

**LEBANON CITY COUNCIL MEETING**  
**Wednesday, September 12, 2007**  
**6:30 p.m.**  
*(Santiam Travel Station - 750 3rd Street)*

**A G E N D A**

**Executive Session (6:30 p.m.)** – *Executive Sessions are closed to the public due to the highly confidential nature of the subject.*

*Per ORS 192.660(1)(i) To review & evaluate the employment related performance of the chief executive officer.*

**CALL TO ORDER / FLAG SALUTE ( 7:00 p.m.)**

**ROLL CALL**

**APPROVAL OF CITY COUNCIL MINUTES:**

1. August 8, 2007
2. August 17, 2007 – Special Session

**CONSENT CALENDAR** *(Approve/Amend by Motion)*

*LEBANON CITY COUNCIL AGENDA: September 12, 2007*

*APPOINTMENT: SDC Citizens Advisory Committee – Rich Branvold*

*CITY OF LEBANON MINUTES:*

1. Lebanon Public Library – July 11, 2007
2. Parks Committee Tree Board Meeting – July 17, 2007

**CITIZEN COMMENTS** - *Those citizens with comments concerning public matters may do so at this time. Please identify yourself before speaking and print your name and address on the sign-up sheet.*

**ITEMS FROM COUNCIL**

**REGULAR SESSION**

**1) Police and Library Facilities Update**

Presented by: Denice Lee, Library Services Director  
Tom Oliver, Information Services Manager

*Discussion Only*

**2) Award Contract Manager/General Contractor (CM/GC)  
For Police and Library Facilities**

Presented by: Denice Lee, Library Services Director  
Tom Oliver, Information Services Manager

*Approval/Denial by Motion*

**3) Municipal Court Judicial Services Contract**

Presented by: Tom McHill, City Attorney

*Discussion Only*

**4) Waste Water Treatment Plan Improvements**

Presented by: Malcolm Bowie, City Engineer

*Approval/Denial by Resolution*

**5) City Manager's Report**

Presented by: John Hitt, City Manager

*Discussion Only*

**Executive Session** – *Executive Sessions are closed to the public due to the highly confidential nature of the subject.*

*Per ORS 192.660(1)(e) To conduct deliberations with persons designated by the Council to negotiate real property transactions.*

*Per ORS 192.660(1)(i) To review & evaluate the employment related performance of the chief executive officer.*

**REGULAR SESSION**

**6) Proposed Property Purchase**

Presented by: Malcolm Bowie, City Engineer

*Approval/Denial by Motion*

**7) City Manager's Salary and Contract**

Presented by: Ken Toombs, Mayor

*Approval/Denial by Motion*

**ADJOURNMENT**

# \*Executive Session

*Per ORS 192.660(1)(i) To review & evaluate the employment related performance of the chief executive officer*

*\* Executive Sessions are closed to the public due to the highly confidential nature of the subject. It is unlawful to discuss anything outside of the Executive Session.*



## MEMORANDUM

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### *Administration Department*

**To:** Mayor and City Council

**Date:** September 6, 2007

**From:** City Manager *Jeh*

**Subject:** City Council Executive Session

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We have two separate Executive Sessions scheduled for September 12, 2007. The first, at 6:30 p. m., will be an opportunity for the City Council to discuss my evaluation in my absence.

The second Executive Session, later in our meeting, will be the opportunity for the City Council to discuss the results of my evaluation directly with me. In addition, there will be a discussion of a possible real estate purchase.

After the second Executive Session, the council will go back into public session to consider a revised employment agreement with me and/or a possible salary adjustment.

JEH/jc

# *Approval of Minutes*

1. City Council Minutes – August 8, 2007
2. City Council Minutes – August 17, 2007  
(Special Session)

**LEBANON CITY COUNCIL MEETING**  
**MINUTES**  
**August 8, 2007**

**Council Present:** Mayor Ken Toombs and Councilors Bob Elliott, Floyd Fisher, Rebecca Grizzle, Don Thoma and Ray Weldon.

**Staff Present:** City Manager John Hitt, City Attorney Tom McHill, Finance Director Casey Cole, Police Chief Mike Healy, Public Works Director Jim Ruef, Senior Planner Terry Lewis and City Clerk/Recorder Linda Kaser.

**CALL TO ORDER/FLAG SALUTE/ROLL CALL**

Mayor Toombs called the Regular Session of the Lebanon City Council to order at 7:00 p.m. in the Santiam Travel Station Board Room. Roll call was taken; Councilor Fox was absent.

**APPROVAL OF COUNCIL MINUTES – July 25, 2007**

*Councilor Grizzle moved, Councilor Elliott seconded, to approve the July 25, 2007 City Council Minutes as presented. The motion passed unanimously by roll call vote.*

**CONSENT CALENDAR**

- ❖ City Council Agenda – August 8, 2007
- ❖ Accept Parks Committee Tree Board Meeting Minutes – April 17, 2007
- ❖ Accept Library-Senior Center Trust Meeting Minutes – June 12, 2007
- ❖ Accept Parks Committee Tree Board Meeting Minutes – June 19, 2007
- ❖ Accept Senior Advisory Board Meeting Minutes – June 20, 2007

*Councilor Elliott moved, Councilor Thoma seconded, to approve the Consent Calendar as presented. The motion passed unanimously by roll call vote.*

**CITIZEN COMMENTS**

Scott Simpson, 755 West “D” Street, requested that Agenda Item 5 (Cheadle Lake Donation Request) be open for public comment. Mayor Toombs indicated that comments would be taken.

*There were no other citizen comments.*

**ITEMS FROM COUNCIL**

Councilor Weldon reported that a County Commissioner indicated that they may be willing to forego the interest on past due Transfer Station property taxes of \$84,000 if the City is willing to pay the \$22,000 base amount. He asked if Council would be willing to do this.

City Attorney McHill explained that this has been an ongoing issue with Linn County. The Transfer Station is being leased for a minimal amount from the City, who is tax exempt. The County has filed foreclosure suits against the City on at least three or four occasions; those cases were dismissed because, while the County has the power to impose property taxes on the

leasehold, they cannot assess them against the property itself. The County could, but does not want to, foreclose on the lease and take over the Transfer Station, which Albany-Lebanon Sanitation [Allied Waste] is happy to let them do. McHill noted that this does not prevent the Council from paying what the County claims is owed on the taxes; they just cannot legally collect from a municipality. City Manager Hitt questioned their right to assess a leasehold on a legitimate municipal function, even though it is not being operated by the City. He added that Albany-Lebanon Sanitation [Allied Waste] reports that they do not make any profit on the Transfer Station. After further discussion, the matter was dropped.

*There were no other items from Council.*

## **PUBLIC HEARINGS**

### **1) Zoning Text Amendment - Public Use Zone**

*Mayor Toombs declared the Public Hearing open at 7:10 p.m. to consider Land Use Regulations Text Change ZTA-07-01.*

McHill stated that four public hearings will be heard tonight: three annexations and a zoning text amendment. He reviewed public hearing procedures and indicated that staff has identified the criteria for the zoning text amendment beginning on page 3 of the staff report; these criteria include relevant Statewide Planning Goals and Comprehensive Plan and Zoning Ordinances. Regarding the annexations, staff has identified the criteria beginning on page 7 of the staff report; these criteria include the Annexation Ordinance and relevant Comprehensive Plan and Zoning Ordinances. He explained that all testimony, arguments and evidence brought before Council must be directed toward the criteria staff has indicated or other criteria in the Comprehensive Plan or Land Use Regulations document that the witness believes will apply to the decision being made. Failure to raise an issue accompanied by statements or evidence sufficient to afford the Council and the parties an opportunity to respond precludes appeal to the Land Use Board of Appeals based upon that issue. He asked if anyone would like the criteria reviewed in more detail; no one did.

*Mayor Toombs asked the Council to disclose any conflicts of interest or ex parte contacts. Hearing none, he asked for the staff report.*

Senior Planner Lewis noted that the public hearing procedures are also posted. He explained that this zoning text amendment establishes an omitted zone corresponding to the Comprehensive Plan Map category Public Use. This zoning text amendment will remedy that inconsistency until the new Development Code is adopted early next year. The criteria are listed beginning on page 3 of the staff report. He asked if anyone would like these reviewed further; no one did. Lewis reported that the Planning Commission conducted a public hearing regarding this amendment on August 1 [2007] and voted unanimously to recommend that this amendment be approved. He asked the Councilors if they would like any of the staff comments or findings elaborated on; they did not.

*Mayor Toombs asked if anyone would like to speak in favor of or in opposition to this zoning text amendment. Seeing no one, he closed the Public Hearing at 7:24 p.m.*

*Mayor Toombs asked if there are any questions; there were none.*



McHill read the title of the Ordinance and noted that it declares an emergency because it has a bearing on one of tonight's agenda items.

***Councilor Elliott moved, Councilor Fisher seconded, to approve A BILL FOR AN ORDINANCE AMENDING THE TEXT OF THE LAND USE REGULATIONS FOR THE CITY OF LEBANON, ADOPTING FINDINGS, AND DECLARING AN EMERGENCY. The motion passed unanimously by roll call vote.***

## **2) Badger/Cates Annexation - Russell Drive area**

*Mayor Toombs declared the Public Hearing open at 7:26 p.m. to consider Annexation A-07-04, Map 12-2W-14CB, Tax Lots 100 and 6700; Map 12-2W-14CA; Tax Lot 600, approximately 10.46 acres, Russell Drive and McKinney Lane, Lebanon, Oregon.*

McHill stated that the same process will be followed. Staff has identified the relevant annexation criteria beginning on page 7 of the staff report. He asked if there are any questions; there were none.

*Mayor Toombs asked the Council to disclose any conflicts of interest or ex parte contacts.*

Councilor Elliott indicated that he is an acquaintance of the applicant, but has not discussed this annexation with him. Mayor Toombs noted that he is personally well-acquainted with the applicant and discussed this application with him months ago. McHill asked if anything outside of the staff report was discussed; Mayor Toombs stated no.

*Hearing no other disclosures, Mayor Toombs asked for the staff report.*

Lewis briefed the Council on a request by the property owners to annex an approximately 10.46 acre territory comprised of three tax lots, plus abutting Albany-Eastern rights-of-way. Tax lot 100 is designated as Mixed Use and tax lots 600 and 6700 are designated Residential Mixed Density on the Comprehensive Plan Map. Upon annexation, a Mixed Use zoning designation is being requested upon annexation for Tax Lot 100, and a Residential Mixed Density zoning designation is being requested for Tax Lots 600 and 6700. These zoning designations are consistent with the Comprehensive Plan Map; no changes in zoning designations are being requested. The criteria are listed beginning on page 6 of the staff report and include the Annexation Ordinance and relevant Comprehensive Plan and Zoning Ordinances; these criteria will be used in all three annexation hearings. He asked if anyone would like these reviewed further; no one did. Lewis stated that the Planning Commission conducted a public hearing on June 20 [2007] and found that all relevant criteria were met; they voted unanimously to recommend approval of this proposed annexation and zoning assignment to the City Council. He asked the Councilors if they would like the criteria or staff report reviewed in detail; they did not.

*Mayor Toombs asked if there are any questions of staff. Hearing none, he asked the applicant's representative to come forward.*

Jim Udell, Udell Engineering and Land Surveying LLC, 63 E. Ash Street, engineer for the applicant, Walt Badger, stated that this is an annexation of primarily vacant land, which is adjacent to city limits and is within the urban growth boundary. They have reviewed and concur with the City's staff report. He asked that Council accept the Planning Commission's findings and recommendation. He offered to answer any questions.

Councilor Elliott asked where the single-family dwelling on Tax Lot 6700 is located. Mr. Udell stated that he overlooked mentioning that the other applicant is John and Moira Cates; their residence is the second house on McKinney Lane.

*Mayor Toombs asked if anyone would like to speak in favor of this annexation request. Seeing no one, he asked if anyone would like to speak in opposition to this annexation request.*

Calvin McDowell, who has lived at 2090 Mill Street for 24 years, submitted a letter noting his concerns about this annexation. He stated that he is strongly opposed to the annexation under the current circumstances and ownership; other things should be considered. Over the last ten to thirteen years, Mill Street residents have been put through a lot by Walt Badger. There has been illegal activity on the property; a substantial amount of fill was added, reducing wetlands and raising the elevation two to three feet. He questioned whether the fill contains contaminants and is suitable for family dwellings.

Because this annexation would create a partially unannexed island, Mr. McDowell expressed concern that nearby residents would be prematurely pressured to annex into the City.

Mayor Toombs stated that the City has never forced an annexation since the 1960's. Mr. McDowell indicated that his comments are based on his opinion and experiences with the Safeway development, when they were pressured to annex or sell, or their properties would be taken.

Councilor Grizzle asked if the City threatened to take his property. Mr. McDowell stated that this is what happened in the past; he does not want this type of a situation to come up again. Regarding the extension of Airport Road, he pointed out that the property off Russell Drive behind Safeway was found unsuitable for road-building by the City because of questionable fill. There have been attempts to run a wrecking yard and car lots on the property. Mayor Toombs stated that this is not relevant to the annexation; after the property is brought into the City, the owner makes an application to the Planning Commission for the use of that property. Mr. McDowell stated that, as a resident of the area, he disapproves of the annexation and is listing his reasons. He indicated that he has had substantial financial and emotional loss over the years because of this individual. Mayor Toombs asked Mr. McDowell to refrain from attacking anyone. Mr. McDowell noted that this is his opinion.

Mr. McDowell questioned whether there would be any legal ramifications for the City because neighboring property owners have witnessed illegal fill. He hopes that the City does not allow activities to occur on the property which the County did not. Mr. McDowell questioned the applicant's motives for wanting this annexation. He stated that his written testimony speaks for itself and offered to answer any questions; there were none.

*Mayor Toombs asked if anyone else would like to speak in opposition to this annexation request. Seeing no one, he asked the applicant if they wished to provide rebuttal testimony.*

[McHill noted that Mr. Udell also received a copy of Mr. McDowell's written testimony.]

Mr. Udell stated that one of the goals of urban growth is to develop property appropriate for urbanization. He noted that there are other county inclusions within city limits. Mr. Udell also stated that development is more orderly and controllable under the City, which has urbanized goals, guidelines and ordinances.

*Mayor Toombs closed the Public Hearing at 7:43 p.m.*

There was Council consensus that the findings meet the annexation criteria. McHill read the title of the Ordinance.

***Councilor Grizzle moved, Councilor Elliott seconded, to approve A BILL FOR AN ORDINANCE ANNEXING AND ZONING PROPERTY FOLLOWING CONSENT FILED WITH THE CITY COUNCIL BY LANDOWNERS IN SAID AREA PURSUANT TO ORS 222.120 AND ORS 222.170 (File A-07-04, WALT BADGER & MOIRA CATES).***

Councilor Fisher noted that “Badger” is spelled incorrectly in the ordinance. City Clerk/Recorder Kaser indicated that the Mayor has a corrected copy.

***The motion passed unanimously by roll call vote.***

### **3) Triangle Enterprises Annexation - Areas of Crowfoot and Seven Oak School**

*Mayor Toombs declared the Public Hearing open at 7:47 p.m. to consider Annexation A-07-05, Map 12-2W-23C, Tax Lots 200, 1700, 1702, 2200 and 4100; Map 12-2W-23D, Tax Lots 3700, 4100, 4400 and 4700, approximately 146.63 acres, near Crowfoot and Cascade Drives, Lebanon, Oregon.*

McHill stated that the same procedures will be followed. Staff has identified the relevant annexation criteria beginning on page 6 of the staff report; criteria for this hearing also include LMC Chapter 6.16 (Bees, Fowl and Other Animals) and LZO Section 4.320 Public Use zone. He explained that annexations are legislative procedures to change the city limits. Certain development proposals are required to obtain permission from the City; most of those cases require additional public hearings. Section 7 of the Annexation Ordinance provides that development proposals are not required for annexation requests. If development is proposed following annexation, criteria pertaining to that development would apply; this is why development proposals are not heard in annexation cases.

*Mayor Toombs asked the Council to disclose any conflicts of interest or ex parte contacts.*

Mayor Toombs indicated that he is personally acquainted with one of the applicants, Don Robertson.

*Hearing no other disclosures, Mayor Toombs asked for the staff report.*

Lewis briefed the Council on a request by the property owners to annex an approximately 146.63 acre territory. Three small sections of existing public right-of-way, located on View Lane and Crowfoot Road, constitute 0.07 acres of the proposed annexation territory. The remaining 146.56 acres consists of nine tax lots. Tax lots 200 and 3700, containing Seven Oak Middle and Crowfoot Schools, have Comprehensive Plan Map designations of Public Use and will be assigned a Public Use zoning designation upon annexation. All remaining tax lots proposed for annexation have Comprehensive Plan Map designations of Residential Mixed Density and will be assigned Residential Mixed Density zoning upon annexation. These zoning designations are consistent with the Comprehensive Plan Map designation; no changes in zoning designations are being requested. The Planning Commission conducted a public hearing on June 20 [2007] and voted unanimously to recommend approval of this proposed annexation. The criteria are listed

beginning on page 6 of the staff report and include the new Public Use zone and LMC Chapter 6.16 (Bees, Fowl and Other Animals) because of cattle on the property. He asked if anyone would like the criteria or staff report reviewed in more detail; no one did.

*Mayor Toombs asked if there are any questions of staff.*

Councilor Weldon asked if the Parkway is proposed to go through that area. Public Works Director Ruef stated that the Parkway is proposed to follow the alignment of Crowfoot Road. Lewis noted that *Engineering Comment D* addresses the Transportation System Plan.

Councilor Weldon observed that there are quite a few lots which will become county islands; he asked if those residents did not also want to annex. Hitt stated that the City does not monitor that process. Mayor Toombs added that it is not City policy to ask residents to annex; it is at the residents' request.

*Hearing no other questions, Mayor Toombs asked the applicant's representative to come forward.*

Jerry Offer, Otak, Inc., 17355 Boones Ferry Road, Lake Oswego, the applicants' representative, stated that they believe the staff report addresses their proposal well and have nothing to add. They appreciate the Planning Commission's recommendation for approval and have no issues with what is being recommended. There should not be any problem with the additional livestock ordinance, because the cattle have been sold. He asked if there are any questions; there were none.

Lewis stated that there is a revised legal description and map which replaces the one in the staff report. Mr. Offer explained that, at the request of the Planning Commission, the legal description and map was revised to include only portions of the Crowfoot Road right-of-way that is being annexed.

*Mayor Toombs asked if anyone would like to speak in favor of this annexation request.*

Larry Tilford, Director of Facilities for Lebanon Community Schools, 485 S. 5<sup>th</sup> Street, representing the School District, stated that they are excited to be part of and are supportive of this annexation application because it allows them options to be forward-looking and proactive in responding to the educational needs of children who might be coming from new developments in this part of town. They encourage Council to accept this annexation application.

*Mayor Toombs asked if anyone else would like to speak in favor of this annexation request. Seeing no one, he asked if anyone would like to speak in opposition to this annexation request.*

Florence Townsend, 2495 Porter Street, expressed concern for residents who do not want to be included in an annexation and who would then be living in a county island. She stated that the City should educate them on what their choice will mean in terms of getting services, because she has that problem with pockets where she lives. To be a comprehensive annexation in any area, the developer and the City should work with residents so that either the whole area is annexed or none of it is.

*Mayor Toombs asked if anyone else would like to speak in opposition to this annexation request. Seeing no one, he asked the applicant if they wished to provide rebuttal testimony.*

Mr. Offer declined the opportunity to provide rebuttal testimony.

*Mayor Toombs closed the Public Hearing at 8:03 p.m.*

There was Council consensus that the findings meet the annexation criteria. McHill read the title of the Ordinance.

***Councilor Elliott moved, Councilor Thoma seconded, to approve A BILL FOR AN ORDINANCE ANNEXING AND ZONING PROPERTY FOLLOWING CONSENT FILED WITH THE CITY COUNCIL BY LANDOWNERS IN SAID AREA PURSUANT TO ORS 222.120 AND ORS 222.170 (File A-07-05, TRIANGLE ENTERPRISES). The motion passed unanimously by roll call vote.***

#### **4) River Properties LLC - 36629 Airport Road**

*Mayor Toombs declared the Public Hearing open at 8:05 p.m. to consider Annexation A-07-07, Map 12-2W-16, Tax Lot 2800, approximately 2.73 acres, 36629 Airport Road, Lebanon, Oregon.*

McHill stated that staff has identified the relevant criteria beginning on page 6 of the staff report; these criteria were also used in the previous annexation. He recommended that the same procedures be used.

*Mayor Toombs asked the Council to disclose any conflicts of interest or ex parte contacts. Hearing none, he asked for the staff report.*

Lewis briefed the Council on a request by the property owners to annex an approximately 2.73 acre territory, which is within the urban growth property and is contiguous to city limits. The property is designated as Industrial on the Comprehensive Plan Map; a Limited Industrial zoning designation is being requested upon annexation. This zoning designation is consistent with the Comprehensive Plan Map designation; no change in zoning designation is being requested. As an advisory for future development, although not a criterion for annexation, he noted that the property is also located within the Aircraft Control subzone. The criteria are listed beginning on page 6 of the staff report. Lewis asked the Councilors if they would like the criteria reviewed in detail; they did not.

Mayor Toombs noted that Council received a revised legal description. Lewis stated that the revision includes a thirty-foot strip, which had to be added to the originally submitted legal description and map.

Lewis stated that the Planning Commission conducted a public hearing on August 1 [2007] and voted unanimously to recommend approval of this proposed annexation to the City Council. He asked the Councilors if they would like the staff report reviewed in detail; they did not.

*Mayor Toombs asked if there are any questions of staff. Hearing none, he asked the applicant's representative to come forward.*

Jim Udell, Udell Engineering and Surveying LLC, 63 E. Ash Street, the applicant's engineer, stated that they reviewed the criteria and recommendation and do not have any concerns with it. He offered to answer any questions; there were none.

*Mayor Toombs asked if anyone would like to speak in favor of or in opposition to this annexation request. Seeing no one, he closed the Public Hearing at 8:11 p.m.*

Ruef confirmed for Councilor Fisher that this section of Airport Road will be within city limits, but not necessarily under city jurisdiction for maintenance.

There was Council consensus that the findings meet the annexation criteria. McHill read the title of the Ordinance.

***Councilor Grizzle moved, Councilor Fisher seconded, to approve A BILL FOR AN ORDINANCE ANNEXING AND ZONING PROPERTY FOLLOWING CONSENT FILED WITH THE CITY COUNCIL BY LANDOWNERS IN SAID AREA PURSUANT TO ORS 222.120 AND ORS 222.170 (File A-07-07, RIVER VALLEY PROPERTIES, LLC). The motion passed unanimously by roll call vote.***

*Mayor Toombs called for a ten-minute recess.*

## **REGULAR SESSION**

### **5) Cheadle Lake Donation Request**

Ruef gave a brief PowerPoint presentation on the Cheadle Lake donation offer from the Lebanon Community Foundation (LCF). Regarding Council's first area of concern, he stated that extensive testing showed no known environmental contamination, although trash needs to be removed. Staff feels comfortable with these results and does not believe that the City would be taking on a tremendous liability. The Cheadle Lake Refinement Plan addresses the second area of information requested by Council. Council's decision tonight entails only the lake, but because it is landlocked and there is no effective access, the City would need to acquire additional land.

