

EXHIBIT A

CITY OF REDMOND, OREGON GENERAL CONDITIONS FOR PUBLIC IMPROVEMENT CONTRACTS

INSTRUCTIONS: The attached **City of Redmond, Oregon, general conditions (the "General Conditions")** apply to all designated public improvement contracts. Changes to the General Conditions (including any additions, deletions or substitutions) should only be made by attaching Supplemental General Conditions. The text of these General Conditions should not otherwise be altered.

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CITY OF REDMOND, OREGON
GENERAL CONDITIONS FOR PUBLIC IMPROVEMENT CONTRACTS
("General Conditions")

SECTION A
GENERAL PROVISIONS

A.1 DEFINITION OF TERMS. Capitalized terms used, but not otherwise defined, in the Contract Documents will have the following meanings:

"Affiliate" means any subsidiary of Contractor, and any other entity in which Contractor has a financial interest or which has a financial interest in Contractor (including without limitation parent companies, related businesses under the same holding company, or any other business controlled by, under common control with, or which controls Contractor).

"Allowance" means the allowance amounts shown in the GMP Supporting Documents, together with such further allowances as may be developed by the Parties as the Project progresses.

"Amendment" means a written modification of the Contract (including without limitation any Change Order, Early Work Amendment, or GMP Amendment) executed by Contractor, City's Authorized Representative, and, where required, approved in writing on behalf of City by its City Manager.

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

"Business Days" means every day except Saturday, Sunday, and legal holidays recognized for employees of City.

"Change Order" means a written modification of the Contract under Section D.1 of the General Conditions (including without limitation any agreed change to GMP), identified as a Change Order and executed by City's Authorized Representative, Contractor, where applicable, and, where required, approved in writing by City.

"City" or **"Owner"** means City of Redmond, an Oregon municipal corporation.

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

"Claim" means a demand or assertion by Contractor seeking, as a matter of right, adjustment or interpretation of Contract terms, payment of money, extension of Contract Time or other relief pursuant to Section D.3.

"Construction Documents" has the meaning given in City's Professional Services Agreement with the Architect for this Project.

"Construction Manager Services" or **"CM Services"** has the meaning given in Article 3.3 of the Contract.

“Construction Phase” means the period commencing on City’s execution of a GMP Amendment or Early Work Amendment, together with the earlier of (i) issuance by City of a Notice to Proceed with any on-site construction or (ii) execution of a subcontract or issuance of a purchase order for materials or equipment required for the Work.

“Construction Phase Services” means all of the Work other than the Preconstruction Phase Services.

“Contract” means the written agreement between City and Contractor comprised of the Contract Documents which describe the Work to be done and the obligations between the Parties.

“Contract Documents” means the Request for Proposals and any addenda, Instructions to Proposers, the Contract, General Conditions, Supplemental General Conditions, if any, the accepted Proposal, Plans, Specifications, Amendments and Change Orders.

“Contract Period” as set forth in the Contract Documents, means the period beginning with the issuance of the Notice to Proceed and concluding upon Final Completion.

“Contract Price” means a total amount equal the sum of the Preconstruction Fee, the CM/GC Fee, and the actual Cost of the Work, as increased or decreased by the price of approved alternates and Change Orders, but not exceeding the GMP. If only Preconstruction Phase Services are provided and a GMP Amendment is not executed between Contractor and City, the Contract Price is the amount payable for the Preconstruction Phase Services listed on Exhibit C. If Preconstruction Phase Services are provided and a GMP Amendment is executed between Contractor and City, the Contract Price is the amount payable for Preconstruction Phase Services listed on Exhibit C and the amount established by the GMP Amendment and any addenda.

“Contract Time” means any incremental period of time allowed under the Contract to complete any portion of the Work as reflected in the project schedule.

“Contractor” means the Person awarded the Contract for the Work contemplated.

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

“Days” means calendar days, including weekdays, weekends and holidays, unless otherwise specified.

“Design Development Documents” has the meaning given in City’s Professional Services Agreement with the Architect for this Project.

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

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

“Early Work Amendment” means an Amendment to the Contract executed by and between the Parties to authorize Early Work.

“Early Work Price” has the meaning given in Article 3.2.3 of the Contract.

“Effective Date” means the date on which this Contract is fully executed by the parties.

“Engineer”. References to the Architect/Engineer will be deemed to refer to the Architect/Engineer of record.

“Federal Contract Provisions” means the Contract Provision Guidelines for Obligated Sponsors and Airport Improvement Program Projects.

“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.

“Fixed Cost for GC Work” means that fixed sum identified in Article 8.7 of the Contract.

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

“General Conditions Work” or **“GC Work”** means (i) that portion of the Work required to support construction operations that is not included within overhead or general expense but is called out as General Conditions Work, and (ii) any other specific categories of Work approved in writing by City’s Authorized Representative as forming a part of the General Conditions Work.

“Guaranteed Maximum Price” or **“GMP”** means the Guaranteed Maximum Price of the Contract, as stated in the GMP Amendment, determined in accordance with Article 6 of the Contract, and as it may be adjusted from time to time pursuant to the provisions of the Contract.

“GMP Amendment” means an Amendment to the Contract, issued in the form of Exhibit B and executed by and between the Parties, to establish the GMP and identify the GMP Supporting Documents for Construction Phase Services.

“GMP Change Request” means a party’s written request for adjustment of the GMP based on a Scope Change.

“GMP Supporting Documents” means the documents referenced in the GMP Amendment as the basis for establishing the GMP. The GMP Supporting Documents will expressly identify the Plans and Specifications, clarifications, assumptions, qualifications, exclusions, conditions, Allowances, unit prices, and alternates that form the basis for the GMP.

“Indemnitees” has the meaning given the term in Subsection G.1.2 of these General Conditions.

“Key Persons” means those Contractor personnel identified in Articles 4.5 and 4.6 of the Contract.

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

“Offer” means a bid or proposal, as applicable, submitted by a Subcontractor in response to a Contractor-issued solicitation for subcontract work.

“Offeror” means a Subcontractor submitting a bid or proposal for subcontract work.

“Overhead” means those items which may be included in Contractor's markup (general and administrative expense and profit) and that will not be charged as Direct Costs, including without limitation such Overhead expenses as wages or salary of personnel above the level of foreman (i.e., superintendents and project managers), and expenses of Contractor's offices at the job site (e.g. job trailer) including expenses of personnel staffing the job site office.

“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.

“Preconstruction Fee” means the fee paid by City to Contractor, on a cost reimbursement basis, for all Preconstruction Phase Services, up to the maximum amount identified in Article 6.2 of the Contract.

“Preconstruction Phase” means the period commencing on the effective date of the Contract and ending upon commencement of the Construction Phase; provided that if City and Contractor agree, the Construction Phase may commence before the Preconstruction Phase is completed, in which case both phases will proceed concurrently.

“Preconstruction Phase Services” means all services described in Article 3.1 of the Contract, and any similar services described in the RFP, including such similar services as are described in Contractor's Proposal to the extent they are accepted by City, but excluding any Early Work. Early Work will be considered part of Construction Phase Services.

“Project” means the Redmond Municipal Airport Terminal Building Expansion Project

“Proposal” means Contractor's proposal submitted in response to the RFP.

“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.

“Record Document” means the as-built Plans, Specifications, testing and inspection records, product data, Samples, manufacturer and distributor/supplier warranties evidencing transfer to City, operational and maintenance manuals, shop drawings, Change Orders, correspondence, certificate(s) of occupancy, and other documents listed in Subsection B.9.1 of these General Conditions, recording all Services performed.

“Request for Proposals” or **“RFP”** means the Request for Proposals, and all schedules, attachments, or addenda to the RFP, issued by City for award of a contract for performance of the Work.

“Samples” has the meaning given in Section B.18.1(c) of these General Conditions.

“Schedule of Values” has the meaning given in Section E.1 of these General Conditions.

“Schematic Design Documents” has the meaning given in City Professional Services Agreement with the Architect for this Project.

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

“Specifications” 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 Contractor, or another Subcontractor, to perform one or more items of the Work.

“Substantial Completion” means the date when City accepts in writing the construction, alteration, and/or repair of the improvement to real property (or any designated portion thereof) as having reached that state of completion when City determines it may be used or occupied for its intended use and purposes. Substantial Completion of facilities with operating systems occurs only after thirty (30) continuous Days of successful, trouble-free operation of the operating systems as provided in Section K.4.2 of these General Conditions.

“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 will be solely determined by City's Authorized Representative. The decision of City'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 RFP or may be a separate attachment to the Contract.

“Target GMP Range” means the range of estimated Contract Price identified in Article 3.1.5(f) of the Contract.

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

A.2 SCOPE OF WORK. The Work contemplated under this Contract includes all labor, materials, transportation, equipment and services for, and incidental to, completion of all construction work in connection with the project described in the Contract Documents. Separate scopes of work may be issued for Preconstruction Phase Services and Construction Phase Services. Contractor will perform all Work necessary so that the project can be legally occupied and fully used for the intended use as set forth in the Contract Documents.

A.3 INTERPRETATION OF CONTRACT DOCUMENTS.

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

- (a) Amendments and Change Orders, with those of later date having precedence over those of an earlier date;
- (b) The Supplemental General Conditions, if any;
- (c) The Contract, including Exhibits;
- (d) Federal Contract Provisions
- (e) The General Conditions;
- (f) Division One (General Requirements) of the Specifications;
- (g) Detailed Schedules of finishes, equipment and other items included in the Specifications;
- (h) Plans and Specifications (other than Division One and the Detailed Schedules to the Specifications);
- (i) Large-scale drawings on Plans;
- (j) Small-scale drawings on Plans;
- (k) Dimension numbers written on Plans which will prevail and take precedence over dimensions scaled from Plans;
- (l) The Request for Proposals; and
- (m) The accepted Proposal.

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

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

A.3.4 References to standard specifications, manuals, codes of any technical society, organization or association, to the laws or regulations of any governmental authority, whether such reference be specific or by implication, will 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 Request for Proposals, except as may be otherwise specifically stated.

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

A.4.1 It is understood that Contractor, before submitting a Proposal, 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. Contractor acknowledges receipt of all information necessary to construct the Work. City will in no case be responsible for any loss or for any unanticipated costs that may be suffered by Contractor as a result of 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 other City personnel, or with the Architect/Engineer either before or after the Effective Date, will affect or modify any of the Contract's terms or obligations.

A.4.2 Should the Plans or Specifications fail to particularly describe the materials, kind of goods, or details of construction of any aspect of the Work, Contractor will have the duty to make inquiry of City and Architect/Engineer as to what is required prior to performance of the Work. Absent Specifications to the contrary, the materials or processes that would normally be used to produce first quality finished Work will be considered a part of the Contract requirements.

