

APPENDIX B

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STATE OF OREGON
STANDARD GENERAL CONDITIONS FOR PUBLIC IMPROVEMENT CONTRACTS

SECTION A

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.

CONTRACT, means the written agreement between the Owner and the Contractor describing the Work to be done and the obligations between the parties.

CONTRACT DOCUMENTS, means the Solicitation Document and addenda thereto, Instructions to Offerors, General Conditions, Supplemental General Conditions, if any, the accepted Offer, the Contract (excluding the General Conditions) and amendments thereto, if any, performance bond, Plans, (including large and small-scale drawings and dimension numbers written on drawings), Specifications, (including Division One of and the Detailed Schedules to the Specifications), and approved 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; bond premiums, rental cost of equipment, and machinery; and the additional costs of field personnel directly attributable to the Work.

DISADVANTAGED BUSINESS ENTERPRISE, as defined in ORS 200.005, means a small business concern which is at least 51 percent owned by one or more socially and economically disadvantaged individuals, or, in the case of any corporation, at least 51 percent of the stock of which is owned by one or more socially disadvantaged individuals and whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

ECONOMICALLY DISADVANTAGED INDIVIDUAL, as defined in ORS 200.005, means an individual who is socially disadvantaged and whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to another in the same business area who is not socially disadvantaged.

EMERGING SMALL BUSINESS, means (a) a business with its principal place of business located in this state; (b) a business with average annual gross receipts over the last three years not exceeding \$1 million for construction firms and \$300,000 for non-construction firms; (c) a business which has fewer than 20 employees; (d) an independent business; (e) a business properly licensed and legally registered in this state, and (f) a business certified by the Office of Minority, Women and Emerging Small Business.

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, happening, or occurrence of the kind described in section F. 7. 1.

MINORITY OR WOMEN BUSINESS ENTERPRISE, as defined in ORS 200.005, means a small business concern which is at least 51 percent owned by one or more minorities or women, or in the case of a corporation, at least 51 percent of the stock of which is owned by one or more minorities or women, and whose management and daily business operations are controlled by one or more such individuals.

MINORITY INDIVIDUAL, as defined in ORS 200.005, means a person who is a citizen or lawful permanent resident of the United States who is:

- (a) Black who is a person having origins in any of the black racial groups of Africa;
- (b) Hispanic who is a person of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin, regardless of race;
- (c) Asian American who is a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent or the Pacific Islands;
- (d) Portuguese who is a person of Portuguese, Brazilian or other Portuguese culture or origin, regardless of race;
- (e) American Indian or Alaskan Native who is a person having origins in any of the original peoples of North America; or
- (f) Member of another group, or another individual who is socially and economically disadvantaged as determined by the Advocate for Minority, Women and Emerging Small Businesses.

NOTICE TO PROCEED, means the official written notice from the Owner indicating that all initial Contract requirements, including the Contract, performance bond, and certificates of insurance, have been fully executed and submitted in a suitable form and that the Contractor may proceed with the Work defined in the Contract Documents.

OFFER, means a bid in connection with an invitation to bid and a proposal in connection with a request for proposals.

Offeror, means a bidder in connection with an invitation to bid 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); costs of equipment owned or leased by the Contractor (i.e., job trailers, small tools); expenses of the Contractor's offices including personnel; and overhead and general administrative expenses.

OWNER, means the State of Oregon acting by and through the governmental entity identified in the Solicitation Document.

OWNER'S AUTHORIZED REPRESENTATIVE, means those individuals identified in writing by the Owner to act on behalf of the Owner for this Project.

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.

SMALL BUSINESS CONCERN, as defined in ORS 200.005, means a small business as defined by the United States Small Business Administration per 13 CFR, part 121, as amended.

SOCIALLY DISADVANTAGED INDIVIDUAL, as defined in ORS 200.005, means an individual who has been subjected to racial or ethnic prejudice or cultural bias, without regard to individual qualities, because of the individual's identity as a member of a group.

SOLICITATION DOCUMENT, means an Invitation to bid or request for proposal or 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. (Refer also to Section K.4).

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

WOMAN, as defined in ORS 200.005, means a person of the female sex who is a citizen or lawful permanent resident of the United States.