The total Refinement Plan's cost is \$13,211,811, which includes all improvements on the festival grounds. Staff's estimate of \$13,634,000 does not include the festival grounds improvements, but does include the lake and the cost of additional property. This is a thirty-plus-year plan so there is no need to raise all of the funds overnight if approved. Ruef distributed "*Cheadle Lake Grant Opportunities*" and noted that some of these grants are new to the City. If Council decides to accept the lake, there will also be a change in the SDC fees. He distributed "*Cheadle Lake Cost Details*" and letters of support, including the Parks Committee and City's staff's recommendation that Council accept the donation. He requested that Council approve a motion to: accept the donation of Cheadle Lake; adopt the Cheadle Lake Refinement Plan as presented; and make initial development of Cheadle Lake a high priority, which is significant to granting agencies. Initial development would include: the land purchase; establishing basic public access; identifying and resolving safety issues; minimizing fluctuating lake levels; and beginning technical studies for further development of the lake.

Councilor Grizzle questioned whether making Cheadle Lake a priority would take away from other Parks projects. Ruef stated that it would detract from other park growth, but not necessarily park maintenance. Staff would lean towards Cheadle Lake with grants because Council has declared it a high priority and because it has immediate needs and could be heavily used. Councilor Grizzle asked if the Parks Committee understands this. Ruef stated that the Committee did not hear about making this a priority, because it came up after that discussion. He confirmed

for Councilor Grizzle that the Committee did hear about accepting the lake and adopting the Refinement Plan. He stated that the lake could be a big attraction for Lebanon because it would be unique.

Councilor Fisher asked if the additional land is owned by one property owner. Ruef stated that he understands that the two tax lots are jointly owned by two people. Councilor Fisher questioned whether there are any ideas on where the funds could come from. Ruef stated that a couple of the grants are very easy to use for land purchase; the lake is worth a lot and the grant agencies will accept this as a match.

Councilor Weldon questioned what the land acquisition cost could be. Ruef stated that the City would have to speak with the property owner; we may not be able to afford to buy all the land according to the Refinement Plan. Possible funding sources were discussed: donation, grants and other resources.

*Mayor Toombs asked for public comments.*

Florence Townsend, 2495 Porter Street, stated that the City would be foolish to turn down this donation.

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Scott Simpson, 755 West "D" Street, stated that he was glad to hear that there was no high contamination of the lake. He is very supportive of Parks and noted that there is seldom opportunity to receive land. Regarding the Plan's thirty-year timeline, the quicker it can be done, the quicker it will benefit the community and the less money it will ultimately cost. He agrees that applying for grants is a great idea.

*There were no other public comments.*

***Councilor Grizzle moved, Councilor Fisher seconded, to accept the Cheadle Lake donation, to adopt the Refinement Plan, and to make this a priority.***

Councilor Weldon asked if this motion includes purchasing the additional land. Hitt stated that if Council approves this motion, it will become a staff goal to implement that Plan, which will include attempting to obtain the additional land. He confirmed for Councilor Weldon that this motion does not give authority to purchase the land; this decision would come back before Council.

*Mayor Toombs reminded the Councilors that there is a motion on the floor.*

Councilor Thoma stated for the record that the City Attorney confirmed that he has no conflict of interest on this issue.

***The motion passed unanimously by roll call vote.***

## 6) Adoption of City Manager Evaluation Criteria

Hitt stated that ORS recommends that the City Manager Performance Evaluation form, which was developed by Councilors Elliott and Fisher and Human Resources Manager Allen, be adopted at a public meeting and be open for public comment. He distributed a partial listing of Council goals; those chosen were the ones most easily defined as being reached or those which show the level of progress. Included is a listing of City operations or activities which have improved, in addition to supporting documents, such as monthly crime statistics and building permit activity. The Senior Center activity and attendance records are also available. He asked the Councilors to contact him if they have any questions.

Mayor Toombs asked if the public received the evaluation form. Hitt stated that it was not mailed out or advertised because this is not a public hearing, although it was available in the agenda packets for those who were interested.

Mayor Toombs explained that upon adoption, he and the Councilors will individually complete the evaluations. After Councilors submit their completed form, he and the Council President will evaluate the performance criteria/score and present this information to Council in a closed executive session. At that time they will consider any salary adjustments for the City Manager. Mayor Toombs noted that copies of the evaluation form can be obtained.

*Mayor Toombs asked if there was anyone who would like to comment on the adoption of this form. Seeing no one, he asked for a motion.*

***Councilor Grizzle moved, Councilor Thoma seconded, to adopt the Performance Evaluation form as proposed to the Mayor and Council. The motion passed unanimously by roll call vote.***

Mayor Toombs noted that the City Manager has requested a one-on-one meeting with each Councilor so that they can go over the evaluation.

## 7) City Manager's Report

Hitt provided a brief report on the following:

*Library/Justice Center Project* – We will recommend the Contract Manager/General Contractor (CM/GC) firm at the September 12 [2007] meeting. There was good response to the RFP; three strong firms were interviewed. The architect will also be here on September 12 to give an update on the design process.

Councilor Elliott asked if any of the firms are local. Hitt stated that one of the firms has an office in Corvallis; the other two firms are from Portland.

Hitt noted that the CM/GC evaluation committee consisted of: Hitt, Police Chief Healy, IS Manager Tom Oliver, Library Manager Denice Lee, Architect Troy Ainsworth, and Project Manager Doug Roberts.

Lee stated that the architect indicated that he will not be able to be at the September 12 meeting. In response to Hitt's request, Lee stated that she would ask the architect if he could send someone in his place.



*City Council Goals/City Manager Accomplishments* – This was previously distributed.

*LBCC Mechatronics Technician Program* – Hitt attended this cutting-edge computerized manufacturing technical training program last week. The Mayor will be sending a letter to the college, as they are seeking a grant to start this program in fall 2008. Initially the pilot program will take place in their Albany facilities; their long-term goal is to build a stand-alone facility possibly in Lebanon. They feel that this may grow to be one of their largest programs, as there is a lot of interest and demand from the manufacturing and business sector.

*City of Lebanon Economic Opportunities Report* – This report was paid for by the Department of Land Conservation and Development (DLCD) and looked at whether there is adequate justification to consider an urban growth boundary expansion, particularly in the northwestern part of town. DLCD coordinated closely with the Port of Portland and the Oregon Economic and Community Development Department. The report concluded that there is not adequate basis to consider an urban growth boundary adjustment at this time. DLCD recommends a possible designation of an urban reserve area outside the urban growth boundary; this will go to the Planning Commission sometime within the next few months. A copy of the report is available for review.

Councilor Grizzle questioned the difference between an urban reserve area and an urban growth boundary. Hitt stated that an urban reserve area is an indication to the public and state agencies that if an urban growth boundary expansion is justified, this is where it will likely happen. It is not an official categorization, but it is probably something the Planning Commission, and perhaps the Council, should officially put on record.

*League of Oregon Cities Conference* – Mayor Toombs and Councilor Grizzle signed up to attend this conference. Please contact Kaser if anyone else would also like to attend.

*Scroggins Mill* – A Notice of Abatement was officially posted because the building is becoming an increasing concern. McHill is coordinating with the County to see what we can do to get something done before the winter storms come in. Please contact Chief Healy, Municipal Ordinance Officer Buchheit or McHill if there are any questions.

*New Development Code* – Lewis is managing this review, which will be starting up again in a week or two. This has been a long and laborious process to think about the City's long-term goals and objectives with regards to future development. We hope to have it through the Planning Commission process and to City Council for adoption sometime early next year. A draft copy should be available for review by mid-September, but it would still have to be reviewed by the Committee, McHill and the Planning Commission.

*Ron Miller's Retirement* – Ron's open house will be held at 6:00 p.m. on August 15 at the Senior Center.

*Special Council Meeting* – Hitt confirmed that there would be a quorum for the noon August 17 [2007] meeting. Agenda items include awarding the Lebanon Industrial Area Improvements Phase II project contract and a jurisdictional road transfer. The next regularly scheduled meeting is on September 12 [2007].

**COUNCILOR COMMENTS**

Councilor Elliott asked Hitt if he approved of the evaluation criteria. Hitt stated that the form and process is good.

**ADJOURNMENT**

Mayor Toombs adjourned the meeting at 9:09 p.m.

*[Meeting recorded & transcribed by: Donna Trippett]*

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Kenneth I. Toombs, Mayor   
Ron Miller, Council President

ATTESTED:

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Linda G. Kaser, City Clerk/Recorder

**LEBANON CITY COUNCIL MEETING**  
**MINUTES**  
**August 17, 2007**

**Council Present:** Mayor Ken Toombs and Councilors Bob Elliott, Floyd Fisher, Tim Fox, Don Thoma and Ray Weldon.

**Staff Present:** City Manager John Hitt, Attorney Jessica Meyer, City Engineer Malcolm Bowie and Senior Engineer Ron Whitlatch.

**CALL TO ORDER/FLAG SALUTE/ROLL CALL**

Mayor Toombs called the Special Session of the Lebanon City Council to order at 12:02 p.m. in the Santiam Travel Station Board Room. Roll call was taken; Councilor Grizzle was absent.

**CITIZEN COMMENTS** – *There were no citizen comments.*

**ITEMS FROM COUNCIL** – *There were no items from Council.*

**REGULAR SESSION**

**1) Award Construction Contract for Lebanon Industrial Area Improvements Phase II**

Senior Engineer Whitlatch requested that Council pass a motion to award the Lebanon Industrial Area Improvements Phase II project contract to R.J. Armstrong, who was the low bidder of the seven bids received. He indicated that they hope to start Phase II construction next week.

Councilor Elliott stated that it is unusual for a bid to come in \$50,000 less than the engineer's estimate. Whitlatch noted that R.J. Armstrong's bid is approximately 14% less than the City's estimate; they have the advantages of already being on site for Phase I construction and they are a local company. City Manager Hitt stated that we may be seeing the results of a slow down in the construction environment. Whitlatch indicated that staff was also conservative with the engineer's estimate because of the time of year. City Engineer Bowie stated that he believes the City has developed a good reputation among contractors.

***Councilor Elliott moved, Councilor Fisher seconded, to award the Lebanon Industrial Area Improvements Phase II project contract to R.J. Armstrong. The motion passed unanimously by roll call vote.***

Hitt asked for an update on the Grant and Williams Streets improvements. Whitlatch stated that, as part of the Truck Route project, they will be working on Grant Street from about 5:00 a.m. to 10:00 p.m. on Monday and Tuesday. They will then move on to Williams and Wheeler Streets. Paving of the final lift will take place on August 27 and 28. Although they have a good plan in place, their biggest issue will be traffic backups on Grant Street. There has been a lot of advance notice, including a newspaper press release and door-to-door notification by the contractor and City staff.

## **2) Jurisdictional Transfer - Portion of Oak Street**

In order to facilitate the necessary improvements to serve the Pace American development, Bowie asked that Council pass a resolution requesting the Board of County Commissioners to surrender jurisdiction of approximately 1000 feet of Oak Street.

Councilor Elliott asked Bowie how he feels the County Commissioners will act on this. Bowie stated that Linn County Roadmaster Darrin Lane does not foresee any problems. Hitt added that he does not anticipate any problems.

Attorney Meyer read the title of the Resolution.

***Councilor Fox moved, Councilor Thoma seconded, TO APPROVE A RESOLUTION REQUESTING THE BOARD OF COUNTY COMMISSIONERS OF LINN COUNTY TO SURRENDER JURISDICTION OF CERTAIN COUNTY ROADS LOCATED WITHIN THE CITY OF LEBANON. The motion passed unanimously by roll call vote.***

## **3) Amending LMC Section 18.24.040 Manufactured Homes (Base Flood Elevation)**

Hitt stated that FEMA requested a technical amendment to LMC Section 18.24.040 to ensure that the floor of all mobile homes be placed above the 100-year floodplain. This has already been put into practice, but the formal code will allow the City to continue to qualify for related federal grants.

Meyer read the title of the Ordinance.

***Councilor Elliott moved, Councilor Fox seconded, to approve A BILL FOR AN ORDINANCE AMENDING CHAPTER 18.24, BASE FLOOD AREAS, OF THE LEBANON MUNICIPAL CODE CONCERNING FLOOD PREVENTION CONTROL. The motion passed unanimously by roll call vote.***

## **COMMENTS**

Hitt stated that Councilors may be asked to come back for another special noon meeting in a few weeks and asked if anyone would be gone during that time. Mayor Toombs and Councilor Fox indicated that they will be gone next Thursday and Friday.

Mayor Toombs asked that the City Manager Evaluation forms be turned in as soon as possible. He reminded the Councilors that if they do not complete the form or have the one-on-one meeting with Hitt, their evaluation will not be considered. Hitt invited the Councilors to call him to set up a meeting time.

**ADJOURNMENT**

Mayor Toombs adjourned the meeting at 12:17 p.m.

*[Meeting recorded & transcribed by: Donna Trippett]*

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Kenneth I. Toombs, Mayor             
Bob Elliott, Council President      

ATTESTED:

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Linda Kaser, City Clerk/Recorder

# *Consent Calendar*

*LEBANON CITY COUNCIL AGENDA: September 12, 2007*

*APPOINTMENT: SDC Citizens Advisory Committee –  
Rich Branvold*

*CITY OF LEBANON MINUTES:*

1. Lebanon Public Library – July 11, 2007
2. Parks Committee Tree Board Meeting – July 17, 2007



## MEMORANDUM

### *Engineering Division*

**To:** Malcolm Bowie, City Engineer

**Date:** September 4, 2007

**From:** Rob Emmons, Senior Engineer *RE*

**Subject:** System Development Charge Citizen Advisory Committee Appointment

---

Background:

The City of Lebanon adopted new SDC methodologies and fees for the Water, Sewer, Storm Drainage and Parks systems in June 2005. We are ready to complete the SDC update by reconvening the SDC Citizens Advisory Committee to recommend a new Transportation SDC methodology and updated Parks and Water SDC fees.

The SDC Citizens Advisory Committee (CAC) has been contacted and all but two members are available and would like to participate in the upcoming SDC update. The members available and ready to participate are as follows:

Bob Elliott – City Council Representative  
Todd Gestrin  
Bob Armstrong  
Jon Erwin

The two members not available are:

Ron Miller – City Council Representative  
Mike Wells

We have contacted Rich Branvold who has agreed to serve on the CAC to replace Mike Wells. In order to complete the CAC, we would like to have one addition City Council Representative to replace Ron Miller.

Action Requested:

Please appoint a City Council member to replace Ron Miller and appoint Rich Branvold to replace Mike Wells.



# CITY OF LEBANON

*It's easier from here.*

## LEBANON PUBLIC LIBRARY

Advisory Board Meeting Minutes

July 11, 2007

The Library Advisory Board meeting was called to order at 5:30 p.m. by Co-chairperson Carolyn Misa. Attending were Garry Browning, Sharon Follingstad, Sue Spiker, Tom Stewart and Library Director Denice Lee.

Minutes of the May 9th meeting were approved.

### **Director's Report:**

#### **Circulation:**

June 2007	8,556	YTD 2007	103,225
June 2006	8,475	YTD 2006	96,406

The director reported that year-end circulation was 103,225 which is the highest circulation the Lebanon Public Library has ever achieved since not including freebies in the circulation statistics. This rate of circulation is a 7% increase over last year's total annual circulation. In addition, Internet sessions are higher by 7%; Reference questions higher by 27%; and Interlibrary Loans higher by 9% over last year's totals.

### **Library Building Trust:**

The Library/Senior Center Trust has determined the need for a grant researcher/writer for the library building project. Susan Chandler and Linda Bebernes have interviewed with the Trust and the Trust wants to contract their grant services. The information Susan and Linda provided indicated a potential of approximately \$350,000 in funding for the library project. The fee to contract with them would be no more than \$10,000 of which the Trust will fund \$1,000. The director requested board approval of the release of no more than \$9,000 from the Library Building Trust to complete the contract funding. The board gave unanimous approval.

### **Building Project Update:**

The building project has progressed from the program design phase into the beginning of schematic design. The architects will start generating more visual presentations of the new facilities in the schematic design phase. The Request for Proposals for the Construction Manager/General Contractor has been publicized. The response has been very encouraging with contact from the very top firms in the state. The deadline for the proposals is June 20<sup>th</sup> and interviews will follow.

### **Budget:**

The City's budget for fiscal year 2007/2008 has been officially approved. The library's funding in this budget reflects an increase in the book budget of approximately \$4,000 and an additional part-time position. Plans are being made to increase hours of operation by 6-8 hours with the addition of the part-time position

LIBRARY SERVICES



### **Summer Reading Programs:**

The Summer Reading Program, "Get a Clue @ Your Library", started the last week of June. The K-4<sup>th</sup> graders will meet from 2-3 p.m. on Tuesdays; and the preschoolers will meet from 11-11:45 a.m. on Thursdays. There is a self-maintained YA Summer Reading Program funded by the Friends of the Library for 5<sup>th</sup> -12<sup>th</sup> graders. YA students read books and enter their reading slips into drawings for various prizes. There will be a closing session for the YA group to meet together Saturday, August 11 at which the drawings for prizes will be held. Also this year, the staff has created an Adult Summer Reading Program around the mystery theme whereby adults can read books and enter into prize drawings. There is also a mystery author patrons can try to identify as pieces covering his/her pictured face are removed.

### **Summer Hours:**

The library started summer hours July 1 and will continue through Labor Day September 3. Summer hours (11-6 Mon & Tues; 11-5 Wed. & Thurs; 11-4 Fri. & Sat.) are designed to close the library early during the summer heat. After Labor Day, regular library hours will be expanded with the addition of the part-time position approved in this year's budget. The new hours (10-7 Mon & Tues; 10-6 Wed & Thurs; 10-5 Fri & Sat) increase hours of service to the public from 40 to 48 per week.

### **Honor Books:**

There are patrons coming into the library with non-resident addresses who leave the library empty handed because they cannot afford the non-resident fee for a library card. To assist those potential patrons, the library has developed a rack of "Honor Books" made up of donated paperback books which are not added to the library's collection and are not processed for checking out. Visitors can take up to 5 of the "Honor Books" without a card, and can either return the books or not, as they choose. The result has been surprising as patrons have responded by bringing more donations for this collection.

### **Recruitment:**

The recruitment for the part-time position and the on-call position closed today, Wednesday, July 11. To date, the response has been slow.

### **Grant Opportunities:**

The library will be applying for the Ready to Read Grant by August 31<sup>st</sup>. The legislature has increased funding for this grant so Lebanon can anticipate receiving \$2,600 for 2008 as opposed to the \$2,000 we received this year. This money is used for our Summer Reading and Spring Break programming as well as any early literacy projects we may develop. By February 15<sup>th</sup> the library will be able to apply for the Trust Management Grant made available to the library in every even numbered year. This grant can be for up to \$10,000. Staff is working to define library needs for this funding.

### **Friends Report:**

There was no report from the Friends of the Library.

### **Unfinished Business:**

#### **Limiting first-time checkouts:**

At their last staff meeting, library staff discussed a potential policy change for first time patron registrations. To this point in time, the staff and board agree that mailing library cards to newly registered patrons is a good idea because it creates a check point to verify addresses. The second

piece of the puzzle is to determine the number of items patrons can take from the library on their first visit. Between now and the next staff meeting, the director has charged the staff with mentally applying the policy change at the front desk to determine which approach will be the most effective. At the next staff meeting, staff will bring an opinion about their observations.

**New Business:**

**Policy Change:**

Currently the library's policy manual (page 23) states that patrons paying a \$10.00 deposit for a 3 month temporary card will have that deposit refunded when the card expires. The library has had patrons fail to return for the deposit, so the director requested a change to the policy manual stating that the deposit will be placed in the Library Trust Fund if not picked up within 30 days. After some discussion, the board felt that the deposit should be changed to a \$10.00 fee since that reflected what non-resident patrons pay for library services. The motion was unanimously approved and the director will make the change in the policy manual.

**Adjournment:**

The meeting was adjourned at 6:15 p.m.

**Next meeting August 8, 2007  
5:30 p.m.  
750 3<sup>rd</sup> Street  
Santiam Travel Station**



*City of Lebanon*  
*Parks Committee Tree Board*

**Meeting Minutes**

July 17, 2007

**MEMBERS PRESENT:** John Dinges, Bob Elliott, Ronn, Passmore, and Don Wonsley. Late arrivals Jim McDaniel and Sally Skaggs

**STAFF PRESENT:** Rod Sell, Cecil Bridge and Shannon Muskopf

**GUESTS PRESENT:** None

**CALL TO ORDER:** John Dinges called the meeting of the City of Lebanon Parks Committee Tree Board to order at 5:18 p.m. on July 17, 2007 in the Santiam Travel Station Board Room at 750 3rd Street.

**APPROVAL OF MINUTES:** The April 17, 2007 and June 19, 2007 minutes were approved as written. There were no May 15, 2007 minutes as it was a parks tour.

**BOYS AND GIRLS CLUB UPDATE:** The fall sign ups for 30 soccer teams and 11 football teams are underway. The summer programs finishes next week.

**BOB SMITH MEMORIAL PARK:** The Boys and Girls Club has requested to level and reseed the fields at the park. Don, who has done numerous fields, would head up this project. He would like to start this project in mid to late August. Rod had a list of concerns that he will email to Don. **Passmore moved and McDaniel seconded, Assuming we have an agreement signed by the City and the Boy's and Girls Club for completion [the Boys and Girls Club be allowed to redo the playing fields], motion passed 5-0**

**SUB COMMITTEE MEETINGS:**

**TRAILS COMMITTEE:** BLT is continuing workdays at Marks Slough trail putting in fencing. The contract for the asphalt was awarded to Knife River and if everything comes together, the trail could be in by the end of August. Eric Wiggins will take the danger tree, previously reported, to wildlife size making it safe including a trunk treatment.

**PIONEER CEMETERY COMMITTEE:** The pioneer cemetery book was discussed. After the completion of revisions and updates to photos, it is once again ready for sale. Shannon presented information on material costs and suggested a price of 45.00, which would include \$9.71 profit to be put into the Pioneer Cemetery fund. Shannon explained that in discussing with Pat Dunn the price Pat felt that perhaps \$40.00 was a better price to ask for the book. After discussion **McDaniel motioned and Passmore seconded to recommend \$45.00 as the price for the Pioneer Cemetery Book, motion passed 5-0.**

**DOG PARK UPDATE:** Rod did not have a chance to meet with Lynn on this. The estimated area down by Gills Landing is 460' X 80', .78 acres. Shannon will email this information to Lynn. It looks like the old bridge may not be removed until next year.

**JC PARK RENAMING:** Jim suggested that we get a maintenance cost for the park and look into club sponsorship. A contest for naming the park was discussed, McDaniel motioned, **and Elliott seconded that we have a contest for renaming JC Park, motion passed 5-0.** Shannon will make up a flyer with the history of the park and photos for the next meeting.

# Agenda Item 1



## MEMORANDUM

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### *Geographical & Information Technology Services*

**To:** Mayor Toombs and City Councilors

**Date:** September 4, 2007

**From:** Tom Oliver *TO*

**Subject:** Justice Center and Library Building Project Update

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We will provide Council with a progress update on the Justice Center and Library building project at the September 12, 2007 meeting.

# Agenda Item 2



## MEMORANDUM

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### *Geographical & Information Technology Services*

**To:** Mayor Toombs and City Councilors

**Date:** September 4, 2007

**From:** Tom Oliver *TO*

**Subject:** CM/GC Contract Award

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At the September 12, 2007 Council meeting, we will recommend that Council award a contract for Construction Manager/General Contractor (CM/GC) services for the Justice Center and Library buildings to Howard S. Wright Constructors.

As part of the selection process, a RFP for CM/GC services was issued in July of this year. Respondents were ranked based on the following criteria:

1. Firm Information
  - a. Firm Background
  - b. Firm Workload
  - c. Firm Experience and References
2. Project Team
3. Project Management
4. Proposed Fees and Costs
5. Bonding Company
6. Bonding Performance

The top three ranked respondents were then interviewed, resulting in the selection of Howard S. Wright as the preferred contractor.

