The Cost of the Work shall include only the items specifically identified in Articles 7.2 to 7.7 and must be directly related to the project.

### **7.2 Labor Costs.**

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

**7.2.2** Wages and salaries of the CM/GC's supervisory and administrative personnel stationed at the site and off the site when specifically related to the project with Owner's agreement.

**7.2.3** Wages and salaries of the CM/GC's supervisory or administrative personnel engaged at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time directly required for the Work.

**7.2.4** Fringe benefit costs paid or incurred by the CM/GC for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such agreements, 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 7.2.1 through 7.2.3.

### **7.3 Subcontract Costs.**

**7.3.1** Payments made by the CM/GC to Subcontractors in accordance with the requirements of the subcontracts toward completion of the Work.

- 7.3.2** Costs, including transportation, of materials and equipment incorporated or to be incorporated in the completed Work.
- 7.3.3** 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.
- 7.4 Costs of Other Materials and Equipment, and Related Items.**
- 7.4.1** 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. Cost for items previously used by the CM/GC shall mean fair market value.
- 7.4.2** 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 acquisition costs, and for individual items exceeding \$10,000, will be subject to Owner's prior approval.
- 7.4.3** Costs of removal of debris from the site.
- 7.4.4** 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.
- 7.4.5** 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 in writing by Owner.
- 7.5 Miscellaneous Costs.**
- 7.5.1** That portion directly attributable to this Agreement of premiums for insurance (including deductible for builders all/risk insurance) and bonds as required by Section G of the General Conditions.

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

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

**7.5.4** Direct costs associated with the CM/GC's job site safety program.

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

**7.6 Other Costs.**

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

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

**7.7 Repairs to Damaged, Defective or Nonconforming Work.** The Cost of the Work shall also include costs which are incurred by the CM/GC:

**7.7.1** In taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property.

**7.7.2** In repairing damaged Work, provided such damage did not result from the fault or negligence of the CM/GC or the CM/GC's personnel, and only to the extent that the cost of such repairs is not recoverable by the CM/GC from others and the CM/GC is not compensated therefore by insurance or otherwise.

**7.7.3** In correcting defective or nonconforming Work performed or supplied by a Subcontractor or material supplier and not corrected by them, provided such defective or nonconforming Work did not result from the fault or neglect of the CM/GC or the CM/GC's personnel adequately to supervise and direct the Work of the Subcontractor or material supplier, and only to the extent that the cost of correcting the defective or nonconforming Work is not recoverable by the CM/GC from the Subcontractor or material supplier.

**ARTICLE 8**  
**COSTS INCLUDED IN CM/GC FEE**  
**(Not to be reimbursed)**

**8.1 Costs Included in CM/GC Fee.** The CM/GC Fee shall include all costs for overhead and profit that are not directly attributable to the Work as defined in Article 7. Generally, the CM/GC Fee will include the following:

- 8.1.1 Salaries and other compensation of the CM/GC's personnel stationed at the CM/GC's principal office or offices other than the site office except as allowed under Articles 3.5, 7.2.2 and 7.2.3.
- 8.1.2 Expenses of the CM/GC's principal office and offices other than the site office.
- 8.1.3 Any overhead and general expenses, except as may be expressly included in Article 7.
- 8.1.4 CM/GC's capital expenses, including interest on the CM/GC's capital employed for the Work.
- 8.1.5 Any cost associated with the project not specifically and expressly described in Article 7.
- 8.1.6 Costs due to the fault or negligence of the CM/GC, Subcontractors, anyone directly or indirectly employed by any of them, or for whose acts any of them may be liable, including but not limited to costs for the correction of damaged, defective or nonconforming Work, disposal and replacement of materials and equipment incorrectly ordered or supplied, and making good damage to property not forming part of the Work.
- 8.1.7 Any costs which would exceed the GMP.

**ARTICLE 9**  
**DISCOUNTS, REBATES AND REFUNDS**

**9.1 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.

**9.2 Amounts Credited to Owner.** Amounts which accrue to Owner in accordance with the provisions of Article 9.1 shall be credited to Owner as a deduction from the Cost of the Work.

