



**PUBLIC IMPROVEMENT CONTRACT**  
**between**  
**COLUMBIA 9.1.1**  
**and**  
**Day Wireless Systems**

**Contract No. Meissner Site Rebuild**

THIS PUBLIC IMPROVEMENT CONTRACT ("Contract") is made by and between Columbia 9.1.1, an Oregon Special District of the State of Oregon ("Agency"), and Day Management Corporation, dba Day Wireless Systems ("Contractor") to provide construction services on the following Meissner New Communications Site Construction ("Project"), briefly described below:

This project is to expand and upgrade an existing public safety communications site by constructing a repurposed 150' lattice tower, 11'x21' shelter, emergency power system, installing new fencing, removal of abandoned infrastructure.

The parties agree as follows:

1. **WORK.**  
Contractor shall execute fully the Work described by the Contract Documents, unless specifically indicated in the Contract Documents to be the responsibility of others. "Work" means the construction and any related services required by or reasonably inferable from the Contract Documents, whether completed or partially completed, including (except as otherwise expressly stated in this Contract) all other labor, materials, equipment, tools, permits, fees, licenses, facilities, taxes, transportation, supervision, temporary constructions of every nature, and all other services, management, and facilities of every nature whatsoever necessary to fulfill Contractor's duties by executing and completing this Contract within the Contract Time. The Work may constitute the whole or a part of the Project.
2. **EFFECTIVE DATE AND TERMINATION DATE.**  
The effective date of this Contract shall be the Contract Start Date identified in section 2.a. or the date on which each Party has signed this Contract, whichever is later. Unless earlier terminated as provided below, the termination date shall be the Contract End Date, subject to extension as provided in the Contract Documents.

**Offer and Contract Dates**

- 2.1. Contract Start Date: January 2, 2023

**"Work" Time Dates**

- 2.2. Anticipated Notice to Proceed Date: October 26, 2022
- 2.3. Anticipated Substantial Completion Date: March 1, 2023
- 2.4. Anticipated Final Completion Date: April 12, 2023

2.5. Contract End Date: April 19, 2023

2.6. "Work" Time in Calendar Days: 69

PLEASE NOTE: Contractor shall not commence Work under this Contract until the Notice to Proceed has been issued.

3. **ENUMERATION OF CONTRACT DOCUMENTS.**

The "Contract Documents" include the following:

- This Contract with these Terms and Conditions.
- EXHIBIT A: Agency's General Conditions to the Contract - included in this form
- EXHIBIT B: Insurance Requirements - included in this form
- EXHIBIT C: Agency's Invitation to Bid and all supporting documents including but not limited to BOLI Prevailing Wage Rates
- EXHIBIT D: Contractor's Winning Proposal
- EXHIBIT E: Scope of Work
- EXHIBIT F: Drawings
- EXHIBIT G: Addenda

4. **CONTRACT; CONTRACT DOCUMENTS; ENTIRE AGREEMENT.**

This Contract and the other Contract Documents forms the entire and integrated agreement between the parties. Unless the context requires otherwise, any reference to the "Contract" includes the Contract Documents.

5. **THE CONTRACT TIME.**

Contractor shall achieve Substantial Completion of the Work under this Contract within 59 consecutive calendar days ("Contract Time") from the date specified in Agency's Notice to Proceed, subject to adjustments of this Contract Time as provided in the Contract Documents.

6. **THE CONTRACT TOTAL.**

- 6.1. The Contract Total is \$ 454,357.11. The Contract Total is the total amount payable by the Agency to Contractor for the completion of the Work in its entirety under the Contract Documents.
- 6.2. The following bid alternates are included in the Contract Total: None
- 6.3. Unit prices if any: None
- 6.4. Allowances included in the Contract Total, if any: None
- 6.5. Notwithstanding any other provision of this Contract or the Contract Documents, the Contract Total includes all construction contingencies for existing site conditions other than for pre-existing Hazardous Materials. Contractor is thoroughly acquainted with and has inspected the Project site without restriction, understands the potential risks in this construction Work, and accepts the full risk of construction contingencies to complete the Work within the Contract Time and Contract Total set out in this Agreement.