A copy of the proposed contract will be distributed to Councilors by Friday, September 7<sup>th</sup>. Doug Roberts, our Project Manager, will be present at the September 12<sup>th</sup> meeting to answer questions about the contract and the selection process.



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

**THIS CONTRACT IS BETWEEN:**

**OWNER:**

*The City of Lebanon, Oregon*

**And**

*Howard S. Wright Constructors  
425 NW 10th Avenue, Suite 200-A, Portland, Oregon 97209  
PO Box 5511, Portland, Oregon 97228-5511  
CCB #164711*

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

**The Project is:**

*The City of Lebanon Library and Justice Center*

**The Architect is:**

*Fletcher Farr Ayotte Inc  
Architecture Planning Interiors  
520 SW Yamhill, Ste 900  
Portland, OR 97204*

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

*KJM & Associates  
(aka Hill International)  
111 SW Columbia St., Suite 830  
Portland, Oregon 97201*

**The Owner's Target GMP is:                      \$12,000,000**



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

**ARTICLE 1**  
**DEFINITIONS**

Except as expressly defined or modified below or elsewhere in this Contract, all capitalized terms shall have the meanings set forth in Section A of the General Conditions for Public Improvement Contracts, July 2002, attached as Exhibit A hereto (the "General Conditions"). The terms below are expressly defined as follows:

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

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

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

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

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

**1.6 CM/GC Field Work.** CM/GC Field Work shall mean customary layout, clean up, supervision, and portions of the Work of a minor nature and not feasibly part of the subcontracted work due to: exclusions by the Subcontractor not resolved through the process described in Article 11.3.3, undeveloped design owing to deviations in Work performed or materials delivered by Subcontractors or suppliers that do not represent defective or nonconforming work, a breach or failure to perform by the Subcontractor or supplier, complexity of coordination of the Work, and other similar reasons typically providing cause for "pick-up" or GC Work under industry standards; provided, however, that

- (i) The CM/GC has reasonably determined that doing such portion of the Work itself is in the best interests of Owner,
- (ii) Such Work is identified as CM/GC Field Work in monthly billings and
- (iii) CM/GC receives prior approval of Owner's Authorized Representative as

to the scope of such CM/GC Field Work.

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

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

**1.9 Construction Phase.** The Construction Phase shall mean the period commencing on the Owner's execution of a GMP Amendment or Early Work Amendment, together with the earlier of

- (i) Issuance by Owner of a Notice to Proceed with any on-site construction or
- (ii) Execution of a subcontract or issuance of a purchase order for materials or equipment required for the Work.

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

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

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

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

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

**1.15 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.

**1.16 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.

**1.17 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.

**1.18 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.

**1.19 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.

**1.20 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.

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

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

**1.23 Scope Change.** Scope Change shall mean only

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

## **ARTICLE 2**

### **CONTRACT DOCUMENTS**

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

**2.2 Effective Date.** This CM/GC Contract (hereafter the "Contract") shall become effective on the first date on which every party has signed this Contract and Owner has received all necessary approvals, including approval for legal sufficiency by legal counsel for owner or the Lebanon City Attorney.

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

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

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

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

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

- (a) The CM/GC shall consult with, advise, assist, and provide recommendations to the Owner and the design team on all aspects of the planning and design of the Work.
- (b) The CM/GC shall jointly schedule and attend regular meetings with the Architect and Owner's Authorized Representative. The CM/GC shall consult with the Owner and Architect and Owner's Authorized Representative regarding site use and improvements, and the selection of materials, building systems and equipment.
- (c) The CM/GC shall provide recommendations on construction feasibility; actions designed to minimize adverse effects of labor or material shortages; time requirements for procurement, installation and construction completion; and factors related to construction cost including estimates of alternative designs or materials, preliminary budgets and possible economies.
- (d) The CM/GC shall review in-progress design documents, including the documents generally described in the industry as 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 periodically update, a preliminary Project schedule for the Architect's and Owner's Authorized Representative's review and the Owner's Authorized Representative's approval.
- (b) The CM/GC shall coordinate and integrate the preliminary Project schedule with the services and activities of the Owner, Architect, and CM/GC. As design proceeds, CM/GC shall update the preliminary Project schedule to indicate proposed activity sequences and durations, milestone dates for receipt and approval of pertinent information, submittal of a GMP proposal, preparation and processing of shop drawings and samples, delivery of materials or equipment requiring long-lead time procurement, and Owner's occupancy requirements showing portions of the Project having occupancy priority, provided that the date(s) of Substantial Completion shall not be modified without Owner's prior written approval. If preliminary Project schedule updates indicate that previously approved schedules may not be met, the CM/GC shall make appropriate recommendations to the Owner's Authorized Representative and Architect.

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

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

- (a) The CM/GC shall prepare, for the review of the Architect and Owner's Authorized Representative and approval of the Owner, a preliminary cost estimate utilizing area, volume or similar conceptual estimating techniques.
- (b) When Schematic Design Documents have been prepared by the Architect and approved by the Owner, the CM/GC shall prepare for the review of the Architect and Owner's Authorized Representative and approval of the Owner, a more detailed estimate with supporting data. During the preparation of the Design Development Documents, the CM/GC shall update and refine this estimate at appropriate intervals agreed to by the Owner, Architect and Owner's Authorized Representative and CM/GC.
- (c) When Design Development Documents have been prepared by the Architect and approved by the Owner, the CM/GC shall prepare a detailed estimate with supporting data for review by the Architect and Owner's Authorized Representative and approval by the Owner. During the preparation of the

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

- (d) If any estimate submitted to the Owner exceeds previously approved estimates or the Owner's budget, the CM/GC shall make appropriate recommendations to the Architect and Owner's Authorized Representative.
- (e) CM/GC shall notify the Owner and the design team immediately if any construction cost estimate appears to be exceeding the construction budget.
- (f) The CM/GC otherwise shall work with the Architect and Owner to develop a GMP within the Target GMP Range and within Owner's schedule.

**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. CM/GC shall advise Owner on subcontracting opportunities for minority/women/ESB firms.

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

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

- 3.1.9** The CM/GC shall work with the Owner and the design team to maximize energy efficiency in the Project, including without limitation providing estimating and value engineering support to the Owner's analysis and application for energy related incentive programs offered by local utilities.
- 3.1.10** The CM/GC shall work with the Owner and the design team to facilitate changes to the Project necessary to allow incorporation of works of art from the Project's 1% for Art program into the design and construction of the building. Owner's cost of the art objects is not included in the Cost of the Work or the GMP, but CM/GC's costs relating to facilitating changes to accommodate the handling and installation of the art are part of the Cost of the Work and are included in the GMP.

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

- 3.2.1** Upon execution of an Early Work Amendment or GMP Amendment, the CM/GC shall provide Construction Phase Services as provided in the Contract Documents, including without limitation providing and paying for all materials, tools, equipment, labor and professional and non-professional services, and performing all other acts and supplying all other things necessary to fully and properly perform and complete the Work, as required by the Contract Documents, to furnish to Owner a complete, fully functional Project, capable of being legally occupied and fully used for its intended purposes upon completion of the Contract (or, as to an Early Work Amendment, to furnish such Work as is described in the Early Work Amendment). Construction Phase Services shall include CM Services performed during the Construction Phase.
- 3.2.2** Notwithstanding any other references to Construction Phase Services in this Contract, this Contract shall include Preconstruction Phase Services only if
- (i) The parties execute a GMP Amendment or
  - (ii) The parties execute an Early Work Amendment, defined below.
- 3.2.3** The parties may execute one or more Early Work Amendments identifying specific Construction Phase Services that must be performed in advance of establishment of the GMP, without exceeding a not-to-exceed budget, a not-to-exceed guaranteed maximum price, or a fixed price ("Early Work Price") to be stated in such Amendment, with such Amendment including all necessary approvals where required. If the Early Work Price is a not-to-exceed budget, then CM/GC shall be obligated to perform the Early Work only to the extent that the Cost of Work therefor, together with the CM/GC Fee, does not exceed the Early Work Price; however if CM/CG performs Early Work with a cost in excess of the Early Work Price the CM/GC shall pay such excess cost without reimbursement. If one or more Early Work Amendments are executed, the CM/GC shall diligently continue to work toward development of a GMP Amendment acceptable to Owner, which shall incorporate the Early Work Amendments. If Owner thereafter terminates the Contract prior to execution of a GMP Amendment, the provisions of Section J.5 of the General Conditions shall apply.



**3.2.4** Prior to commencement of the Construction Phase, and in any event not later than mutual execution of the GMP Amendment, CM/GC shall provide to Owner a full performance bond and a payment security bond as required by Section G of the General Conditions in the amount of the GMP. If an Early Work Amendment is executed, CM/GC shall provide such bond in the amount of the Early Work Price under the Early Work Amendment. CM/GC shall provide to Owner additional or replacement bonds at the time of execution of any subsequent Early Work Amendment or GMP Amendment, in each case prior to execution of the Amendment and the supplying of any labor or materials for the prosecution of the Work covered by the Amendment, and in each case in a sufficient amount so that the total bonded sum equals or exceeds the total Early Work Price or the GMP, as the case may be. In the event of a Scope Change that increases the GMP, CM/GC shall provide to Owner an additional or supplemental bond in the amount of such increase prior to performance of the additional Work.

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

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

- (i) Actual costs and progress for the reporting period as compared to the estimate of costs;
- (ii) Explanations of significant variations;
- (iii) Work completed;
- (iv) Work in progress;
- (v) Changes in the work; and
- (vi) Other information as determined to be appropriate by the Owner.

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

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

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

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

**4.2 Performance of Work.** The CM/GC 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** Vice President: **Frank Pierson** shall be the CM/GC's Regional Manager / Vice President. CM/GC represents that has the authority to execute Change Orders and Contract Amendments on behalf of CM/GC.

**4.5.2** Project Executive, Project Manager and Assistant Project Manager: **Dan Pelissier** shall be the CM/GC's Project Executive, **Joel Freeman** shall be the CM/GC's Project Manager and **Steven Wages** shall be CM/GC's Assistant Project Manager and one or all 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.

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

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

replacement for any of these staff members is authorized, further replacement shall not occur without the written permission of Owner.

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

**5.1 Notice to Proceed.** If Construction Phase Services are added to the Contract as set forth in Article 3.2, then a notice to proceed will be issued by Owner to begin the designated or full Construction Phase Services ("Notice to Proceed"). It is anticipated that the Notice to Proceed will be issued on or about June 1, 2008. A separate Notice to Proceed shall be issued for any and every Early Work Amendment.

**5.2 Completion of Project.** The CM/GC shall achieve Substantial Completion of the entire Work not later than May 31, 2009 and shall achieve Final Completion not later than 30 Days after the earlier of

- (i) Substantial Completion or
- (ii) The required date for Substantial Completion.

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

**5.4 Time Extensions.** Notwithstanding provisions for Contract time extensions in Section 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. CM/GC agrees to make every effort to recover "lost" time.

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

**5.5.1** Liquidated Damages shall be \$500 for each day that Substantial Completion exceeds the required date of Substantial Completion.

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

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

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

**6.2 Preconstruction Fee.** The Preconstruction Fee shall be payable to CM/GC on a cost reimbursement basis up to a maximum sum of **\$49,080.00**, 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 **3.4%** 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** Notwithstanding any provision of Section D.1.3 of the General Conditions to the contrary, and unless the parties agree in writing to the contrary, any Amendment or Change Order that increases or decreases the GMP 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 therefrom. Such further development does not include such things as changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which, if required, shall be incorporated by Change Order or Amendment with a corresponding GMP adjustment.

**6.4.3** The CM/GC shall include with its GMP proposal a written statement of its basis (the "GMP Supporting Documents"), 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, except as specifically provided in an Early Work Amendment.
- 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 as designed.
- 6.4.16** (deleted)

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

Work Amendment. Termination under this provision shall proceed under Section J.5 of the General Conditions as a termination for Owner's convenience. CM/GC further agrees that Owner shall not be liable for any damages whether actual, consequential or otherwise for termination of the Contract under this provision.

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

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

**6.8 Allowance Work.**

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

**6.8.2** Owner shall be entitled to apply any Allowance line items that are not 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 Reallocating Projected Cost Underruns after Bid (Offer) Buyout.** As soon as possible after the awarding of the Work to the primary Subcontractors, CM/GC shall review projected costs and provide the Owner with a buy-out status report showing any projected cost underruns, reconciling accepted Offers and other reasonably anticipated costs, to the cost estimate used by CM/GC to establish the GMP. CM/GC shall include with its report any underlying documentation requested by Owner used to develop or support such report. CM/GC shall also consider the reduced risk associated with known subcontracting costs, and the impact that reduced risk has on the amount of the CM/GC's Contingency. The parties shall negotiate in good faith to execute a Change Order transferring an appropriate portion of any projected cost



underruns to an Owner-controlled contingency fund to be held within the GMP to pay for additional costs arising from (a) any Owner-directed or approved change to the Work, (b) schedule changes that would otherwise entitle CM/GC to an increase in the GMP, (c) Allowance items after exhaustion of all Allowances, (d) selection by Owner of more expensive alternates than those used for calculation of the GMP, (e) Owner selection of substitutions that increase the Cost of the Work, or (f) any other costs which otherwise would entitle CM/GC to an increase in the GMP. Any transfer of projected cost underruns from CM/GC's contingency to the Owner-controlled contingency fund will not affect CM/GC's obligation to complete the Project within the GMP.

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

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

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

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

- 7.2.1** CM/GC shall review subsequent iterations of the Plans and Specifications as they are prepared to determine whether, in the opinion of CM/GC, they result in a Scope Change so that it can be determined if an adjustment to the GMP is warranted.
- 7.2.2** Changes to the GMP shall be initiated by written notice by one party to the other ("GMP Change Request"). CM/GC shall deliver any such GMP Change Request to Architect and Owner's Authorized Representative promptly after becoming aware of any Scope Change if, in CM/GC's opinion, it constitutes grounds for adjustment of the GMP. Any GMP Change Request shall include a proposal as to the appropriate GMP adjustment with respect to the Scope Change at issue.
- 7.2.3** CM/GC shall submit its GMP Change Requests as soon as possible, and CM/GC shall not be entitled to claim a GMP increase unless CM/GC submitted a GMP Change Request to Owner's Authorized Representative and to Architect within the earlier of (a) 30 Days after CM/GC has received the information constituting the basis for the claim,

or (b) as to Work not yet bid or proposed, prior to submission of solicitations for such Work and as to Work already solicited, prior to commencement of the portion of the Work for which CM/GC intends to claim a Scope Change; and (c) in any event, prior to CM/GC's signing of a Change Order for the Scope Change.

- 7.2.4** Owner may, at any time, submit a GMP Change Request requesting a reduction of the GMP, which shall include Owner's basis for such request, which may include, for example, reduction of the CM/GC's Contingency after further development of the Plans and Specifications that form the basis for the original GMP Amendment, and/or unused Allowances.
- 7.2.5** CM/GC shall work with Architect to reconcile all differences in its GMP Change Request with Architect within seven Days from the date of submission of the GMP Change Request. "Reconciled" means that the CM/GC and Architect have verified that their assumptions about the various categories are the same, and that identifies the reason for differences in the GMP Change Request and the Architect's position. CM/GC shall submit the Reconciled GMP Change Request to Owner, which submission shall be a condition to any CM/GC claim for a GMP increase.
- 7.2.6** If the Reconciled GMP Change Request is not acceptable to Owner, CM/GC agrees to work with the Owner and the Architect to provide a GMP Change Request that is acceptable to Owner.
- 7.2.7** CM/GC agrees to make all records, calculations, drawings and similar items relating to GMP Change Request available to Owner and to allow Architect and Owner access and opportunity to view such documents at CM/GC's offices. Upon Owner's reasonable notice, CM/GC shall deliver two copies of such documents to Owner and Architect at any regular meeting or at the Site.
- 7.2.8** GMP increases, if any, shall not exceed the increased Cost of the Work arising from the Scope Change (whether based on agreed fixed pricing, or the estimated Cost of the Work increase based on cost-reimbursable pricing), reconciled in accordance with the above provisions, as arising from the incident justifying the GMP increase, plus or minus the CM/GC Fee applicable to such change in the Cost of the Work.
- 7.2.9** Except as provided in this Article 7.2, adjustments to the GMP shall be reconciled in accordance with Section D of the General Conditions.

**7.3 Execution by Owner.** If Architect or Consulting Project Manager is the Owner's Authorized Representative, then notwithstanding any provision in the Contract to the contrary, Architect or Consulting Project Manager has no authority to execute Change Orders or Amendments on behalf of Owner, and only duly authorized personnel of Owner may do so.

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

**8.1 Cost of the Work.** The term "Cost of the Work" shall mean the following costs. The Cost of the Work shall include only those items necessarily and reasonably incurred by CM/GC in the proper performance of the Work 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 \$10,000, will be subject to Owner's prior approval. CM/GC shall deliver to Owner a list of published rates from time to time at Owner's request. For all items rented or leased, the CM/GC shall charge Owner only the rental charge incurred by CM/GC with no additional administrative or other mark-up. CM/GC shall make efforts and use its best skills and judgement to procure equipment in the most expeditious and economical manner consistent with the interest of the Owner. Efforts shall include, but not be limited to, providing Owner with a rent/buy analysis so that Owner may elect for CM/GC to procure the item in lieu of rental if the facility at issue is expected to be rented for six months or longer. Such rent/buy analysis shall include, where available, a leasing rate commensurate with the expected term of rental of the facility at issue. Inclusions to and exclusions from rental rates will be made in accordance with American Association of Equipment Dealer standards.
- 8.5.3** Costs of removal of debris from the site.
- 8.5.4** Cost of telegrams and long-distance telephone calls, postage and parcel delivery charges, telephone service at the site and reasonable petty cash expenses of the site office, which are solely for the benefit of the Work.

**8.5.5** That portion of the travel and subsistence expenses of the CM/GC's personnel determined by Owner to be reasonable and necessary, at Owner approved rates, incurred while traveling in discharge of duties connected with the Work. Main office staff travel shall not be reimbursed unless approved in advance by Owner. These travel costs shall be reimbursed only to the extent allowed under City of Lebanon travel reimbursement guidelines applicable to Owner and only at approved travel rates. CM/GC personnel who are scheduled to work at the Project site for less than six months may receive a subsistence per diem approved by the Owner in accordance with City Travel Rules if their place of residence is greater than 100 miles from the Project site; provided no such personnel shall be entitled to such per diem reimbursement beyond such six-month period.

## **8.6 Other Costs.**

- 8.6.1** That portion of premiums for insurance directly attributable to this Contract, specifically, builders all/risk insurance, including the deductible (but excluding premiums for comprehensive/commercial general liability, automobile and worker's compensation coverage which the Owner does not consider Project specific), and payment and performance bonds as required by Section G of the General Conditions (but excluding premiums for Subcontractor bonds or subcontractor default insurance 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.
- 8.6.6** Costs of drawings, Specifications and other documents required to complete the Work, except as provided by Owner or Architect.
- 8.6.7** Other costs incurred in the performance of the Work if and to the extent approved in advance in writing by Owner.

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

**8.8 Fixed Cost For General Conditions Work.** CM/GC shall be paid a fixed sum of **\$898,653.00** 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. However, no adjustment in the amount payable for General

Conditions Work will be made if the actual construction period is shorter or longer than the number of months scheduled for the Construction Phase, unless the construction period is extended because of an Owner-requested delay.

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

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

- 9.1.1** Salaries and other compensation of the CM/GC's personnel stationed at the CM/GC's principal office or offices other than the site office except as allowed under Articles 8.2.2 and 8.2.3.
- 9.1.2** Expenses of the CM/GC's principal office and offices other than the site office.
- 9.1.3** Any overhead and general expenses, except as may be expressly included in Article 8.
- 9.1.4** CM/GC's capital expenses, including interest on the CM/GC's capital employed for the Work.
- 9.1.5** Rental cost of machinery and equipment, except as provided in Article 8.5.2
- 9.1.6** Any cost associated with the Project not specifically and expressly described in Article 8.
- 9.1.7** Costs due to the fault or negligence of the CM/GC, Subcontractors, suppliers, anyone directly or indirectly employed by any of them, or for whose acts any of them may be liable.
- 9.1.8** The cost of correction of any repair work, 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.

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

**11.1.3** The CM/GC shall report to Owner on the results of the good faith efforts of compliance required in Article 11.1.2 following award of all subcontracts. The CM/GC shall also submit quarterly reports to Owner listing Work contracted to date with Minority, Women and Emerging Small Business Enterprises.

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

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

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

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

**11.3 Subcontractor Selection.**

**11.3.1** Unless otherwise provided under this Article 11, the selection of all Subcontractors and suppliers shall be made by competitive Offers in a manner that will not encourage favoritism or substantially diminish competition. While not subject to the competitive procurement requirements of ORS 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) Solicitations will be advertised at least 10 Days prior to opening in the Daily Journal of Commerce and at least one other newspaper specifically targeted to reach the Minority, Women and Emerging Small Business audience. CM/GC also agrees to advertise in a local community newspaper in the area in which the Project is located, in order to allow for local participation in the solicitation process.
- (b) Unless specific other prior arrangement has been made with Owner, all Offers will be written, and submitted to a specific location at a specific time. CM/GC shall time-stamp all Offers as received. Subcontractors must be qualified to perform the Work for this Project by being appropriately registered with the State of Oregon Construction Contractors Board.



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

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

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

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

**11.4 CM/GC Field Work.**

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

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

**11.5 Subcontracting by CM/GC.**

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

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

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

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

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

the CM/GC shall preserve these for a period of three years after final payment, or for such longer period as may be required by law.

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

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

**13.1 Integration with General Conditions.** The requirements of this Article 13 and Article 14 are in addition to, and not in lieu of, the requirements of Section E of the General Conditions. In the event of conflict between the provisions of Articles 13 and 14 and Section E, the provision more favorable to Owner shall control. Without limitation, the provisions of Articles 13.3 and 13.4 shall control over the corresponding provisions of Section E.2.5 of the General Conditions.

**13.2 Progress Payments.** Based upon applications for payment submitted pursuant to Section E of the General Conditions, 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
- (ii) 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 E.2.3 of the General Conditions;
- (c) Add the CM/GC's Fee. The portion of the CM/GC's Fee payable shall be an amount that bears the same ratio to CM/GC Fee as sum of the amounts in the two preceding Clauses bears to the estimated probable Cost of the Work described in Article 6.1.2, but in no event causing total CM/GC Fee payments to exceed the total CM/GC Fee;
- (d) Subtract the aggregate of previous payments made by and retained by the Owner;
- (e) Subtract the shortfall, if any, indicated by the documentation required to substantiate prior applications for payment, or resulting from errors subsequently discovered by the Owner in such documentation;
- (f) Subtract any amounts for which the Owner's Authorized Representative has withheld or nullified payment as provided in the Contract Documents; and
- (g) Subtract 5% retainage on the entire progress payment.

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

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

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

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

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

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

**14.3 Final Payment Review.** Owner or its accountants will review and report in writing on the CM/GC's final accounting within 30 Days after delivery of the final accounting by the CM/GC. Based upon such Cost of the Work as Owner or Owner's accountants report to be substantiated by the CM/GC's final accounting, and provided the other conditions of this Contract have been met, the Owner's Authorized Representative will, within 10 Days after

receipt of the written report of Owner's accountants, either issue to Owner an approval of CM/GC's final application for payment with a copy to the CM/GC or notify the CM/GC and Owner in writing of the Owner's Authorized Representative's reasons for withholding approval of any part of the application for payment, which disapproval shall include Owner's Authorized Representative's estimate of the amount that is due Contractor under the application for payment.