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 PRECEDENCE OF CONTRACT DOCUMENTS

A.3.1 The Contract Documents are intended to be complementary. Whatever is called for in one, is interpreted to be called for in all. However, in the event of conflicts or discrepancies among the Contract Documents, interpretations will be based on the following descending order of precedence:

- (a) The Contract (excluding the General Conditions), and amendments to same, including approved change orders, with those of later date having precedence over those of earlier date;
- (b) The Supplemental General Conditions;
- (c) Division One of the Specifications;
- (d) The General Conditions;
- (e) Detailed Schedules of finishes, equipment and other items included in the Specifications;
- (f) Drawings and Specifications (other than Division One of and the Detailed Schedules to the Specifications);
- (g) Large-scale drawings;
- (h) Small-scale drawings;
- (i) Dimension numbers written on drawings which shall prevail and take precedence over dimensions scaled from drawings.

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 Owners or Owner's Authorized Representative. Contractor shall not proceed without direction in writing from the Owner or Owner's Authorized Representative.

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

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.5 INDEPENDENT CONTRACTOR STATUS

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

A.6 RETIREMENT SYSTEM STATUS

Contractor 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.

A.7 GOVERNMENT EMPLOYMENT STATUS

A.7.1 If this payment is to be charged against federal funds, Contractor certifies 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 certifies 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 CONTRACTOR'S MITIGATION OF IMPACTS

- B.1.1 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.1.2 The Contractor is responsible for the actions of all its personnel, laborers, suppliers, and Subcontractors on the Project.

B.2 MATERIALS AND WORKMANSHIP

- B.2.1 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.2.2 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.2.3 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.2.4 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.2.5 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.3 PERMITS

Contractor shall obtain and pay for all necessary permits and licenses, including any fees imposed by public authorities on the Work, 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 State of Oregon, and its departments, divisions, members and employees.

B.4 COMPLIANCE WITH GOVERNMENT REGULATIONS

- B.4.1 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.
- B.4.2 Contractor shall comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations; and
- (a) Contractor shall not discriminate against Minority, Women or Emerging Small Business enterprises in the awarding of subcontracts (ORS 279.111).
- (b) Contractor shall maintain, in current and valid form, all licenses and certificates required by law, regulation, or this Contract when performing the Work.
- (c) Failure to comply with any or all of the requirements of B.4.1 through B.4.3 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.4.3 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.4.4 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.4.5 Utility Notification Requirement for 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 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.6 INSPECTION

- B.6.1 Owner's Authorized Representative shall have access to the Work at all times.
- B.6.2 Inspection of the Work will be made by the Owner's Authorized Representative at its discretion. 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.6.3 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.6.4 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.6.5 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.7 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.8 ACCESS TO RECORDS

- B.8.1 Contractor shall keep, at all times on the Work site, a copy of the complete Contract Documents and current as built, and shall at all times give the Owner's Authorized Representative access thereto.
- B.8.2 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 including records pertaining to overhead and indirect 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.9 WAIVER

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

B.10 ASSIGNMENT/ SUBCONTRACT

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

B.11 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.12 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.13 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.12.

SECTION C
WAGES AND LABOR

Part II

Bureau of Labor and Industries
Wage and Hour Division
Prevailing Wage Unit
800 N.E. Oregon Street, #32
Portland, Oregon 97232

C.1 WAGE RATES ON PUBLIC WORKS

When the Contract price exceeds \$25,000, the Contractor shall comply fully with the provisions of ORS 279.348 through 279.365 (except for 279.349 and 279.359). 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 with the Owner's Authorized Representative, on the form prescribed by the Commissioner of the Bureau of Labor and Industries, certifying the hourly rate of wage paid each worker which the Contractor or the Subcontractor has employed on the project and further certifying that no worker employed on the project has been paid less than the prevailing rate of wage or less than the minimum hourly rate of wage specified in the Contract, which certificate and statement shall be verified by the oath of the Contractor or the Subcontractor that the Contractor or Subcontractor has read such statement and certificate and knows the contents thereof and that the same is true to the Contractor 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 shall be submitted as follows:

- (a) For any project ninety (90) Days or less from the date of award of the Contract to the date of completion of Work under the Contract, the statements shall be submitted once before the first payment and once before final payment is made.
- (b) For any project exceeding ninety (90) Days from the date of award of the Contract to the date of completion of Work under the Contract, the statements shall be submitted once before the first payment is made, at 90-Day intervals thereafter, and once before final payment is made.

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 comes first. The fee is payable to the Bureau of Labor and Industries and shall be mailed or otherwise delivered to the Bureau at the following address:

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 and the State Unemployment Compensation Trust 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 working under this Contract are subject employers which must comply with ORS 656.017 relating to providing Workers' Compensation coverage.

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.