**ARTICLE 10**  
**SUBCONTRACTS AND OTHER AGREEMENTS**

**10.1 General Subcontracting Requirements.**

**10.1.1** Other than Work performed pursuant to Articles 10.4 or 10.5 of this Agreement, CM/GC shall subcontract the Work to subcontractors other than the CM/GC, its subsidiaries, or other affiliates.

**10.1.2** The CM/GC shall comply with OAR 580-050-0040, 580-050-0041, and 580-050-0042 in all respects for the solicitation of Minority, Women and Emerging Small Business Enterprises. Compliance shall include pass-through requirements for subcontractor demonstrations of good faith efforts for all subcontract bidding packages, for which set goals shall not be utilized.

**10.1.3** The CM/GC shall report to Owner on the results of the good faith efforts compliance required in Article 10.1.2 following award of all subcontracts. The CM/GC shall also submit quarterly reports to Owner listing Work contracted to date with Minority, Women and Emerging Small Business Enterprises.

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

**10.2.1** No use of a Subcontractor shall relieve the CM/GC of any of its obligations or liabilities under the Agreement. 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.

**10.2.2** 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 General Conditions fully effective as applied to Subcontractors. The CM/GC shall provide all necessary Plans, Specifications, and instructions to its suppliers and Subcontractors to enable them to properly perform their work.

## **10.3 Subcontractor Selection.**

**10.3.1** Unless specifically waived in writing by Owner, the selection of all Subcontractors shall be made by competitive bid or quotes in a manner that will not encourage favoritism or substantially diminish competition. The process shall conform to the following procedures, in general compliance with the open and competitive nature of [ public contracting], taking into account industry subcontracting practices:

- 1) Solicitations will be advertised at least ten (10) days prior to opening in the Daily Journal of Commerce and at least one other newspaper specifically targeted to reach the Minority, Women and Emerging Small Business audience.
- 2) Unless specific other prior arrangement has been made with Owner, all bids or quotes will be written, and submitted to a specific location at a specific time. Subcontractors must be registered with the Construction Contractors Board.
- 3) Unless this requirement is specifically waived by Owner for a specific contract, bids or

quotes will be publicly read and the subcontract awarded to the lowest responsive and responsible offeror.

4) If fewer than three (3) bids or quotes are submitted, approval by Owner is required to accept the offer.

5) State of Oregon Bureau of Labor & Industries prevailing wage rates dated \_\_\_\_\_, 2000.

**10.3.2** Under special circumstances and only with prior written authorization by Owner, Work may be subcontracted on other than a low bid or quote basis. Examples include: where there are single fabricators of materials; special packaging requirements for Subcontractor work; or, where an alternative contracting method can be demonstrated to clearly benefit Owner.

#### **10.4 Miscellaneous Labor.**

**10.4.1** The CM/GC may provide normal layout, clean up, and other "pick-up" work required to complete the project with its own forces, without the necessity of subcontracting.

**10.4.2** If the CM/GC desires to perform any other work, that work shall be bid according to the provisions of Article 10.5.2.

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

**10.5.1** The CM/GC, subsidiaries, other affiliates or businesses in which it has a financial interest (including parent companies and related businesses under the same holding company) may bid in accordance with Article 10.3.1 to do Work with its own forces, provided at least 50% of the labor by such work unit is performed by employees of the CM/GC, subsidiary, or affiliate.

**10.5.2** For those items for which the CM/GC or any of its subsidiaries intends to bid, such intent must be publicly announced with the solicitation for bids required by Article 10.3.1, and Owner notified in writing. All bids for this work shall be delivered to Owner and opened by Owner at an announced time, date, and place.

### **ARTICLE 11** **ACCOUNTING RECORDS**

**11.1 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 Agreement; the accounting and control systems shall be satisfactory to Owner. Owner and Owner's representatives, including the Oregon Secretary of State accountants and auditors, shall be afforded reasonable and regular access to the CM/GC's records, books, correspondence, instructions, drawings, receipts, subcontracts, purchase orders,

vouchers, memoranda and other data relating to this Agreement, 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.

**11.2 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 Agreement closeout. The CM/GC shall cooperate fully with Owner in the performance of such audits.