A.4.3 Any design errors or omissions noted by Contractor will be reported promptly to City's Authorized Representative, including without limitation, any nonconformity with applicable laws, statutes, ordinances, building codes, rules and regulations.

A.4.4 Since the Contract Documents are complementary, before starting each portion of the Work, Contractor will carefully study and compare the various Plans, Specifications, and other Contract Documents relative to that portion of the Work, will take field measurements of any existing conditions related to that portion of the Work, and will observe any conditions at the site affecting it. Any errors, inconsistencies, or omissions known, recognized, or discovered by Contractor will be reported promptly to the Architect/Engineer, in writing, as a request for information in such form as the Architect/Engineer may require.

A.4.5 If Contractor believes that additional cost or Contract Time is involved because of clarifications or instructions issued by City's Authorized Representative (or Architect/Engineer) in response to Contractor's notices or requests for information, Contractor must submit a written request to City's Authorized Representative, setting forth the nature and specific extent of the request, including all time and cost impacts against the Contract as soon as possible, but no later than thirty (30) Days after receipt by Contractor of the clarifications or instructions issued. If Contractor does not concur with the decision of City's Authorized Representative regarding time and cost impacts of the clarifications or instructions, Contractor may proceed to file a Claim under Section D.3, Claims Review Process. If Contractor fails to perform the obligations of Sections A.4.1 to A.4.3, Contractor will pay such costs and damages to City as would have been avoided if Contractor had performed such obligations.

A.5 INDEPENDENT CONTRACTOR STATUS. The service or services to be performed under this Contract are those of an independent contractor as defined in ORS 670.600. Contractor represents and warrants that it is not an officer, employee or agent of City as those terms are used in ORS 30.265.

A.6 RETIREMENT SYSTEM STATUS AND TAXES. Contractor represents and warrants that it is not a contributing member of the Public Employees' Retirement System and will be responsible for any federal or state taxes applicable to payment received under this Contract. Contractor will not be eligible for any benefits from these Contract payments of federal Social Security, employment insurance, workers' compensation or the Public

Employees' Retirement System, except as a self-employed individual. City will not withhold from such payments any amount(s) to cover Contractor's federal or state tax obligations.

A.7 GOVERNMENT EMPLOYMENT STATUS.

A.7.1 If this payment is to be charged against federal funds, Contractor represents and warrants that it is not currently employed by the Federal Government. This does not preclude Contractor from holding another contract with the Federal Government.

A.7.2 Contractor represents and warrants that Contractor is not an employee of City for purposes of performing Work under this Contract

**SECTION B
ADMINISTRATION OF THE CONTRACT**

B.1 CITY'S ADMINISTRATION OF THE CONTRACT.

B.1.1 City's Authorized Representative will provide administration of the Contract as described in the Contract Documents (1) during construction (2) until final payment is due and (3) during the five-year period for correction of Work. City's Authorized Representative will act on the Contract Documents, unless modified in writing in accordance with other provisions of the Contract. In performing these tasks, City's Authorized Representative may rely on the Architect/Engineer or other consultants to perform some or all of these tasks.

B.1.2 City's Authorized Representative will visit the site at intervals appropriate to the stage of Contractor's operations (1) to become generally familiar with and to keep City informed about the progress and quality of the portion of the Work completed, (2) to endeavor to guard City against defects and deficiencies in the Work, and (3) to determine in general if Work is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. City's Authorized Representative will not make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. City will have no control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences or procedures, nor for the safety precautions and programs in connection with the Work.

B.1.3 Except as otherwise provided in the Contract Documents or when direct communications have been specifically authorized, City and Contractor will endeavor to communicate with each other through City's Authorized Representative or designee about matters arising out of or relating to the Contract. Communications by and with the Architect/Engineer's consultants will be through the Architect/Engineer. Communications by and with Subcontractors and material suppliers will be through Contractor. Communications by and with separate contractors will be through City's Authorized Representative.

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

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

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

B.2.2 Contractor is responsible to protect and maintain the Work during the course of construction and to mitigate any adverse impacts to the project, including those caused by authorized changes, which may affect cost, schedule, or quality.

B.2.3 Contractor is responsible for the actions of all its personnel, laborers, suppliers, and Subcontractors on the project. Contractor will enforce strict discipline and good order among Contractor's employees and other persons carrying out the Work. Contractor will not permit employment of persons who are unfit or unskilled for the tasks assigned to them.

B.3 **MATERIALS AND WORKMANSHIP.**

B.3.1 The intent of the Contract Documents is to provide for the construction and completion in every detail of the Work described. All Work will be performed in a professional manner and unless the means or methods of performing a task are specified elsewhere in the Contract Documents, Contractor will employ methods that are generally accepted and used by the industry, in accordance with industry standards.

B.3.2 Contractor is responsible to perform the Work as required by the Contract Documents. Defective Work will be corrected at Contractor's expense.

B.3.3 Work done and materials furnished will be subject to inspection or observation and testing by City's Authorized Representative to determine if they conform to the Contract Documents. Inspection of the Work by City's Authorized Representative does not relieve Contractor of responsibility for the Work in accordance with the Contract Documents.

B.3.4 Contractor will furnish adequate facilities, as required, for City's Authorized Representative to have safe access to the Work including without limitation walkways, railings, ladders, tunnels, and platforms. Producers, suppliers, and fabricators will also provide proper facilities and access to their facilities.

B.3.5 Contractor will furnish Samples of materials for testing by City's Authorized Representative and include the cost of the Samples in the Contract Price.

B.4 **PERMITS.** Contractor will obtain and pay for all necessary permits and licenses, except for the building permit, 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 will be responsible for all violations of the law, in connection with the construction or caused by obstructing streets, sidewalks or otherwise. Contractor will give all requisite notices to public authorities. Contractor will pay all royalties and license fees. Contractor will defend all suits or claims for infringement of any patent or other proprietary rights and will hold City and its departments, divisions, members, employees, and consultants harmless from loss on account thereof.

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

B.5.1 Contractor will comply with all federal, state and local laws, codes, regulations and ordinances applicable to the Work and the Contract. Failure to comply with such requirements will constitute a breach of Contract and will be grounds for Contract termination. Without limiting the generality of the foregoing, Contractor expressly agrees to comply with: (i) Title VI and VII of Civil Rights Act of 1964, as amended; (ii) Section 503 and 504 of the Rehabilitation Act of 1973, as amended; (iii) the Health Insurance Portability and Accountability Act of 1996; (iv) the Americans with Disabilities Act of 1990, as amended; (v) ORS Chapter 659A; as amended; (vi) all regulations and administrative rules established pursuant to the foregoing laws; and (vii) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.

B.5.2 Contractor will comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules, and regulations; and

(a) Contractor will not discriminate against disadvantaged business enterprises, minority-owned businesses, women-owned businesses, emerging small businesses, or businesses that are owned by a service-disabled veterans, as those terms are defined in ORS 200.005, in the awarding of subcontracts.

(b) Contractor will maintain, in current and valid form, all licenses and certificates required by law, regulation, or this Contract when performing the Work.

B.5.3 Unless contrary to federal law, Contractor will certify that it will 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 Contractor.

B.5.4 Unless contrary to federal law, Contractor will certify that each landscape contractor, as defined in ORS 671.520(2), performing Work under this Contract holds a valid landscape contractor's license issued pursuant to ORS 671.560.

B.5.5 The following notice is applicable to Contractors who perform excavation Work. ATTENTION: Oregon law requires you to follow rules adopted by the Oregon Utility Notification Center. Those rules are set forth in OAR 952-001-0010 through OAR 952-001-0090. You may obtain copies of the rules by calling the center at (503)232-1987.

B.5.6 Failure to comply with any or all of the requirements of B.5.1 through B.5.5 will be a breach of Contract and constitute grounds for Contract termination. Damages or costs resulting from such noncompliance will be the responsibility of Contractor.

B.6 **SUPERINTENDENCE.** Contractor will keep on the site, during the progress of the Work, a competent superintendent and any necessary assistants who will be satisfactory to City and who will represent Contractor on the site. Directions given to the superintendent by City's Authorized Representative will be confirmed in writing to Contractor.

B.6.1 Contractor is responsible for the actions of all its personnel, laborers, suppliers, and Subcontractors on the Project. Contractor will enforce strict discipline and good order among Contractor's employees and other persons carrying out the Work. Contractor will not permit employment of persons who are unfit or unskilled for the tasks assigned to them. Contractor will remove from the Project any employee City reasonably deems incompetent, careless, or otherwise objectionable at Contractor's expense. If Contractor removes any persons from the Project at its request or at City's request, Contractor will provide City with the names and qualifications of the replacement person for City's approval.

B.7 **INSPECTION.**

B.7.1 City's Authorized Representative will have access to the Work at all times.

B.7.2 Inspection of the Work will be made by City's Authorized Representative at its discretion. City's Authorized Representative will have authority to reject Work that does not conform to the Contract Documents. Any Work found to be not in conformance with the Contract Documents, in the discretion of City's Authorized Representative, will be removed and replaced at Contractor's expense.

B.7.3 Contractor will make or obtain at the appropriate time all tests, inspections and approvals of portions of the Work required by the Contract Documents or by laws, ordinances, rules, regulations or orders of public authorities having jurisdiction. Unless otherwise provided, Contractor will make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to City, or with the appropriate public authority, and will bear all related costs of tests, inspections and approvals. Tests or

inspections conducted pursuant to the Contract Documents will be made promptly to avoid unreasonable delay in the Work. Contractor will give City's Authorized Representative timely notice of when and where tests and inspections are to be made so that City's Authorized Representative may be present for such procedures. Required certificates of testing, inspection or approval will, unless otherwise required by the Contract Documents, be secured by Contractor and promptly delivered to City's Authorized Representative.

B.7.4 As required by the Contract Documents, Work done or material used without inspection or testing by City's Authorized Representative may be ordered removed at Contractor's expense.

B.7.5 If directed to do so any time before the Work is accepted, Contractor will uncover portions of the completed Work for inspection. After inspection, Contractor will 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 City's Authorized Representative, the uncovering and restoration will be done at Contractor's expense. If the Work uncovered is acceptable and was done with sufficient notice to City's Authorized Representative, the uncovering and restoration will be paid for as a Change Order.

B.7.6 If any testing or inspection reveals failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure, including those of repeated procedures and compensation for City's Authorized Representative's and Architect/Engineer's services and expenses, will be at Contractor's expense.