7. **PROGRESS PAYMENTS.**

- 7.1. The Contractor will submit an application for payment to the Agency Representative as provided in the General Conditions. The Agency Representative may require the Contractor to simultaneously submit an application for payment to the Design Professional working on the Project.
- 7.2. Each application for payment shall be for one calendar month ending on the last day of the month.
- 7.3. Payments are due and payable 30 days following receipt of the Contractor's complete Application for Payment or 15 days from the date after payment is approved by the Agency Representative, whichever is earlier. Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate set forth in ORS 279C.570(2).
- 7.4. The amount of each progress payment shall be determined as provided in the General Conditions, less retainage of 5% pursuant to ORS 279C.550 to 279C.565, ORS 701.420 and 701.430, and less liquidated damages, if any.
- 7.5. Unless otherwise specified in the Contract Documents, Contractor elects to have the Agency deposit the retainage as accumulated in an interest-bearing account in a bank, savings bank, trust company, or savings association as outlined in ORS 279C.560(5), OAR 125-249-0820(3), and COH-049-0820(3), from which earnings on such account shall accrue to the Contractor.

8. **INDEPENDENT CONTRACTOR STATUS.**

By its signature on this contract, Contractor certifies that the service or services to be performed under this Contract are those of an independent contractor as defined in ORS 670.600, and that Contractor is solely responsible for the work performed under this Contract. Contractor represents and warrants that Contractor, its subcontractors, employees, and agents are not "officers, agents, or employees" of the Agency within the meaning of the Oregon Tort Claims Act (ORS 30.260 through 30.300). Contractor shall be responsible for all federal, state, and local taxes and any and all fees applicable to payments for services under this Agreement.

9. **REQUEST FOR TAXPAYER IDENTIFICATION NUMBER.**

Contractor must be a current vendor with the Agency or must submit a completed "Request for Taxpayer Identification Number and Certification" (Form W-9) with this signed Contract. Payment information will be reported to the Internal Revenue Service under the name and TIN or SSN provided by Contractor. Contractor shall be responsible for all federal, state, and local taxes and any fees applicable to payments for Work under this Contract.

10. **COMPLIANCE WITH APPLICABLE LAW.**

Contractor shall comply with all federal, state, and local laws applicable to the Work under this Contract, and all regulations and administrative rules established pursuant to those laws, including without limitation, the following requirements of the Oregon Public Contract Code:

- 10.1. ORS 279A.110 (Non-discrimination Certification): Contractor shall certify that Contractor has not discriminated and will not discriminate against a Subcontractor in the awarding of a subcontract because the Subcontractor is a minority, women, or emerging small business enterprise (certified under ORS 200.055.), or a business that is owned or controlled by, or employs a disabled veteran (as defined in ORS 408.225).

- 10.2. ORS 279C.380 (Performance and Payment Bonds): Unless exempted by the Agency in writing pursuant to the Agency's local public contracting rules, prior to starting work under this Contract, Contractor or its Subcontractor shall execute and deliver to Agency a good and sufficient performance bond, in a form acceptable to Agency, in a sum equal to 100% of the construction portion of the Contract Price, and Contractor or its Subcontractor shall execute and deliver to Agency a good and sufficient payment bond, in a form acceptable to Agency, in a sum equal to 100% of the construction portion of the Contract Price, solely for the protection of claimants under ORS 279C.600.
- 10.3. ORS 279C.505 (Prompt Pay Requirement, Liens, Taxes, and Drug Testing): Contractor shall make payment promptly, as due, to all persons supplying to such Contractor labor or material for the performance of the Work provided for in such Contract; pay all contributions or amounts due the Industrial Accident Fund from such Contractor or Subcontractor incurred in the performance of the Contract; not permit any lien or claim to be filed or prosecuted against the state or a county, school district, municipality, municipal corporation or subdivision thereof, on account of any labor or material furnished; and pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167. Contractor shall further demonstrate that an employee drug testing program is in place.
- 10.4. ORS 279C.510 (Recycling/Composting): If this Contract includes demolition work, the Contractor shall salvage or recycle construction and demolition debris, if feasible and cost-effective. If this Contract includes lawn or landscape maintenance, the Contractor shall compost or mulch yard waste material at an approved site, if feasible and cost-effective.
- 10.5. ORS 279C.515 (Failure to Pay Promptly): If Contractor fails, neglects, or refuses to make prompt payment of any Claim for labor or services furnished to the Contractor or a Subcontractor by any person in connection with this Contract as such Claim becomes due, the Agency may pay such Claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due the Contractor by reason of this Contract. The payment of a Claim in the manner authorized in this section shall not relieve the Contractor or the Contractor's surety from any obligation with respect to any unpaid Claims. Unless the payment is subject to a good-faith dispute as defined in ORS 279C.580, if Contractor or any first-tier Subcontractor fails to pay any Claim for materials or labor furnished under this Contract within 30 days after being paid by Agency, interest shall be due on such claim as specified in ORS 279C.515(2) at the end of the 10-day period that payment is due under ORS 279C.580(4). A person with any such unpaid Claim may file a complaint with the Construction Contractor's Board unless the complaint is subject to a good-faith dispute as defined in ORS 279C.580.
- 10.6. ORS 279C.520 and 279C.540 (Hours of Labor, Holidays, and Overtime): Except as otherwise provided in an applicable collective bargaining agreement with a labor organization, Contractor shall not employ and shall require that its Subcontractors not employ any person to perform construction work for more than ten hours in any one day, or 40 hours in any one week, except in cases of necessity, emergency, or where the public policy absolutely requires it, and in such cases, except in cases of Contracts for personal services as defined in ORS 279A.055, the laborer shall be paid at least time and a half pay:
- 10.6.1. For all overtime in excess of eight hours a day or 40 hours in any one week when the work week is five consecutive days, Monday through Friday; and