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

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

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

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

**15.2 Owner's Termination for Convenience after GMP Amendment.** After the GMP Amendment is executed by both parties, the Contract may be terminated by Owner without penalty for convenience pursuant to Section J.5 of the General Conditions in which case CM/GC shall be entitled to payment of the amount stated in Article 15.1 together with the actual Cost of the Work, plus the CM/GC's Fee prorated based on the actual Cost of the Work to the date of termination, but in any event not in excess of the GMP.

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

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

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

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

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

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

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

**16.1.3** CM/GC's execution and delivery of the Contract and the consummation of the transactions contemplated hereby will not conflict with or result in a material breach of any terms or provisions of, or constitute a material default under,

- (i) CM/GC's Articles of Incorporation or Bylaws;
- (ii) Any note, bond, mortgage, indenture, license, lease, contract, commitment, agreement or other instrument or obligation to which CM/GC is a party or by which CM/GC may be bound; or
- (iii) Any statute, order, writ, injunction, decree, rule or regulation applicable to CM/GC;

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

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

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

## **ARTICLE 17** **MISCELLANEOUS**

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

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

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

**CM/GC:**

Name of Firm: ***Howard S. Wright Constructors***

Address: *425 NW 10th Avenue, Suite 200-A, Portland, Oregon 97209  
PO Box 5511, Portland, Oregon 97228-5511*

CM/GC's Federal I.D. #: \_\_\_\_\_  
Construction Contractor's Board Registration No.: *CCB #164711*

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

Title \_\_\_\_\_

Date \_\_\_\_\_

**OWNER:**

***CITY OF LEBANON, OREGON***

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

Title \_\_\_\_\_

Date \_\_\_\_\_

**EXHIBITS:**

- Exhibit A –General Conditions**
- Exhibit B – Form of GMP Amendment**
- Exhibit C – GC General Conditions Cost Worksheet**



**EXHIBIT A**  
**GENERAL CONDITIONS FOR PUBLIC IMPROVEMENT CONTRACTS**  
**July 2002**

**EXHIBIT B**

**GMP AMENDMENT TO CM/GC CONTRACT**

**THIS AMENDMENT IS BETWEEN:**

**OWNER:** **The City of Lebanon, Oregon**

**And**

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

**The Project is:**

**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>Estimated Cost of Work (Est. COW):</b>	\$ _____
<b>CM/GC Fee (___ % 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 for GC Work, and the costs of all components and systems required for a complete, fully functional facility.

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

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

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

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

**CM/GC:**

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

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

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

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

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

Title \_\_\_\_\_

Date \_\_\_\_\_

**OWNER:**

CITY OF LEBANON, OREGON

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

Title \_\_\_\_\_

Date \_\_\_\_\_

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

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

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

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

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

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

# GENERAL CONDITIONS FOR PUBLIC IMPROVEMENT CONTRACTS

JULY 2002

INSTRUCTIONS: The attached **General Conditions for Public Improvement Contracts** ("General Conditions") apply to all designated public improvement contracts. Changes to the General Conditions (including any additions, deletions or substitutions) should only be made by attaching Supplemental General Conditions. The text of these General Conditions should not otherwise be altered. These General Conditions have been reviewed as to form by the Oregon Department of Justice. The legal sufficiency and approval requirements of ORS 291.047 remain applicable to individual procurements, unless an exemption has been granted pursuant to that statute and Department of Justice administrative rules at OAR Chapter 137, Division 45.

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**GENERAL CONDITIONS FOR PUBLIC IMPROVEMENT CONTRACTS**  
**("General Conditions")**

**SECTION A**  
**GENERAL PROVISIONS**

**A.1 DEFINITION OF TERMS**

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

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

**CLAIM**, means a demand or assertion by Contractor seeking, as a matter of right, adjustment or interpretation of Contract terms, payment of money, extension of time or other relief with respect to the terms of the Contract.

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

**CONTRACT DOCUMENTS**, means the Solicitation Document and addenda thereto, Instructions to Offerors, Supplemental Instructions to Offerors, the Public Improvement Agreement Form, General Conditions, Supplemental General Conditions, if any, the accepted Offer, Plans, Specifications, amendments and change orders.

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

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

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

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

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

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

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

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

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

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

**OVERHEAD**, means those items which may be included in the Contractor's markup (general and administrative expense, overhead and profit) and that shall not be charged as Direct Cost of the Work: wages or salary of personnel above the level of foreman (i.e., superintendents and project managers); expenses of the Contractor's offices (e.g. job trailer) including personnel; and overhead and general administrative expenses.

**OWNER**, means the City of Lebanon, Oregon.

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

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

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

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

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

**SPECIFICATION**, means any description of the physical or functional characteristics of the Work, or of the nature of a supply, service or construction item. Specifications may include a description of any requirement for inspecting, testing or preparing a supply, service or construction item for delivery and the quantities or qualities of materials to be furnished under the Contract. Specifications generally will state the results or products

to be obtained and may, on occasion, describe the method and manner of doing the work to be performed. Specifications may be incorporated by reference and/or may be attached to the Contract.

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

**SUBSTANTIAL COMPLETION**, means the date when the Owner accepts in writing the construction, alteration or repair of the improvement to real property or any designated portion thereof as having reached that state of completion when it may be used or occupied for its intended purpose. Substantial Completion of facilities with operating systems occurs only after thirty (30) continuous Days of successful, trouble-free operation of the operating systems as provided in Section K.4.2.

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

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

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

## **A.2 SCOPE OF WORK**

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

## **A.3 INTERPRETATION OF CONTRACT DOCUMENTS**

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

- (a) Contract amendments and change orders, with those of later date having precedence over those of an earlier date;
- (b) The Supplemental General Conditions;
- (c) The Public Improvement Agreement Form;
- (d) The General Conditions;
- (e) Division One (General Requirements) of the Specifications;

- (f) Detailed Schedules of finishes, equipment and other items included in the Specifications;
- (g) Plans and Specifications (other than Division One and the Detailed Schedules to the Specifications);
- (h) Large-scale drawings on Plans;
- (i) Small-scale drawings on Plans;
- (j) Dimension numbers written on Plans which shall prevail and take precedence over dimensions scaled from Plans;
- (k) The Solicitation Document, including Instructions to Offerors and Supplemental Instructions to Offerors, and any addenda thereto;
- (l) The accepted Offer.

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

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

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

## **A.4 EXAMINATION OF PLANS, SPECIFICATIONS, AND SITE**

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



Owner, or with the Architect/Engineer either before or after the execution of this Contract, shall affect or modify any of the terms or obligations herein contained.

- A.4.2 Should the Plans or Specifications fail to particularly describe the materials, kind of goods, or details of construction of any aspect of the Work, Contractor shall have the duty to make inquiry of the Owner and Architect/Engineer as to what is required prior to performance of the Work. Absent Specifications to the contrary, the materials or processes that would normally be used to produce first quality finished Work shall be considered a part of the Contract requirements.
- A.4.3 Any design errors or omissions noted by the Contractor shall be reported promptly to the Owner's Authorized Representative, including without limitation, any nonconformity with applicable laws, statutes, ordinances, building codes, rules and regulations.
- A.4.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions issued by the Owner's Authorized Representative (or Architect/Engineer) in response to the Contractor's notices or requests for information, the Contractor must submit a written request to the Owner's Authorized Representative, setting forth the nature and specific extent of the request, including all time and cost impacts against the Contract as soon as possible, but no later than thirty (30) Days after receipt by Contractor of the clarifications or instructions issued. If the Contractor does not concur with the decision of the Owner's Authorized Representative regarding time and cost impacts of the clarifications or instructions, the Contractor may proceed to file a Claim under Section D.3, Claims Review Process. If the Contractor fails to perform the obligations of Sections A.4.1 to A.4.3, the Contractor shall pay such costs and damages to the Owner as would have been avoided if the Contractor had performed such obligations.

#### **A.5 INDEPENDENT CONTRACTOR STATUS**

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

#### **A.6 RETIREMENT SYSTEM STATUS AND TAXES**

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

#### **A.7 GOVERNMENT EMPLOYMENT STATUS**

- A.7.1 If this payment is to be charged against federal funds, Contractor represents and warrants that it is not currently employed by the Federal Government. This does not preclude the Contractor from holding another contract with the Federal Government.
- A.7.2 Contractor represents and warrants that Contractor is not an employee of the State of Oregon for purposes of performing Work under this Contract

## **SECTION B ADMINISTRATION OF THE CONTRACT**

### **B.1 OWNER'S ADMINISTRATION OF THE CONTRACT**

- B.1.1 The Owner's Authorized Representative will provide administration of the Contract as described in the Contract Documents (1) during construction (2) until final payment is due and (3) during the one-year period for correction of Work. The Owner's Authorized Representative will act on Documents, unless modified in writing in accordance with other provisions of the Contract. In performing these tasks, the Owner's Authorized Representative may rely on the Architect/Engineer or other consultants to perform some or all of these tasks.
- B.1.2 The Owner's Authorized Representative will visit the site at intervals appropriate to the stage of the Contractor's operations (1) to become generally familiar with and to keep the Owner informed about the progress and quality of the portion of the Work completed, (2) to endeavor to guard the Owner against defects and deficiencies in the Work, and (3) to determine in general if Work is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. The Owner's Authorized Representative will not make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Owner's Authorized Representative will neither have control over or charge of, nor be responsible for the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work.
- B.1.3 Except as otherwise provided in the Contract Documents or when direct communications have been specifically authorized, the Owner and Contractor shall endeavor to communicate with each other through the Owner's Authorized Representative or designee about matters arising out of or relating to the Contract. Communications by and with the Architect/Engineer's consultants shall be through the Architect/Engineer. Communications by and with Subcontractors and material suppliers shall be through the Contractor. Communications by and with separate contractors shall be through the Owner's Authorized Representative.

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

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

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

responsible for the jobsite safety of such means, methods, techniques, sequences or procedures.

- B.2.2 The Contractor is responsible to protect and maintain the Work during the course of construction and to mitigate any adverse impacts to the project, including those caused by authorized changes, which may affect cost, schedule, or quality.
- B.2.3 The Contractor is responsible for the actions of all its personnel, laborers, suppliers, and Subcontractors on the project. The Contractor shall enforce strict discipline and good order among Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of persons who are unfit or unskilled for the tasks assigned to them.

### **B.3 MATERIALS AND WORKMANSHIP**

- B.3.1 The intent of the Contract Documents is to provide for the construction and completion in every detail of the Work described. All Work shall be performed in a professional manner and unless the means or methods of performing a task are specified elsewhere in the Contract Documents, Contractor shall employ methods that are generally accepted and used by the industry, in accordance with industry standards.
- B.3.2 The Contractor is responsible to perform the Work as required by the Contract Documents. Defective Work shall be corrected at the Contractor's expense.
- B.3.3 Work done and materials furnished shall be subject to inspection and/or observation and testing by the Owner's Authorized Representative to determine if they conform to the Contract Documents. Inspection of the Work by the Owner's Authorized Representative does not relieve the Contractor of responsibility for the Work in accordance with the Contract Documents.
- B.3.4 Contractor shall furnish adequate facilities, as required, for the Owner's Authorized Representative to have safe access to the Work including without limitation walkways, railings, ladders, tunnels, and platforms. Producers, suppliers, and fabricators shall also provide proper facilities and access to their facilities.
- B.3.5 The Contractor shall furnish Samples of materials for testing by the Owner's Authorized Representative and include the cost of the Samples in the Contract Price.

### **B.4 PERMITS**

Contractor shall obtain and pay for all necessary permits and licenses, except for those specifically excluded in the Supplemental General Conditions, for the construction of the Work, for temporary obstructions, enclosures, opening of streets for pipes, walls, utilities, environmental Work, etc., as required for the project. Contractor shall be responsible for all violations of the law, in connection with the construction or caused by obstructing streets, sidewalks or otherwise. Contractor shall give all requisite notices to public authorities. The Contractor shall pay all royalties and license fees. The Contractor shall defend all suits or claims for infringement of any patent or other proprietary rights and save harmless and blameless from loss, on account thereof, the City of Lebanon, and its departments, divisions, members and employees.

### **B.5 COMPLIANCE WITH GOVERNMENT REGULATIONS**

- B.5.1 Contractor shall comply with all federal, state and local laws, codes, regulations and ordinances applicable to the Work. Failure to comply with such requirements shall constitute a breach of Contract and shall be grounds for Contract termination. Damages or costs resulting from noncompliance shall be the responsibility of Contractor. Contractor shall comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to the Contract. Without limiting the generality of the foregoing, Contractor expressly agrees to comply with:
  - (i) Title VI and VII of Civil Rights Act of 1964, as amended;
  - (ii) Section 503 and 504 of the Rehabilitation Act of 1973, as amended;
  - (iii) the Health Insurance Portability and Accountability Act of 1996;
  - (iv) the Americans with Disabilities Act of 1990, as amended;
  - (v) ORS Chapter 659A; as amended;
  - (vi) all regulations and administrative rules established pursuant to the foregoing laws; and
  - (vii) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.
- B.5.2 Contractor shall comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations, as well as "Division AA – Affirmative Action Requirements For Bids To The Board of Higher Education"; and
  - (a) Contractor shall not discriminate against Disadvantaged, Minority, Women or Emerging Small Business enterprises, as those terms are defined in ORS 200.005, in the awarding of subcontracts.
  - (b) Contractor shall maintain, in current and valid form, all licenses and certificates required by law, regulation, or this Contract when performing the Work.
- B.5.3 Unless contrary to federal law, Contractor shall certify that it shall not accept a bid from Subcontractors to perform Work as described in ORS 701.005 under this Contract unless such Subcontractors are registered with the Construction Contractors Board in accordance with ORS 701.035 to 701.055 at the time they submit their bids to the Contractor.
- B.5.4 Unless contrary to federal law, Contractor shall certify that each landscape contractor, as defined in ORS 671.520(2), performing Work under this Contract holds a valid landscape contractor's license issued pursuant to ORS 671.560.
- B.5.5 The following notice is applicable to Contractors who perform excavation Work. ATTENTION: Oregon law requires you to follow rules adopted by the Oregon Utility Notification Center. Those rules are set forth in OAR 952-001-0010 through OAR 952-001-0090. You may obtain copies of the rules by calling the center at (503)232-1987.
- B.5.6 Failure to comply with any or all of the requirements of B.5.1 through B.5.5 shall be a breach of Contract and constitute grounds for Contract termination. Damages or costs resulting from such noncompliance shall be the responsibility of Contractor.

### **B.6 SUPERINTENDENCE**

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

the Owner's Authorized Representative shall be confirmed in writing to the Contractor.

#### **B.7 INSPECTION**

- B.7.1 Owner's Authorized Representative shall have access to the Work at all times.
- B.7.2 Inspection of the Work will be made by the Owner's Authorized Representative at its discretion. The Owner's Authorized Representative will have authority to reject Work that does not conform to the Contract Documents. Any Work found to be not in conformance with the Contract Documents, in the discretion of the Owner's Authorized Representative, shall be removed and replaced at the Contractor's expense.
- B.7.3 Contractor shall make or obtain at the appropriate time all tests, inspections and approvals of portions of the Work required by the Contract Documents or by laws, ordinances, rules, regulations or orders of public authorities having jurisdiction. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work. The Contractor shall give the Owner's Authorized Representative timely notice of when and where tests and inspections are to be made so that the Owner's Authorized Representative may be present for such procedures. Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Owner's Authorized Representative.
- B.7.4 As required by the Contract Documents, Work done or material used without inspection or testing by the Owner's Authorized Representative may be ordered removed at the Contractor's expense.
- B.7.5 If directed to do so any time before the Work is accepted, the Contractor shall uncover portions of the completed Work for inspection. After inspection, the Contractor shall restore such portions of Work to the standard required by the Contract. If the Work uncovered is unacceptable or was done without sufficient notice to the Owner's Authorized Representative, the uncovering and restoration shall be done at the Contractor's expense. If the Work uncovered is acceptable and was done with sufficient notice to the Owner's Authorized Representative, the uncovering and restoration will be paid for as a change order.
- B.7.6 If any testing or inspection reveals failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure, including those of repeated procedures and compensation for the Owner's Authorized Representative's and Architect/Engineer's services and expenses, shall be at the Contractor's expense.
- B.7.7 When the United States government participates in the cost of the Work, or the Owner has an agreement with other public or private organizations, or if any portion of the Work is being performed for a third party or in close proximity to third party facilities, representatives of these organizations have the right to inspect the Work affecting their interests or property. Their right to inspect shall not make them a party to the Contract and shall not interfere

with the rights of the parties of the Contract. Instructions or orders of such parties shall be transmitted to the Contractor, through the Owner's Authorized Representative.

#### **B.8 SEVERABILITY**

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

#### **B.9 ACCESS TO RECORDS**

- B.9.1 Contractor shall keep, at all times on the Work site, one record copy of the complete Contract Documents, including the Plans, Specifications, change orders and addenda, in good order and marked currently to record field changes and selections made during construction, and one record copy of Shop Drawings, Product Data, Samples and similar submittals, and shall at all times give the Owner's Authorized Representative access thereto.
- B.9.2 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 Contractor which are pertinent to the Contract costs, for the purpose of making audit, examination, excerpts and transcripts. If for any reason, any part of the Contract is involved in litigation, Contractor shall retain all pertinent records until all litigation is resolved. The Owner and/or its agents will continue to be provided full access to the records during litigation.

#### **B.10 WAIVER**

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

#### **B.11 SUBCONTRACTS AND ASSIGNMENT**

- B.11.1 Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound by the terms and conditions of these General Conditions, and to assume toward the Contractor all of the obligations and responsibilities which the Contractor assumes toward the Owner thereunder, unless (1) the same are clearly inapplicable to the subcontract at issue because of legal requirements or industry practices, or (2) specific exceptions are requested by Contractor and approved in writing by Owner. Where appropriate, Contractor shall require each Subcontractor to enter into similar agreements with sub-subcontractors at any level.
- B.11.2 At Owner's request, Contractor shall submit to Owner prior to their execution either Contractor's form of subcontract, or the subcontract to be executed with any particular Subcontractor. If Owner disapproves such form, Contractor shall not execute the form until the matters disapproved are resolved to Owner's satisfaction. Owner's review, comment upon or approval of any such form shall not relieve Contractor of its obligations under this Agreement or be deemed a waiver of such obligations of Contractor.
- B.11.3 Contractor shall not assign, sell, or transfer its rights, or delegate its responsibilities under this Contract, in whole or in part, without the prior written approval of the Owner at

Owner's sole and exclusive discretion. No such written approval shall relieve Contractor of any obligations of this Contract, and any transferee shall be considered the agent of the Contractor and bound to perform in accordance with the Contract Documents. Contractor shall remain liable as between the original parties to the Contract as if no assignment had occurred.

#### **B.12 SUCCESSORS IN INTEREST**

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

#### **B.13 OWNER'S RIGHT TO DO WORK**

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

#### **B.14 OTHER CONTRACTS**

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

#### **B.15 GOVERNING LAW**

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

#### **B.16 LITIGATION**

Any Claim between Owner and Contractor that arises from or relates to this Contract and that is not resolved through the Claims Review Process in Section D.3 shall be brought and conducted solely and exclusively within the Circuit Court of Linn County for the State of Oregon; provided, however, if a Claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. In no event shall this section be construed as a waiver by the City of Lebanon or the State of Oregon on any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any claim or from the jurisdiction of any court. CONTRACTOR BY EXECUTION OF THIS CONTRACT HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF THE COURTS REFERENCED IN THIS SECTION B.16.

#### **B.17 ALLOWANCES**

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

B.17.2 Unless otherwise provided in the Contract Documents:

- (a) when finally reconciled, allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- (b) Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit and other expenses contemplated for stated allowance amounts shall be included in the Contract Price but not in the allowances;
- (c) whenever costs are more than or less than allowances, the Contract Price shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (i) the difference between actual costs and the allowances under Section B.17.2(a) and (2) changes in Contractor's costs under Section B.17.2(b).
- (d) Unless Owner requests otherwise, Contractor shall provide to Owner a proposed fixed price for any allowance work prior to its performance.

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

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

- (a) Shop Drawings are drawings, diagrams, schedules and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-Subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.
- (b) Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.
- (c) Samples are physical examples which illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

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

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

- B.18.3 The Contractor shall review for compliance with the Contract Documents, approve and submit to the Architect/Engineer Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of separate contractors. Submittals which are not marked as reviewed for compliance with the Contract Documents and approved by the Contractor may be returned by the Architect/Engineer without action.
- B.18.4 By approving and submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents that the Contractor has determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and has checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.
- B.18.5 The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal has been approved by the Architect/Engineer.
- B.18.6 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Architect/Engineer's review or approval of Shop Drawings, Product Data, Samples or similar submittals unless the Contractor has specifically informed the Architect/Engineer in writing of such deviation at the time of submittal and (i) the Architect/Engineer has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order has been executed by Owner authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by the Architect/Engineer's review or approval thereof.
- B.18.7 In the event that Owner elects not to have the obligations and duties described under this Section B.18 performed by the Architect/Engineer, or in the event no Architect/Engineer is employed by Owner on the project, all obligations and duties assigned to the Architect/Engineer hereunder shall be performed by the Owner's Authorized Representative.

#### **B.19 SUBSTITUTIONS**

The Contractor may make Substitutions only with the consent of the Owner, after evaluation by the Owner's Authorized

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

#### **B.20 USE OF PLANS AND SPECIFICATIONS**

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

#### **B.21 FUNDS AVAILABLE AND AUTHORIZED**

Owner reasonably believes at the time of entering into this Contract that sufficient funds are available and authorized for expenditure to finance the cost of this Contract within the Owner's appropriation or limitation. Contractor understands and agrees that, to the extent that sufficient funds are not available and authorized for expenditure to finance the cost of this Contract, Owner's payment of amounts under this Contract attributable to Services performed after the last day of the current biennium is contingent on Owner receiving from the Oregon Legislative Assembly appropriations, limitations or other expenditure authority sufficient to allow Owner, in the exercise of its reasonable administrative discretion, to continue to make payments under this contract.

### **SECTION C WAGES AND LABOR**

#### **C.1 MINIMUM WAGE RATES ON PUBLIC WORKS**

Contractor shall comply fully with the provisions of ORS 279.348 through 279.365. Documents establishing those conditions, as determined by the Commissioner of the Bureau of Labor and Industries (BOLI), are included as attachments to the Contract Documents.

#### **C.2 PAYROLL CERTIFICATION AND FEE REQUIREMENTS**

C.2.1 In accordance with ORS 279.354, the Contractor and every Subcontractor shall submit written certified statements to the Owner's Authorized Representative, on the form prescribed by the Bureau of Labor and Industries, certifying the hourly rate of wage paid each worker which the Contractor or the Subcontractor has employed on the project and further certifying that no worker employed on the project has been paid less than the prevailing rate of wage or less than the minimum hourly rate of wage specified in the Contract, which certificate and statement shall be verified by the oath of the Contractor or the Subcontractor that the

Contractor or Subcontractor has read such statement and certificate and knows the contents thereof and that the same is true to the Contractor or Subcontractor's knowledge. The certified statements shall set out accurately and completely the payroll records for the prior week including the name and address of each worker, the worker's correct classification, rate of pay, daily and weekly number of hours worked, deductions made and actual wages paid. Certified statements for each week during which the Contractor or Subcontractor has employed a worker on the project shall be submitted once a month, by the fifth business day of the following month. The Contractor and Subcontractors shall preserve the certified statements for a period of three (3) years from the date of completion of the Contract.