B.7.7 When the State or Federal government contributes toward the Cost of the Work, or City 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 will not make them a party to the Contract and will not interfere with the rights of the Parties of the Contract. Instructions or orders of such parties will be transmitted to Contractor, through City's Authorized Representative.

B.8 **SEVERABILITY.** If any provision of this Contract is declared by a court to be illegal or in conflict with any law, the validity of the remaining terms and provisions will not be affected and the rights and obligations of the Parties will be construed and enforced as if the Contract did not contain the particular provision held to be invalid.

B.9 **ACCESS TO RECORDS.**

B.9.1 Contractor will keep, at all times on the Work site, one record copy of the complete Contract Documents, including the Plans, Specifications, Change Orders and addenda, in good order and marked currently to record field changes and selections made during construction, and one record copy of Shop Drawings, Product Data, Samples and similar submittals, and will at all times give City's Authorized Representative access thereto.

B.9.2 Contractor will retain and City and its duly authorized representatives will have access, for a period not less than six (6) years, to all Record Documents, financial and accounting records, and other books, documents, papers and records of Contractor which are pertinent to any and all amounts payable to Contractor under the Contract, for the purpose of making audit, examination, excerpts and transcripts. If for any reason, any part of the Contract is involved in litigation, Contractor will retain all pertinent records until all litigation is resolved. City or its agents will continue to be provided full access to the records during litigation.

B.9.3 Refer to Federal Contract provisions A1.2 for additional requirements

B.10 WAIVER. Failure of City to enforce any provision of this Contract will not constitute a waiver or relinquishment by City of the right to such performance in the future nor of the right to enforce any other provision of this Contract.

B.11 SUBCONTRACTS AND ASSIGNMENT.

B.11.1 Contractor will require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound by the terms and conditions of these General Conditions, and to assume toward Contractor all of the obligations and responsibilities which Contractor assumes toward City thereunder, unless (1) the same are clearly inapplicable to the subcontract at issue because of legal requirements or industry practices, or (2) specific exceptions are requested by Contractor and approved in writing by City. Where appropriate, Contractor will require each Subcontractor to enter into similar agreements with sub-subcontractors at any level.

B.11.2 At City's request, Contractor will submit to City, prior to execution, either Contractor's form of subcontract, or the subcontract to be executed with any particular Subcontractor. If City disapproves such form, Contractor will not execute the form until the matters disapproved are resolved to City's satisfaction. City's review, comment upon or approval of any such form will not relieve Contractor of its obligations under this Contract or be deemed a waiver of such obligations of Contractor.

B.11.3 Except as provided in the Contract for the award of subcontracts, Contractor will 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 City. No such written approval will relieve Contractor of any obligations of this Contract, and any transferee will be considered the agent of Contractor and bound to perform in accordance with the Contract Documents. Contractor will remain liable as between the original parties to the Contract as if no assignment had occurred. Approval by City of an assignment will not be deemed approval of future assignment.

B.12 SUCCESSORS IN INTEREST. The provisions of this Contract will be binding upon and will accrue to the benefit of the Parties to the Contract and their respective permitted successors and assigns. City has no obligation to pay or perform any of Contractor's obligations under this Contract.

B.13 CITY'S RIGHT TO DO WORK. City reserves the right to perform other or additional work at or near the project site with other forces than those of 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. City'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, City's Authorized Representative will establish work priority (including the Work) which generally will be in the sequence that the contracts were awarded.

B.14 OTHER CONTRACTS. In all cases and at any time, City has the right to execute other contracts related to or unrelated to the Work of this Contract. Contractor of this Contract will fully cooperate with City's separate contractors without additional cost to City in the manner described in section B.13.

B.15 GOVERNING LAW. This Contract will be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflict of laws.

B.16 LITIGATION. Any Claim between City and Contractor that arises from or relates to this Contract and that is not resolved through the Claims Review Process in Section D.3 will be brought and conducted solely and exclusively within the Circuit Court of Deschutes County for the State of Oregon; provided, however, if a Claim must be brought in a federal forum, then it will be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. In no event will this section be construed as a waiver by City on any

form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any claim or from the jurisdiction of any court. CONTRACTOR BY EXECUTION OF THIS CONTRACT HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF THE COURTS REFERENCED IN THIS SECTION B.16.

B.17 ALLOWANCES.

B.17.1 Contractor will include in the Contract Price all Allowances stated in the Contract Documents. Items covered by Allowances will be supplied for such amounts and by such persons or entities as City may direct.

B.17.2 Unless otherwise provided in the Contract Documents:

(a) When finally reconciled, Allowances will cover the cost to Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;

(b) Contractor's costs for unloading and handling at the site, labor, installation costs, Overhead, profit and other expenses contemplated for stated allowance amounts will be included in the Contract Price but not in the Allowances;

(c) Whenever costs are more than or less than Allowances, the Contract Price will be adjusted accordingly by Change Order. The amount of the Change Order will reflect (i) the difference between actual costs and the Allowances under Section B.17.2(a) and (2) changes in Contractor's costs under Section B.17.2(b).

(d) Unless City requests otherwise, Contractor will provide to City a proposed fixed price for any allowance work prior to its performance.

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

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

(a) Shop Drawings are drawings, diagrams, schedules and other data specially prepared for the Work by Contractor or a Subcontractor (including any sub-subcontractor), manufacturer, supplier or distributor to illustrate some portion of the Work.

(b) Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by Contractor to illustrate materials or equipment for some portion of the Work.

(c) Samples are physical examples which illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

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

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

B.18.3 Contractor will review for compliance with the Contract Documents, approve and submit to the Architect/Engineer Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of City or of separate contractors. Submittals which are not marked as reviewed for compliance with the Contract Documents and approved by Contractor may be returned by the Architect/Engineer without action.

B.18.4 By approving and submitting Shop Drawings, Product Data, Samples and similar submittals, Contractor represents that Contractor has determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and has checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

B.18.5 Contractor will perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal has been approved by the Architect/Engineer.

B.18.6 The Work will be in accordance with approved submittals except that Contractor will not be relieved of responsibility for deviations from requirements of the Contract Documents by the Architect/Engineer's review or approval of Shop Drawings, Product Data, Samples or similar submittals unless Contractor has specifically informed the Architect/Engineer in writing of such deviation at the time of submittal and (i) the Architect/Engineer has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order has been executed by City authorizing the deviation. Contractor will not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by the Architect/Engineer's review or approval thereof.

B.18.7 In the event that City elects not to have the obligations and duties described under this Section B.18 performed by the Architect/Engineer, or in the event no Architect/Engineer is employed by City on the project, all obligations and duties assigned to the Architect/Engineer hereunder will be performed by City's Authorized Representative.

B.19 **SUBSTITUTIONS.** Contractor may make Substitutions only with the consent of City, after evaluation by City's Authorized Representative and only in accordance with a Change Order. Substitutions will be subject to the requirements of the bid documents. By making requests for Substitutions, Contractor: represents that Contractor has personally investigated the proposed substitute product; represents that Contractor will provide the same warranty for the Substitution that Contractor would for the product originally specified unless approved otherwise; certifies that the cost data presented is complete and includes all related costs under this Contract including redesign costs, and waives all claims for additional costs related to the Substitution which subsequently become apparent; and will coordinate the installation of the accepted Substitution, making such changes as may be required for the Work to be completed in all respects.

B.20 USE OF PLANS AND SPECIFICATIONS. Plans, Specifications and related Contract Documents furnished to Contractor by City or City's Architect/Engineer will be used solely for the performance of the Work under this Contract. Contractor and its Subcontractors and suppliers are authorized to use and reproduce applicable portions of such documents appropriate to the execution of the Work, but will not claim any ownership or other interest in them beyond the scope of this Contract, and no such interest will attach. Unless otherwise indicated, all common law, statutory and other reserved rights, in addition to copyrights, are retained by City.

B.21 FUNDS AVAILABLE AND AUTHORIZED. City reasonably believes at the time of entering into this Contract that sufficient funds are available and authorized for expenditure to finance the cost of this Contract within City's appropriation or limitation. Contractor understands and agrees that, to the extent that sufficient funds are not available and authorized for expenditure to finance the cost of this Contract, City's payment of amounts under this Contract attributable to Services performed after the last day of the current biennium is contingent on City receiving appropriations, limitations or other expenditure authority sufficient to allow City, in the exercise of its reasonable administrative discretion, to continue to make payments under this Contract.

B.22 NO THIRD-PARTY BENEFICIARIES. City and Contractor are the only parties to this Contract and are the only parties entitled to enforce its terms. Nothing in this Contract gives, is intended to give, or will be construed to give or provide any benefit or right, whether directly, indirectly, or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Contract.

SECTION C WAGES AND LABOR

C.1 MINIMUM WAGE RATES ON PUBLIC WORKS. Contractor will comply fully with the provisions of ORS 279C.800 through 279C.870. 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. Contractor will pay workers at not less than the specified minimum hourly rate of wage, and will include that requirement in all subcontracts.

C.2 PAYROLL CERTIFICATION AND FEE REQUIREMENTS.

C.2.1 In accordance with ORS 279C.845, Contractor and every Subcontractor will submit written certified statements to City'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 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 will be verified by the oath of Contractor or the Subcontractor that Contractor or Subcontractor has read such statement and certificate and knows the contents thereof and that the same is true to Contractor's or Subcontractor's best knowledge and belief. The certified statements will accurately and completely set out the payroll records for the prior week including the name and address of each worker, the worker's correct classification, rate of pay, daily and weekly number of hours worked, deductions made and actual wages paid. Certified statements for each week during which Contractor or Subcontractor has employed a worker on the project will be submitted once a month, by the fifth business day of the following month. Contractor and Subcontractors will preserve the certified statements for a period of six (6) years from the date of completion of the Contract.

C.2.2 Pursuant to ORS 279C.845(7), City will retain twenty-five percent (25%) of any amount earned by Contractor on this public works project until Contractor has filed the certified statements required by section C.2.1. City will pay to Contractor the amount retained under this subsection within fourteen (14) days after Contractor files the required certified statements, regardless of whether a Subcontractor has failed to file certified statements.

C.2.3 Pursuant to ORS 279C.845(8), Contractor will retain twenty-five percent (25%) of any amount earned by a first-tier Subcontractor on this public works project until the first-tier Subcontractor has filed with City the certified statements required by C.2.1. Before paying any amount retained under this subsection, Contractor will verify that the first-tier Subcontractor has filed the certified statement, within fourteen (14) days after the first-tier Subcontractor files the required certified statement Contractor will pay the first-tier Subcontractor any amount retained under this subsection.