**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.

When Work is performed by an authorized Subcontractor, the Contractor will be allowed a supplemental mark-up on each piece of subcontract Work covered by the change order up to the following:

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. The Owner's Authorized Representative may at any time, without notice to the sureties, either increase or decrease the amount of Work to be performed under the Contract. Without impairing the Contract, the Owner reserves the right to require changes determined necessary or desirable to complete the proposed construction within the general scope of the Contract. These changes may include, but are not limited to:

\$0.00 - \$2,000.00.....	10%
Over \$2,000.00.....	5%

These payments made to the Contractor will be complete compensation for Overhead, profit, and all other costs that were incurred by the Contractor or by other forces furnished by the Contractor, including Subcontractors. These payments apply to all change order Work. No other reimbursement, compensation, or payment will be made.

- (a) Specifications and design.
- (b) Increases or decreases in quantities.
- (c) Additional Work.
- (d) Elimination of any Contract item.
- (e) Duration of project.
- (f) Acceleration or delay in performance of Work.

D.1.5 If any change under this section causes an increase or decrease in the Contractor's cost of, or the time required for the performance of any part of the Work under this Contract, the Contractor must submit a written statement setting forth the nature and specific extent of the claim, including all time and cost impacts against the Contract as soon as possible, but no later than thirty (30) Days after receipt of any written notice of modification of the Contract. (Refer also to Section H. 1.4 for notification.)

D.1.3 The Owner and Contractor agree that changes shall be administered and negotiated according to the following:

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

Any Contract amendment including change orders, extra Work, field orders, or other changes in the Contract Documents which modifies the original Contract, may be made with the Contractor without competitive bidding subject to the following conditions:

D.1.7 All change order Work shall be executed under the conditions of the Contract Documents except that any claim for extension of time caused thereby shall be adjusted at the time of ordering such change.

The original Contract was let by competitive procurement, unit prices or solicitation alternates were provided that established the cost for additional Work, and a binding obligation exists on the parties covering the terms and conditions of the additional Work.

D.1.8 Deductive changes are those which reduce the scope of the Work.

D.1.4 In the event there are any changes or extra Work of a class not covered by the prices included in the Contract Documents, the basis of payments shall be agreed upon in writing between the parties to the Contract before the Work is done. If basis for payment cannot be agreed upon prior to the beginning of the Work, and if so directed by the Owner's Authorized Representative, then Work shall be performed on the basis of furnishing direct labor, equipment, and material costs on all Work performed. In either case, in addition to Direct Costs, up to the following amounts may be added to the Contractor's or Subcontractor's Direct Costs to cover overhead expenses for Work performed with their own forces:

D.1.9 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 impact 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.

Labor.....	15%
Equipment.....	10%
Materials.....	10%

D.2 DELAYS

D.2.1 Except as provided in Section D.2.6, Contractor shall not be entitled to additional time or additional compensation for avoidable delays. Avoidable delays include delays which could have been avoided by the exercise of care, prudence, foresight, and diligence on the part of the Contractor or its Subcontractors, including, but not limited to, the following::

- (a) Delays which may in themselves be unavoidable but which affect only a portion of the Work and do not necessarily prevent or delay the prosecution of other parts of the Work nor the completion of the whole Work within the Contract time.
- (b) Delays which do not impact activities on the accepted critical path schedule.
- (c) Time associated with the reasonable interference of other contractors employed by the Owner which do not necessarily prevent the completion of the whole Work within the Contract time.

D.2.2 Based on principles of equitable adjustment, Contractor may be entitled to additional time or additional compensation for unavoidable delays which are 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, or by any site condition described in Section D.2.5. Contractor may be entitled to additional time for unavoidable delays caused by any of the causes or conditions described in Sections D.2.3 and D.2.4. Contractor shall submit a written notification of the delay to the Owner's Authorized Representative within five (5) Days of the delay. This notice shall state the cause of the potential delay, the project components impacted by the delay, and the anticipated time extension necessary to compensate for the delay. 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 notice, the Contractor shall submit to the Owner's Authorized Representative, a complete and detailed request for additional time resulting from the delay. The request shall be reviewed as described in Section D.3, Claims Review Process.

D.2.3 Unavoidable delays include those which result from causes beyond the control of the Contractor and which could not have been avoided by the exercise of care, prudence, foresight, and diligence on the part of the Contractor or its Subcontractors. Delays caused by Force Majeure, war, public enemy, freight embargoes, and strikes which occur despite the Contractor's reasonable efforts to avoid them, shall be considered as unavoidable.

