

**C304**  
**OREGON HEALTH AND SCIENCE UNIVERSITY**  
**STANDARD GENERAL CONDITIONS FOR OHSU APPROVED GENERAL CONTRACTOR**  
**AGREEMENTS**  
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## **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, firm, or corporation, so identified, appointed by the Owner to make drawings and specification of the Work contemplated by the Contract.

**BID** means a competitive offer, which is binding on the offerer, in which price, delivery (or project completion), and conformance to specification and the requirements of the Invitation to Bid will be the predominant award criteria.

**BIDDER** is an individual, firm, or corporation who submits a Bid in response to a public contracting agency's Invitation to Bid.

**CLAIM** is a resubmitted change request which has been previously denied by the Owner's Authorized Representative.

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

**CONTRACT PERIOD** is set forth in these Contract Documents which shall begin with the issuance of the Notice to Proceed and conclude upon Final Completion.

**CONTRACT PRICE** is the total of the awarded bid amount, including any approved alternates, and any fully executed change orders.

**CONTRACTOR** means the individual, firm, or corporation awarded the Contract for the Work contemplated.

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

**DIRECT COSTS** - Unless otherwise provided in the Contract Documents, Direct Cost shall be limited to the following: cost of materials, including sales tax and 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 value of equipment, and machinery; and the additional costs of field personnel directly attributable to the change.

**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; and (e) A business properly licensed and legally registered in this state.

**FINAL COMPLETION** means the final completion of all requirements under the Contract, including Contract Closeout (Section K) and that the final payment may be made and all retainage, if any, released.

**FORCE MAJEURE** means an inevitable act, event, happening, or occurrence which results entirely from natural causes and is in no sense attributable to human agency.

**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.

**NOTICE TO PROCEED** is official written notice from the Owner indicating that all initial contract requirements, including the Contract, performance bond, and certificate 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.

**OVERHEAD** - The following items shall be included in Contractor's markup (general and administrative expense, overhead and profit) and shall not be charged as direct cost of the Work: Personnel above the level of foreman (i.e., superintendents and project managers); equipment owned or leased by the Contractor (i.e., job trailers, small tools); expenses of Contractor's offices including personnel; and overhead and general and administrative expenses.

**OWNER** means the Oregon Health and Science University.

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

**PLANS** are the drawings which show the location, type, dimensions, and details of the work to be done under the contract.

PROJECT means the specific work to be performed as described in the Contract Documents.

PURCHASING AGENT means agent of the issuing agency as identified in the Contract Documents.

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 prejudices or cultural bias, without regard to individual qualities because of the individual's identity as a member or a group.

SOLICITATION DOCUMENT is an Invitation to Bid.

SPECIFICATIONS is this publication and all publications to which are referred in this publications. Also supplemental specifications, special provisions, and documents referred to and/or bound with the Contract Documents; together with all signed, written agreements pertaining to the method and manner of doing the work, or to the quantities or qualities of materials to be furnished under the contract.

SUBCONTRACTOR means the individual, firm, or corporation having a direct contract with the Contractor, or another subcontractor, to perform a portion of 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 are items that are the same or better in function, performance, reliability, quality, and general configuration as that product(s) specified. Approval of the substitute item will be solely determined by the Owner's Authorized Representative. The decision of the Owner's Authorized Representative is final.

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, 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. All excavating and backfill necessary to the execution of this Contract shall be the responsibility of the Contractor. The Contractor shall perform other work necessary to render the project complete and usable.

A.3 CONTRACT DOCUMENTS

The Contract Documents consist of the Solicitation Document, Invitation to Bid including any bid addenda, Instructions to Bidders, General Conditions, Special Conditions, if any, accepted Bid, the Contract and Amendments thereto, if any, Performance Bond, Plans, Specifications, approved shop drawings, and approved change orders.