C.2.2 Pursuant to ORS 279.375 and in accordance with administrative rules promulgated by the Commissioner of the Bureau of Labor and Industries, the Contractor must pay a fee to the Bureau of Labor and Industries equaling 1/10 of 1% of the Contract price, however, the fee shall not be less than \$100 nor more than \$5,000, regardless of the Contract price. The fee shall be paid on or before the first progress payment or sixty (60) Days from the date Work first began on the Contract, whichever come 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 N.E. Oregon Street, #32  
Portland, Oregon 97232

### **C.3 PROMPT PAYMENT AND CONTRACT CONDITIONS**

- C.3.1 As a condition to Owner's performance hereunder, the Contractor shall:
- C.3.1.1 Make payment promptly, as due, to all persons supplying to Contractor labor or materials for the prosecution of the Work provided for in this Contract.
- C.3.1.2 Pay all contributions or amounts due the State Industrial Accident Fund from such Contractor or Subcontractor incurred in the performance of the Contract.
- C.3.1.3 Not permit any lien or claim to be filed or prosecuted against the Owner on account of any labor or material furnished.
- C.3.1.4 Pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.
- C.3.2 As a condition to Owner's performance hereunder, if Contractor fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to the Contractor of a Subcontractor by any person in connection with the project as such claim becomes due, the proper officer(s) representing the Owner may pay the claim and charge the amount of the payment against funds due or to become due Contractor under this Contract. Payment of claims in this manner shall not relieve the Contractor or the Contractor's surety from obligation with respect to any unpaid claims.
- C.3.3 Contractor shall include in each subcontract for property or services entered into by the Contractor and a first-tier subcontractor, including a material supplier, for the purpose of performing a construction contract, a payment clause that

obligates the Contractor to pay the first-tier Subcontractor for satisfactory performance under its subcontract within ten (10) Days out of such amounts as are paid to the Contractor by the public contracting agency under such contract.

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

### **C.4 PAYMENT FOR MEDICAL CARE**

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

### **C.5 HOURS OF LABOR**

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

- (a) For all overtime in excess of eight (8) hours a day or forty (40) hours in any one week when the work week is five consecutive Days, Monday through Friday; or
- (b) For all overtime in excess of ten (10) hours a day or forty (40) hours in any one week when the work week is four consecutive Days, Monday through Friday; and
- (c) For all Work performed on Saturday and on any legal holiday specified in ORS 279.334

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

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

## **SECTION D CHANGES IN THE WORK**

### **D.1 CHANGES IN WORK**

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

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

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

Deductive changes are those that reduce the scope of the Work, and shall be made by mutual agreement whenever feasible. In cases of suspension or partial termination under Section J, Owner reserves the right to unilaterally impose a deductive change and to self perform such Work, for which the provisions of B.13 (Owner's Right to Do Work) shall then apply. Adjustments in compensation shall be made under the provisions of D.1.3, in which costs for deductive changes shall be based upon the percentages for labor, equipment, material and Subcontractor mark-ups specified therein, unless otherwise agreed to by Owner.

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

- (a) Unit pricing may be utilized at the Owner's option when unit prices or solicitation alternates were provided that established the cost for additional Work, and a binding obligation exists under the Contract on the parties covering the terms and conditions of the additional Work.
- (b) If the Owner elects not to utilize unit pricing, or in the event that unit pricing is not available or appropriate, fixed pricing may be used for change order Work. In fixed pricing the basis of payments or total price shall be agreed upon in writing between the parties to the Contract, and shall be established before the Work is done whenever feasible. The mark-ups set forth in D.1.3(c) shall be utilized by the parties as a guide in establishing fixed pricing, and will not be exceeded by Owner without adequate justification. Cost and price data relating to change orders shall be supplied by Contractor to Owner upon request, but Owner shall be under no obligation to make such requests.
- (c) In the event that unit pricing and fixed pricing are not utilized, then change order Work shall be performed on a cost reimbursement basis for Direct Costs. Such Work shall be compensated on the basis of the actual, reasonable and allowable cost of labor, equipment, and material furnished on the Work performed. In addition, the following markups shall be added to the Contractor's or Subcontractor's Direct Costs as full compensation for profit, Overhead and other indirect costs for Work directly performed with the Contractor's or Subcontractor's own forces:

On Labor.....	15%
On Equipment.....	10%

On Materials..... 10%

When change order Work under D.1.3(c) is invoiced by an authorized Subcontractor at any level, each ascending tier Subcontractor or Contractor will be allowed a supplemental mark-up on each piece of subcontract Work covered by such change order as follows:

\$0.00 - \$5,000.00	10%, and then
Over \$5,000.00	5%

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

D.1.4 Any necessary adjustment of time that may be required as a result of a change order must be agreed upon by the parties before the start of the change order Work unless Owner's Authorized Representative authorizes Contractor to start the Work before agreement on time adjustment. Contractor shall submit any request for additional compensation (and additional time if Contractor was authorized to start Work before an adjustment of time was approved) as soon as possible but no later than thirty (30) Days after receipt of the change order. If Contractor and Owner's Authorized Representative cannot agree on additional compensation or additional time needed to perform change order Work, Contractor may proceed to file a Claim under Section D.3, Claims Review Process. No other reimbursement, compensation, or payment will be made, except as provided in Section D.1.5 for impact claims.

D.1.5 If any change order Work under Section D.1.3 causes an increase or decrease in the Contractor's cost of, or the time required for the performance of, any other part of the Work under this Contract, the Contractor must submit a written request to the Owner's Authorized Representative, setting forth the nature and specific extent of the request, including all time and cost impacts against the Contract as soon as possible, but no later than thirty (30) Days after receipt of the change order by Contractor. If the Contractor does not concur with the decision of the Owner's Authorized Representative, the Contractor may proceed to file a Claim under Section D.3, Claims Review Process.

D.1.6 No request or Claim by the Contractor for additional costs shall be allowed if made after receipt of final payment application under this Contract.

D.1.7 It is understood that changes in the Work are inherent in construction of this type. The number of changes, the scope of those changes, and the effect they have on the progress of the original Work cannot be defined at this time. The Contractor is notified that numerous changes are anticipated and that there will be no compensation made to the Contractor directly related to the number of changes. Each change will be evaluated for extension of Contract time and increase or decrease in compensation based on its own merit.

**D.2 DELAYS**

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

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

- (a) Could have been avoided by the exercise of care, prudence, foresight, and diligence on the part of the Contractor or its Subcontractors.
- (b) Affect only a portion of the Work and do not necessarily prevent or delay the prosecution of other parts of the Work nor the completion of the whole Work within the Contract time.
- (c) Do not impact activities on the accepted critical path schedule.
- (d) Are associated with the reasonable interference of other contractors employed by the Owner that do not necessarily prevent the completion of the whole Work within the Contract time.

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

- (a) Caused by any actions of the Owner, Owner's Authorized Representative, or any other employee or agent of the Owner, or by separate contractor employed by the Owner.
- (b) Caused by any site conditions which differ materially from what was represented in the Contract Documents or from conditions that would normally be expected to exist and be inherent to the construction activities defined in the Contract Documents. The Contractor shall notify the Owner's Authorized Representative immediately of differing site conditions before the area has been disturbed. The Owner's Authorized Representative will investigate the area and make a determination as to whether or not the conditions differ materially from either the conditions stated in the Contract Documents or those which could reasonably be expected in execution of this particular Contract. If Contractor and the Owner's Authorized Representative agree that a differing site condition exists, any additional compensation or additional time will be determined based on the process set forth in Section D.1.5 for change order Work. If the Contractor does not concur with the decision of the Owner's Authorized Representative and/or believes that it is entitled to additional compensation or time, or both, the Contractor may proceed to file a Claim under Section D.3, Claims Review Process.
- (c) Caused by Force Majeure acts, events or occurrences that could not have been avoided by the exercise of care, prudence, foresight, and diligence on the part of the Contractor or its Subcontractors.
- (d) Caused by adverse weather conditions. Any adverse weather conditions must be substantiated by documentary evidence that weather conditions were abnormal for the specific time period claimed, could not have been anticipated by the Contractor, and adversely impacted the project in a manner that could not be avoided by rescheduling the Work or by

implementing measures to protect against the weather so that the Work could proceed. A rain, windstorm, high water, or other natural phenomenon for the specific locality of the Work, which might reasonably have been anticipated from the previous 10-year historical records of the general locality of the Work, shall not be construed as abnormal. The parties agree that rainfall greater than the following levels cannot be reasonably anticipated:

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

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

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

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

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

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

In the event of any requests for additional compensation or additional time, or both, as applicable, arising under this Section D.2.3 for Unavoidable Delays, other than requests for additional compensation or additional time for differing site conditions for which a review process is established under Section D.2.1.2 (b), Contractor shall submit a written notification of the delay to the Owner's Authorized Representative within two (2) Days of the occurrence of the cause of the delay. This written notification shall state the cause of the potential delay, the project components impacted by the delay, and the anticipated additional time extension or the additional compensation, or both, as applicable, resulting from the delay. Within seven (7) Days after the cause of the delay has been mitigated, or in no case more than thirty (30) Days after the initial written notification, the Contractor shall submit to the Owner's Authorized Representative, a complete and detailed request for additional compensation or additional time, or both, as applicable, resulting from the delay. If the Contractor does not concur with the decision of the Owner's Authorized Representative and/or believes that it is entitled to additional compensation, or additional time, or both, as applicable, the Contractor may proceed to file a Claim under Section D.3, Claims Review Process. If Contractor does not timely submit the notices required under this Section D.2.1.3(b), then unless otherwise prohibited by law, Contractor's Claim shall be barred.

### **D.3 CLAIMS REVIEW PROCESS**



- D.3.1 All Contractor Claims shall be referred to the Owner's Authorized Representative for review. Contractor's Claims, including Claims for additional compensation or additional time, shall be submitted in writing by Contractor to the Owner's Authorized Representative within five (5) Days after Contractor's initial request has been denied. Within thirty (30) Days after the initial Claim, Contractor shall submit to the Owner's Authorized Representative, a complete and detailed description of the Claim (the "Detailed Notice") that includes all information required by Section D.3.2. Unless the Claim is made in accordance with these time requirements, it shall be waived.
- D.3.2 The Detailed Notice of the Claim shall be submitted in writing by Contractor and shall include a detailed, factual statement of the basis of the Claim, pertinent dates, Contract provisions which support or allow the Claim, reference to or copies of any documents which support the Claim, the dollar value of the Claim, and the time extension requested for the Claim. If the Claim involves Work to be completed by Subcontractors, the Contractor will analyze and evaluate the merits of the Subcontractor claim prior to forwarding it and that analysis and evaluation to the Owner's Authorized Representative. The Owner's Authorized Representative and the Owner will not consider direct claims from Subcontractors, suppliers, manufacturers, or others not a party to this Contract.
- D.3.3 The Owner's Authorized Representative will review all Claims and take one or more of the following preliminary actions within ten (10) Days of receipt of the Detailed Notice of a Claim: (1) request additional supporting information from the Contractor; (2) inform the Contractor and Owner in writing of the time required for adequate review and response; (3) reject the Claim in whole or in part and identify the reasons for rejection; (4) based on principles of equitable adjustment, recommend approval of all or part of the Claim; or (5) propose an alternate resolution.
- D.3.4 The Owner's Authorized Representative's decision shall be final and binding on the Contractor unless appealed by written notice to the Owner within fifteen (15) Days of receipt of the decision. The Contractor must present written documentation supporting the Claim within fifteen (15) Days of the notice of appeal. After receiving the appeal documentation, the Owner shall review the materials and render a decision within thirty (30) Days after receiving the appeal documents.
- D.3.5 The decision of the Owner shall be final and binding unless the Contractor requests mediation within fifteen (15) Days of receipt of the Owner's decision. The mediation process is non-binding, and in the event that matters at issue are not resolved in mediation then the decision of the Owner shall become final and binding upon Owner's written notice to Contractor. Both the Owner and the Contractor are obligated to participate in the mediation process as outlined in Section D.3.6 during a sixty (60) day period following commencement of mediation prior to either or both proceeding to litigation. However, in the event that litigation must be filed within this sixty (60) day period in order to avoid legal filing deadlines, the parties agree to seek a stay or postponement of the litigation proceedings until the sixty (60) day time period expires.
- D.3.6 Should the parties arrive at an impasse regarding any Claims or disputed Claims, it is agreed that the parties shall participate in mediation as specified in Section D.3.5. The mediation process will be considered to have been

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

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

## **SECTION E PAYMENTS**

### **E.1 SCHEDULE OF VALUES**

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

### **E.2 APPLICATIONS FOR PAYMENT**

- E.2.1 Owner shall make progress payments on the Contract monthly as Work progresses. Payments shall be based upon estimates of Work completed and the Schedule of Values. All payments shall be approved by the Owner's Authorized Representative. A progress payment shall not be considered acceptance or approval of any Work or waiver of any defects therein. Owner shall pay to Contractor interest at the rate of two-thirds of one percent per month on the progress payment, not including retainage, due the Contractor. The interest shall commence on the earlier of either:

- (a) forty five (45) Days from the date of the receipt of the invoice from the Contractor, the date of the initial application for payment if no invoice is received, or from the date the claim is made certain by agreement of the parties or by operation of law, whichever is later, or
- (b) fifteen (15) Days after the payment is approved by the Owner's Authorized Representative.

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

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

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

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

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

- (a) The request for stored material shall be submitted at least thirty (30) Days in advance of the application for payment on which it appears. Applications for payment shall be entertained for major equipment, components or expenditures only.
- (b) The Contractor shall submit applications for payment showing the quantity and cost of the material stored.
- (c) The material shall be stored in a bonded warehouse and Owner's Authorized Representative shall be granted the right to access the material for the purpose of removal or inspection at any time during the Contract Period.
- (d) The Contractor shall name the Owner as co-insured on the insurance policy covering the full value of the property while in the care and custody of the Contractor until it is installed. A certificate noting this coverage shall be issued to the Owner.
- (e) Payments shall be made for materials only. The submitted amount of the application for payment shall be

reduced by the cost of transportation and for the cost of an inspector to check the delivery at out of town storage sites. The cost of said inspection shall be borne solely by the Contractor.

- (f) Within sixty (60) Days of the application for payment, the Contractor shall submit evidence of payment covering the material stored.
- (g) Payment for stored materials shall in no way indicate acceptance of the materials or waive any rights under this Contract for the rejection of the Work or materials not in conformance with the Contract Documents.
- (h) All required documentation must be submitted with the respective application for payment.

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

- (a) Work that is defective and not remedied, or that has been demonstrated or identified as failing to conform with the Contract Documents,
- (b) third party claims filed or evidence reasonably indicating that such claims will likely be filed unless security acceptable to the Owner is provided by the Contractor;
- (c) failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment (in which case Owner may issue checks made payable jointly to Owner and such unpaid persons under this provision, or directly to Subcontractors and suppliers at any level under Section C.3.2.1);
- (d) reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Price;
- (e) damage to the Owner or another contractor;
- (f) reasonable evidence that the Work will not be completed within the time required by the Contract, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;
- (g) failure to carry out the Work in accordance with the Contract Documents; or
- (h) assessment of liquidated damages, when withholding is made for offset purposes.

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

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

- (b) Add that portion of the Contract Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction (or, if approved in advance by the Owner pursuant to Section E.2.3, suitably stored off the site at a location agreed upon in writing), less retainage as provided in Section E.5;
- (c) Subtract the aggregate of previous payments made by the Owner; and
- (d) Subtract any amounts for which the Owner's Authorized Representative has withheld or nullified payment as provided in the Contract Documents.

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

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

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

**E.3 PAYROLL CERTIFICATION REQUIREMENT**

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

**E.4 DUAL PAYMENT SOURCES**

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

**E.5 RETAINAGE**

E.5.1 Retainage shall be withheld and released in accordance with OAR 580-050-0032(10).

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

100 percent of the value of the Work remaining to be done. Upon receipt of written application by the Contractor, Owner shall respond in writing within a reasonable time.

E.5.1.2 In accordance with the provisions of OAR 580-040-0007 and 580-050-0032(10), Contractor may request in writing:

- (a) to be paid amounts which would otherwise have been retained from progress payments where Contractor has deposited acceptable bonds and securities of equal value with Owner or in a custodial account or other mutually-agreed account satisfactory to Owner, with an approved bank or trust company to be held in lieu of the cash retainage for the benefit of Owner;
- (b) that retainage be deposited in an interest bearing account, established through the State Treasurer for state agencies, in a bank, savings bank, trust company or savings association for the benefit of Owner, with earnings from such account accruing to the Contractor; or
- (c) that the Owner allow Contractor to deposit a surety bond for the benefit of Owner, in a form acceptable to Owner, in lieu of all or a portion of funds retained, or to be retained. Such bond and any proceeds therefrom shall be made subject to all claims and liens in the manner and priority as set forth for retainage under ORS 279.526 to ORS 279.542.

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

E.5.1.3 The retainage held by Owner shall be included in and paid to the Contractor as part of the final payment of the Contract Price. The Owner shall pay to Contractor interest at the rate of two-thirds of one percent per month on the final payment due Contractor, interest to commence forty five (45) Days after the Work under the Contract has been completed and accepted and to run until the date when final payment is tendered to Contractor. The Contractor shall notify Owner in writing when the Contractor considers the Work complete and Owner shall, within fifteen (15) Days after receiving the written notice, either accept the Work or notify the Contractor of Work yet to be performed on the Contract. If Owner does not within the time allowed notify the Contractor of Work yet to be performed to fulfill contractual obligations, the interest provided by this subsection shall commence to run forty five (45) Days after the end of the 15-Day period.

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

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

to Owner's retainage from any progress payment due to Contractor.

## **E.6 FINAL PAYMENT**

- E.6.1 Upon completion of all the Work under this Contract, the Contractor shall notify the Owner's Authorized Representative, in writing, that Contractor has completed Contractor's part of the Contract and shall request final payment. Upon receipt of such notice the Owner's Authorized Representative will inspect the Work, and if acceptable, submit to the Owner a recommendation as to acceptance of the completed Work and as to the final estimate of the amount due the Contractor. If the Work is not acceptable, Owner will notify Contractor within fifteen (15) Days of Contractor's request for final payment.. Upon approval of this final estimate by the Owner and compliance by the Contractor with provisions in Section K AFFIDAVIT/RELEASE OF LIENS AND CLAIMS, and other provisions as may be applicable, the Owner shall pay to the Contractor all monies due under the provisions of these Contract Documents.
- E.6.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Owner's Authorized Representative (1) a notarized affidavit/release of liens and claims in a form satisfactory to Owner that states that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least thirty (30) Days' prior written notice has been given to the Owner, (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment and (5), if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.
- E.6.3 Acceptance of final payment by the Contractor, a Subcontractor or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final application for payment.

## **SECTION F JOB SITE CONDITIONS**

### **F.1 USE OF PREMISES**

Contractor shall confine equipment, storage of materials and operation of Work to the limits indicated by Contract Documents, law, ordinances, permits or directions of the Owner's

Authorized Representative. Contractor shall follow the Owner's Authorized Representative's instructions regarding use of premises, if any.

### **F.2 PROTECTION OF WORKERS, PROPERTY AND THE PUBLIC**

- F.2.1 Contractor shall maintain continuous and adequate protection of all of the Work from damage, and shall protect the Owner's Authorized Representative, Owner's workers and property from injury or loss arising in connection with this Contract. Contractor shall remedy acceptably to the Owner, any damage, injury, or loss, except such as may be directly due to errors in the Contract Documents or caused by authorized representatives or personnel of the Owner. Contractor shall adequately protect adjacent property as provided by law and the Contract Documents.
- F.2.2 Contractor shall take all necessary precautions for the safety of all personnel on the job site, and shall comply with the Contract Documents and all applicable provisions of federal, state and municipal safety laws and building codes to prevent accidents or injury to persons on, about or adjacent to the premises where the Work is being performed. Contractor shall erect and properly maintain at all times, as required by the conditions and progress of the Work, all necessary safeguards for protection of workers and the public against any hazards created by construction. Contractor shall designate a responsible employee or associate on the Work site, whose duty shall be the prevention of accidents. The name and position of the person designated shall be reported to the Owner's Authorized Representative. The Owner's Authorized Representative has no responsibility for Work site safety. Work site safety is the responsibility of the Contractor.
- F.2.3 Contractor shall not enter upon private property without first obtaining permission from the property owner or its duly authorized representative. Contractor shall be responsible for the preservation of all public and private property along and adjacent to the Work contemplated under the Contract and shall use every precaution necessary to prevent damage thereto. In the event the Contractor damages any property, the Contractor shall at once notify the property owner and make, or arrange to make, full restitution. Contractor shall report, immediately in writing, to the Owner's Authorized Representative, all pertinent facts relating to such property damage and the ultimate disposition of the claim for damage.
- F.2.4 Contractor is responsible for protection of adjacent work areas including impacts brought about by activities, equipment, labor, utilities, and materials on the site.
- F.2.5 Contractor shall at all times direct its activities in such a manner as to minimize adverse effects on the environment. Handling of all materials will be conducted so no release will occur that may pollute or become hazardous.
- F.2.6 In an emergency affecting the safety of life or of the Work or of adjoining property, the Contractor, without special instruction or authorization from the Owner's Authorized Representative, shall act reasonably to prevent threatened loss or injury, and shall so act, without appeal, if instructed by the Owner's Authorized Representative. Any compensation claimed by the Contractor on account of emergency work shall be determined in accordance with section D.

### **F.3 CUTTING AND PATCHING**

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

### **F.4 CLEANING UP**

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

### **F.5 ENVIRONMENTAL CONTAMINATION**

- F.5.1 Contractor will be held responsible for and shall indemnify, defend (with counsel of Owner's choice) and hold harmless Owner from and against any costs, expenses, damages, claims, and causes of action, (including attorney fees), or any of them, resulting from all spills, releases, discharges, leaks and disposal of environmental pollution, including storage, transportation, and handling during the performance of the Contract which occur as a result of, or are contributed by, the negligence or actions of Contractor or its personnel, agents, or Subcontractors or any failure to perform in accordance with the Contract Documents. Nothing in this section F.5.1 shall limit Contractor's liability or responsibility under Section G.3 of this Contract.
- F.5.1.1 Contractor agrees to promptly dispose of such spills, releases, discharge or leaks to the satisfaction of Owner and proper regulatory agencies in a manner that complies with applicable federal, state, and local laws and regulations. Cleanup shall be at no cost to the Owner and be performed by properly qualified personnel.
- F.5.1.2 Contractor shall obtain the Owner's written consent prior to bringing onto the Work site any (i) environmental pollutants or (ii) hazardous substances or materials, as the same or reasonably similar terms are used in any applicable federal, state, or local statutes, rules or ordinances. Notwithstanding such written consent from the Owner, the Contractor, at all times, shall:
- (a) properly handle, use and dispose of all environmental pollutants and hazardous substances or materials brought onto the Work site, in accordance with all applicable federal, state, or local statutes, rules, or ordinances;
  - (b) be responsible for any and all spills, releases, discharges, or leaks of (or from) environmental pollutants or hazardous substances or materials which Contractor has brought onto the Work site; and

- (c) 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.

F.5.2 Contractor shall report all reportable quantity releases to applicable federal, state, and local regulatory and emergency response agencies. Reportable quantities are found in 40 CFR Part 302, Table 302.4 for hazardous substances and in OAR Chapter 340 Division 108 for all products addressed therein. Upon discovery, regardless of quantity, Contractor must telephonically report all releases to the Owner. A written follow-up report shall be submitted to Owner within 48 hours of the telephonic report. Such written report shall contain, as a minimum:

- (a) Description of items released (identity, quantity, manifest no., and all other documentation required by law.)
- (b) Whether amount of items released is EPA/DEQ reportable, and, if so, when it was reported.
- (c) Exact time and location of release, including a description of the area involved.
- (d) Containment procedures initiated.
- (e) Summary of communications about the release Contractor has had with members of the press or State officials other than Owner.
- (f) Description of cleanup procedures employed or to be employed at the site, including disposal location of spill residue.
- (g) Personnel injuries, if any, resulting from, or aggravated by, the release.