## **ARTICLE 12** **PROGRESS PAYMENTS**

**12.1 Progress Payments.** Based upon Applications for Payment submitted to the Architect by the CM/GC and Certificates for Payment issued by the Architect, Owner shall make progress payments on account of the Cost of the Work, and associated CM/GC Fee, less retainage of five percent, 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.

**12.2 Payment Period.** The period covered by each application for payment shall be one calendar month ending on the last day of the month.

**12.3 Payment Due Date.** Provided an acceptable application for payment is received by Owner not later than the first day of a month, Owner shall make payment to the CM/GC not later than 30 days thereafter, subject to the provisions of Article 12.4.

**12.4 Late Payment.** Any outstanding balance on undisputed Applications for Payments shall bear interest 30 days after the request for payment is made by the CM/GC or 15 days after the payment is approved by Owner, whichever is the earlier date, at the rate of interest and in the manner stated in Section E.2 of the General Conditions. Interest, if any, on a final payment due and unpaid shall commence upon expiration of the applicable time period under Article 13.

**12.5 Payment Values.** Prior to submitting each application for payment, CM/GC shall meet with representatives of Owner to establish values for the payment application. Payment shall be made in accordance with the Contract Documents.

**ARTICLE 13**  
**FINAL PAYMENT**

**13.1 Final Payment.** Final payment shall be made by Owner to the CM/GC when (1) the Agreement has been fully performed by the CM/GC, including all obligations stated in Section K of the General Conditions, except for the CM/GC's responsibility for Warranty Work, as provided in Section I.2 of the General Conditions, and to satisfy other requirements, if any, which necessarily survive final payment: (2) a final application for payment with a final detailed accounting for the Cost of the Work have been submitted by the CM/GC and reviewed by Owner's accountants, and (3) a final certificate for payment has then been issued by the Architect. Owner shall make such final payment within 30 days after the issuance of the Architect's final certificate for payment.

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

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

**13.2.2** Subtract amounts, if any, for which the Architect withholds, in whole or in part, a final certificate for payment.

**13.2.3** 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. Any payment made after 30 days shall bear interest at the rate of 1.5% per month from the date 30 days after the Work under the Contract has been completed and accepted.

**13.3 Final Certificate for Payment.** Owner's accountants will review and report in writing on the CM/GC's final accounting within 15 working days after delivery of the final accounting to the Architect by the CM/GC. Based upon such Cost of the Work as Owner's accountants report to be substantiated by the CM/GC's final accounting, and provided the other conditions of Article 13.1 have been met, the Architect will, within 5 days after receipt of the written report of Owner's accountants, either issue to Owner a final certificate for payment with a copy to the CM/GC or notify the CM/GC and Owner in writing of the Architect's reasons for withholding a certificate.

**13.4 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, the CM/GC shall be entitled to demand a review by the Architect 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 Architect's final certificate 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. Pending a final resolution, Owner shall

pay the CM/GC the amount certified in the Architect's final certificate for payment.

**13.5 Costs Incurred after Final Payment.** If, subsequent to final payment and at Owner's request, the CM/GC incurs costs described in Article 7 and not excluded by Article 8 to correct defective or nonconforming Work, Owner shall reimburse the CM/GC such costs applicable thereto on the same basis as if such costs had been incurred prior to final payment, but not in excess of the GMP.

## **ARTICLE 14** **TERMINATION OR SUSPENSION**

**14.1 Owner's Termination for Convenience.** The Agreement may be terminated by Owner without penalty for convenience pursuant to Section J.5 of the General Conditions; however, the amount to be paid to the CM/GC under the General Conditions shall not exceed the amount of the GMP.

**14.2 Termination for Cause.** The Agreement may be terminated by Owner for cause as provided in Article J.4 of the General Conditions; however, the amount, if any, to be paid to the CM/GC under the General Conditions shall not cause the GMP to be exceeded, nor shall it exceed the amount the CM/GC would be entitled to receive under Article 13. Payment for the CM/GC Fee shall be on a pro-rata basis of the satisfactory Work performed.