D.2.4 Claims by the Contractor based on adverse weather conditions must be substantiated by documentation that weather conditions were abnormal for the specific time period claimed, could not have been anticipated by the Contractor, and adversely impacted the project. 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 ten (10) year historical records of the general locality of the Work, shall not be construed as abnormal. It is hereby agreed that rainfall greater than the following cannot be reasonably anticipated:

- (a) Daily rainfall equal to, or greater than, 0.50 inch during a month when the monthly rainfall exceeds the normal monthly average by twenty-five percent (25 %) or more.
- (b) Daily rainfall equal to, or greater than, 0.75 inch at any time.

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

D.2.5 If the Contractor discovers 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 and 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 it is determined that a differing site condition exists, any compensation or credit will be determined based on Section D. 1, Changes. 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, the Contractor may proceed to file a claim.

D.2.6 The Owner may grant a time extension for avoidable or unavoidable delay if the Owner deems it is in its best interest. [Time extensions for avoidable or unavoidable delays shall not be compensable.] Only delays within the reasonable control of the Owner shall be compensable.

D.3 CLAIMS REVIEW PROCESS

D.3.1 All Contractor claims shall be referred to the Owner's Authorized Representative for review. Contractor shall submit a written notification of a claim to the Owner's Authorized Representative within five (5) Days of the date of the occurrence of the event which gives rise to the claim or within five (5) Days of the date that the Contractor knew or should have known of the problem. Within seven(7) Days after the cause of the claim has been mitigated, but in no case more than thirty (30) Days after the initial notice, 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 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 (15) fifteen 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. Both the Owner and the Contractor are obligated to participate in the mediation process prior to either or both proceeding to litigation. The mediation process is non-binding.
- D.3.6 Should the parties arrive at an impasse regarding any claims or disputed claims, it is agreed that the parties shall submit to mediation prior to the commencement of litigation. The mediator shall be an individual mutually acceptable to both parties, 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 will pay its own costs for the time and effort involved in mediation. The cost of the mediator shall be split equally between the two parties. Both parties agree to exercise their best 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 and time allowed for mediation will be mutually acceptable. 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.
- D.3.7 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.

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. Requests for payment shall be entertained for major equipment, components or expenditures only.
- (b) The Contractor shall submit invoices showing the quantity and cost of the material stored.
- (c) The material shall be stored in a bonded warehouse and Owner's 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.

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 one and one-half percent per month on the progress payment, not including retainage, due the Contractor. The interest shall commence thirty (30) Days after the receipt of invoice from the Contractor or fifteen (15) Days after the payment is approved by the Owner's Authorized Representative, whichever is the earlier date. 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.

- (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 material only. The submitted invoice amount 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 request 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 payment for Work which has been demonstrated or identified as failing to conform with the Contract Documents.

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:

E.3 PAYROLL CERTIFICATION REQUIREMENT

E.3.1 Payroll certification is required before payments are made on the Contract. Refer to Section C.2 for this information.

E.4 DUAL PAYMENT

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

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

E.5 RETAINAGE

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

Signed: _____

E.2.3 Generally, request for payment will be accepted only for materials which have been installed. Under special conditions, payment requests for stored materials will be accepted at Owner's sole discretion.

Part II

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 an escrow 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, 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 in the manner and priority as set forth for under ORS 279.526 to ORS 279.542.

Where the Owner has agreed to 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 election of option (c), Contractor shall accept like bonds from Subcontractors and suppliers on the Project.

E. 5.1.3 The retainage held by Owner shall be included in and paid to the Contractor as part of the final payment of the Contract Price. The Owner shall pay to Contractor interest at the rate of one and one-half percent per month on the final payment due Contractor, interest to commence thirty (30) Days after the Work under the Contract has been completed and accepted and to run until the date when final payment is tendered to Contractor. The Contractor shall notify Owner in writing when the Contractor considers the Work complete and Owner shall, within fifteen (15) Days after receiving the written notice, either accept the Work or notify the Contractor of Work yet to be performed on the Contract. If Owner does not within the time allowed notify the Contractor of Work yet to be performed to fulfill contractual obligations, the interest provided by this subsection shall commence to run thirty (30) Days after the end of the 15-day period.

E.5.1.4 Owner shall reduce the amount of the retainage if the Contractor notifies the controller of the Owner that the Contractor has deposited in 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.6 FINAL PAYMENT

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. 3 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.