A.4 INTERPRETATION OF DOCUMENTS

A.4.1 The Contract Documents are intended to be complementary. Whatever is called for in one, is interpreted to be called for in all. However, in the event of conflicts or discrepancies among the Contract Documents, interpretations will be based on the following priorities:

1. The Contract, and Amendments to same, with those of later date having precedence over those of an earlier date;
2. The Special Conditions;
3. The General Conditions of the Contract;
4. Specifications and Plans and notes on Plans.

A.4.2 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's Authorized Representative's interpretation in writing.

A.4.3 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's Authorized Representative. Contractor shall not proceed without direction in writing from the Owner's Authorized Representative.

A.4.4 Reference to standard specifications, manuals, or codes of any technical society, organization or association, or to the laws or regulations of any governmental authority, whether such reference be specific or by implication, shall mean the latest standard specification, manual, code or laws or regulations in effect in the jurisdiction where the project is occurring on the first published date of the Solicitation Document, except as may be otherwise specifically stated.

A.5 EXAMINATION OF PLANS, SPECIFICATIONS, AND SITE OF WORK

It is understood that the Contractor, before submitting a Bid, 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.6 INDEPENDENT CONTRACTOR STATUS

The service or services to be rendered 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.7 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.8 GOVERNMENT EMPLOYMENT STATUS

A.8.1 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.8.2 Contractor certifies he/she is not an employee of the State of Oregon for purposes of performing work under this Contract.

A.9 DIVERSITY

A.9.1 Contractor acknowledges that (i) OHSU is committed to diversity within OHSU and within our community, (ii) OHSU is committed to developing business relationships that encourage affirmative action and the participation of emerging small businesses and businesses owned by women and minorities, and (iii) OHSU encourages and supports the development of minority business enterprises, women business enterprises, and emerging small businesses that meet high quality standards by offering business opportunities available through OHSU contracts.

A.9.2 Upon request, Contractor shall provide information to OHSU about its diversity related efforts and programs and shall maintain similar or improved diversity related efforts and programs for the term of this contract.

**SECTION B - ADMINISTRATION OF THE CONTRACT**

B.1 CONTRACTOR'S RESPONSIBILITY TO MITIGATE IMPACTS

B.1.1 The Contractor is responsible to mitigate any impacts to the project, including 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 to the project.

B.2 MATERIALS AND WORKMANSHIP

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.2.1 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.2.2 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.2.3 Contractor shall furnish adequate facilities, as required, for the Owner's Authorized Representative to have safe access to the Work. (Walkways, railings, ladders, tunnels, platforms, etc.) Producers, suppliers, and fabricators shall also provide proper facilities and access to their facilities.

B.2.4 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, except for those specifically excluded in the Special Conditions, for the construction of the Work, for temporary obstructions, enclosures, opening of streets for pipes, walls, utilities, environmental, 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 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 ALL GOVERNMENT REGULATIONS**

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.4.1 Contractor shall comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations; and

B.4.2 Contractor shall not discriminate against disadvantaged minority, women or emerging small business enterprises in the awarding of subcontracts.

B.4.3 Contractor shall maintain, in current and valid form, all licenses and certificates required by law, regulation, or this Contract when performing the Work.

B.4.4 Failure to comply with any or all of the requirements of B.4.1 through B.4.8 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.4.5 Office of Federal Contract Compliance Programs (OFCCP) The requirements of Executive Orders 13201 and 11246 and 41 CFR part 60 are hereby incorporated by reference. EO 13201 <http://www.dol.gov/esa/regs/compliance/ofccp/13201ofp.htm>, EO 11246 <http://www.dol.gov/compliance/guide/discrim.htm#who>

B.4.6 Conflict of Interest Contractor acknowledges that OHSU uses ethical business practices in its vendor selection and other contracting practices. Contractor certifies that neither it nor its employees or agents have, with an intent to establish or maintain a business relationship with OHSU, provided any gift or sponsorship having more than minimal value: (i) to any person working on behalf of OHSU involved in the negotiation of the contract; (ii) to any OHSU Department or unit procuring items or services under this contract; or (iii) to any person with authority on behalf of OHSU to enter into the contract.