C.2.4 In accordance with statutory requirements and administrative rules promulgated by the Commissioner of the Bureau of Labor and Industries, the fee required by ORS 279C.825(1) will be paid by City to the Commissioner at the time City enters into the Contract.

C.2.5 Refer to Federal Contract Provision A8 "Contract Workhours and Safety Standards Act Requirements", A9 "Copland Anti-Kickback Act", A10 Davis Bacon Requirements for additional requirements.

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

C.3.1 Pursuant to ORS 279C.505, and as a condition to City's performance hereunder, Contractor will:

C.3.1.1 Make payment promptly, as due, to all persons supplying to Contractor labor or materials for the prosecution of the Work provided for in this Contract.

C.3.1.2 Pay all contributions or amounts due the State Industrial Accident Fund from such Contractor or Subcontractor incurred in the performance of the Contract.

C.3.1.3 Not permit any lien or claim to be filed or prosecuted against City on account of any labor or material furnished. Contractor will not assign any claims that Contractor has against City, or assign any sums due by City, to Subcontractors, suppliers, or manufacturers, and will not make any agreement or act in any way to give Subcontractors a claim or standing to make a claim against City.

C.3.1.4 Pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.

C.3.1.5 Demonstrate that an employee drug testing program is in place as follows:

(a) Contractor represents and warrants that Contractor has in place as of the Effective Date, and will maintain during the term of this Contract, a Qualifying Employee Drug Testing Program for its employees that includes, at a minimum, the following: (1) A written employee drug testing policy, (2) Required drug testing for all new Subject Employees or, alternatively, required testing of all Subject Employees every twelve (12) months on a random selection basis, and (3) Required testing of a Subject Employee when Contractor has reasonable cause to believe the Subject Employee is under the influence of drugs. A drug testing program that meets the above requirements will be deemed a "Qualifying Employee Drug Testing Program." For the purposes of this section, an employee is a "Subject Employee" only if that employee will be working on the project job site.

(b) Contractor will require each Subcontractor providing labor for the project to: (1) Demonstrate to Contractor that it has a Qualifying Employee Drug Testing Program for the Subcontractor's Subject Employees, and represent and warrant to Contractor that the Qualifying Employee Drug Testing Program is in place at the time of subcontract execution and will continue in full force and effect for the duration of the subcontract, or (2) Require that the Subcontractor's Subject Employees participate in Contractor's Qualifying Employee Drug Testing Program for the duration of the subcontract.

C.3.2 Pursuant to ORS 279C.515, and as a condition to City's performance hereunder, Contractor agrees:

C.3.2.1 If Contractor fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to Contractor or a Subcontractor by any person in connection with the project as such claim becomes due, the proper officer(s) representing City 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 will not relieve Contractor or Contractor's surety from obligation with respect to any unpaid claims.

C.3.2.2 If Contractor or a first-tier Subcontractor fails, neglects or refuses to make payment to a person furnishing labor or materials in connection with the public contract for a public improvement within thirty (30) Days after receipt of payment from City or a contractor, Contractor or first-tier Subcontractor will owe the person the amount due plus interest charges commencing at the end of the ten (10) Day period that payment is due under ORS 279C.580(3) and ending upon final payment, unless payment is subject to a good faith dispute as defined in ORS 279C.580. The rate of interest charged to Contractor or first-tier Subcontractor on the amount due will equal three times the discount rate on 90-Day commercial paper in effect at the Federal Reserve Bank in the Federal Reserve district that includes Oregon on the date that is thirty (30) Days after the date when payment was received from City or from Contractor, but the rate of interest will not exceed thirty percent (30%). The amount of interest may not be waived.

C.3.2.3 Pursuant to ORS 279C.580, Contractor will include in each subcontract for property or services entered into by Contractor and a first-tier Subcontractor, including a material supplier, for the purpose of performing a construction contract:

(a) A payment clause that obligates 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 Contractor by City under the Contract;

(b) An interest penalty clause that obligates Contractor if payment is not made within thirty (30) Days after receipt of payment from Owner, to pay to the first-tier Subcontractor an interest penalty on amounts due in the case of each payment not made in accordance with the payment clause included in the subcontract pursuant to paragraph (a) of this subsection. Contractor or first-tier Subcontractor will not be obligated to pay an interest penalty if the only reason that Contractor or first-tier Subcontractor did not make payment when payment was due is that Contractor or first-tier Subcontractor did not receive payment from City or Contractor when payment was due. The interest penalty will be for the period beginning on the day after the required payment date and ending on the date on which payment of the amount due is made; and will be computed at the rate specified in ORS 279C.515(2).

(c) A clause that requires each of Contractor's Subcontractor's to include, in each of their contracts with lower-tier Subcontractors or suppliers, provisions to the effect that the first-tier Subcontractor will 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.3.4 All employers, including Contractor, that employ subject workers who work under this contract in the State of Oregon will comply with ORS 656.017 and provide the required Workers' Compensation coverage, unless such employers are exempt under ORS 656.126. Contractor will ensure that each of its Subcontractors complies with these requirements.

C.4 **PAYMENT FOR MEDICAL CARE.** As a condition to City's performance hereunder, Contractor will 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 Contractor agrees to pay for such services and all moneys and sums which 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 City's performance hereunder, no person will 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 will 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 279C.540.

This section C.5 will not apply to Contractor's Work under this Contract if Contractor is currently a party to a collective bargaining agreement with any labor organization. This Section C.5 will not excuse Contractor from completion of the Work within the time required under this Contract.

SECTION D CHANGES IN THE WORK

D.1 CHANGES IN WORK.

D.1.1 The terms of this Contract will not be waived, altered, modified, supplemented or amended in any manner whatsoever, without prior written approval of City's Authorized Representative, and then only in a manner consistent with the Change Order provisions of this Section D.1 and after any necessary approvals required by public contracting laws have been obtained. Otherwise, an Amendment is required, which will not be effective until its execution by the Parties to this Contract and all approvals required by public contracting laws have been obtained.

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

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

Deductive changes are those that reduce the scope of the Work, and will be made by mutual agreement whenever feasible. In cases of suspension or partial termination under Section J, City reserves the right to unilaterally impose a deductive change and to self-perform such Work, for which the provisions of B.13 (City's Right to Do Work) will

then apply. Adjustments in compensation will be made under the provisions of D.1.3, in which costs for deductive changes will be based upon a Direct Costs adjustment together with the related percentage markup specified for profit, Overhead and other indirect costs, unless otherwise agreed to by City.

D.1.3 City and Contractor agree that Change Order Work will be administered and compensated according to the following:

(a) Unit pricing may be utilized at City's option when unit prices or solicitation alternates were provided that established the cost for additional Work, and a binding obligation exists under the Contract on the Parties covering the terms and conditions of the additional Work.

(b) If City elects not to utilize unit pricing, or in the event that unit pricing is not available or appropriate, fixed pricing may be used for Change Order Work. In fixed pricing the basis of payments or total price will be agreed upon in writing between the Parties to the Contract, and will be established before the Work is done whenever feasible. The mark-ups set forth in D.1.3(c) will be utilized by the Parties as a guide in establishing fixed pricing, and will not be exceeded by City without adequate justification. Cost and price data related to Change Orders will be supplied by Contractor to City upon request, but City will be under no obligation to make such requests.

(c) In the event that unit pricing and fixed pricing are not utilized, then Change Order Work will be performed on a cost reimbursement basis for Direct Costs. Such Work will be compensated on the basis of the actual, reasonable and allowable cost of labor, equipment, and material furnished on the Work performed. In addition, the following markups will be added to Contractor's or Subcontractor's Direct Costs as full compensation for profit, Overhead and other indirect costs for Work directly performed with Contractor's or Subcontractor's own forces:

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

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

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

Payments made to Contractor will be complete compensation for Overhead, profit, performance and payment bond premiums, and all other costs that were incurred by Contractor or by other forces furnished by Contractor, including Subcontractors, for Change Order Work. City may establish a maximum cost for Change Order Work under this Section D.1.3(c), which will not be exceeded for reimbursement without additional written authorization from City. Contractor will not be required to complete such Change Order Work without additional authorization. Owner will have the right to conduct an audit of Contractor's books and records, as well as those of its subcontractors and suppliers, to verify the accuracy of Contractor's claim with respect to Contractor's cost associated with any Change Order

D.1.4 Any necessary adjustment of Contract Time that may be required as a result of a Change Order must be agreed upon by the Parties before the start of the Change Order Work unless City's Authorized Representative authorizes Contractor to start the Work before agreement on Contract Time adjustment. Contractor will submit any request for additional compensation (and additional Contract Time if Contractor was authorized to start Work before an adjustment of Contract Time was approved) as soon as possible but no later than thirty (30) Days after receipt of the Change Order. If Contractor's request for additional compensation or adjustment of Contract Time is not made within the thirty (30) Day time limit, Contractor's requests pertaining to

that Change Order are barred. The thirty (30) Day time limit for making requests will not be extended for any reason, including without limitation Contractor's claimed inability to determine the amount of additional compensation or adjustment of Contract Time, unless an extension is granted in writing by City. If Contractor and City's Authorized Representative cannot agree on additional compensation or additional Contract Time needed to perform Change Order Work, Contractor may proceed to file a Claim under Section D.3, Claims Review Process. No other reimbursement, compensation, or payment will be made, except as provided in Section D.1.5 for impact claims.

D.1.5 If any Change Order Work under Section D.1.3 causes an increase or decrease in the GMP or the Contract Time required for the performance of, any other part of the Work under this Contract, Contractor must submit a written request to City's Authorized Representative, setting forth the nature and specific extent of the request, including all time and cost impacts against the Contract as soon as possible, but no later than thirty (30) Days after receipt of the Change Order by Contractor. The thirty (30) Day time limit applies to claims of Subcontractors, suppliers, or manufacturers who may be affected by the Change Order and who request additional compensation or an extension of Contract Time to perform; Contractor has responsibility for contacting its Subcontractors, suppliers, or manufacturers within the thirty (30) Day time limit, and including their requests with Contractor's requests. If the request involves Work to be completed by Subcontractors, or materials to be furnished by suppliers or manufacturers, such requests will be submitted to Contractor in writing with full analysis and justification for the compensation and additional Contract Time requested. Contractor will analyze and evaluate the merits of the requests submitted by Subcontractors, suppliers, and manufacturers to Contractor prior to including those requests and Contractor's analysis and evaluation of those requests with Contractor's requests for additional compensation or Contract Time that Contractor submits to City's Authorized Representative. Failure of Subcontractors, suppliers, manufacturers or others to submit their requests to Contractor for inclusion with Contractor's requests submitted to City's Authorized Representative within the time period and by the means described in this section will constitute a waiver of these Subcontractor claims. City's Authorized Representative and City will not consider direct requests or claims from Subcontractors, suppliers, manufacturers or others not a party to this Contract. The consideration of such requests and claims under this section does not give any person, not a party to the Contract the right to bring a claim against City, whether in this claims process, in litigation, or in any dispute resolution process. If Contractor does not concur with the decision of City's Authorized Representative, Contractor may proceed to file a Claim under Section D.3, Claims Review Process.