- 10.6.2. For all overtime in excess of ten hours a day or 40 hours in any one week when the work week is four consecutive days, Monday through Friday; and
  - 10.6.3. For work performed on Saturday and on any legal holiday specified in any applicable collective bargaining agreement or ORS 279C.540(1)(b).
  - 10.6.4. The requirement to pay at least time and a half for all overtime worked in excess of 40 hours in any one week shall not apply to individuals who are excluded under ORS 653.010 to 653.261 or under 29 U.S.C. Section 201 to 209 from receiving overtime. Contractor shall and shall require its Subcontractors to give notice in writing to their employees who work under this Contract, either at the time of hire or before commencement of Work on the Contract, or by posting a notice in a location frequented by employees, of the number of hours per day and days per week that the employees may be required to work.
- 10.7. ORS 279C.525 (Notice of Environmental Regulations): State law requires that solicitation documents for a public improvement contract make specific reference to federal, state, and local agencies that have enacted ordinances, rules, or regulations dealing with the prevention of environmental pollution or the preservation of natural resources that may affect the performance of this Contract. These agencies include, but are not limited to:
- 10.7.1. Federal Agencies: Department of Agriculture, Forest Service, Soil and Water Conservation Service, Coast Guard, Department of Defense, Army Corps of Engineers, Department of Emergency, Federal Energy Regulatory Commission, Environmental Protection Agency, Department of Health and Human Services, Department of Housing and Urban Development, Solar Energy and Energy Conservation Bank, Department of Interior, 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, Department of Labor, Mine Safety and Health Administration, Occupational Safety and Health Administration, Department of Transportation, Federal Highway Administration, and Water Resources Council.
  - 10.7.2. State Agencies: Department of Administrative Services, Department of Agriculture, Soil and Water Conservation Commission, Columbia River Gorge Commission, Department of 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, Land Conservation and Development Commission, Department of Parks and Recreation, Division of State Lands, and Department of Water Resources.
  - 10.7.3. Local Agencies: Agency councils, county courts, county boards of commissioners, metropolitan service district councils, design commissions, historic preservation commissions, planning commissions, development review commissions, special district boards of directors, and other and special governmental agencies such as Tri-Met, urban renewal agencies, and Port districts.
  - 10.7.4. Tribal Governments.