B.4.7 Unless contrary to federal law, Contractor shall certify that it shall not accept a bid or proposal 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 or proposals to the Contractor.

B.4.8 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 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-builts, and shall at all times give the Owner's Authorized Representative access thereto.

B.8.2 The State of Oregon and its agencies, Federal Government and their 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 cost pools, 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 State, Federal Government, 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 rights, or delegate responsibilities under this Contract, in whole or in part, without the prior consent 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 successors and assigns.

B.12 OWNER'S RIGHT TO DO WORK

At any time and without prejudicing this Contract, the Owner may perform work with its own personnel or separate contractor. The Contractor shall fully cooperate with any and all Owner forces without additional cost to the Owner.

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.

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

C.1 MINIMUM WAGE RATES ON PUBLIC WORKS

When the contract price exceeds \$50,000.00, the 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 in these Contract Documents.

C.2 PROMPT PAYMENT AND LIABILITY FOR CLAIMS

C.2.1 The Contractor shall:

C.2.1.1 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. Further, Contractor shall include the following provisions in each subcontract for property, materials, or services:

- (a) a payment clause that obligates the Contractor to pay the subcontractor or material supplier for satisfactory performance under its subcontract within 10 days out of such amounts as are paid to Contractor by Owner;
- (b) a clause requiring the Contractor to pay the subcontractor an interest penalty on amounts due and unpaid under C.2.1.2(a) at the rate of one and one-half percent per month from the day after the required payment date until the day of actual payment; and
- (c) a clause which requires each of Contractor's subcontractors to include, in each of their contracts with lower-tier subcontractors or suppliers, provisions to the effect that the subcontractor shall pay its lower-tier subcontractors and suppliers in accordance with the provisions of subsections (a) and (b), above and requiring each of their subcontractors and suppliers to include such clauses in their subcontracts and supply contracts.

C.2.1.2 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.2.1.3 Not permit any lien or claim to be filed or prosecuted against the state, county, school district, municipality, municipal corporation or subdivision thereof, on account of any labor or material furnished.

C.2.1.4 Pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.

C.2.2 If Contractor fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to the Contractor or 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.2.3 All employers working under this Contract are subject employers which must comply with ORS 656.017 relating to providing Workers Compensation coverage.

C.3 PAYMENT FOR MEDICAL CARE

Contractor shall promptly, as due, make payment to any person, copartnership, 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.4 HOURS OF LABOR

No person shall be employed to perform work under this Contract for more than eight hours in any one day or forty 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 for all time in excess of eight hours a day or for work performed on Saturday and on any legal holiday specified in ORS 279.334. This section C.4 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.

D.1.2 It is mutually agreed that changes in plans, quantities, or details of construction are inherent to 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:

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

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: 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. Where unit prices or solicitation alternates do not establish the cost for additional work, the limits as supplied by the Owner will apply.

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 sub-contractor's direct costs to cover overhead expenses for work performed with their own forces:

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

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:

\$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.

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 30 days after receipt of any written notice of modification of the Contract. (Refer also to Section H.1.4 for notification.)

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.

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.

D.1.8 Deductive changes are those which reduce the scope of the work. All deductive changes will be negotiated using the percentages for labor, equipment, material and subcontractor mark-ups in D.1.4.

- D.1.9 It is understood that changes in the work are inherent to 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.
- D.2 DELAYS
- D.2.1 If the Contractor is delayed 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 Force Majeure, the Contractor shall submit a written notification of the delay to the Owner's Authorized Representative within two working 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 days after the cause of the delay has been mitigated, or in no case more than 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.2.2 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.2.3 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 The Owner may grant a time extension for avoidable delay if the Owner deems it is in its best interest. Except as otherwise provided in ORS 279.063, time extensions for avoidable or unavoidable delays shall not be compensable. Only delays within the reasonable control of the Owner shall be compensable.
- D.2.5 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) years historical records of the general locality of the work,