D.1.6 No request or Claim by Contractor for additional costs or an adjustment of Contract Time will be allowed if made after receipt of final application for payment under this Contract. Final application for payment must be made by Contractor within the time required under Section E.6.4.

D.1.7 It is understood that changes in the Work are inherent in construction of this type. The number of changes, the scope of those changes, and the effect they have on the progress of the original Work cannot be defined at this time. Contractor is notified that numerous changes may be required and that there will be no compensation made to 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.1.8 "Construction Change Directive" A Construction Change Directive is a written order prepared by the Architect and signed by the Owner and Architect, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

D.1.9 Upon receipt of a Construction Change Directive, the Contractor will promptly proceed with the change in the Work involved and advise the Architect of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

D.2 DELAYS.

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

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

- (a) Could have been avoided by the exercise of care, prudence, foresight, and diligence on the part of Contractor or its Subcontractors.
- (b) Affect only a portion of the Work and do not necessarily prevent or delay the prosecution of neither other parts of the Work nor the completion of the whole Work within the Contract Time.
- (c) Do not impact activities on the accepted critical path schedule.
- (d) Are associated with the reasonable interference of other contractors employed by City that do not necessarily prevent the completion of the whole Work within the Contract Time.

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

- (a) Caused by any actions of City, City’s Authorized Representative, or any other employee or agent of City, or by separate contractor employed by City.
- (b) Caused by any site conditions which differ materially from what was represented in the Contract Documents or from conditions that would normally be expected to exist and be inherent to the construction activities defined in the Contract Documents. Contractor will notify City’s Authorized Representative immediately of differing site conditions before the area has been disturbed. City’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 have been anticipated on the Effective Date of this Contract. If Contractor and City’s Authorized Representative agree that a differing site condition exists, any additional compensation or additional Contract Time will be determined based on the process set forth in Section D.1.5 for Change Order Work. If Contractor does not concur with the decision of City’s Authorized Representative or believes that it is entitled to additional compensation or Contract Time, or both, Contractor may proceed to file a Claim under Section D.3, Claims Review Process.
- (c) Caused by Force Majeure acts, events or occurrences that could not have been avoided by the exercise of care, prudence, foresight, and diligence on the part of Contractor or its Subcontractors.
- (d) Caused by adverse weather conditions. Any adverse weather conditions must be substantiated by documentary evidence that weather conditions were abnormal for the specific time period claimed, could not have been anticipated by Contractor, and adversely impacted the project in a manner that could not be avoided by rescheduling the Work or by implementing measures to protect against the weather so that the Work could proceed. A rain, windstorm, high water, or other natural phenomenon for the specific locality of the Work, which might reasonably have been anticipated from the previous 10-year historical records of the general locality of the Work, will not be construed as abnormal. The Parties agree that rainfall greater than the following levels cannot be reasonably anticipated:

- (i) Daily rainfall equal to, or greater than, 0.50 inch during a month when the monthly rainfall exceeds the 10 year monthly average by twenty-five percent (25%) or more.

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

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

- (e) Caused by Hazardous Substances in accordance with F.6 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.

D.2.2 Contractor will not be entitled to additional compensation or additional Contract Time for Avoidable Delays.

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

- (a) Additional compensation or additional Contract Time, or both, for Unavoidable Delays described in Section D.2.1.2 (a) and (b); provided, however, no extension will be granted for any Unavoidable Delay commencing more than five (5) days before written claim for such delay is made to City (in the case of a continuing delay, only one claim is necessary), and in no event will Contractor be entitled to damages arising out of actual or alleged loss of efficiency, morale, fatigue, attitude, or labor rhythm, constructive acceleration, home office overhead, expectant underrun, trade stacking, reassignment of workers, concurrent operations, dilution of supervision, learning curve, beneficial or joint occupancy, ripple, season change, extended overhead, profit upon damages for delay, impact damages, or similar damages.

- (b) Additional Contract Time for Unavoidable Delays described in Section D.2.1.2(c) and (d).

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

D.3 CLAIMS REVIEW PROCESS.

D.3.1 All Contractor Claims will be referred to City's Authorized Representative for review. Contractor's Claims, including Claims for additional compensation or additional Contract Time, will be submitted in writing by Contractor to City's Authorized Representative within five (5) Days after Contractor's initial request has been denied. Within thirty (30) Days after the initial Claim, Contractor will submit to City'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 will be waived.

D.3.2 The Detailed Notice of the Claim will be submitted in writing by Contractor and will 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 Contract Time extension requested for the Claim. Contractor will include Time Impact Analysis (TIA) with any request, or in response to any request, for Change Order or Directive that includes Critical Path impact to Project completion date. Contractor's TIA will utilize a standard cover sheet for identifying impacted milestone(s). Supporting documentation is to include un-impacted Critical Path from previous Schedule update, a "fragnet" Schedule of added or revised activities resulting from the change, and as-impacted Critical Path that demonstrates delay to project completion date. Absent this submittal in strict compliance with these requirements, the City will not consider or grant any time extension requested. If the Claim involves Work to be completed by Subcontractors, Contractor will analyze and evaluate the merits of the Subcontractor claim prior to forwarding it and that analysis and evaluation to City's Authorized Representative. City's Authorized Representative and City will not consider direct claims from Subcontractors, suppliers, manufacturers, or others not a party to this Contract. Contractor agrees that it will make no agreement, covenant, or assignment, nor will it commit any other act that will permit or assist any Subcontractor, supplier, manufacturer, or other to directly or indirectly make a claim against City.

D.3.3 City'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 Contractor; (2) inform Contractor and City 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 City's Authorized Representative's decision will be final and binding on Contractor unless appealed by written notice to City within fifteen (15) Days of receipt of the decision. Contractor must present written documentation supporting the Claim within fifteen (15) Days of the notice of appeal. After receiving the appeal documentation, City will review the materials and render a decision within thirty (30) Days after receiving the appeal documents.

D.3.5 The decision of City will be final and binding unless Contractor delivers to City its request for mediation, which will be a non-binding process, within fifteen (15) Days of the date of City's decision. The mediation process will be considered to have commenced as of the date Contractor delivers the request. The Parties acknowledge and agree that participation in mediation is a prerequisite to commencement of litigation of any disputes relating to the Contract. The Parties further agree to exercise their best efforts in good faith to resolve all disputes within sixty (60) Days of the commencement of the mediation through the mediation process set forth herein. In the event that a lawsuit must be filed within this sixty (60) Day period in order to preserve a cause of action, the Parties agree that notwithstanding the filing, they will proceed diligently with the mediation to its conclusion prior to actively prosecuting the lawsuit, and will seek from the Court in which the lawsuit is pending such stays or extensions, including the filing of an answer, as may be necessary to facilitate the mediation process. Further, in the event settlements are reached on any issues through mediation, the Parties agree to promptly submit the appropriate motions and orders documenting the settlement to the Court for its signature and filing.

D.3.6 Should the Parties arrive at an impasse regarding any Claims or disputed Claims, it is agreed that the Parties will participate in mediation as specified in Section D.3.5. The mediation process will be considered to have been commenced as of the date one party delivers to the other its request in writing to mediate. The mediator will be an individual mutually acceptable to the Parties, but in the absence of agreement each party will select a temporary mediator and the temporary mediators will 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 will be split equally between the Parties. The 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 City and Contractor. The schedule, time and place for mediation will be mutually acceptable, or, failing mutual agreement, will be as established by the mediator. The Parties agree to comply with City's administrative rules governing the confidentiality of mediation,

if any, and will execute all necessary documents to give effect to such confidentiality rules. In any event, the Parties will not subpoena the mediator or otherwise require the mediator to produce records, notes or work product, or to testify in any future proceedings as to information disclosed or representations made in the course of mediation, except to the extent disclosure is required by law.

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

D.3.8 Contractor will keep a log of all Claims, Change Orders (CO) and Potential Change Orders (PCO) which is to be submitted to the City every month. The City will have the right to conduct an audit of Contractor's books and records, as well as those of its subcontractors and suppliers, to verify the accuracy of Contractor's claim with respect to the Contractor's costs associated with any Change Order or Potential Change Order.

SECTION E PAYMENTS

E.1 **SCHEDULE OF VALUES.** Contractor will 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 City's Authorized Representative, this schedule will be used as the basis for reviewing Contractor's applications for payment. If objected to by City's Authorized Representative, Contractor will revise the Schedule of Values and resubmit the same for approval of City's Authorized Representative.

E.2 **APPLICATIONS FOR PAYMENT.**

E.2.1 City will make progress payments on the Contract monthly as Work progresses. Payments will be based upon estimates of Work completed and the Schedule of Values. All payments will be approved by City's Authorized Representative. A progress payment will not be considered acceptance or approval of any Work or waiver of any defects therein. 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, City will so notify 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 Contractor within seven (7) Days of being notified by City, will 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 City and Contractor.

E.2.2 Contractor will submit to City'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 will 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 will aggregate to the application for payment total, and will include, on the face of each copy thereof, a certificate in substantially the following form:

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

Signed: _____

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

- (a) The request for stored material will be submitted at least thirty (30) Days in advance of the application for payment on which it appears. Applications for payment will be entertained for major equipment, components or expenditures only.
- (b) Contractor will submit applications for payment showing the quantity and cost of the material stored.
- (c) The material will be stored in a bonded warehouse and City's Authorized Representative will be granted the right to access the material for the purpose of removal or inspection at any time during the Contract Period.
- (d) Contractor will name City as co-insured on the insurance policy covering the full value of the property while in the care and custody of Contractor until it is installed. A certificate noting this coverage will be issued to City.
- (e) Payments will be made for materials only. The submitted amount of the application for payment will 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 will be borne solely by Contractor.
- (f) Within sixty (60) Days of the application for payment, Contractor will submit evidence of payment covering the material stored.
- (g) Payment for stored materials will 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 City reserves the right to withhold all or part of a payment, or may nullify in whole or part any payment previously made, to such extent as may be necessary in City's opinion to protect City from loss because of:

- (a) Work that is defective and not remedied, or that has been demonstrated or identified as failing to conform with the Contract Documents;
- (b) Third party claims filed or evidence reasonably indicating that such claims will likely be filed unless security acceptable to City is provided by Contractor;
- (c) Failure of Contractor to make payments properly to Subcontractors or for labor, materials or equipment (in which case City may issue checks made payable jointly to City and such unpaid persons under this provision, or directly to Subcontractors and suppliers at any level under Section C.3.2.1);
- (d) Reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Price;
- (e) Damage to City or another contractor;

(f) Reasonable evidence that the Work will not be completed within the Contract Time required by the Contract, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;

(g) Failure to carry out the Work in accordance with the Contract Documents; or

(h) Assessment of liquidated damages, when withholding is made for offset purposes.