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

- F.6.1 Unless disposition of environmental pollution is specifically a part of this Contract, or was caused by the Contractor (reference F.5 Environmental Contamination), Contractor shall immediately notify Owner of any hazardous substance(s) which Contractor discovers or encounters during performance of the Work required by this Contract. "Hazardous substance(s)" means any hazardous, toxic and radioactive materials and those substances defined as "hazardous substances," "hazardous materials," "hazardous wastes," "toxic substances," or other similar designations in any federal, state, or local law, regulation, or ordinance, including without limitation asbestos, polychlorinated biphenyl (PCB), or petroleum, and any substances, materials or wastes regulated in 40 CFR, Part 261 and defined as hazardous in 40 CFR S 261.3. In addition to notifying Owner of any hazardous substance(s) discovered or encountered, Contractor shall immediately cease working in any particular area of the project where a hazardous substance(s) has been discovered or encountered if continued work in such area would present a risk or danger to the health or well being of Contractor's or any Subcontractor's work force.
- F.6.2 Upon being notified by Contractor of the presence of hazardous substance(s) on the project site, Owner shall arrange for the proper disposition of such hazardous substance(s).

## **F.7 FORCE MAJEURE**

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

### **SECTION G INDEMNITY, BONDING, AND INSURANCE**

#### **G.1 RESPONSIBILITY FOR DAMAGES / INDEMNITY**

- G.1.1 Contractor shall be responsible for all damage to property, injury to persons, and loss, expense, inconvenience, and delay that may be caused by, or result from, the carrying out of the Work to be done under this Contract, or from any act, omission or neglect of the Contractor, its Subcontractors, personnel, or agents.
- G.1.2 To the fullest extent permitted by law, Contractor shall indemnify, defend (with counsel approved by Owner) and hold harmless the Owner, Owner's Authorized Representative, Architect/Engineer, Architect/Engineer's consultants, and their respective officers, directors, agents, employees, partners, members, stockholders and affiliated companies (collectively "Indemnitees") from and against all liabilities, damages, losses, claims, expenses (including reasonable attorney fees), demands and actions of any nature whatsoever which arise out of, result from or are related to, (a) any damage, injury, loss, expense, inconvenience or delay described in this Section G.1.2, (b) any accident or occurrence which happens or is alleged to have happened in or about the project site or any place where the Work is being performed, or in the vicinity of either, at any time prior to the time the Work is fully completed in all respects, (c) any failure of the Contractor to observe or perform any duty or obligation under the Contract Documents which is to be observed or performed by the Contractor, or any breach of any agreement, representation or warranty of the Contractor contained in the Contract Documents or in any subcontract, (d) the negligent acts or omissions of the Contractor, a subcontractor or anyone directly or indirectly employed by them or any one of them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder (except to the extent otherwise void under ORS 30.140), and (e) any lien filed upon the project or bond claim in connection with the Work. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Section G.1.2.
- G.1.3 In claims against any person or entity indemnified under this Section G.1.2 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under Section G.1.2 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

## **G.2 PERFORMANCE AND PAYMENT SECURITY**

- G.2.1 When the Contract Price is \$100,000 or more the Contractor shall furnish and maintain in effect at all times during the Contract Period, a performance bond in a sum equal to the Contract Price, and a separate payment bond also in a sum equal to the Contract Price. The bonds may be required if the Contract Price is less than \$100,000, if required by the Contract Documents.
- G.2.2 Bond forms furnished by the Owner and notarized by awarded Contractor's surety company authorized to do business in Oregon are the only acceptable forms of performance and payment security, unless otherwise specified in the Contract Documents.

## **G.3 INSURANCE**

- G.3.1 Primary Coverage: Insurance carried by Contractor under this Contract shall be the primary coverage, and the Owner's insurance is excess and solely for damages or losses for which the Owner is responsible. The coverages indicated are minimums unless otherwise specified in the Contract Documents.
- G.3.2 Workers' Compensation: All employers, including Contractor, that employ subject workers who work under this contract in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage, unless such employers are exempt under ORS 656.126. This shall include Employer's Liability Insurance with coverage limits of not less than \$100,000 for each accident. Contractors who perform the Work without the assistance or labor of any employee need not obtain such coverage if the Contractor certifies so in writing. Contractor shall ensure that each of its Subcontractors complies with these requirements. The Contractor shall require proof of such Workers' Compensation by receiving and keeping on file a certificate of insurance from each Subcontractor or anyone else directly employed by either the Contractor or its Subcontractors.
- G.3.3 Builder's Risk Insurance:
- G.3.3.1 Builder's Risk: During the term of this Contract, for new construction the Contractor shall maintain in force, at its own expense, Builder's Risk insurance on an all risk form, including earthquake and flood, for an amount equal to the full amount of the Contract. Any deductible shall not exceed \$50,000 for each loss, except the earthquake and flood deductible shall not exceed 2 percent of each loss or \$50,000, whichever is more. The policy will include as loss payees the Owner, the Contractor and its Subcontractors as their interests may appear.
- G.3.3.2 Builder's Risk Installation Floater: For other than new construction the Contractor shall obtain, at the Contractor's expense, and keep in effect during the term of this Contract, a Builder's Risk Installation Floater for coverage of the Contractor's labor, materials and equipment to be used for completion of the Work performed under this Contract. The minimum amount of coverage to be carried shall be equal to the full amount of the Contract. This insurance shall include as loss payees the State of Oregon, the Owner, the Contractor and its Subcontractors as their interests may appear.
- G.3.3.3 Such insurance shall be maintained until Owner has occupied the facility.

G.3.3.4 A loss insured under the Builder's Risk insurance shall be adjusted by the Owner and made payable to the Owner for the insureds, as their interests may appear. The Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub-subcontractors in similar manner. The Owner shall have power to adjust and settle a loss with insurers.

G.3.4 Liability Insurance:

G.3.4.1 Contractor shall obtain, at Contractor's expense, and keep in effect during the term of this Contract, Commercial General Liability Insurance covering bodily injury and property damage in a form and with coverages that are satisfactory to the State. This insurance shall include personal injury liability, products and completed operations, and contractual liability coverage for the indemnity provided under this Contract (to the extent contractual liability coverage for the indemnity is available in the marketplace), and shall be issued on an occurrence basis. Combined single limit per occurrence shall not be less than \$1,000,000 for each job site or location. Each annual aggregate limit shall not be less than \$2,000,000.

G.3.4.2 Automobile Liability: Contractor shall obtain, at Contractor's expense, and keep in effect during the term of this Contract, Automobile Liability Insurance covering owned, non-owned and/or hired vehicles, as applicable. The coverage may be written in combination with the Commercial General Liability Insurance. Combined single limit per occurrence shall not be less than \$1,000,000.00, or the equivalent.

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

G.3.5 Additional Insured: The liability insurance coverage, except Professional Liability if included, required for performance of this Contract shall include the State of Oregon, its departments, divisions, officers, and employees, as Additional Insureds but only with respect to the Contractor's activities to be performed under this Contract.

If Contractor cannot obtain an insurer to name the State of Oregon, its departments, divisions, officers and employees as Additional Insureds, Contractor shall obtain at Contractor's expense, and keep in effect during the term of this Contract, Owners and Contractors Protective Liability Insurance, naming the State of Oregon, its departments, divisions, officers and employees as Named Insureds with not less than a \$1,000,000.00 limit per occurrence. This policy must be kept in effect for 12 months following Final Completion. As evidence of coverage, Contractor shall furnish the actual policy to Owner prior to its issuance of a Notice to Proceed.

G.3.6 Notice of Cancellation or Change: There shall be no cancellation, material change, potential exhaustion of aggregate limits or intent not to renew insurance coverages without thirty (30) Days' written notice from the Contractor or its insurer(s) to the Owner. Any failure to comply with the reporting provisions of this insurance, except for the potential exhaustion of aggregate limits, shall not affect the coverages provided to the State of Oregon, its Owner and their divisions, officers, and employees.

G.3.7 Certificate(s) of Insurance: As evidence of the insurance coverage required by this Contract, the Contractor shall furnish certificate(s) of insurance to the Owner prior to its issuance of a Notice to Proceed. The certificate(s) will specify all of the parties who are Additional Insureds or Loss Payees. Insurance coverage required under this Contract shall be obtained from insurance companies or entities acceptable to Owner and authorized to do business in Oregon. The certificates will also specify that there shall be no cancellation, material change, potential exhaustion of aggregate limits or intent not to renew insurance coverages without thirty (30) Days' written notice from the insurer(s) to the Owner. To the extent Certificates of Insurance contain words to the effect that Contractor shall "endeavor to send notice of cancellation" or similar language, Contractor shall require its insurer to send such notice by making sure that the words "endeavor to" or similar words are removed from the Certificate. The Contractor shall be financially responsible for all deductibles, self-insured retentions and/or self-insurance included hereunder. Any deductible, self-insured retention and/or self-insurance in excess of \$50,000 shall be approved by the Owner in writing prior to issuance of a Notice to Proceed and is subject to Owner's approval.

## SECTION H SCHEDULE OF WORK

### H.1 CONTRACT PERIOD

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

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

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

### H.2 SCHEDULE

H.2.1 Contractor shall provide, by or before the pre-construction conference, a detailed schedule for review and acceptance by the Owner. The submitted schedule must illustrate Work by significant project components, significant labor trades, long lead items, broken down by building and/or floor where applicable. Each schedule item shall account for no

greater than 5 % of the monetary value of the project or 5 % of the available time. Schedules with activities of less than one day or valued at less than 1% of the Contract will be considered too detailed and will not be accepted. Schedules lacking adequate detail, or unreasonably detailed, will be rejected. Included within the schedule are the following: Notice to Proceed, Substantial Completion, and Final Completion. Schedules will be updated monthly and submitted with the monthly payment application. Acceptance of the Schedule by the Owner does not constitute agreement by the Owner, as to the Contractor's sequencing, means, methods, or durations. Any positive difference between the Contractor's scheduled completion and the Contract completion date is float owned by the Owner. Owner reserves the right to negotiate the float if it is deemed to be in Owner's best interest to do so. In no case shall the Contractor make a claim for delays if the Work is completed within the Contract time but after Contractor's scheduled completion.

### **H.3 PARTIAL OCCUPANCY OR USE**

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

## **SECTION I CORRECTION OF WORK**

### **I.1 CORRECTION OF WORK BEFORE FINAL PAYMENT**

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

punch list work within the thirty (30) Day period, without affecting Contractor's obligations Owner may perform such work and Contractor shall reimburse Owner all costs of the same within ten (10) Days after demand.

### **I.2 WARRANTY WORK**

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

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

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

1.2.4 The one-year period for correction of Work shall be extended with respect to portions of Work performed after Substantial Completion by the period of time between Substantial Completion and the actual performance of the Work, and shall be extended by corrective Work performed by the Contractor pursuant to this Section, as to the Work corrected. The Contractor shall remove from the site portions of the Work which are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

1.2.5 Nothing contained in this Section 1.2 shall be construed to establish a period of limitation with respect to other obligations which the Contractor might have under the



Contract Documents. Establishment of the period for correction of Work as described in this Section 1.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

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

## SECTION J

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

#### **J.1 OWNER'S RIGHT TO SUSPEND THE WORK**

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

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

J.1.2 Contractor and the Contractor's Surety shall be notified in writing of the effective date and time of the suspension and shall be notified in writing to resume Work.

#### **J.2 CONTRACTOR'S RESPONSIBILITIES**

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

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

#### **J.3 COMPENSATION FOR SUSPENSION**

J.3.1 Depending on the reason for suspension of the Work, the Contractor or the Owner may be due compensation by the other party. If the suspension was required due to acts or omissions of Contractor, the Owner may assess the Contractor actual costs of the suspension in terms of

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

#### **J.4 OWNER'S RIGHT TO TERMINATE CONTRACT**

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

- (a) If Contractor should voluntarily or involuntarily, seek protection under the United States Bankruptcy Code and Contractor as debtor-in-possession or the Trustee for the estate fails to assume the Contract within a reasonable time;
- (b) If Contractor should make a general assignment for the benefit of Contractor's creditors;
- (c) If a receiver should be appointed on account of Contractor's insolvency;
- (d) If Contractor should repeatedly refuse or fail to supply an adequate number of skilled workers or proper materials to carry on the Work as required by the Contract Documents, or otherwise fail to perform the Work in a timely manner;
- (e) If Contractor should repeatedly fail to make prompt payment to Subcontractors or for material or labor, or should disregard laws, ordinances or the instructions of the Owner or its Authorized Representative; or
- (f) If Contractor is otherwise in material breach of any part of the Contract.

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

#### **J.5 TERMINATION FOR CONVENIENCE**

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

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

## **J.6 ACTION UPON TERMINATION**

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

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

## **SECTION K CONTRACT CLOSE OUT**

### **K.1 RECORD DRAWINGS**

As a condition of final payment (refer also to section E.6), Contractor shall comply with the following: Contractor shall provide to Owner's Authorized Representative, record drawings of the entire project. 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 Contract Documents unless otherwise directed.

### **K.2 OPERATION AND MAINTENANCE MANUALS**

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

### **K.3 AFFIDAVIT/RELEASE OF LIENS AND CLAIMS**

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

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

### **K.4 COMPLETION NOTICES**

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

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

### **K.5 TRAINING**

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

### **K.6 EXTRA MATERIALS**

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

### **K.7 ENVIRONMENTAL CLEAN-UP**

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

### **K.8 CERTIFICATE OF OCCUPANCY**

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

unconditional certificate of occupancy is due to the fault or neglect of Owner.

**K.9 OTHER CONTRACTOR RESPONSIBILITIES**

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

**K.10 SURVIVAL**

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

**APPENDIX C**  
**GC General Conditions Cost Worksheet**

**LIBRARY AND JUSTICE CENTER**  
**City of Lebanon, Oregon**

**Content of Construction General Conditions**

The Construction Management General Condition is to include the following elements, as a minimum:

Superintendent	\$113,111	General Foreman	N/A
Labor Foreman	\$117,013	Other Foreman	N/A
Field Engineer	Included	Field Coordination	Included
Field Supervision	Included	Field Layout	\$19,841
Quality Control	Included	Clean Up	\$28,032
Material Handling	\$25,200	Safety	\$27,792
Project Engineering	\$98,813	Project Coordination	Included
Trade Coordination	Included	Clerical/Secretarial	\$37,239
Temporary Office	\$25,971	Office Equipment & Supplies	\$17,400
Office Clean-up	\$2,600	Office Furniture	\$3,250
Office Security	\$2,600	Drinking Water	\$1,040
Postage/Delivery	\$4,550	Printing/Reproduction	\$2,600
Temporary Toilets	\$12,350	First Aid Supplies	\$500
Phones/Radios/Pagers	\$14,575	Vehicles	\$11,050
Fuel/Maintenance	\$14,682	Barricades and Temporary Partitions, Construction Signage	\$8,500
Substance Abuse Testing	Included	BOLI Fees & Administration	\$5,000
Incidental small tools and repairs/storage/ maintenance of.	\$32,250	Liability, Builders Risk & Workers Comp. Insurance	\$115,000
Permits <sup>1</sup>	Included		

Others: Specify

Project Executive	\$61,248	City Business License	\$500
Project Manager	\$75,947	Hoisting / Crane	COW2
Final Clean	COW <sup>2</sup>	Scaffolding	COW2
Dumpsters	COW <sup>2</sup>	Tree Protection	COW2
Temp. heat/power/water and associated billings	COW <sup>2</sup>		
<b>Total Cost</b>			<b>\$898,653</b>

<sup>1</sup> The building permit is paid by the City and is excluded here

<sup>2</sup> COW = Cost of Work

**APPENDIX C**  
**GC General Conditions Cost Worksheet**

**LIBRARY AND JUSTICE CENTER**  
**City of Lebanon, Oregon**

# Agenda Item 3

# LEBANON CITY ATTORNEY

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80 East Maple Street P Lebanon, Oregon 97355 P Phone: (541) 258-3194 P Fax:  
(541) 258-7575

## MEMORANDUM

**DATE:** September 12, 2007  
**TO:** Mayor and Council  
**FROM:** Thomas McHill, Lebanon City Attorney  
**RE:** Contract for Judicial Services

You have recently received correspondence from Judge Houchin concerning his proposal to extend the terms of his contract with the City for the provision of judicial services for another two year term. Basically, the proposal is to continue the current monthly stipend at its current level, with changes to be made in future years of the contract to reflect average pay increases for employees for the fiscal year 2008-09. All other provisions of the existing contract would remain in effect. A copy of the existing contract is provided for you information.

If you approve the changes suggested by Judge Houchin, please take action to direct staff to make the appropriate amendments to the existing contract and authorize signatures on the contractual amendment. If you would like staff to negotiate or discuss further, please also give that direction.

As you know, recent changes to the Lebanon Municipal Code, primarily found in section 3.04.070, have set forth a procedure for review of personal service contracts and the letting of personal service contracts. This procedure allows the council to use a bidding process to decide the letting of the contract. The Council has, in the past, suggested the use of this procedure to consider other alternatives in procuring personal service contracts. Therefore, if the Council decides to use this method of obtaining personal services in this area, staff will need that direction to proceed. Remember, the current contract with the Judge expires on October 31, 2007.

However, if you are satisfied with the current situation, LMC 3.04.070 (F) provides as follows:

“The above provisions regarding selection procedures do not apply to amendments, modifications or supplements to executed personal service contracts.”

You are therefore, in this case of an amendment or supplement to an executed personal services contract, simply approve the changes and proceed with the agreement.

LARRY K. HOUCHIN  
MUNICIPAL JUDGE  
31827 LAWRENCE STREET  
LEBANON, OREGON 97355  
541 258-8477

Lebanon Municipal Court  
40 East Maple Street  
Lebanon, OR 97355

August 20, 2007

Mayor Ken Toombs  
Lebanon City Council  
John Hitt, City Manager  
Thomas McHill, City Attorney

Re: Contract for Judicial Services for City of Lebanon

Mr. Mayor, City Council Members, Mr. Hitt, Mr. McHill

The current two year contract between the City of Lebanon and me for judicial services began October 31, 2005. I have had the honor of serving as the Lebanon Municipal Judge since October 1999 and would like to continue as your judge.

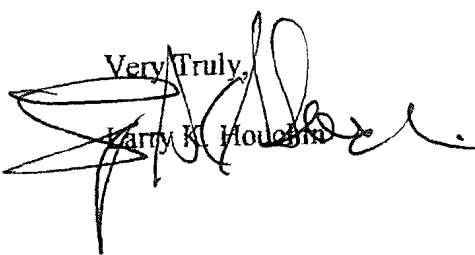
I propose that the City of Lebanon and I extend the current judicial services contract for another two year period on the same general terms and conditions as the current contract with the following modifications:

1. That the contract period shall be for a two year term with option to renew for a similar term:
2. That the monthly stipend for the judicial services from November 1, 2007 through July 2008 shall continue at the same monthly rate, ie. \$3051.00:
3. Beginning August 1, 2008 through October 31, 2009 the monthly compensation shall be \$3051.00 per month plus the average pay increase granted Lebanon City employees for the fiscal year 2008-09.
4. Unless expressly modified by this memorandum and agreement, all other provisions of the Personal Services Contract entered into between City of Lebanon and Larry K. Houchin on October 27, 1999 shall remain in full force and effect.

I respectfully request the opportunity to continue to serve the City of Lebanon as Municipal Judge.

Very Truly,

Larry K. Houchin





## CONTRACT TO PROVIDE MUNICIPAL COURT SERVICES

THIS AGREEMENT, is made and entered into this 10<sup>th</sup> day of October, 1999, by and between the CITY OF LEBANON, Oregon, a municipal corporation, hereinafter referred to as "CITY" and LARRY K. HOUCHIN, Attorney at Law.

### WITNESETH

WHEREAS, the CITY desires the services of LARRY K. HOUCHIN as Municipal Judge, pursuant to the provisions of the charter of the City of Lebanon; and

WHEREAS, LARRY K. HOUCHIN desires to serve in said capacity as an independent contractor, rather than as an employee of the CITY OF LEBANON; and

WHEREAS, it is the desire of both parties hereto to establish and set forth their mutual responsibilities one to the other.

NOW, THEREFORE, in consideration of the mutual promises contained herein, it is hereby agreed as follows:

1. Duties. The CITY hereby contracts with LARRY K. HOUCHIN to perform all functions and duties specified in the charter of the CITY OF LEBANON, and to perform such other legally permissible and proper duties and functions as said position shall require. These duties shall include, but are not limited to, the following:

- a. Provide oversight of the Municipal Court judicial function, including pretrial conferences, scheduling of pro tem judges, and annual reviews of the financial condition of the Municipal Court system;
- b. Preside over criminal, traffic, parking cases, arraignments, trials, hearings, and set forth the courtroom calendar;
- c. Develop and carry out policies for trial procedures, including the adoption of an appropriate bail schedule;
- d. From time to time, review and recommend changes to the Lebanon Municipal Code which relate to Municipal Court as LARRY K. HOUCHIN deems appropriate;
- e. Make recommendations to the CITY to improve the financial or other operating conditions of the Court.

2. Independent Contractor. In performing the duties of Municipal Court Judge,

LARRY K. HOUCHIN shall serve as an independent contractor, and not as an employee of the CITY. The CITY shall have no right or responsibility to control or influence the manner in which he carries out his judicial responsibilities, save and except that LARRY K. HOUCHIN agrees to carry out his duties in a timely, consistent, and impartial manner. All employees of LARRY K. HOUCHIN who may work under this agreement are subject employees under the Oregon Worker's Compensation law and LARRY K. HOUCHIN agrees to comply with ORS 656.017 as to such persons.

3. Pro Tem Services. While it is agreed that LARRY K. HOUCHIN shall personally serve as Municipal Judge and shall be available to fill the duties of that office, it is anticipated that ethical conflicts, scheduling conflicts, vacations, illness, etc. will occasionally require the employment of pro tem municipal judges. It is understood that it is in the interest of both parties to maintain an active pool of pro tem judges so that the work for the Municipal Court will not be interrupted when LARRY K. HOUCHIN must be absent from that position. Therefore:

a. On or before the 1<sup>st</sup> day of January, of each and every year this contract remains in effect, LARRY K. HOUCHIN shall submit to the City Council the names of those persons whom he wishes to nominate as pro tem judges for the 12 months following the date of such appointment. These persons shall all be members of the Oregon State Bar, in good standing, and must be satisfactory to the City Council of the CITY. Upon receiving such list of proposed pro tem judges, the City Council shall, at its next regularly scheduled meeting, or as soon thereafter as may be convenient, review the list of persons nominated by LARRY K. HOUCHIN and approve or deny their appointment as pro tem municipal judges. Any pro tem municipal judge shall also be an independent contractor and not an employee of the City of Lebanon and shall exercise the same functions, duties, powers, and responsibilities as those assumed by LARRY K. HOUCHIN pursuant to this agreement.

b. Except for occasions requiring a pro tem judge because LARRY K. HOUCHIN may have an ethical conflict of interest, LARRY K. HOUCHIN shall be responsible to compensate pro tem municipal judges at his own expense and upon such terms as he and they may agree. In the event of an ethical conflict of interest which may require, on a case by case basis, the employment of a pro tem municipal court judge, CITY shall be responsible to compensate such pro tem municipal court judge.

c. LARRY K. HOUCHIN shall make a reasonable effort to maintain a pool of at least three pro tem municipal court judges and shall endeavor to rotate pro tem services evenly among the approved pro tem pool so that all will be reasonably familiar with Municipal Court procedures should their service be necessary.

d. LARRY K. HOUCHIN shall instruct all pro tems concerning procedures and customary sentences in order to promote uniformity to the greatest extent possible.