notice to the Owner within fifteen days of receipt of the decision. The Contractor must present written documentation supporting the claim within fifteen days of the notice of appeal. After receiving the appeal documentation, the Owner shall review the materials and render a decision within 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 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. Should the parties lack specific recommendations for a mediator, the parties will look to the local circuit court or the Oregon Dispute Resolution Commission. Each party will pay its own costs for the time and effort involved in mediation. The cost of the mediator shall be split equally between the two parties. Both parties agree to exercise their best effort in good faith to resolve all disputes in mediation. Participation in mediation is a mandatory requirement on both the Owner and the Contractor. The schedule and time allowed for mediation will be mutually acceptable.
- 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 days prior to submission of its first application for progress payment, a 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.

### **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 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 30 days after the receipt of invoice from the Contractor or 15 days after the payment is approved by the Owner's Authorized Representative, whichever is the earlier date.
- 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, request for payment will be accepted only for materials which have been installed. Under special conditions, payment requests for stored materials will be accepted. Such a payment will be subject to the following conditions:
- (a) The request for stored material shall be submitted at least 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 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 "all-risk" 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 for an inspector to check the delivery at out of town storage sites.
  - (f) Within 60 days for 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.3 PAYROLL CERTIFICATION REQUIREMENT**

Contractor and its subcontractors shall submit complete weekly certified statements of payrolls for the week immediately preceding each submission as follows:

- E.3.1 For projects of less than 90 days the weekly certified statements of payroll shall be submitted:

Once before the first payment is made to the Contractor by the public agency; and  
Once before the final payment (covering the last full week of work on the project) is made to the Contractor by the public

agency.

E.3.2 For projects exceeding 90 days the weekly certified statements of payroll shall be submitted:

Once before the first payment is made to the Contractor by the public agency;  
At 90 day intervals thereafter; and  
Once before the final payment (covering the last full week of work on the project) is made to the Contractor by the public agency.

E.3.3 Payroll and Certified Statement forms are available at any BOLI office. Payroll and certified statement records must be kept by the Contractor for three (3) years from the date of Final Completion of the Contract and be available to the Owner upon request.

#### 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.

#### E.5 RETAINAGE

E.5.1 Retainage shall be in accordance with ORS 279.400 to 279.445:

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 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;
- (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 the public agency, with earnings from such account accruing to the Contractor; or
- (c) that the Owner allow Contractor to deposit a surety bond in a form acceptable to the public agency in lieu of all or a portion of funds retained, or to be retained.

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 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 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 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 he has completed his part of the Contract and shall request final payment. Upon receipt of such notice the Owner's Authorized Representative will inspect, and if acceptable, submit to the Owner his 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 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 him under the provisions of these Contract Documents.

### **SECTION F - JOB SITE CONDITIONS**

#### F.1 USE OF PREMISES

F.1.1 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.1.2 In addition, Contractor shall be responsible for regular cleaning in compliance with all federal, state, and local laws rules and ordinances.

F.2 PROTECTION OF WORKERS, PROPERTY, AND PUBLIC

F.2.1 The Contractor is responsible to manage the project to mitigate impacts to the project, including authorized changes, which may adversely affect cost, schedule, or quality.

F.2.2 The Contractor is responsible for the actions of all personnel, laborers, suppliers, and subcontractors to the project.

F.2.3 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.2.4 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 worksite safety. Worksite safety is the responsibility of the Contractor.

F.2.5 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 equitably determined.

F.3 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.4 ENVIRONMENTAL POLLUTION

F.4.1 Unless disposition of environmental pollution is specifically a part of this Contract, 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 bona fide risk or danger to the health or well being of Contractor's or any subcontractor's work force.

F.4.2 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.5 SPILL RESPONSIBILITY

F.5.1 Contractor will be held responsible for any and all releases 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 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.

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, 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 Sections G.2.1.1 and G.2.1.2 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 340-108 for petroleum products. 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 CUTTING AND PATCHING

- F.6.1 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.6.2 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.7 FORCE MAJEURE

- F.7.1 Neither party of this contract shall be held responsible for delay or default caused by fire, riot, acts of God, sovereign, public enemy, and/or war 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, there shall be no additional compensation paid to the Contractor.