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

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

(b) Add that portion of the Contract Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction (or, if approved in advance by City pursuant to Section E.2.3, suitably stored off the site at a location agreed upon in writing), less retainage as provided in Section E.5;

(c) Subtract the aggregate of previous payments made by City; and

(d) Subtract any amounts for which City's Authorized Representative has withheld or nullified payment as provided in the Contract Documents.

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

E.2.7 Contractor warrants to City that title to all Work covered by an application for payment will pass to City no later than the time of payment. Contractor further warrants that upon submittal of an application for payment all Work for which payments are received from City will be free and clear of liens, claims, security interests or encumbrances in favor of Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work. For every progress payment application, Contractor must submit a current lien waiver from the Contractor as necessary under Oregon law to waive all lien rights for Work performed through the end of the time period covered by the Application for Payment, and so-called trailing lien waivers from all Subcontractors as necessary under Oregon law to waive all lien rights for Work performed by Subcontractors through the end of the time period covered by the prior Application for Payment (provided, that each Subcontractor must furnish a final lien waiver prior to final payment and release of retainage for Work performed by such Subcontractor).

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

E.3 **PAYROLL CERTIFICATION REQUIREMENT.** Payroll certification is required before full payments are made on the Contract. Refer to Section C.2 for this information.

E.4 **DUAL PAYMENT SOURCES.** Contractor will not be compensated for Work performed under this Contract from any public agency other than City.

E.5 RETAINAGE.

E.5.1 Retainage will be withheld and released in accordance with ORS 279C.550 – 279C.580 and OAR 137-049-0820.

E.5.1.1 City may reserve as retainage from any progress payment an amount not to exceed five percent (5%) of the payment. As Work progresses, City may reduce the amount of the retainage and may eliminate retainage on any remaining monthly Contract payments after fifty percent (50%) of the Work under the Contract is completed if, in City's opinion, such Work is progressing satisfactorily. Elimination or reduction of retainage will be allowed only upon written application by Contractor, which application will include written approval of Contractor's surety; except that when the Work is 97-1/2 percent (97.5%) completed City may, at its discretion and without application by Contractor, reduce the retained amount to one-hundred percent (100%) of the value of the Work remaining to be done. Upon receipt of written application by Contractor, City will 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 City or in a custodial account or other mutually-agreed account satisfactory to City, with an approved bank or trust company to be held in lieu of the cash retainage for the benefit of City;

(b) That retainage be deposited in an interest-bearing account in a bank, savings bank, trust company or savings association for the benefit of City, with earnings from such account accruing to Contractor; or

(c) That City allow Contractor to deposit a surety bond for the benefit of City, in a form acceptable to City, in lieu of all or a portion of funds retained, or to be retained. Such bond and any proceeds therefrom will be made subject to all claims and liens in the manner and priority as set forth for retainage under ORS 279C.550 to ORS 279C.625.

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

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

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

E.5.1.5 Contractor agrees that if Contractor elects to reserve a retainage from any progress payment due to any Subcontractor or supplier, such retainage will not exceed five percent (5%) of the payment,

and such retainage withheld from Subcontractors and suppliers will be subject to the same terms and conditions stated in Subsection E.5 as apply to City's retainage from any progress payment due to Contractor.

E.5.2 Where the Contract price exceeds \$500,000, City will deposit cash retainage from any progress payment due into an interest-bearing escrow account. Contractor is entitled to receive interest on the retainage funds from the date Contractor's related application for payment is fully approved by City until the date the retainage funds are paid by City to Contractor. For purposes of this Contract, retainage is deemed to be "paid" when the payment is transmitted to Contractor, or otherwise applied against an obligation of Contractor under the Contract. [ORS 279C.570(2)]

E.5.3 As provided in subsections C.2.2 and C.2.3, additional retainage in the amount of twenty-five percent (25%) of amounts earned will be withheld and released in accordance with ORS 279C.845(7) when Contractor fails to file certified statements as required by section C.2.1.

E.6 **FINAL PAYMENT.**

E.6.1 Upon completion of all the Work under this Contract, Contractor will notify City's Authorized Representative, in writing, that Contractor has completed Contractor's part of the Contract and will request final payment. Upon receipt of such notice City's Authorized Representative will inspect the Work, and if acceptable, submit to City a recommendation as to acceptance of the completed Work and as to the final estimate of the amount due Contractor. If the Work is not acceptable, City will notify Contractor within fifteen (15) Days of Contractor's request for final payment. Upon approval of this final estimate by City and compliance by Contractor with provisions in Section K AFFIDAVIT/RELEASE OF LIENS AND CLAIMS, and other provisions as may be applicable, City will pay to Contractor all monies due under the provisions of these Contract Documents.

E.6.2 Neither final payment nor any remaining retained percentage will become due until Contractor submits to City's Authorized Representative (1) a notarized affidavit/release of liens and claims in a form satisfactory to City that states that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which City or City's property might be responsible or encumbered (less amounts withheld by City) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least thirty (30) Days' prior written notice has been given to City, (3) a written statement that Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment and (5), if required by City, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by City. If a Subcontractor refuses to furnish a release or waiver required by City, Contractor may furnish a bond satisfactory to City to indemnify City against such lien. If such lien remains unsatisfied after payments are made, Contractor will refund to City all money that City may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

E.6.3 Acceptance of final payment by Contractor, a Subcontractor or material supplier will constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final application for payment.

E.6.4 Contractor agrees to submit its final application for payment within ninety (90) Days after Substantial Completion, unless written extension is granted by City. Contractor will not delay final application for payment for any reason, including without limitation nonpayment of Subcontractors, suppliers, manufacturers or others not a party to this Contract, or lack of resolution of a dispute with City or any other person of matters arising out of or relating to the Contract. If Contractor fails to submit its final application for payment within ninety (90) Days after Substantial Completion, and Contractor has not obtained written extension by City, all requests or Claims for additional costs or an extension of Contract Time will be waived.

SECTION F
JOB SITE CONDITIONS

F.1 **USE OF PREMISES.** Contractor will confine equipment, storage of materials and operation of Work to the limits indicated by Contract Documents, law, ordinances, permits or directions of City's Authorized Representative. Contractor will follow City's Authorized Representative's instructions regarding use of premises, if any.

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

F.2.1 Contractor will maintain continuous and adequate protection of all of the Work from damage, and will protect City's Authorized Representative, City's workers and property from injury or loss arising in connection with this Contract. Contractor will remedy acceptably to City, 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 City. Contractor will adequately protect adjacent property as provided by law and the Contract Documents.

F.2.2 Contractor will take all necessary precautions for the safety of all personnel on the job site, and will 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 will 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 will designate a responsible employee or associate on the Work site, whose duty will be the prevention of accidents. The name and position of the person designated will be reported to City's Authorized Representative. City's Authorized Representative has no responsibility for Work site safety. Work site safety is the responsibility of Contractor.

F.2.3 Contractor will not enter upon private property without first obtaining permission from the property City or its duly authorized representative. Contractor will be responsible for the preservation of all public and private property along and adjacent to the Work contemplated under the Contract and will use every precaution necessary to prevent damage thereto. In the event Contractor damages any property, Contractor will at once notify the property City and make, or arrange to make, full restitution. Contractor will report, immediately in writing, to City'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 will 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, Contractor, without special instruction or authorization from City's Authorized Representative, will act reasonably to prevent threatened loss or injury, and will so act, without appeal, if instructed by City's Authorized Representative. Any compensation claimed by Contractor on account of emergency work will be determined in accordance with section D.

F.3 **CUTTING AND PATCHING.**

F.3.1 Contractor will 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 will 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 will 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 City and, in any event, immediately after completion of the Work, Contractor will, at its own expense, clean up and remove all refuse and unused materials of any kind resulting from the Work. If Contractor fails to do so within twenty-four (24) hours after notification by City the work may be done by others and the cost charged to Contractor and deducted from payment due Contractor.

F.5 ENVIRONMENTAL CONTAMINATION.

F.5.1. Contractor will be held responsible for and will indemnify, defend (with counsel of City's choice), and hold harmless City from and against any costs, expenses, damages, claims, and causes of action, (including attorneys' fees), or any of them, resulting from all spills, releases, discharges, leaks and disposal of environmental pollution, including storage, transportation, and handling during the performance of the Contract which occur as a result of, or are contributed by, the negligence or actions of Contractor or its personnel, agents, or Subcontractors or any failure to perform in accordance with the Contract Documents (except to the extent otherwise void under ORS 30.140). Nothing in this section F.5.1 will limit Contractor's responsibility for obtaining insurance coverages required under Section G.3 of this Contract, and Contractor will take no action that would void or impair such coverages.

F.5.1.1 Contractor agrees to promptly dispose of such spills, releases, discharge or leaks to the satisfaction of City and proper regulatory agencies in a manner that complies with applicable federal, state, and local laws and regulations. Cleanup will be at no cost to City and be performed by properly qualified personnel.

F.5.1.2 Contractor will obtain City'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 City, Contractor, at all times, will:

(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 City, such spills, releases, discharges, or leaks to City's satisfaction and in compliance with all applicable federal, state, or local statutes, rules or ordinances.

F.5.2 Contractor will 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 City. A written follow-up report will be submitted to City within forty-eight (48) hours of the telephonic report. Such written report will contain, at a minimum:

(a) 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) The 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 public officials other than City.
- (f) A 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 Contractor (reference F.5 Environmental Contamination), Contractor will immediately notify City of any hazardous substance(s) which Contractor discovers or encounters during performance of the Work required by this Contract. "Hazardous substance(s)" means any hazardous, toxic and radioactive materials and those substances defined as "hazardous substances," "hazardous materials," "hazardous wastes," "toxic substances," or other similar designations in any federal, state, or local law, regulation, or ordinance, including without limitation asbestos, polychlorinated biphenyl (PCB), or petroleum, and any substances, materials or wastes regulated in 40 CFR, Part 261 and defined as hazardous in 40 CFR S 261.3. In addition to notifying City of any hazardous substance(s) discovered or encountered, Contractor will 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, City will arrange for the proper disposition of such hazardous substance(s).