- 10.8. ORS 279C.530 (Payment for Medical Care and Workers' Compensation): Contractor shall promptly, as due, make payments to any person, co-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, of all sums which the Contractor agrees to pay for such services and all moneys and sums which the Contractor collected or deducted from the wages of employees pursuant to any law, contract, or agreement for the purpose of providing or paying for such service. All employers, including the Contractor, that employ subject workers who work under this Contract in the State of Oregon shall comply with ORS 656.017 and provide the required workers' compensation coverage, unless such employers are exempt under ORS 656.126. Contractor shall ensure that each of its Subcontractors complies with these requirements.
- 10.9. ORS 279C.545 (Time Limitations on Claims for Overtime): Construction workers employed by the Contractor or its Subcontractor shall be foreclosed from the right to collect for any overtime under this Contract unless a claim for payment is filed with the Contractor or Subcontractor within 90 days from the completion of the Contract, providing the Contractor or Subcontractor has:
- 10.9.1. Caused a circular clearly printed in blackface pica type and containing a copy of this section to be posted in a prominent place alongside the door of the timekeeper's office or in a similar place which is readily available and freely visible to any or all workers employed on the Work; and
- 10.9.2. Maintained such circular continuously posted from the inception to the completion of the Contract on which workers are or have been employed.
- 10.10. ORS 279C.580(3) (Prompt Payment of First-Tier Subcontractors): Contractor shall include in each subcontract for property or services with a first-tier Subcontractor a clause that obligates the Contractor to pay the first-tier Subcontractor for satisfactory performance under its subcontract within ten days out of such amounts as are paid to the Contractor by the Agency. Contractor shall also include in each subcontract a clause that states that if the Contractor fails to pay any claim for materials or labor furnished under this Contract within 30 days after being paid by Agency, interest shall be due on such claim as specified in ORS 279C.515(2) at the end of the ten-day period that payment is due under ORS 279C.580(3). Contractor shall require each first-tier Subcontractor to include a payment clause and interest clause conforming to the requirements of ORS 279C.580 in each of its subcontracts, and to require each of its Subcontractors to include a similar clause in each contract with a lower-tiered subcontractor or supplier.
- 10.11. ORS 279C.605 (Notice of Claim on Bond): Any person claiming a right of action under ORS 279C.600 must file a notice of claim as provided in ORS 279C.605.
- 10.12. ORS 279C.800 to 279C.870 (Payment of Prevailing Wage Required):
- 10.12.1. The hourly rate of wage to be paid by Contractor or any Subcontractor to workers in each trade or occupation required for the public works employed in the performance of this Contract shall not be less than the specified minimum rate of wage in accordance with ORS 279C.838 and ORS 279C.840 for each trade or occupation as defined by the Commissioner of the Oregon Bureau of Labor and Industries in the applicable publication entitled Definitions of Covered Occupations for Public Works Contracts in Oregon available at [http://www.boli.state.or.us/BOLI/WHHD/PWR/pwr\\_state.shtml](http://www.boli.state.or.us/BOLI/WHHD/PWR/pwr_state.shtml).

- 10.12.2. This contract is subject to the prevailing wage rates published as specified in the Agency's Invitation to Bid document included in this contract as Exhibit C.
- 10.12.3. Contractor and all Subcontractors shall keep the prevailing wage rates for this Project posted in a conspicuous and accessible place in or about the Project.
- 10.12.4. The Agency shall pay a fee to the Commissioner of the Oregon Bureau of Labor and Industries as provided in ORS 279C.825. The fee shall be paid to the Commissioner under the administrative rule of the Commissioner.
- 10.12.5. If Contractor or any Subcontractor also provides for or contributes to a health and welfare plan or a pension plan, or both, for its employees on the Project, it shall post notice describing such plans in a conspicuous and accessible place in or about the Project. The notice shall contain information on how and where to make claims and where to obtain future information.
- 10.13. ORS 279C.836 (Public Works Bond Required): Contractor shall:
  - 10.13.1. File a public works bond with the Construction Contractors Board pursuant to ORS 279C.836 before starting work on the Project, unless exempt under ORS 279C.836(2), (7) or (8); and
  - 10.13.2. Include in every subcontract a provision requiring the Subcontractor to file a public works bond with the Construction Contractors Board pursuant to ORS 279C.836 before starting work on the Project, unless exempt under ORS 279C.836(2), (7) or (8).
- 10.14. ORS 279C.845 (Prevailing Wage Certification; Additional Retainage):
  - 10.14.1. Contractor and every Subcontractor shall file certified statements with Agency in writing in the form prescribed by the Commissioner of the Bureau of Labor and Industries, certifying the hourly rate of wage paid each worker whom Contractor or Subcontractor has employed upon such public work, and further certifying that no worker employed upon such public work has been paid less than the prevailing rate of wage or less than the minimum hourly rate of wage specified in the Contract, which certificate and statement shall be verified by the oath of Contractor or Contractor's surety or Subcontractor or Subcontractor's surety that Contractor and any Subcontractor has read such statement and certificate and knows the contents thereof, and that the same is true to Contractor or Subcontractor's knowledge. The certified statements shall set out accurately and completely the payroll records for the prior week including the name and address of each worker, the worker's correct classification, rate of pay, daily and weekly number of hours worked, deductions made, and actual wages paid.