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 his 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 any and all spills, releases, discharge or leaks of environmental pollution during performance of the Contract which occur as a result of, or are contributed by, actions of its agent, personnel, or Subcontractors. Contractor agrees to promptly dispose of such spills, releases, discharge or leaks to satisfaction of the Owner and proper regulatory agencies in a manner that complies with applicable federal, state, and local laws and regulations. Cleanup shall be at no cost to the Owner and be performed by properly qualified personnel.
- F.5.1.1** 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.5.1.2 Contractor shall be liable for any and all costs, expenses, damages, claims, and causes of action (Including attorney fees), or any of them, related to or arising out of a spill, release, discharge, or leak of (or from) any environmental pollutant or hazardous substance or material, to the extent such spill, release, discharge, or leak was caused or contributed to by Contractor's (i) negligence or (ii) failure to perform in accordance with the Contract Documents. Nothing in this section F.5.1.2 shall limit Contractor's liability or responsibility under Section G.2. 1. I of this Contract.
- 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)" are those 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.6.3 In the event any removal, abatement or demolition of asbestos on Owner's property is required under this Contract, the Contractor shall use a certified inmate work force, if available in accordance with ORS 279.319
- F.6.4 Subject to the limitations on liability set forth in Section 7 of Article XI of the Oregon Constitution and the Oregon Tort Claims Act, Owner shall save, defend, indemnify and hold Contractor harmless from and against all costs of clean-up and damages resulting from pre-existing conditions on the project site not resulting or arising from Contractor's operations.
- F.7 FORCE MAJEURE**
- F.7.1 Neither party to this Contract shall be held responsible for delay or default caused by fire, riot, acts of God, sovereign, or public enemy, strikes, freight embargoes and/or war or any other act which is beyond that party's control. The Owner may terminate this Contract upon written notice after determining such delay or default will reasonably prevent successful performance of the Contract.
- F.7.2 In the event Force Majeure impacts this project, the Owner may grant a reasonable extension of time, and there shall be no additional compensation paid to the Contractor.

SECTION G
BONDING AND INSURANCE

G.1 PERFORMANCE AND PAYMENT SECURITY

G.1.1 When the Contract Price exceeds \$75,000 the Contractor shall furnish and maintain in effect at all times during the Contract Period, a bond to cover performance/payment in a sum equal to the Contract Price. A bond may be required if the Contract Price is \$75,000 or less, if required by the Contract Documents.

G.1.2 A performance/payment bond form furnished by the Owner and notarized by awarded Contractor's surety company authorized to do business in Oregon is the only acceptable form of performance/payment security, unless otherwise specified in the Contract Documents.

G.2 INSURANCE

G.2.1 Responsibility For Damages/ Hold Harmless:

G.2.1.1 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. Contractor shall indemnify, defend (with counsel of Owner's choice) and hold harmless the Owner against any claims arising from said damage, injury, loss, expense, inconvenience or delay.

G.2.2 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 coverage's indicated are minimums unless otherwise specified in the Contract Documents.

G.2.3 Workers' Compensation: The Contractor, its Subcontractors, if any, and all employers providing work, labor, or materials under this Contract are subject employers under the Oregon Workers' Compensation Law and shall comply with ORS 656.017, which requires them to provide workers' compensation coverage that satisfies Oregon Law for all their subject workers. 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. 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.2.4 BUILDER'S RISK INSURANCE

G.2.4.1 Builder's Risk: During the term of this Contract, 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.2.4.2 Builder's Risk Installation Floater: 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.2.5 LIABILITY INSURANCE

G.2.5.1 Commercial General Liability: 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. This insurance shall include coverage for the hazards of operations including explosion, collapse and underground coverage, elevators, independent contractors, employees as additional insureds, and broad form property damage. The insurance shall include personal injury coverage and contractual liability coverage for the indemnity provided for in this Contract, for contracts related to the Work, and products/completed operations liability. The policy shall be endorsed to extend the completed operations for three years after Final Completion of the Work. Combined single limit per occurrence shall not be less than \$1 million, or the equivalent. Each annual aggregate limit shall not be less than \$1 million, when applicable.

G.2.5.2 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.2.5.3 "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 the Contractor's insurer will provide such 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.2.6 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 million limit per occurrence. This policy must be kept in effect for 24 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.2.7 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.2.8 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 acceptable insurance companies or entities authorized to do business in Oregon. Contractor shall cause the insurer to strike out the clause "endeavor to send notice of cancellation" where such or a similar clause appears in any 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 disclosed to 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.
- 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 H.1.2 above.
- H.1.4 Any claim for additional time shall be based on written notice stating the general nature of the request, delivered to the Owner's Authorized Representative, in accordance with D. 2. 1. As a part of this notice, the Contractor shall provide an estimate of the probable effect of such delay on the progress of the Work and Final Completion of the Project. Failure to submit a suitable notice within the specified time period will result in the Contractor waiving this right to request additional time for that delay cause. This does not abrogate Section D. 1.5.