F.7 FORCE MAJEURE. A party to this Contract will not be held responsible for delay or default, other than a delay or default in the payment of sums due under this Contract, due to Force Majeure acts, events or occurrences unless they could have been avoided by the exercise of reasonable care, prudence, foresight, and diligence by that party. City may terminate this Contract upon written notice after determining that delay or default caused by Force Majeure acts, events or occurrences will reasonably prevent successful performance of the Contract.

SECTION G INDEMNITY, BONDING, AND INSURANCE

G.1 RESPONSIBILITY FOR DAMAGES / INDEMNITY.

G.1.1 Contractor will 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 Contractor, its Subcontractors, personnel, or agents.

G.1.2 To the fullest extent permitted by law, Contractor will defend (with counsel approved by City), indemnify, and hold harmless City, City's Authorized Representative, Architect/Engineer, Architect/Engineer's consultants, and their respective officers, directors, agents, employees, partners, members, stockholders and affiliated companies (collectively "Indemnitees") for, from, and against all claims, actions, proceedings, damages, liabilities, injuries, losses, and expenses of every kind, whether known or unknown, including, without limitation, attorneys' fees, resulting from or arising out of, whether directly or indirectly, the following: (a) damage, injury, or death to person or property caused directly or indirectly by Contractor (or Contractor's shareholders, officers, agents, employees, directors, representatives, or contractors); (b) Contractor's failure to pay any tax arising out of or resulting from the performance of the Services; (c) Contractor's breach or failure to perform any Contractor

representation, warranty, covenant, or obligation contained in this Contract; or (d) the Work. Contractor's obligation under this Section G.1.2 will survive acceptance of the Work and the earlier expiration or termination of this Contract. In all claims against Indemnitees, the indemnification obligations contained in this Section G.1.2 will not be limited in any way by any limitation in the amount or type of damages, compensation or benefits payable by or for contractors' or workers' compensation acts, disability acts or other employee benefit acts. Contractor will carry sufficient insurance to defend, indemnify, and hold City harmless as provided in this provision. In carrying out any of the provisions hereof or in exercising any authority granted under this Contract, there will be no personal liability imposed upon any public official or employee of City.

G.1.3 If any provision of Section G.1.2 could be read to require a type or degree of indemnification or insurance not permitted by Oregon law, such provision is expressly restricted only to that type or degree of indemnification or insurance which is permitted by Oregon Law. Without limitation, to the extent required under ORS 30.140, no provision of the Contract Documents will require Contractor, or its surety or insurer, to indemnify another against liability for damage arising out of death or bodily injury to persons or damage to property caused in whole or in part by negligence of the indemnitee, provided this Section G.1.3 will not affect any provision of the Contract Documents that requires Contractor or Contractor's surety or insurer to indemnify against liability for damage arising out of death or bodily injury to persons or damage to property to the extent that the death or bodily injury to persons or damage to property arises out of the fault of the indemnitor, or the indemnitor's agents, representatives, or subcontractors.

G.2 PERFORMANCE AND PAYMENT SECURITY; PUBLIC WORKS BOND.

G.2.1 Contractor will furnish and maintain in effect for the Contract Period performance and payment bonds as required in Article 3.2.4 of the Contract, executed and notarized by Contractor's surety company. Contractor's surety company will be authorized to do business in the State of Oregon.

G.2.2 The performance and payment bond forms attached to the Contract as Exhibits E and F are the only acceptable forms of performance and payment security, unless otherwise agreed to in writing by City.

G.2.3 Before starting Work, Contractor will file with the Construction Contractors Board, and maintain in full force and effect, the separate public works bond required by ORS 279C.836, and OAR 839-025-0015, unless otherwise exempt under those provisions. Contractor will also include in every subcontract a provision requiring the Subcontractor to have a public works bond filed with the Construction Contractors Board before starting Work, unless otherwise exempt, and will verify that the Subcontractor has filed a public works bond before permitting the Subcontractor to start Work.

G.3 INSURANCE.

G.3.1 Primary Coverage: Insurance carried by Contractor under this Contract will be the primary coverage, and City's insurance is excess and solely for damages or losses for which City is responsible. The coverages indicated are minimums unless otherwise specified in the Contract Documents. Unless otherwise expressly provided otherwise, Contractor will be required to obtain the insurance required under this Section G.3 at Contractor's cost and expense.

G.3.2 Workers' Compensation: All employers, including Contractor, that employ subject workers who work under this contract in the State of Oregon will comply with ORS 656.017 and provide the required workers' compensation coverage, unless such employers are exempt under ORS 656.126. This will include employer's liability insurance with coverage limits of no less than \$1,000,000.00 for each accident, \$2,000,000.00 in the aggregate. A Contractor who performs the Work without the assistance or labor of any employee need not obtain such coverage if Contractor certifies so in writing. Contractor will ensure that each of its Subcontractors complies with these requirements. Contractor will 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 Contractor or its Subcontractors.

G.3.3 Professional Liability Insurance: Contractor will obtain and maintain contract professional liability insurance covering damages caused by error, omission, or negligent acts related to professional services provided under the Contract. The policy must provide extended reporting period coverage, sometimes referred to as “tail coverage” for claims made within two years after the Work is completed. Combined single limit of no less than \$1,000,000.00 per occurrence, \$2,000,000.00 annual aggregate limit.

G.3.4 Builder's Risk Insurance.

G.3.4.1 Builder's Risk: During the term of this Contract, for new construction Contractor will 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 will not exceed \$5,000.00 for each loss, except the earthquake and flood deductible will not exceed two percent (2%) of each loss or \$10,000.00, whichever is more. The policy will include as loss payees City, Contractor, and its Subcontractors as their interests may appear.

G.3.4.2 Builder's Risk Installation Floater: For other than new construction, Contractor will obtain, at Contractor's expense, and keep in effect during the term of this Contract, a builder's risk installation floater for coverage of 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 will be equal to the full amount of the Contract. This insurance will include as loss payees City, Contractor, and its Subcontractors as their interests may appear.

G.3.4.3 Such insurance will be maintained until City has occupied the facility or otherwise commenced use of the subject improvements.

G.3.4.4 A loss insured under the builder's risk insurance will be adjusted by City and made payable to City for the insureds, as their interests may appear. Contractor will pay Subcontractors their just shares of insurance proceeds received by Contractor, and by appropriate agreements, written where legally required for validity, will require Subcontractors to make payments to their Sub-subcontractors in similar manner. City will have power to adjust and settle a loss with insurers.

G.3.5 Liability Insurance.

G.3.5.1 Commercial General Liability: Contractor will obtain, at Contractor's expense, and keep in effect during the term of this Contract, commercial general liability insurance covering bodily injury and property damage in form and with coverages that are satisfactory to City. This insurance will include personal injury liability, products and completed operations, and contractual liability coverage for the indemnity provided under this Contract (to the extent contractual liability coverage for the indemnity is available in the marketplace), and will be issued on an occurrence basis. Combined single limit per occurrence will be no less than \$25,000,000.00 for each job site or location. Each annual aggregate limit will be no less than \$50,000,000.00.

G.3.5.2 Automobile Liability: Contractor will obtain, at Contractor's expense, and keep in effect during the term of this Contract, automobile liability insurance covering owned, non-owned or hired vehicles, as applicable. The coverage may be written in combination with the commercial general liability insurance. Combined single limit per occurrence will be no less than \$2,000,000.00, or the equivalent.

G.3.5.3 Pollution Liability (including Asbestos Liability): Contractor will obtain, at Contractor's expense, and keep in effect during the term of this Contract, pollution liability insurance, including asbestos liability. City must be notified immediately if any hazardous material is encountered during construction. Any Contractor or Subcontractor performing work under the Contract will obtain and keep in effect during the term of this Contract the pollution liability insurance, including asbestos liability insurance, covering the Contractor or Subcontractor's liability for bodily injury, property damage, and environmental damage resulting from “sudden accidental” or “gradual” pollution and related cleanup costs incurred by the subcontractor, all arising out of the

work or services (including the transportation risk, when applicable) to be performed under this Contract. Combined single limit per occurrence will be no less than \$2,000,000.00 per occurrence. Each annual aggregate limit will be no less than \$4,000,000.00.

G.3.5.4 "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 twenty-four (24) months or the maximum time period available in the marketplace if less than twenty-four (24) months. Contractor will be responsible for furnishing certification of "tail" coverage as described or continuous "claims made" liability coverage for twenty-four (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. This will be a condition of the final acceptance of Work or services and related warranty (if any).

G.3.6 Additional Insured: The liability insurance coverage, except Workers' Compensation and professional liability if included, required for performance of this Contract will include City, its departments, divisions, officers, employees, volunteers, agents, subcontractors, and consultants as Additional Insureds.

G.3.7 Notice of Cancellation or Change: There will be no cancellation, material change, potential exhaustion of aggregate limits or intent not to renew insurance coverages without thirty (30) Days' written notice from Contractor or its insurer(s) to City.

G.3.8 Certificate(s) of Insurance: As evidence of the insurance coverage required by this Contract, Contractor will furnish certificate(s) of insurance to City 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 will be obtained from insurance companies or entities acceptable to City that are allowed to provide such insurance under Oregon law. Eligible insurers include admitted insurers that have been issued a certificate of authority from the Oregon Department of Consumer and Business Services authorizing them to do business in the State of Oregon, and certain non-admitted surplus lines insurers that satisfy the requirements of applicable Oregon law and are approved by City. The certificates will also specify that there will be no cancellation, material change, potential exhaustion of aggregate limits or intent not to renew insurance coverages without thirty (30) Days' written notice from the insurer(s) to City. To the extent Certificates of Insurance contain words to the effect that Contractor will "endeavor to send notice of cancellation" or similar language, Contractor will require its insurer to send such notice by making sure that the words "endeavor to" or similar words are removed from the Certificate. Contractor will be financially responsible for all deductibles, self-insured retentions or self-insurance included hereunder. Any deductible, self-insured retention or self-insurance in excess of \$50,000 will be approved by City in writing prior to issuance of a Notice to Proceed and is subject to City's approval.

SECTION H SCHEDULE OF WORK

H.1 CONTRACT PERIOD.

H.1.1 Time is of the essence on this Contract. Contractor will at all times carry on the Work diligently, without delay and punctually fulfill all requirements herein. Contractor will 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 will be complete by the date contained in the Contract Documents. City will have the right to accelerate the completion date of the Work, which may require the use of overtime. Such accelerated Work schedule will be an acceleration in performance of Work under Section D.1.2 (f) and will be subject to the Change Order process of Section D.1.

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

H.2 SCHEDULE.