- 10.14.2. The certified statement shall be delivered or mailed by Contractor or Subcontractor to Agency. Certified statements for each week during which the Contractor or Subcontractor employs a worker upon the public work shall be submitted once a month, by the fifth business day of the following month. Information submitted on certified statements may be used only to ensure compliance with the provisions of ORS 279C.800 to 279C.870. Notwithstanding any other provision of this Contract and in addition to any other retainage required under this Contract, the Agency shall retain 25% of any amount earned by the Contractor until the Contractor has filed the certified statements with the Agency as required by this Section. The Agency will pay the retainage required under this Section within 14 days after Contractor files the certified statements required by this Section.
- 10.14.3. Contractor and each Subcontractor shall preserve the certified statements for a period of three years from the date of completion of the Contract.
- 10.15. ORS 671.560, 701.026 (Landscape/Construction Contractors License Required): If Contractor is performing work as a landscape contractor as defined in ORS 671.520(2), Contractor must have a current, valid landscape contractor's license issued under ORS 671.560. If Contractor is performing work as a Contractor as defined in ORS 701.005(2), Contractor must have a current, valid construction contractor's license issued under ORS 701.026. Contractor shall further certify that all Subcontractors performing Work described in ORS 701.005(2) are registered with the Construction Contractors Board or licensed by the State Landscaping Contractor's Board as required by the above-noted statutes before they commence Work under this Contract. Contractor shall maintain in effect all licenses, permits, and certifications required for the performance of the Work. Contractor shall notify Agency immediately if any license, permit, or certification required for performance of this Contract shall cease to be in effect for any reason.
- 10.16. SB 675 (Oregon Tax Law Compliance): Contractor must, throughout the duration of this Contract and any extensions, comply with all tax laws of this state and all applicable tax laws of any political subdivision of this state. Contractor (to the best of Contractor's knowledge, after due inquiry), for a period of no fewer than six calendar years preceding the date of this Contract, faithfully has complied with:
- 10.16.1. All tax laws of this state, including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318;
- 10.16.2. Any tax provisions imposed by a political subdivision of this state that applied to Contractor, to Contractor's property, operations, receipts, or income, or to Contractor's performance of or compensation for any work performed by Contractor;
- 10.17. ORS 279B.230(2) (Oregon Workers' Compensation Law): Contractor and its subcontractors, if any, are subject to Oregon Workers' Compensation Law, which requires all employers that employ subject workers who work under this Contract in the State of Oregon to comply with ORS 656.017 and provide the required workers' compensation coverage, unless such employers are exempt under ORS 656.126. Contractor shall ensure that each of its subcontractors, if any, complies with these requirements (ORS 279B.230(2)).



11. **NOTICE.**

Except as otherwise expressly provided in this Contract, any communications between the parties hereto or notices to be given hereunder shall be given in writing by personal delivery or mailing with postage prepaid to Contractor or Agency at the address set forth below. Any communication or notice so addressed and mailed shall be deemed to be given five (5) days after mailing. Any communication or notice by personal delivery shall be deemed to be given when actually delivered.

**For the Columbia 9.1.1**

Contract Administrator Name, Title: Mike Fletcher, Executive Director  
Address, Agency, State and ZIP Code: Columbia 9-1-1 Communications District  
PO Box 998  
St. Helens, OR 97051  
Telephone: 503-366-6971 Email: MFletcher@columbia911.com

**For the Contractor**

Contract Administrator Name, Title: **Tabitha Studebaker**  
Address, Agency, State and ZIP Code: **4700 SE International Way | Milwaukie OR, 97222**  
Telephone: **(503) 659-1240**  
Email: **contracts@daywireless.com**

12. **CONTRACTOR INFORMATION AND CERTIFICATION.**

Contractor shall provide Contractor's Social Security number or Contractor's federal tax ID number and the additional information set forth below. This information is requested pursuant to ORS 305.385 and OAR 125-246-0330. Social Security numbers provided pursuant to this paragraph will be used for the administration of state, federal and local tax laws.