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. Use of the float will be negotiated. 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.

SECTION I
CORRECTION OF WORK

I.1 CORRECTION OF WORK BEFORE FINAL PAYMENT

Work failing to conform to the Contract Documents shall be deemed defective. Contractor shall promptly remove from the premises and replace, all defective materials as determined by the Owner's Authorized Representative as failing to conform to the Contract Documents, 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.

I.2 WARRANTY WORK

- I.2.1 Neither the final certificate of payment nor any provision of the Contract Documents shall relieve the Contractor from responsibility for defective Work and, unless otherwise specified, Contractor shall correct any 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.
- I.2.2 This provision does not negate guarantees or warranties for periods longer than one year including without limitation such guarantees or warranties required by other sections of the Contract Documents for specific installations, materials, processes, equipment or fixtures.
- I.2.3 In addition to Contractor's warranty, manufacturer's warranties shall pass to the Owner and shall not take effect until affected Work has been accepted in writing by the Owner's Authorized Representative.

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 it was a Contractor caused suspension, 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 the Owner, the Contractor shall be due compensation which shall be defined using Section D, Changes in the 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, after providing Contractor an opportunity for remedy, may, without prejudice to any other right or, remedy and after giving Contractor seven (7) Days written notice, terminate the Contract 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 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 the above occurs, the 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 and the Contractor's surety seven (7) Days prior written notice of a termination for public convenience. After such notice, the Contractor and the Contractor's surety 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 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, five (5) complete and approved sets of O & M Manuals shall be delivered to the Owner's Authorized Representative by the Contractor.

K.3 RELEASE OF LIENS AND CLAIMS

As a condition of final payment, the Contractor shall submit to the Owner's Authorized Representative a notarized Release of Liens and Claims Form, 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 NOTICES

K.4.1 Contractor shall provide Owner a written notice of both Substantial and Final Completion. Both completion notices must be signed by the Owner's Authorized Representative 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 an operating facility 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.4.3 Final Completion shall be when all Work is complete in accordance with the Contract Documents.

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 state that the Contractor shall indemnify, defend (with counsel of Owner's choice) and hold harmless the Owner from any claims resulting from the disposal of the environmental pollution including removal, encapsulation, transportation, handling, and storage.

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.

**SECTION L
LEGAL RELATIONS AND RESPONSIBILITY TO THE PUBLIC**

L.1 LAWS TO BE OBSERVED

The following is a list of federal, state and local agencies of which the Owner has knowledge that have enacted ordinances or regulations relating to environmental pollution and the preservation of natural resources that may affect the performance of the Contract:

L.2 FEDERAL AGENCIES

- Agriculture, Department of
- Army Corps of Engineers
- Bureau of Indian Affairs
- Bureau of Land Management
- Bureau of Mines
- Bureau of Reclamation
- Coast Guard
- Defense, Department of
- Energy, Department of
- Environmental Protection Agency
- Federal Energy Regulatory Commission
- Federal Highway Administration
- Forest Service
- Geological Survey
- Health and Human Services, Department of
- Housing and Urban Development, Department of

- Interior, Department of
- Labor, Department of
- Mine Safety and Health Administration
- Minerals Management Service
- Occupation Safety and Health Administration
- Soil Conservation Service
- Solar Energy and Energy Conservation Bank
- Transportation, Department of
- U. S. Fish and Wildlife Service
- Water Resources Council

L.3 STATE AGENCIES

- Administrative Services, Department of
- Agriculture, Department of
- Columbia River Gorge Commission
- Energy, Department of
- Environmental Quality, Department of
- Fish and Wildlife, Department of
- Forestry, Department of
- Geology and Mineral Industries, Department of
- Human Resources, Department of
- Insurance and Finance, Department of
- Land Conservation and Development Commission
- Parks and Recreation, Department of
- Soil and Water Conservation Commission
- State Lands, Division of
- State of Oregon Standard Terms and Conditions for Public Improvement Contracts July 1998
- Water Resources Department of

L.4 LOCAL AGENCIES

- City Councils
- County Commissioner, Board of
- County Courts
- Design Commissions
- Historical Preservation Commission
- Planning Commissions