4. Term. This agreement shall commence on the date set forth on page one and shall continue until November 1, 2001. This contract may be renewed annually upon the terms set forth herein or upon any other terms mutually acceptable to both parties. Notwithstanding the foregoing, LARRY K. HOUCHIN shall serve at the pleasure of the City Council. No rights, responsibilities, salary, or other benefits shall extend beyond the term of this Agreement and nothing in this Agreement shall be deemed to vest in LARRY K. HOUCHIN any property interest in the duties, responsibilities, or compensation provided in this contract or any right to the continuation thereof. Either party may, at any time, terminate this Agreement, with or without cause, upon sixty days written notice, in which event LARRY K. HOUCHIN shall be entitled to all compensation then due.

5. Compensation. LARRY K. HOUCHIN shall be paid the sum of \$2,500.00 per month as compensation for services to be performed pursuant to this Agreement. Payment shall be made pursuant to CITY's usual practices for the payments of accounts payable.

6. Hours of Work. It is recognized that the hours devoted by the judge in the performance of his responsibilities may vary with the caseload of the court. It is anticipated that court shall be conducted every Wednesday of every month, for one half day on the second Tuesday of each month, and for a full day on the fourth Tuesday of the month. In addition, LARRY K. HOUCHIN will be "on call" for arraignment of persons held in custody from time to time, and to decide other matters of the administration of the court.

7. Periodic Review. The City Council may review the performance and compensation of the Municipal Court Judge by such method, and at such times as the Council shall deem appropriate.

8. General Provisions. This Agreement shall constitute the entire agreement between the parties and supercedes any previous agreements or understandings. If any provisions or a portion thereof contained in this Agreement is held to be unconstitutional, invalid, or unenforceable, the remainder of this agreement, or portion thereof, shall be deemed severable, shall not be affected, and shall remain in full force and effect. No other benefits, consideration or compensation of any kind shall be due from CITY to LARRY K. HOUCHIN or any pro tem judge other than as set forth herein.

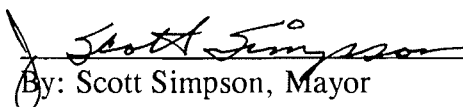
The CITY agrees to provide administrative support staff to LARRY K HOUCHIN with qualified CITY employees and shall pay all costs relative to court operations. Staff members employed by CITY to provide support to the municipal judge shall be supervised administratively by the finance director for the city, who will prepare performance evaluations of each staff member with the assistance of the municipal judge.

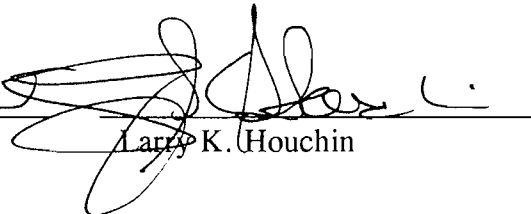
In the event of disagreement or litigation concerning this Agreement, the parties agree to employ binding arbitration according to the mediation and arbitration rules of the Linn County Circuit Court. In such event, the parties agree that the arbitrator may award the

payment of attorney fees to be paid by the loser to the winner in such arbitration. In the event that the arbitrator reaches a decision in such litigation, the parties agree that the award of the arbitrator may be reduced to judgment and entered into the records of the Linn County Circuit Court as provided by law.

WHEREFORE, the parties hereto do execute this agreement by virtue of the lawful authority of the Lebanon City Council, upon the date first mentioned above.

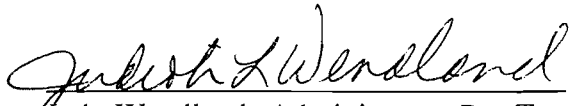
CITY OF LEBANON

  
By: Scott Simpson, Mayor

  
Larry K. Houchin

Date: 10-27-99

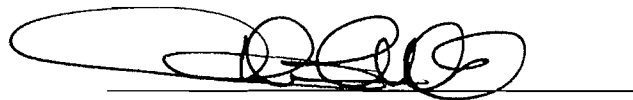
Date: 11-03-99

  
Judy Wendland, Administrator Pro Tem

Date: 10-27-99

ATTEST:

  
City Recorder Pro Tem

  
Approved as to form  
Thomas A. McHill, City Attorney

# Agenda Item 4



## CITY OF LEBANON MEMORANDUM

---

TO: Jim Ruef  
Public Works Director

DATE: 9/04/07

FROM: Malcolm Bowie  
City Engineer

CC:

SUBJECT: Wastewater Treatment Plant improvements Resolution

---

In February 07 staff presented to City Council proposed Wastewater Treatment Plant projects to comply with the recommended implementation of improvements identified in Lebanon Wastewater Treatment Plant Facilities Plan. One of capital improvements presented to City Council was a proprietary innovative process for biosolids treatment that would reduce the amount of biosolids generated by the treatment plant by a significant amount approximately 80%. This process has been patented and named as the cannibal process. The cannibal project alone as presented to council will effectively replace four of the phase I and II projects listed in the Wastewater Treatment Plant Facilities Plan totaling about 4 million dollars in 2004 dollars. At the same time it is anticipated that odors from the treatment plant will be greatly reduced.

In accordance with ORS 279B staff is requesting permission to contract for goods and services with OMI/CH2M Hill for design and construction services and Siemens for financial services. A resolution will be provided to council for adoption with listed findings incorporated within the resolution.

The purpose of this memo is to request City Council to adopt a resolution allowing non competitive contract procurement for design construction and financial services for the wastewater treatment plant biosolids project.

# SIEMENS FINANCIAL SERVICES

September 7, 2007

Mr. Casey Cole  
Finance Director  
City of Lebanon  
853 Main Street  
Lebanon, OR 97355

*Draft*

Re: Financing for a Wastewater Treatment Facility

Dear Mr. Cole:

**Siemens Financial Services, Inc.** ("SFS") is pleased to outline the following lease proposal to City of Lebanon for your review and consideration. This proposal is subject to, among other things, Lessee being qualified to issue tax exempt obligations under the Internal Revenue Code, as well as certain additional conditions set forth hereinafter.

**Lessor:** Siemens Public, Inc., its affiliates, assigns or nominees

**Lessee:** The Wastewater Enterprise Fund of the City of Lebanon

**Type of Lease:** Lease Purchase Agreement with pledge of net revenues of the Proprietary Fund. Firm term lease not subject to annual appropriation. The transaction will be triple net, whereby any insurance, maintenance, filing, registration, searches and taxes relating to the purchase, lease, ownership, possession and use of the property and to the transaction, including Lessee's issuance costs and all items of a similar nature, will be for Lessee's account.

**Tax Treatment:** The interest portion of the Lease Payments must be excludable from the gross income of the Lessor for federal income tax purposes.

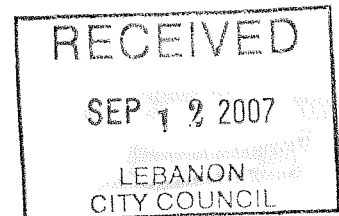
**Transaction Description:** Financing of a wastewater treatment plant incorporating the Cannibal Solids Reduction Process

**Total Cost:** It is anticipated that the Total Cost will be \$4,250,000.

**Vendor/Contractor:** Siemens Water Technologies together with CH2MHill as project manager.

**Equipment Location:** City of Lebanon wastewater treatment site.

**Delivery Date:** Design and engineering to commence in October of 2007; plant completion and commissioning to occur in or about September of 2008.



<b>Payment &amp; Performance Bond:</b>	Bond will be required prior to funding.
<b>Lease Term:</b>	Fifteen (15) years, including within the term the twelve (12) month design, engineering, and construction period.
<b>Commencement Date:</b>	On or about September 30, 2007.
<b>Interest Rate and Lease Payments:</b>	<p>This transaction will be based upon a current rate of interest equal to 4.62% and subject to the "Adjustment to Lease Payments" section below wherein the rate will be fixed for the term of the lease two business days prior to funding the Total Cost Amount into the Escrow Account</p> <p>The Lease will commence upon funding of the Escrow Account. Lessee will make no payments during the twelve month engineering and construction period for which interest on the Total Cost Amount will be calculated and added monthly to the then outstanding principal balance. Following the Escrow Period, Lessee shall make twenty-eight (28) consecutive semi-annual lease payments, each in advance and each in an amount equal to \$213,268.07.</p>
<b>Adjustments to Lease Payments:</b>	The Lease Payments specified above are based upon a Reference Rate of 5.70%, as reported in the H15 Report on June 29, 2007. The Reference Rate is defined to be the yield of the ten year Swap Rate. The interest rate that will actually be used in establishing the Lease Payments will be increased or decreased by point six five (.65) basis points for each one (1) basis point increase or decrease in the Reference Rate as published in the Wall Street Journal two business days prior to the Commencement Date, provided that the increase or decrease in the Reference Rate is at least five (5) basis points.
<b>Escrow Account:</b>	SFS is proposing to deposit the principal sum into an Escrow Account on the (the "Commencement Date") on behalf of the Lessee for this transaction. The Lessee is responsible for paying all Escrow Agent fees. Any excess interest earnings remaining in Escrow after payment in full to the Contractor(s) will be paid to the Lessee or used by the Lessee to make the first scheduled Lease Payment.
<b>Prepayment Option:</b>	The Lessee will have the option to prepay its obligations under the Lease as specified in the Lease after year five.
<b>Insurance:</b>	Lessee must provide evidence of physical damage and liability insurance in an amount and from an insurance carrier satisfactory to SFS. SFS must be listed on the policies as loss payee and additional insured, as applicable, and a certificate of insurance is to be provided to the Lessor.
<b>Title:</b>	Title to the Equipment will transfer to Lessee upon acceptance of the Equipment, subject to divestment for default by Lessee.
<b>Grant of Security Interest:</b>	Pledge of net revenues of the Proprietary Fund.



- Covenants:** Lessee cannot issue additional debt unless debt service coverage for existing and proposed debt is at least 1.2 to 1. Lessee covenants to raise rates sufficient to meet debt service payments for all outstanding debt.
- Legal Opinions:** An opinion will be required by Lessee's Legal Counsel as to, among other things, the legality, enforceability, authority, title and execution and tax effect of the Lease.
- Documentation:** All documentation will be provided by Lessor and must be satisfactory to all parties concerned. The following standard documentation, among others, will be required for this transaction:
1. Municipal Lease/Purchase Agreement
  2. Delivery & Acceptance
  3. Amortization Schedule
  4. Essential Use/Source of Funds Letter
  5. Opinion of Counsel
  6. Tax Opinion
  7. Resolution
  8. Notice of Assignment
  9. Officer's Certificate
  9. 8038-G (GC)
  10. Other documents deemed necessary pursuant to the terms of lease approval
- Lessor may, at its discretion, order UCC, judgment, tax and similar searches against Lessee. Additional documentation and/or information may be required based upon the results of those searches. All fees and costs for legal, documentation, insurance, maintenance, filing, registration and searches relating to the transaction, and all items of a similar nature, will be for Lessee's account.
- Proposal Expiration:** The proposal expires on October 1, 2007.

The terms and conditions outlined herein are not all-inclusive and are based upon information provided to date. This proposal does not represent an offer or commitment by Lessor to enter into a lease transaction or to purchase the Equipment described in this proposal, and does not create any obligation for Lessor. A commitment to enter into the transaction described herein may only be extended by Lessor after this transaction has been approved by all appropriate credit and other authorities within Lessor and a "written commitment letter" has been issued by Lessor. Closing of this proposed transaction will be subject to, among other things, there having occurred no material adverse change in the Lessee's financial condition or business operations or in the economic and/or regulatory conditions existing prior to the closing and, subject further, to the execution by Lessee and Lessor, and delivery to Lessor, of all documents required by Lessor, all in form and substance acceptable to Lessor. This proposal may be withdrawn or modified by Lessor at anytime prior to a definitive written commitment letter to enter into a lease transaction with Lessee being issued by Lessor and accepted by Lessee. Lessor shall have the sole right to assign this proposal, any commitment letter or any lease between Lessee and Lessor. All rates stated herein are based upon current money cost, tax rates and tax law assumptions. Should any changes occur, the rates will be adjusted accordingly.

Please feel free to contact me if you have any questions, or would like to discuss this proposal in greater detail. Thank you for allowing us the opportunity to present this proposal.

Sincerely,

William Haefliger  
Siemens Financial Services

**LESSEE:** The Wastewater Enterprise Fund of the City of Lebanon

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

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

**Title:** \_\_\_\_\_

**Date:** \_\_\_\_\_

# Agenda Item 5



MEMORANDUM

---

*Administration Department*

**To:** Mayor and City Council

**Date:** September 6, 2007

**From:** City Manager *Jyu*

**Subject:** City Manager's Report

---

At the September 12, 2007 City Council Meeting, I will provide a brief, oral update on the following matters:

1. Community Development Manager Recruitment
2. City Council Schedule
3. City Signage
4. Miscellaneous Matters.

JEH/jc

# \*Executive Session

*Per ORS 192.660(1)(e) To conduct deliberations with persons designated by the Council to negotiate real property transactions.*

*Per ORS 192.660(1)(i) To review & evaluate the employment related performance of the chief executive officer*

*\* Executive Sessions are closed to the public due to the highly confidential nature of the subject. It is unlawful to discuss anything outside of the Executive Session.*



CITY OF LEBANON  
**MEMORANDUM**

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TO: Jim Ruef  
Public Works Director

DATE: 9/04/07

FROM: Malcolm Bowie  
City Engineer

CC:

SUBJECT: Permission to make an offer regarding real property necessary for  
City Operations

---

New real property is necessary to expand existing city operations.  
(A map will be provided at this meeting).

The purpose of this memo is to request City Council to convene in executive session to grant permission to City staff to offer to purchase real property to facilitate operations expansion .

# Agenda Item 6



CITY OF LEBANON  

---

MEMORANDUM

TO: Jim Ruef  
Public Works Director

DATE: 9/04/07

FROM: Malcolm Bowie  
City Engineer

CC:

SUBJECT: Permission to make an offer regarding real property necessary for  
City Operations

---

New real property is necessary to expand existing city operations.  
(A map will be provided at this meeting).

The purpose of this memo is to request City Council to convene in executive session to grant permission to City staff to offer to purchase real property to facilitate operations expansion .



# Agenda Item 7



MEMORANDUM

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*Administration Department*

**To:** Mayor and City Council

**Date:** September 6, 2007

**From:** City Manager *[Signature]*

**Subject:** City Manager's Contract/Salary Adjustment

---

Attached is a proposed, revised employment agreement as well as my current employment agreement, signed in 2000.

The new one is modeled after that of the City of Springfield. In addition, I have attached some current City Manager recruitments from several cities Lebanon's size and smaller, as well as my salary history and the annual CPI changes.

JEH/jc

May, 2000

## EMPLOYMENT AGREEMENT

This Employment Agreement (this "Agreement") is made and entered into effective May 15, 2000, between the City of Lebanon ("CITY") and JOHN E. HITT ("CITY ADMINISTRATOR").

### RECITAL

CITY wishes to employ CITY ADMINISTRATOR as City Administrator for CITY on the terms and conditions hereinafter set forth, and CITY ADMINISTRATOR wishes to accept such employment on such terms and conditions.

### AGREEMENT

The parties mutually agree as follows:

1. EMPLOYMENT. CITY hereby agrees to employ CITY ADMINISTRATOR and CITY ADMINISTRATOR hereby accepts employment with CITY on the terms and conditions set forth in this Agreement, Oregon law and the Charter of the City of Lebanon.

2. DUTIES. CITY ADMINISTRATOR shall serve as the administrative head of the government of the City of Lebanon, Linn County, Oregon, and shall devote his full time and best efforts to the duties of that position. He shall serve at the pleasure of the Lebanon City Council, pursuant to the terms of the Lebanon Charter, the ordinances of the City of Lebanon, Linn County, Oregon and the laws of the State of Oregon.

3. TERM. The initial term of this Agreement commences May 15, 2000 and continues until terminated by the parties.

4. COMPENSATION.

4.1 Monthly Base Salary. CITY shall pay CITY ADMINISTRATOR a base salary at the monthly rate of no less than \$6,100. The base salary will be reviewed at an initial interval of six months, and thereafter as agreed by the parties for possible adjustment by CITY.

5. EMPLOYEE BENEFITS.

5.1 Benefits Generally. CITY ADMINISTRATOR shall be entitled to all the benefits applicable to the management personnel of CITY as are incident to



14. ENTIRE AGREEMENT. This Agreement constitutes and embodies the entire understanding and agreement of the parties hereto relating to the matters addressed herein. Except as otherwise provided herein, there are no other agreements or understandings, written or oral, in effect between the parties relating to the matters addressed herein.

IN WITNESS WHEREOF, CITY has caused this Employment Agreement to be executed and CITY ADMINISTRATOR has executed this Employment Agreement as of the date indicated.

CITY ADMINISTRATOR:

CITY:

\_\_\_\_\_  
John E. Hitt

\_\_\_\_\_  
J. Scott Simpson, Mayor, City of Lebanon

Dated: April \_\_\_\_\_, 2000

Dated: April \_\_\_\_\_, 2000

\_\_\_\_\_  
Thomas A. McHill  
Lebanon City Attorney  
Dated: April \_\_\_\_\_, 2000

their employment relationship with CITY, including but not limited to vacation, medical insurance and other insurance benefits, and leaves. The publication, "Exempt Employee Summary of Benefits, November 1999" adopted by CITY November 16, 1999 is hereby incorporated into this agreement by the parties as if set forth at this point. If any provision of said summary of benefits should contradict a provision of this agreement, this agreement shall control.

- 5.2 Personnel Policies. Except as provided in this Agreement, CITY ADMINISTRATOR is subject to the personnel policies of CITY that are generally applicable to management personnel.
- 5.3 Expenses. In addition to the base monthly pay as aforementioned, CITY shall pay to CITY ADMINISTRATOR the monthly sum of \$300 as car allowance pursuant to CITY policy. Any other expenses incurred by CITY ADMINISTRATOR shall be reimbursed to him pursuant to CITY's policy concerning reimbursements.
- 5.4 Professional Liability. Subject to the requirements of Oregon law, CITY shall defend, hold harmless, and indemnify CITY ADMINISTRATOR from any and all legal proceedings, including but not limited to those brought in court, administrative bodies, brought against CITY ADMINISTRATOR in his capacity as agent and CITY ADMINISTRATOR of CITY, provided the incident arises while CITY ADMINISTRATOR is acting within the scope of his employment.

6. MEDICAL EXAMINATIONS. CITY shall, at its expense, provide for CITY ADMINISTRATOR, a complete medical examination prior to commencing work. Any report of the medical examination shall be given by the examining physician to CITY. CITY shall be advised in writing by the physician of the physical fitness of CITY ADMINISTRATOR to perform the duties. If the medical examination report discloses facts or conditions that render CITY ADMINISTRATOR unqualified to perform his essential duties under this Agreement despite reasonable accommodations, CITY may terminate this Agreement.

7. CONFIDENTIALITY. During and after the term of this Agreement, CITY ADMINISTRATOR will not disclose or use any Confidential Information except for CITY's benefit. Confidential Information is all nonpublic information about CITY or its business that is disclosed to CITY ADMINISTRATOR, that he produces, or that he otherwise obtains during his employment.

8. TERMINATION OF EMPLOYMENT. This Agreement and CITY ADMINISTRATOR's employment may be terminated by:

- 8.1 Mutual Agreement of the Parties.
- 8.2 Retirement or Resignation. CITY ADMINISTRATOR will give written notice of retirement or resignation at least 60 days in advance. If CITY ADMINISTRATOR terminates his employment in accordance with this paragraph, CITY shall pay CITY ADMINISTRATOR pursuant to the provisions of the Exempt Employee Summary of Benefits.
- 8.3 Disability. CITY may terminate this Agreement by written notice to CITY ADMINISTRATOR at any time after CITY ADMINISTRATOR has exhausted any accumulated sick leave and such other leave as may be available under CITY policies and has remained unable to perform the essential functions of his position immediately following exhaustion of all leave. If CITY ADMINISTRATOR becomes disabled during the term of this Agreement, CITY shall pay to CITY ADMINISTRATOR his base salary and accrued vacation pay through the date he is determined to be disabled. Any accrued sick leave and any disability benefits to which CITY ADMINISTRATOR is then entitled shall be paid in accordance with the terms of CITY's plans and policies establishing sick leave and disability benefits.
- 8.4 Discharge for Cause by the Lebanon City Council. Cause for discharging shall be any misconduct, malfeasance, neglect of duty, breach of this Agreement, or other actions or inactions that are contrary to the interests of CITY. In making that determination, CITY reserves to itself the sole right to determine the relevant facts and to assess the severity of CITY ADMINISTRATOR's inappropriate actions or inactions. While termination pursuant to this section is under consideration, CITY may relieve CITY ADMINISTRATOR from his duties under this Agreement. If CITY ADMINISTRATOR's employment and this Agreement are terminated for cause, CITY shall pay to CITY ADMINISTRATOR his base salary and any other benefits pursuant to the Exempt Employee Exempt Benefits accrued through the date of termination and CITY shall have no further obligations to CITY ADMINISTRATOR.
- 8.5 Death. If CITY ADMINISTRATOR dies during the term of this Agreement, CITY shall pay to CITY ADMINISTRATOR's representative all benefits, including death benefits, to which CITY ADMINISTRATOR is then entitled shall be paid in accordance with the terms of CITY's plans and policies establishing such benefits. This Agreement shall terminate as of the date of death, and except as provided in this section, CITY shall have no further obligations to CITY ADMINISTRATOR hereunder.

**City Manager** – Dallas, Oregon. ([www.ci.dallas.or.us](http://www.ci.dallas.or.us)) Population 14,585 (20,000 in immediate community). Salary Range \$110,000 - \$130,000, plus excellent benefit package. City Manager retiring after 25 years. Dallas is a full service, growing community that has retained its small town charm. The City is well managed and fiscally sound. Located in the scenic Willamette Valley, it is close to the coast, world class wineries, mountains, colleges and a wide variety of recreational opportunities. Under the City's Charter, the manager reports to a 9 member City Council and is required to establish residency within the city limits.

The successful candidate will have an understanding and appreciation of the council-manager form of government, be an effective communicator who is able to build consensus and build upon the successful foundation of achievements in Dallas. He/she should also be an active and visible member of the community. The city is seeking an experienced leader who has respect for the City Council and its role in policy setting, working for the City Council as a group. The successful candidate will continue a respectful, team centered, and supportive work environment that attracts and retains excellent staff. Knowledge of urban renewal and funding, bonding, loans, grants, land use, development, and transportation infrastructure, along with labor and personnel law experience and skills are desired. Strong knowledge of finance and budgeting are required. The ability to understand and supervise full service operations, including contract administration, public works, fire, library, police, water, storm water, sanitary sewer, ambulance and parks and recreation, including an aquatic center is needed. The city manager should have strong negotiation skills and the ability to identify and anticipate issues and needs, while proposing alternate solutions. The city is looking for an individual who will understand community volunteerism and its importance to Dallas. The city manager should be innovative and able to oversee technological advancement within the organization. Demonstrated intergovernmental relations skills are expected.

Issues facing Dallas include growth, infrastructure needs (both for new and replacement), especially related to transportation, planning for Master Plan and Urban Growth Boundary updates, public safety building needs, industrial and business development, continuing and expanded intergovernmental and educational partnerships, retention of students in the community after graduation, growing demand for recreation programs and parks, water supply and storage, meeting expectations of a growing senior population, continuing the City's focus on livability, accessing grant funding to support infrastructure replacement and development, having a sufficient pool of workers for growing and existing industrial base,



downtown urban renewal, continuation of the City's strong financial position, inadequate ambulance reimbursements, redevelopment/renovation of housing in older sections of the City, continuing and improving the competitive aesthetic environment to attract robust housing and business strength and growth, harnessing and effectively facilitating greater public involvement and interaction, and staying current with and advancing technological infrastructure.