Legal Name: **Day Management Corporation dba Day Wireless Systems**

Address, Agency, State and ZIP Code: **4700 SE International Way| Milwaukie OR 97222**

Citizenship, if applicable: Non-resident alien? ☐ Yes ☐ No

Business Designation (check one):

☒ Professional Corporation ☐ Partnership ☐ Limited Partnership

☐ Limited Liability Company ☐ Limited Liability Partnership ☐ Sole Proprietorship ☐ Other

Federal Tax ID#: **93-0681623** or SSN:

Oregon CCB License Number: **64950**

Agency may report the information set forth above in conjunction with any reports it makes to the Internal Revenue Service (IRS) under the name and Social Security number or taxpayer identification number provided.

The individual signing on behalf of Contractor hereby certifies and swears under penalty of perjury that: (a) the number shown on this form is Contractor's correct taxpayer identification; (b) Contractor is not subject to backup withholding because (i) Contractor is exempt from backup withholding, (ii) Contractor has not been notified by the IRS that Contractor is subject to backup withholding as a result of a failure to report all interest or dividends, or (iii) the IRS has notified Contractor that Contractor is no longer subject to backup withholding; (c) s/he is authorized to act on behalf of Contractor, s/he has authority and knowledge regarding Contractor's payment of taxes, and to the best of her/his knowledge, (d) Contractor is not in violation of any Oregon tax laws named in ORS 305.380(4). Contractor is an independent contractor as defined in ORS 670.600; and (e) the supplied Contractor data is true and accurate.

Contractor has the power and authority to enter into and perform this Contract. The persons executing this Contract on behalf of Contractor have the actual authority to bind Contractor to the terms of this Contract.

FOR COLUMBIA 9.1.1:

\_\_\_\_\_  
*Signature*

\_\_\_\_\_  
*Name (Printed)*

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

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

FOR DAY WIRELESS SYSTEMS:

\_\_\_\_\_  
*Signature*

\_\_\_\_\_  
*Name (Printed)*

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

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

## **EXHIBIT A**

### **PUBLIC IMPROVEMENT CONTRACT**

#### **GENERAL CONDITIONS**

##### **1. GENERAL PROVISIONS.**

- 1.1. Contract Documents. The "Contract Documents" are enumerated in Item 3. ("Enumeration of Contract Documents") of the Public Improvement Contract between Agency and Contractor ("Contract") and consist of the Contract, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, additions or deletions to, material changes in, or general interest explanations of a Solicitation Document ("Addenda") (other than Addenda relating to bidding requirements) issued prior to the bid, other documents listed in the Contract, and Modifications issued after execution of the Contract. The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all. Performance by Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.
- 1.2. Contract Schedule. The "Contract Schedule" is the graphical representation of the practical plan for carrying out the Work and completing the Work within the Contract Time as set forth in the Contract Documents. The Contract Schedule provides a list of intended events and times to complete each event as set forth in the Contract Documents.
- 1.3. Drawings. The "Drawings" are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules, and diagrams.
- 1.4. Knowledge. The terms "knowledge," "recognize" and "discover" their respective derivatives and similar terms in the Contract Documents, when used in reference to the Contractor, means that which the Contractor knows or should know, recognizes or should recognize and discovers or should discover. Analogously, the expression "reasonably inferable" and similar terms in the Contract Documents means reasonably inferable by a contractor familiar with the Project and exercising the care, skill and diligence required of the Contractor by the Contract Documents.
- 1.5. Modification. A "Modification" is
  - 1.5.1. a written amendment to this Contract signed by both parties;
  - 1.5.2. a Change Order;
  - 1.5.3. a Construction Change Directive; or
  - 1.5.4. a written order for a minor change in the Work issued by the Architect.
- 1.6. Organization of Drawings and Specifications. "Organization of Drawings and Specifications" into divisions, sections, articles, or otherwise arranged will not control Contractor in dividing the Work among subcontractors or in establishing the extent of Work to be performed by any trade subcontractor.