H.2.1 Contractor will provide, by or before the preconstruction conference, a detailed schedule for review and acceptance by City. The submitted schedule will be provided in Primavera P6 (version 16 or later) both in .XER and .PDF files, it must illustrate Work by significant project components, significant labor trades, and long lead items broken down by building or floor where applicable. Each schedule item will account for no greater than 5 % of the monetary value of the project or 5 % of the available Contract 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 application for payment. Acceptance of the Schedule by City does not constitute agreement by City, as to Contractor's sequencing, means, methods, or durations. Any positive difference between Contractor's scheduled completion and the Contract completion date is float owned by City. City reserves the right to negotiate the float if it is deemed to be in City's best interest to do so. In no case will Contractor make a claim for delays if the Work is completed within the Contract Time but after Contractor's scheduled completion.

H.3 PARTIAL OCCUPANCY OR USE.

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

SECTION I *CORRECTION OF WORK*

I.1 CORRECTION OF WORK BEFORE FINAL PAYMENT. Contractor warrants to City that materials and equipment furnished under the Contract will be of good quality and new unless otherwise required or permitted by the Contract Documents, that the Work will be free from defects, and that the Work will conform to the requirements of the Contract Documents. Work failing to conform to these requirements will be deemed defective. Contractor will promptly remove from the premises and replace all defective materials and equipment as determined by City's Authorized Representative, whether incorporated in the Work or not. Removal and replacement will be without loss or expense to City, and Contractor will bear the cost of repairing all Work destroyed or damaged by such removal or replacement. Contractor will be allowed a period of no longer than sixty (60) Days for completion of defective (punch list) work, unless otherwise agreed. At the end of the sixty (60) Day period, or earlier if requested by Contractor, City will arrange for inspection of the Work by the Architect/Engineer. Should the work not be complete, and all corrections made, the costs for all subsequent re-inspections will be borne by Contractor. If Contractor fails to complete the punch list work within the sixty (60) Day period, without affecting Contractor's obligations City may perform such work and Contractor will reimburse City all costs of the same within thirty (30) Days after demand.

I.2 WARRANTY WORK.

I.2.1 Neither the final certificate of payment nor any provision of the Contract Documents will relieve Contractor from responsibility for defective Work and, unless a longer period is specified, Contractor will correct all defects that appear in the Work within a period of five (5) years from the date of issuance of the written notice of

substantial completion by City except for latent defects which will be remedied by Contractor at any time they become apparent. City will give Contractor notice of defects with reasonable promptness. Contractor will perform such warranty work within a reasonable time after City's demand. If Contractor fails to complete the warranty work within such period as City determines reasonable, or at any time in the event of warranty work consisting of emergency repairs, without affecting Contractor's obligations, City may perform such work and Contractor will reimburse City all costs of the same within thirty (30) Days after demand. Contractor will perform the warranty Work by correcting defects within twenty-four (24) hours of notification by City, unless otherwise specified in the Contract Documents. Should Contractor fail to respond within the specified response time, City may, at its option, complete the necessary repairs using another contractor or its own forces. If City completes the repairs using City's own forces, Contractor will pay City at the rate of one and one-half (1½) times the standard hourly rate of City's forces, plus related overhead and any direct non-salary costs. If City completes the repairs using another contractor, Contractor will pay City the amount of City's direct costs billed by the other contractor for the work, plus the direct salary costs and related overhead and direct non-salary expenses of City's forces who are required to monitor that contractor's work. Work performed by City using City's own forces or those of another contractor will not affect Contractor's contractual duties under these provisions, including warranty provisions. If City prefers to accept Work which is not in accordance with the requirements of the Contract Documents, City may do so instead of requiring its removal and correction, in which case the Contract Price will be reduced as appropriate and equitable. Such adjustment will be effected whether or not final payment has been made.

1.2.2 This provision does not negate guarantees or warranties for periods longer than five (5) years including without limitation such guarantees or warranties required by other sections of the Contract Documents for specific installations, materials, processes, equipment or fixtures.

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

1.2.4 The five (5) year period for correction of Work will be extended with respect to portions of Work performed after Substantial Completion by the period of time between Substantial Completion and the actual performance of the Work, and will be extended by corrective Work performed by Contractor pursuant to this Section, as to the Work corrected. Contractor will remove from the site portions of the Work which are not in accordance with the requirements of the Contract Documents and are neither corrected by Contractor nor accepted by City.

1.2.5 Nothing contained in this Section 1.2 will be construed to establish a period of limitation with respect to other obligations which Contractor might have under the Contract Documents. Establishment of the period for correction of Work as described in this Section 1.2 relates only to the specific obligation of Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish Contractor's liability with respect to Contractor's obligations other than specifically to correct the Work.

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

1.2.7 The only warranties made by Contractor in connection with the Work are those set forth in this Article 2. These warranties are exclusive and in lieu of all other warranties, whether statutory, express or implied, including the warranties of merchantability, fitness for a particular purpose and those arising from course of dealing and usage of trade.

SECTION J
SUSPENSION OR TERMINATION OF THE WORK

J.1 CITY'S RIGHT TO SUSPEND THE WORK.

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

- (a) Failure of Contractor to correct unsafe conditions;
- (b) Failure of Contractor to carry out any provision of the Contract;
- (c) Failure of Contractor to carry out orders;
- (d) Conditions, in the opinion of City'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 City will notify Contractor and Contractor's Surety will be notified in writing of the effective date and time of the suspension and will notify Contractor and its surety in writing to resume Work.

J.1.3 The right of City to suspend the Work will not give arise to a duty on the part of City to exercise this right for the benefit of Contractor or any other person or entity, nor, except as otherwise expressly provided in the Contract Documents, give rise to any claim by Contractor for additions to the Contract Price or Contract Time.

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

J.4 CITY'S RIGHT TO TERMINATE CONTRACT.

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

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

J.4.2 At any time that any of the above occurs, City may exercise all rights and remedies available to City at law or in equity, and in addition, City 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, Contractor will not be entitled to receive further payment until the Work is completed. If City's cost of finishing the Work exceeds the unpaid balance of the Contract Price, Contractor will pay the difference to City.

J4.3 Refer to Federal Contract Provision A25.2.2 for additional requirements.

J.5 TERMINATION FOR CONVENIENCE.

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

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

J5.3 Refer to Federal Contract Provision A25.2.1 for additional requirements.

J.6 ACTION UPON TERMINATION.

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

J.6.2 As directed by City, Contractor will, upon termination, transfer title and deliver to City all Record Documents, information, and other property that, if the Contract had been completed, would have been required to be furnished to City.

**SECTION K
CONTRACT CLOSE OUT**

K.1 RECORD DOCUMENTS. As a condition of final payment (refer also to section E.6), Contractor will comply with the following: Contractor will provide to City's Authorized Representative, Record Documents of the entire project. Record Documents will depict the project as constructed and will reflect each and every change, modification, and deletion made during the construction. Record Documents are part of the Work and will be provided prior to City's issuance of final payment. Record Documents include all modifications to the Contract Documents unless otherwise directed.

K.2 OPERATION AND MAINTENANCE MANUALS. As part of the Work, Contractor will submit two completed operation and maintenance manuals ("O & M Manuals") for review by City'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 City until the O & M Manuals have been received. The O & M Manuals will 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. City's Authorized Representative will review and return one O & M Manual for any modifications or additions required. Prior to submission of its final pay request, Contractor will deliver three (3) complete and approved sets of O & M Manuals to City's Authorized Representative.

K.3 AFFIDAVIT/RELEASE OF LIENS AND CLAIMS. As a condition of final payment, Contractor will submit to City's Authorized Representative a notarized affidavit/release of liens and claims form, in a form satisfactory to City, which states that all Subcontractors and suppliers have been paid in full, all disputes with City 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 Contractor's knowledge, there are no claims of any kind outstanding against the project. Contractor will indemnify, defend (with counsel of City's choice) and hold harmless City from all claims for labor and materials finished under this Contract. Contractor will furnish complete and valid releases or waivers, satisfactory to City, of all liens arising out of or filed in connection with the Work. Also as a requirement for final payment, Contractor will submit to City's Authorized Representative a Consent of Surety indicating the surety is satisfied and Final Payment may be made.

K.4 COMPLETION NOTICES.

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

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

K.5 **TRAINING.** As part of the Work, and prior to submission of the request for final payment, Contractor will schedule with City's Authorized Representative, training sessions for all equipment and systems, as required in the individual specifications sections. Contractor will schedule training sessions at least two (2) weeks in advance of the date of training to allow City personnel adequate notice. The O & M Manual will be used as a basis for training. Training will be a formal session, held after the equipment or system is completely installed and operational in its normal operating environment.

K.6 **EXTRA MATERIALS.** As part of the Work, Contractor will 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 will be designated by City'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, Contractor will notify City 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 will reaffirm the indemnification given under Section F.5.1 above.

K.8 **CERTIFICATE OF OCCUPANCY.** Contractor will not be granted Final Completion or receive final payment if City has not received an unconditioned certificate of occupancy from the appropriate state or local building officials, unless failure to obtain an unconditional certificate of occupancy is due to the fault or neglect of City.

K.9 **OTHER CONTRACTOR RESPONSIBILITIES.** Contractor will be responsible for returning to City all items issued during construction such as keys, security passes, site admittance badges, and all other pertinent items. Contractor will be responsible for notifying the appropriate utility companies to transfer utility charges from Contractor to City. The utility transfer date will not be before Substantial Completion and may not be until Final Completion, if City does not take beneficial use of the facility and Contractor's forces continue with the Work.

K.10 **SURVIVAL.** All warranty and indemnification provisions of this Contract, and all of Contractor's other obligations under this Contract that are not fully performed by the time of Final Completion or termination, will survive Final Completion or any termination of the Contract.

SECTION L

LEGAL RELATIONS & RESPONSIBILITIES

L.1 **LAWS TO BE OBSERVED.** In compliance with ORS 279C.525, Sections L.2 through L.4 contain lists of federal, state and local agencies of which City 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 Forest Service
Soil Conservation Service Coast Guard
Defense, Department of Army Corps of Engineers Energy, Department of
Federal Energy Regulatory Commission Environmental Protection Agency

Federal Aviation Administration
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 Security Administration
Transportation, Department of
Federal Highway Administration
Water Resources Council

L.3 **STATE AGENCIES.**

Administrative Services, Department of 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
Geology and Mineral Industries, Department of Human Resources, Department of
Consumer and Business Services, Department of
Land Conservation and Development Commission
Parks and Recreation, Department of State Lands, Division of
Water Resources Department of

L.4 **LOCAL AGENCIES.**

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

END OF GENERAL CONDITIONS