Minimum requirements include a Bachelor's Degree, 5 years as a city manager/administrator or as a major department head in a similar or larger community. A Masters Degree in Public Administration is preferred. 1<sup>st</sup> review of resumes: October 1, 2007. Interested persons should submit a letter of interest, e-mail address, and resume to the League of Oregon Cities at P.O. Box 928, Salem, OR 97308-0928. In the application materials, please identify size of budget responsibilities, number of employees in each organization, and populations. Inquiries may be directed to the League of Oregon Cities at 503-588-6550 or [jmoke@orcities.org](mailto:jmoke@orcities.org).

**Additional Information on the community:**

Dallas is a wonderful family-oriented community of nearly 20,000 which is located in the middle of the beautiful, scenic Willamette Valley and near Salem, the State Capitol and Oregon's second largest city. There is a wide range of job opportunities in and around Dallas. Even with its rapid growth, Dallas still maintains its small town charm and atmosphere. Residents and visitors notice the Courthouse Square, the historic downtown and its park system. Dallas is well known for its cleanliness, its well-maintained wide, tree-lined streets, and the excellent condition of civic, residential, commercial, and industrial properties. The City government provides full municipal services including police, library, fire, emergency medical services, and well-maintained parks, as well as sponsoring cultural and leisure services. Dallas has highly acclaimed public schools and has exceptional recreation programs and opportunities for children and adults. The City works hard to ensure that growth is positive through its growth management program. This helps prevent growth from diminishing our quality of life, which is why residents say they live here. At the City, we provide water and sewer services and try hard to maintain a safe transportation system throughout the community including all forms of transportation. The Aquatic Center has become the premier family center in the community. The City partners with the Chamber and other community organizations to sponsor seasonal festivals and other community events and projects. As an example, the City, in conjunction with the business community, provides a

summer concert series at the Rotary Performing Arts Stage. These and many other programs and services help to maintain the high quality of life enjoyed in Dallas. Our goal and commitment is to concentrate in the areas where our services will enhance the community and fulfill our mission of providing a safe and livable environment for our residents.

The people of Dallas participate in every facet of their community. They support careful, strategic planning; they enthusiastically volunteer; and they nurture positive progress. They honor both tradition and innovation.

**THE CITY OF LA GRANDE  
SEEKS  
CITY MANAGER**

(Starting salary range from the low \$90's to low \$100's, DOQ)

The City of La Grande (population 12,500), is located along Interstate 84 in Northeastern Oregon, approximately 250 miles east of Portland and 175 miles west of Boise, Idaho. The City of La Grande operates under the Council-Manager form of government with the Mayor and six Council Members elected at-large for four year overlapping terms. Day-to-day management of City operations is vested with the City Manager, who directs the activities of eight department directors and a full-time staff of 130 employees. La Grande operates with a total \$33 million budget.

The City is seeking a long-term City Manager who will serve as a catalyst for several new initiatives to include strong economic development/redevelopment, community partnership building and a focus on organizational evaluation and professional development. The new City Manager will also be called upon to be a highly visible and involved individual, at Council direction, with other governmental agencies, business and citizen groups. The new City Manager will be asked to fill a void in dynamic leadership that has existed for the past two years after the resignation of a ten-year City Manager and service, of less than one-year, from his replacement.

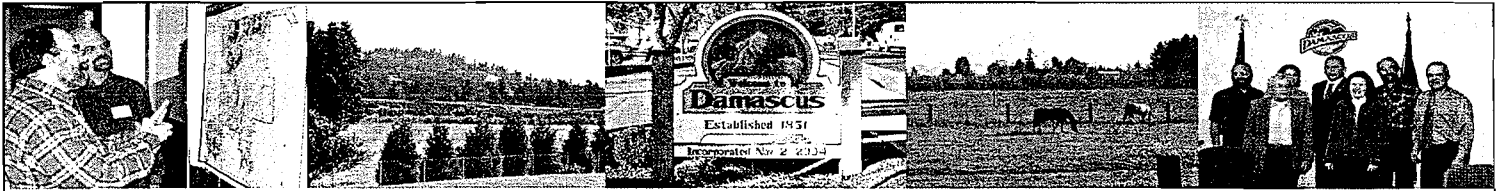
The position requires a minimum of a Bachelor's degree in Government, Political Science, Business/Public Administration or a related field. An advanced degree or graduate level training is highly desirable. Seven to ten years of progressively responsible experience in supervising and managing local government services is expected. Preference will be given to candidates with current knowledge of municipal finance, economic development, labor relations, growth management, and transportation issues. Strong knowledge of concepts related to smart/balanced growth and New Urbanism, environmental regulations and development processes/ordinances is strongly preferred. Preference may be shown for those who have served in senior level administrative management positions in communities of 15,000 populations or greater.

Experience in stand-alone or independent city operations will be welcomed, as will identification with the culture and politics of smaller cities.

To Apply: Qualified candidates please submit your resume online by visiting our website at [www.watersconsulting.com/recruitment](http://www.watersconsulting.com/recruitment). This position is open until filled; however, the first review of applicants will take place approximately **September 20, 2007**. For more information please contact **Jerry Oldani** by calling our toll free number 877.356.2924 or visit our website at [www.watersconsulting.com](http://www.watersconsulting.com) to view the detailed recruitment brochure for this position.

**The City of La Grande is an Equal Opportunity Employer and values diversity at all levels of its workforce!**

**Applicants for this position selected as finalists will be subject to a criminal history/credit/drivers license check prior to interview.**



THE CITY OF  
**DAMASCUS**  
O R E G O N

*An invitation to apply for the position of*

## **CITY MANAGER**

**\$100,000 - \$130,000**

*plus excellent benefits*

*Apply by **June 24, 2007** (first review, open until filled)*

### **WHY APPLY?**

This is an excellent opportunity for a city management professional looking to truly make a difference in a rapidly growing community that wishes to maintain its small town charm. The City of Damascus offers an opportunity for the right candidate to work with a very supportive Mayor, City Council, and staff committed to professional management and teamwork.

### **THE COMMUNITY**

The City of Damascus (population 9,670) is situated in the north central part of Clackamas County. The City of Portland is a 20 minute drive to the northwest and Mt. Hood ski areas are a 45 minute drive to the east. The Clackamas River is located nearby offering rafting, kayaking, and fishing opportunities for the outdoor enthusiast. The City was incorporated in 2004, but its history in Oregon dates back to the 1850's. In 1852, Philip Foster built the Barlow-Foster Trail (later known as Foster Road) and the trail passed through present day Damascus on to Portland. The first post office was founded here in 1867, and the name Damascus was chosen by the community based on a suggestion of a local potter, Ed Pedigo. The first post office was located in the home of John Fisher, who became the first postmaster. In 2002, Metro (the regional government) brought the Damascus area into the Urban Growth Boundary and designated the area for future development. In 2003, a planning process was commenced for the area by Clackamas County in partnership with Metro, the Oregon Department of Transportation, the City of Happy Valley, and the communities of Damascus and Boring. The project is referred to as the Damascus/Boring Concept Plan. The City of Damascus is primarily served by the Gresham-Barlow School District. The district has a solid and proven reputation for providing its students with a quality education. Students from the Gresham-Barlow School

District are consistent in scoring above the national average on standardized exams.

### **THE CITY**

The City of Damascus operates under a Council-Manager form of government. The City prides itself on having a cooperative and forward-thinking council which has recently grown from a 5 to 7 members. This new council is known in the community for its progressive thinking style and their ability to work as a cohesive group.

Mr. Dan Bartlett has been serving as Interim City Manager since April 2006. Drawing from his extensive experience as a city management professional, Mr. Bartlett has done an excellent job of providing guidance and bringing stability to the City. (Mr. Bartlett will not be a candidate for the position.) With the City's population estimated to grow to 60,000 over the next 20 years, the Council and leadership team are working together to make the City of Damascus a very livable and sustainable community. The City of Damascus, as with most new cities, is currently operating primarily as a "contract city". They have an excellent working relationship with their contract providers and will continue to evaluate on a case by case basis to either continue to contract for services or bring the service in house. The City's total budget for 2007-2008 is \$8.3 million.

### **THE POSITION**

Under policy direction from the City Council, the City Manager will serve as the Chief Administrative Officer for the City and is responsible for seeing that the City Council's goals and policies are effectively and efficiently implemented. The City Manager supervises department directors; represents the City on numerous committees and public-private projects; conducts research and analysis at the request of the City Council; reviews and approves reports prepared by staff; serves as the primary contact for the news media; prepares information about

City activities; and responds to citizen inquiries, questions, and complaints.

### **ISSUES FACING THE NEW CITY MANAGER**

- **Comprehensive Plan** - Damascus is under a statutory 2008 deadline to file a Comprehensive Plan and supporting documents with the Department of Land Conservation and Development for State agency review and acknowledgement. This will require the City Manager to supervise the Community Development Director's activities in managing several grants, supervising contractors, and filing necessary documents in a timely manner. This also involves ensuring that the Citizen Participation Plan is executed in a timely and professional manner.
- **Service Delivery Contracting** - The City Manager will need to complete negotiations with various service providers for water, sewer, and development support services. This will require that the providers' capital improvement plans reflect the City's desires for infrastructure phasing. This will also require coordination with multiple metropolitan region service providers.
- **Building the Municipal Organization** - The City Manager will need to work to build on the Vision, Mission, and Goals of the City Council to create a municipal organization that lives the Mission Statement daily. The City Manager will need to help the City Council lead community building that is consistent with the Vision, Mission, and Goals. This will include the opportunity to make legacy decisions and establish long-term traditions.

### **THE IDEAL CANDIDATE**

The desired candidate will be expected to build upon the positive Council relations and integrity that the Interim City Manager has established in his short tenure with the City. The candidate will be a talented municipal manager and administrative leader who understands all aspects of city government. Due to the small number of city staff, the ideal candidate will be a "hands-on" individual who is not afraid to "get their hands dirty." The City Council is seeking a City Manager who is approachable and encourages open communication based on an environment of trust and integrity. The selected candidate will be able to support policy and legislative decisions by the City Council and provide sound information and ability to articulate issues and options to help them make informed decisions. Candidates should

have a proven track record of delivering results, building accountability for staff and creating a positive working environment of teamwork and innovation. The desired candidate will be recognized for building consensus and providing management leadership to the City staff and will not be afraid to make the tough decisions when needed. The successful candidate will be politically astute and demonstrate an unquestionable sense of integrity, honesty, and commitment to the City. The new City Manager will have excellent skills in working with city councilors, both individually and as a corporate body. He/she should have well developed skills in assisting councils with wide ranging opinions and ideas in reaching consensus and direction.

### **EDUCATION & EXPERIENCE**

Candidates should have seven to ten years of progressively responsible senior management experience in municipal or county government, preferably with at least three to five years as a successful City or County Manager or Administrator or as an Assistant/Deputy. Oregon land use experience would be a plus. A bachelor's degree in public administration, business or related field is required, with a history of continuing educational and professional development. A master's degree is preferred.

### **COMPENSATION**

- **\$100,000 to \$130,000**
- 401k Retirement
- Social Security
- Medical
- Dental
- Vision
- Life insurance
- Long-term disability insurance
- Employee Assistance Program
- Deferred Compensation Program (In Progress)
- Paid time off (PTO)
- 10 paid holidays
- Personal Services Contract with Severance



<http://www.ci.damascus.or.us>

The City of Damascus is an Equal Opportunity Employer. All qualified candidates are strongly encouraged to apply by **June 24, 2007** (first review, open until filled). To apply, please send a letter of interest, resume, completed application and answers to the supplemental questions to Greg Prothman via email at [humanresources@prothman.com](mailto:humanresources@prothman.com) or mail to the address below. The application form and the supplemental questions can be found at [www.prothman.com](http://www.prothman.com).



206 368 0050 {ph}  
3633 136<sup>th</sup> PL SE, Suite 206  
[humanresources@prothman.com](mailto:humanresources@prothman.com)

206 368 0060 {fx}  
Bellevue, WA 98006  
[www.prothman.com](http://www.prothman.com)



MEMORANDUM

Administration Department

To: John Hitt, City Manager

Date: September 6, 2007

From: Ginger Allen, Assistant to the City Manager/H.R. Manager

Subject: City Manager Compensation History

<u>Date</u>	<u>Total Monthly Cash Salary</u>	<u>Description of Salary Changes</u>
7/2000	\$6,400	Beginning Salary, \$300 Car Allowance
7/2001	\$6,522	2% Annual Increase, \$300 Car Allowance
7/2002	\$6,646	2% Annual Increase, \$300 Car Allowance
3/2003	\$6,346 <sup>1</sup> + \$35	Cellular Phone Stipend Added, Car Allowance Dropped
4/2004	\$5,711 + \$35	10% Budget Cut for 2 mths.
6/2004	\$6,346 + \$35	10% Budget Cut Cancelled
7/2005	\$6,797 + \$35 + \$1,000	Annual Salary Increase, Cell Phone Stipend, Special Pay Plan Compensation continued.
7/2006	\$6,933 + \$35 + \$1,000	Annual Salary Increase, Cell Phone Stipend, Special Pay Plan Compensation continued
7/2007	\$7,047 + \$35 + \$1,000	Annual Salary Increase, Cell Phone Stipend, Special Pay Plan Compensation continued

1. Monthly car allowance of \$300 dropped due budget constraints.

## EMPLOYMENT AGREEMENT

THIS AGREEMENT, made and entered into this \_\_\_\_\_ day of September, 2007, by and between the CITY OF LEBANON, a municipal corporation of the State of Oregon, hereinafter called "City", and JOHN E. HITT, hereinafter called "Manager", now therefore,

### WITNESSETH

WHEREAS, the City of Lebanon desires to employ JOHN E. HITT as the City Manager/Administrator of the City of Lebanon to perform the duties of the City Manager/Administrator under the conditions and provisions of the Lebanon Charter; and

WHEREAS, it is the desire of the City to provide certain benefits and to otherwise establish the terms and conditions of JOHN E. HITT'S employment as City Manager; and

WHEREAS, JOHN E. HITT desires to be employed as City Manager of the City of Lebanon,

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the parties do agree as follows:

1. Duties: The City hereby agrees to employ JOHN E. HITT as City Manager of the City of Lebanon to perform the functions and duties specified in the Lebanon City Charter, and to perform such other duties and functions as the City Council shall, from time to time, assign. John E. Hitt hereby agrees that his full time employment as City Manager for the City of Lebanon commenced May 15, 2000 and shall continue until such time as a termination shall occur in accordance with Section 2 of this agreement.

2. Term: This agreement shall be for an indefinite term, commencing upon the first day of employment with the city of Lebanon. The terms of this agreement shall be reviewed by the parties as least every three years, beginning July 1, 2010.

(a) Nothing in this agreement shall prevent, limit, or otherwise interfere with the right of the City Council to terminate the services of the Manager at any time, subject only to the provisions of this agreement.

(b) Subject only to the notice required by Section 2(b) the Manager may resign at any time.

(c) During the term of this agreement, Manager agrees to remain exclusively employed by the City, and not become employed by any other employer until the effective date of any termination or resignation.

(d) Except in the case of termination for cause or by mutual agreement of the parties, each of the parties agree not to terminate this contract (by either termination as referred to herein or resignation), except upon ninety-(90) days prior written notice.

(e) Except as provided for in Sections 2(b) or 2(h), if the City Council chooses to terminate this contract when the City Manager is willing and able to perform his duties, the Council will provide the Manager a severance package. The severance package will consist of a



cash payment equal to nine (9) months of annual base salary (payable one-ninth of each month for nine consecutive months) and will include, for each month of salary payment, medical and dental insurance benefits at the same benefit level and premium co-payment arrangements as when employed; not to exceed nine months. This severance package shall terminate effective upon the date the Manager obtains comparable full-time employment. Any portion of a month shall be prorated. Acceptance of severance by the City Manager shall constitute a waiver and release of all claims of the City Manager, and any person legally entitled to assert claims, as a result of the City Manager's dismissal.

(f) The Manager shall be considered to have been terminated by the City Council and entitled to severance pay and benefits in accordance with this paragraph if the Manager resigns because the City Council has failed to comply with the terms and conditions of this agreement, or if the City Council at any time during the term of this agreement reduces the salary or other financial benefits of the Manager in a greater percentage than an applicable across-the board reduction for all City employees, or the City Council requests the resignation of the Manager, either formally or informally.

(g) In the event the Manager is terminated by the City Council for cause then the Manager shall not be entitled to severance pay under this provision. Termination for cause, under this provision, shall be for adjudicated violations of local, state, or federal law, or malfeasance, malpractice or other chargeable offenses.

(h) In the event the Manager voluntarily resigns his position while this contract is in effect, then the Manager shall not be entitled to severance pay in accordance with this provision.

3. Vacation, Sick Leave and Administrative Leave: Manager shall be entitled to vacation and sick leave with accrual, accumulation and use in accordance with City policy applying to Department Heads of the City. The Manager shall, at employment termination be paid in full for any accrued, but unused vacation and/or administrative leave. All such termination pay shall be at the then current pay rate of the City Manager and shall be paid directly into his 401(a) Special Pay Plan within thirty (30) days of termination.

4. Salary and cost of Living Adjustments: Effective October 1, 2007 the City agrees to pay Manager for services rendered pursuant to this agreement the annual base salary of \$118,200, payable in installments at the same time as other employees of the City are paid. Beginning July 1, 2008, City agrees to grant periodic cost of living adjustments to Manager during the term of this agreement, based upon and at the same time and rate as cost of living adjustments granted to non-union employees of the City.

5. Community Involvement: To the extent permitted by his duties as City Manager, the City expects the Manager to be involved in events, civic organizations and some voluntary endeavors in the Lebanon community. In an effort to assist Manager in such involvement, the city will pay all membership expenses, provided however, any such monthly expense in excess of \$125 shall be paid only upon the approval of the City Council and provided further, the City shall not pay membership expenses for any civic clubs or organizations which discriminate on the basis of race, religion, color, nation origin, age or sex.

6. Hours of Work: It is understood and agreed that the Manager must devote a great deal of time outside normal office hours to his duties as City Manager, and Manager is therefore entitled to take time off to such extent as he deems appropriate, during normal office hours provided that the same does not unduly interfere with the performance of the Manager's duties.

7. Deferred Compensation: Manager is authorized to participate in the City's 401(a) Special Pay Plan. The City agrees to contribute \$500 per month to this plan, up to a minimum of \$6,000 annually, payable in monthly installments. This contribution is already calculated into the annual salary of \$118,200.

8. Car Allowance: City agrees to pay the Manager the current IRS rate for any use of his personal vehicle that may be necessary during the conduct of city business.

9. Expense Account: The City recognizes that certain expenses of a non-personal and generally job-related nature are incurred by the Manager and hereby agrees to reimburse him for expense incurred upon receipt of duly executed expense vouchers, receipts, statements, or personal affidavits for expenses incurred in the performance of his duties as City Manager in accordance with the law and City policy.

10. Dues and Subscriptions: City agrees to budget and pay the professional dues and subscriptions of the Manager necessary for his continuation and full participation in national, regional, state and local associations, and organizations necessary and desirable for his continued professional participation, growth, and advancement, and to improve his performance in his duties as City Manager of the City of Lebanon. Provided the City shall not pay professional dues or subscriptions to any organization which discriminates on the basis of race, religion, color, national origin, age, gender, or disability.

11. Professional Development: City agrees to budget and pay registration, travel and subsistence expenses of the Manager in accordance with the law and City policy, for professional and official travel meetings and occasions deemed necessary or desirable to continue the professional development of the Manager and to adequately pursue necessary official and other functions of the City.

12. Performance Appraisal: Effective immediately, the City agrees that it will formally evaluate the performance of the Manager annually, on or about Manager's employment anniversary date with the City. The evaluation will be conducted based on an evaluation process and performance criteria established at the beginning of each performance period. The city may at its discretion informally and formally evaluate the Manager on a more frequent basis. The City Manager shall receive an annual bonus of 5% of his cash salary if the average rating of all rated categories (on a scale of 0-5) is 3.5 or greater. He shall receive an annual bonus of 10% if the average rating of all rated categories is 4.0 or greater. Ratings of 0 or 1, that are not supported by specific examples of sub-standard performance by the rater, shall not be added into the average rating formula. However, the City Council may, by the vote of five or more members (including the Mayor) award a bonus of less than 10%, or no bonus, if the city's budgetary condition so warrants.

13. Fringe Benefits and Insurance: Except as otherwise provided herein, Manager shall be entitled to the same benefits and insurance coverage available to city department heads.

14. Retirement Benefits: The city is an Oregon PERS covered employer. Manager shall participate in PERS in accordance with PERS requirements upon employment with the City.

City agrees to provide the same retirement benefits as are provided to non-emergency related department heads.

15. Residency Requirement: In accordance with City Charter, Manager agrees to establish residency within the City limits of the City of Lebanon within six (6) months of his date of active employment with the city.

16. Severability: If any provision of this agreement is held to be invalid or unenforceable, the remainder of the agreement shall be deemed severable and shall not be affected, but shall remain in full force and effect.

17. Indemnification: City agrees to defend, hold harmless and indemnify City Manager from any and all demands, claims, suits, actions and legal proceedings brought against City Manager in his official capacity as agent and employee of City, to the extent required pursuant to the Oregon Tort Claims Act, ORS 30.260 to 30.300.

18. Mediation: Should any dispute arise between the parties regarding the terms of this agreement or the terms of any Exhibit or work or services covered thereby, it is agreed that such dispute is required to be submitted to a mediator prior to arbitration. Mediation must be commenced, if at all possible, within thirty (30) days of the act or event giving rise to the dispute. The parties shall exercise good faith efforts to select a mediator who shall be compensated equally by both parties. Mediation will be conducted in Portland, Oregon, unless both parties agree otherwise. Both parties agree to exercise good faith efforts to resolve disputes covered by this section through this mediation process. If a party requests mediation and the other party fails to respond within ten (10) days, or if the parties fail to agree on a mediator within ten (10) days, a mediator shall be appointed by the presiding judge of the Multnomah County Circuit Court upon request of either party.

19. Arbitration: In the event the parties have a dispute concerning the terms of this agreement, the terms and conditions of the employment relationship or the violation of any federal, state, or local law relating to the employment relationship (and they have not otherwise resolved the matter through the mandatory mediation process set out in Section 18 above) then the dispute shall be resolved by submitting it to binding arbitration within ninety (90) days of the date mediation process is concluded.

(a) Within thirty (30) days of notice by either party to the other requesting arbitration, CITY and EMPLOYEE shall select an arbitrator from a list of three (3) obtained from Multnomah County Circuit Court. The arbitrator shall for purposes of the arbitration proceedings apply the rules of mandatory arbitration as adopted by the Multnomah County Circuit Court in effect at the time of the arbitration. If the parties fail to select an arbitrator as required above, on application by either party, the arbitrator shall be appointed by the presiding judge of the Multnomah County Circuit Court.

(b) Within sixty (60) days of the selection or appointment of the arbitrator, both CITY and EMPLOYEE shall concurrently submit to the arbitrator (supplying a copy to each other) a written statement of their respective legal and factual positions on the dispute. The arbitrator shall determine, after a hearing on the merits and within forty-five (45) days after receipt of the statements his/her findings of the dispute which shall be final and binding.

W. Webb Sprague

UC. Berkeley Demography & Anthropology

"Cultural Influences on family formation and the life course"

(in Small Town America)

no one signed in,  
but the attachment  
is written by a  
young man that  
I asked to speak  
to council.

Thanks

Suzanne

4/17/07