**SECTION G - BONDING AND INSURANCE**

G.1 PERFORMANCE SECURITY

- G.1.1 The Contractor shall furnish and maintain in effect at all times during the Contract Period, a bond to cover performance and payment in a sum equal to the Contract Price.
- G.1.2 A surety bond furnished by a surety company authorized to do business in Oregon is the only acceptable form of performance 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, his subcontractors, personnel, or agents and the Contractor shall indemnify and hold harmless the Owner against any claims arising from said damage, injury, loss or expense.

- G.2.1.2 Contractor shall indemnify, defend, and hold harmless the Owner and its officers, divisions, employees, and members, from all claims, suits, or actions of any nature arising out of the activities of Contractor, its officers, subcontractors, agents, or employees under this contract.

- 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.

- G.2.3 Comprehensive or Commercial General Liability: Contractor shall obtain, at Contractor's expense, and keep in effect during the term of this Contract, Comprehensive or Commercial General Liability Insurance covering bodily injury and property damage. This insurance shall include personal injury coverage, contractual liability coverage for the indemnity provided for under this Contract and products/completed operations liability. Combined single limit per occurrence shall not be less than \$1,000,000.00, or the equivalent. Each annual aggregate limit shall not be less than \$1,000,000.00, when applicable.

- G.2.4 Automobile Liability: Contractor shall obtain, at Contractor's expense, and keep in effect during the term of this Contract, Automobile Liability Insurance. This coverage may be written in combination with the Comprehensive or Commercial General Liability Insurance. Combined single limit per occurrence shall not be less than \$1,000,000.00, or the equivalent.

- G.2.5 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 each accident. Contractors who perform the work without the assistance or labor of any employee need not obtain such coverage.

- G.2.6 "Tail" Coverage: If any of the aforementioned 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 contract 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.2.7 Additional Insured: The liability insurance coverages, except Professional Liability if included, required for performance of this Contract shall include the Owner, and its departments, divisions, officers, and employees, as Additional Insureds but only with respect to the contractor's activities to be performed under this Contract.

- G.2.8 Notice of Cancellation or Change: There shall be no cancellation, material change, potential exhaustion of aggregate limits or intent not to renew insurance coverage(s) without 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 coverage(s) provided to the Owner and its divisions, officers, and employees.
- G.2.9 Certificate(s) of Insurance: As evidence of the insurance coverages 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 coverages required under this Contract shall be obtained from acceptable insurance companies or entities. The Contractor shall be financially responsible for all deductibles, self-insured retentions and/or self-insurance included hereunder.

## **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 15 calendar 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**

- 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 project. Use of the float will be negotiated. In no case shall the Contractor make a claim for delays if his work completes within the contract time but after his scheduled completion.
- H.2.1 The Contractor warrants that it has the expertise, forces, and equipment to complete the work within the Contract Period. It further stipulates that its bid includes all overhead and profit for the entire Contract Period.

## **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 acceptance by the Owner of the completed project 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 for periods longer than one year such guarantees 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 causes including, but not limited to:
- (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.2 CONTRACTOR'S RESPONSIBILITIES

- J.2.1 For the duration of the suspension, Contractor is responsible to continue maintenance at the project just as if the work was in progress. This includes, but is not limited to, protection of completed work, maintenance of access, protection of stored materials, temporary facilities, and clean-up.
- J.2.2 When the work is re-commenced 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. 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 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 conditions including but not limited to those listed below:
- (a) If Contractor should voluntarily or involuntarily, seek protection under the United States Bankruptcy Code and its Debtor in Possession or Trustee for the estate fail to assume the Contract within a reasonable time;
  - (b) If 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 pursue 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 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.
- J.4.3 In such case, the Contractor shall not be entitled to receive further payment until the Work is completed. If the unpaid balance of the Contract Price shall exceed the Owner's cost of finishing the Work (with compensation for added managerial and administrative services), such excess shall be paid to Contractor. 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 OWNER'S RIGHT TO TERMINATE 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; 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 circumstances 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 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.
- J.6.3 Upon termination, Contractor shall take any action necessary, or that the Owner may direct, for the protection and preservation of the Work and any other property related to the Contract that is in the possession of Contractor and in which the Owner has any interest.