**14.3 Amounts Payable on Owner's Termination for Certain Causes.** Notwithstanding any of the above, if Owner elects to terminate the Agreement for cause due to failure of the CM/GC to: a) adhere to the schedule defined in Article 16, or b) perform the Work according to the drawings and specifications provided by the Architect, Owner shall reimburse the CM/GC for its reasonable expenses and costs, less the cost that Owner incurs for correcting and remedying those deficiencies caused by the CM/GC's deficient performance. If Owner's cost of correcting or remedying those defects exceeds the CM/GC's reasonable expenses and costs the CM/GC shall pay the difference to Owner.

**14.4 Termination of Agreement for Cause by CM/GC.** The CM/GC may terminate the Agreement for cause if the Work is stopped for 60 days through no act or fault of the CM/GC or a Subcontractor, Sub-subcontractor 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:

**14.4.1.** Issuance of an order of a court or other public authority having jurisdiction;

**14.4.2.** An act of government, such as a declaration of national emergency, making material unavailable;

**14.4.3.** Owner has failed to furnish to the CM/GC promptly, upon the CM/GC's request, reasonable evidence that funds are available to complete the project;

**14.4.4.** Owner has failed to make timely payments in accordance with Section E of the General Conditions following notice as provided below and 10 days opportunity to cure.

If one of the above reasons exists, the CM/GC may, upon seven days' written notice to Owner and Architect, terminate the Agreement and recover from Owner payment for Work executed and for proven loss with respect to materials, equipment, tools, and construction equipment and machinery, including reasonable overhead expenses.

## **ARTICLE 15** **ENUMERATION OF CONTRACT DOCUMENTS**

The Contract Documents, except for amendments issued after execution of this Agreement, are enumerated below and are intended to be complementary. However, in the event of conflicts or discrepancies among the Contract Documents, interpretations will be based on the following descending order of precedence:

- a.** This CM/GC Agreement , excluding the other Contract Documents listed in Article 15 (b) through (h) all of which are by this reference incorporated in the CM/GC Agreement.
- b.** Supplemental General Conditions.
- c.** The General Conditions.
- d.** The Project Manual and technical specifications (to be issued in accordance with Contract requirements).
- e.** The Performance/Payment Bond
- f.** The Project Working Drawings (to be issued in accordance with Contract requirements).
- g.** The Request for Proposals issued \_\_\_\_\_, 2000 together with Addenda ("RFP").
- h.** The Request for Qualifications issued \_\_\_\_\_, 2000.
- i.** The CM/GC's Proposal submitted in response to the RFP.

**ARTICLE 16**  
**THE PROJECT SCHEDULE**

In the event that a contract amendment is executed adding construction period services, the remaining anticipated project schedule for the Work shall be as follows:

Notice to Proceed with Post-GMP Services	_____	, 2000
Project Substantial Completion	_____	, 2000
Final Completion	_____	, 2000

**ARTICLE 17**  
**OWNER'S INSURANCE**

Owner is self-insured under ORS 278.425 and this insurance shall cover Owner's operations and activities at the project site.

**THIS AGREEMENT** is executed in four original copies of which one is to be delivered to the CM/GC, and the remainder to Owner. By signature on this Agreement, I, the undersigned, being duly authorized to represent **the CM/GC**, hereby certify that it is not, to the best of my knowledge, in violation of any Oregon tax law. For the purposes of this certification, "Oregon tax laws" are ORS Chapters 118, 119, 314, 316, 317, 318, 320, 321 and 323 and Sections 10 to 20, Chapter 533, Oregon Laws 1981, as amended by Chapter 16, Oregon Laws 1982 (first special session); the Homeowners and Renters Property Tax Relief Program under ORS 310.630 to 310.690; and any local tax laws administered by the Oregon Department of Revenue under ORS 305.620.

**CM/GC:**

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

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

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

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

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

**OWNER:**

STATE OF OREGON acting by and through the  
Oregon State Board of Higher Education (OSBHE)  
on behalf of \_\_\_\_\_

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

APPROVED AS TO LEGAL SUFFICIENCY  
OREGON DEPARTMENT OF JUSTICE

\_\_\_\_\_  
Assistant Attorney General  
Date \_\_\_\_\_