**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 as defined in Section A.3 unless otherwise directed.

**K.2 OPERATION AND MAINTENANCE MANUALS**

As part of the work, Contractor shall submit two completed operation and maintenance manual 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 Manual has been received. The O & M Manual shall contain a complete set of all submittals, all product data as required by the specifications, training information, phone list of consultants, manufacturers, installer and suppliers, manufacturer's printed data, record and shop drawings, schematic diagrams of systems, appropriate equipment indices, warranties and bonds, etc. The 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 and hold harmless the Owner from all claims for labor and materials furnished 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.

K.4.2 Substantial Completion of an operating facility shall be that degree of completion that has provided a minimum of 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. Both completion notices must be signed by the Owner's Authorized Representative to be valid. The Owner shall be the final signature on the notices. The notices shall take effect on the date they are signed by the Owner.

K.4.3 Final Completion shall be when all work is complete in accordance with the Contract Documents. The Contractor may request a punch list be prepared by the Owner's Authorized Representative with submission of the Substantial Completion.

**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 complete 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 jurisdictions over such environmental pollution. The notice shall indemnify and hold harmless the Owner from any claims resulting from the disposal of the environmental pollution including removal, encapsulation, transportation, handling, and disposal.

**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.

**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 their work.

**SECTION L - LEGAL RELATIONS AND RESPONSIBILITY TO 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:

FEDERAL AGENCIES

Agriculture, Department of  
Forest Service  
Soil Conservation Service

Coast Guard

Defense, Department of  
Army Corps of Engineers

Energy, Department of  
Federal Energy Regulatory Commission

Environmental Protection Agency

Health and Human Services, Department of

Housing and Urban Development, Department of  
Solar Energy and Energy Conservation Bank

Interior, Department of  
Bureau of Land Management  
Bureau of Indian Affairs  
Bureau of Mines  
Bureau of Reclamation  
Geological Survey  
Minerals Management Service  
U.S. Fish and Wildlife Service

Labor, Department of  
Mine Safety and Health Administration  
Occupation Safety and Health Administration

Transportation, Department of  
Federal Highway Administration

Water Resources Council

STATE AGENCIES

Agriculture, Department of  
Soil and Water Conservation Commission

Columbia River Gorge Commission

Energy, Department of

Environmental Quality, Department of

Fish and Wildlife, Department of

Forestry, Department of

General Services, 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

State Engineer

State Lands, Division of

Water Resources Department

LOCAL AGENCIES

City

M: FEDERAL AND STATE PROGRAM ELIGIBILITY

Contractor represents and warrants that it is not excluded from participation, and is not otherwise ineligible to participate, in a "Federal

health care program” as defined in 42 U.S.C. Section 1320a-7b(f) or in any other government payment program. In the event Contractor is excluded from participation, or becomes otherwise ineligible to participate in any such program during the Term, Contractor will notify Owner in writing within three (3) days after such event, and upon the occurrence of such event whether or not such notice is given to Owner, Owner may immediately terminate this contract upon written notice to Contractor. Owner will not make any payments under this contract during any period of debarment, ineligibility or exclusion from participation.

## **DIVISION SG**

### SUPPLEMENTARY GENERAL CONDITIONS

To Oregon Health and Science University  
Standard General Conditions

SG-1 Add the following to Section A.3

“Contract documents also include Supplementary Instructions to Bidders, Supplementary General Conditions, Architects/Engineers Supplemental Instructions, (include here any other contract documents to be added).

SG-2 Replace the itemized list in Section A.4.1 with the following:

1. Change Order
2. Agreement
3. Addenda, with those of later date having precedence over those of earlier date.
4. Supplementary Conditions
5. Division One of the Specifications
6. General Conditions of the Contract
7. Schedules
8. Drawings and Specifications
  - a) In the case of inconsistency between Drawings 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 Architect's/Engineer's interpretation.
9. Large-scale Drawings
10. Small-scale Drawings
11. Dimension numbers written on Drawings prevail and take precedence over dimensions scaled from Drawings.

SG-3 Add the following to Section C.1:

The law requires the filing of certifications and affidavits pertaining to wages paid. Such certifications are required from the primary contractor, or surety, and from every subcontractor, or surety, and must be filed once before the first payment and once before the final payment is made of any sum due on account of a contract for a public work; in addition, for projects exceeding 90 days, certifications are to be made at 90 day intervals. A sample copy of the “State of Oregon Public Works Contractor Wage Certification” form, including the affidavit, is attached. Duplicate copies of the form must be submitted in compliance with statutory requirements.

SG-4 Delete the provisions of Section G.2.1.2 and substitute the following:

The Contractor shall save, defend, indemnify and hold harmless OHSU on behalf of the Institution and its officers, agents (including the Architect/Engineer), employees, and members from all claims, suits, or actions of whatsoever nature resulting from or arising out of the activities of the Contractor or its Subcontractors, agents, or employees acting under this Contract.

SG-5 Delete the provisions of Section G.2.3 and G.2.4 and replace with the following:

The Contractor shall secure at its own expense and keep in effect during the term of this Contract either Comprehensive General Liability (CGL) insurance with a Broad Form CGL Endorsement or commercial general liability insurance with a minimum limit of \$1,000,000 per occurrence, and Auto Liability (CGL) insurance with a minimum limit of \$1,000,000 per occurrence. Insurance policies, which cannot be excess to a self insurance program, are to be issued by an insurance company authorized to do business in the State of Oregon. Contractor shall not default on premium payments.

The Contractor shall secure, at its own expense and keep in effect during the life of the Contract, a Builder's All-Risk Insurance policy covering the real and personal property of others in the care, custody, and control of the Contractor. The policy shall be of such form as is generally written by the insurance industry and carried by an insurance company authorized to conduct business in the State of Oregon. The minimum amount of coverage to be carried shall be equal to the full amount of the Contract. Coverage shall include theft and damage to building interiors. Contractor shall be financially responsible for any deductible applied to loss. The Oregon Health and Science University shall be named as Loss Payees on the policy using a Standard Loss Payee clause. Contractor shall not default on premium payments.

SG-6 Add the following paragraphs at the end of Section G.2.5:

The Contractor shall comply with the Worker's Compensation laws of the State of Oregon at all times during the term of this Contract. The Contractor shall require all Subcontractors or anyone else directly employed by either the Contractor or its Subcontractors to also provide Worker's Compensation in accordance with the laws of the State of Oregon. The Contractor shall require proof of such Worker's 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.

Prior to commencing work, the Contractor shall file certificates of insurance with the Contract Officer, Contracts Office, OHSU Logistics Center, 3930 S.W. Macadam, Portland, OR 97201-4406. Coverage shall be continuous while this Contract is in force. The Contractor shall require similar certificates of coverage from all Subcontractors and shall keep such certificates available for inspection by the Owner.

SG-7 Delete the provisions of Sections G.2.8 and G.2.9 and replace with the following:

Before work under this Contract can begin, the Contractor shall furnish to the Contract Officer, Contracts Office, OHSU Logistics Center, 3930 S.W. Macadam, Portland, OR 97201-4406, Certificate(s) of Insurance as evidence of the insurance coverages required by this Contract, including Worker's Compensation. The Certificate(s) and any endorsements or attachments must contain the policy numbers and the beginning and ending dates of all policies. The Contract # , WO# Number, and Project name must be included on each Certificate. The Certificate(s) must provide that the insurance company give a thirty (30) day notice, without reservations, to the Contract Officer if the insurance is cancelled or materially changed.