- 1.7. Project. The "Project" is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by Agency and by separate Contractors.
- 1.8. Project Site. The "Project Site" is the property upon which the Project lies and Agency's property that surrounds the Project, extending to the Agency's property boundary.
- 1.9. Specifications. The "Specifications" are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards, and workmanship for the Work and performance of related services.
2. **AGENCY'S RESPONSIBILITIES.**
  - 2.1. Authorized Representative. Agency shall designate a person in writing to be the authorized representative with express authority, to the extent permitted by law, to bind and communicate on behalf of Agency with respect to all matters requiring Agency's approval or authorization ("Agency Representative"). The term "Agency" includes Agency Representative.
  - 2.2. Contract Administration. Agency shall provide contract administrative services for the Project through Agency's authorized representative. The Agency Representative may engage and delegate authority to such additional staff and professional and technical consultants as Agency deems necessary to assist in perform its administrative tasks. Contractor shall direct all Project communications to Agency and in accordance with the Contract Documents, or as Agency directs in writing.
    - 2.2.1. Agency may engage professional architects or engineers to assist Agency during construction of the Project to interpret technical contract provisions and to determine the amount, quality, acceptability, and fitness of the Work. Such architects or engineers will be authorized to act on behalf of Agency only to the extent expressly provided in the Contract Documents or as Agency otherwise directs in writing.
    - 2.2.2. Agency may engage a consulting construction manager to provide Project administrative services on Agency's behalf. Such construction manager will be authorized to act on behalf of Agency to the extent expressly provided in the Contract Documents or as Agency otherwise directs in writing.
    - 2.2.3. Agency may retain certain project inspectors to monitor compliance with Drawings and Specifications for the Project, as well as applicable codes and ordinances. Such project inspectors will be authorized to act on behalf of Agency to the extent expressly provided in the Contract Documents or as Agency otherwise directs in writing.
  - 2.3. Access to the Work. Agency and its designated representatives shall have free access to the Work at all times. Contractor shall not carry on Work except with the knowledge of Agency and its designated representatives. Agency may require special inspection or testing of any portion of the Work, whether it has been fabricated, installed, or fully completed. Inspection or observation of Work shall not relieve Contractor from any obligation to fulfill the Contract.

- 2.4. Right to Stop or Reject Work. Agency may reject Work that fails to conform to the Contract Documents, as determined by Agency. If Contractor fails to promptly correct such defective Work, Agency may issue a written order directing Contractor to stop the Work, or designated portion thereof, until the cause for such order is eliminated. The right of Agency to stop the Work shall not give rise to a duty on the part of Agency, or any of its representatives, to discover nonconforming Work or to exercise the right to stop the Work for the benefit of Contractor or any other person or entity.
- 2.5. Permits and Access. Except for permits and fees that are Contractor's responsibility under the Contract Documents, Agency shall secure and pay for all other necessary approvals, easements, assessments and charges required to complete the Work..
- 2.6. Subsurface Surveys. Agency shall make available to Contractor, and Contractor shall study, the results of such test borings and information that Agency has concerning subsurface conditions and site geology. Contractor shall inform Agency of any other site investigation, analysis, study, or test conducted by or for Contractor or its agents and shall make the results available to Agency upon Agency's request.
- 2.7. Agency's Rights. The rights stated in this section and elsewhere in the Contract Documents are cumulative and do not limit any rights Agency may have under the Contract Documents, at law or in equity. Without limiting the generality of the foregoing sentence, any right Agency has under the Contract Documents to compel Contractor to fix defective Work, up to and including any warranty period the Contract Documents may establish, does not operate to shorten or otherwise limit statutes of limitations applicable to the Work.

### 3. **CONTRACTOR'S RESPONSIBILITIES.**

- 3.1. General Responsibilities.
  - 3.1.1. Authorized Representative. Contractor shall designate a person in writing to be the authorized representative with express authority to bind and communicate on behalf of Contractor with respect to all matters requiring Contractor's approval or authorization ("Contractor Representative"). The term "Contractor" means the Contractor or the Contractor Representative.
  - 3.1.2. Materials, Equipment, and Services. The Contractor will provide all labor, materials, equipment, and services necessary to complete the Work, all of which will be provided in full accord with the Contract Documents.
  - 3.1.3. Supervision and Coordination. Unless otherwise expressly provided in the Contract Documents, the Contractor will be solely responsible for the supervision and coordination of the Work, including the construction means, methods, techniques, sequences, and procedures utilized.
  - 3.1.4. Project Correspondence. Contractor shall provide Agency with a copy of all written communications between Contractor and Agency's consultants at the same time as that communication is made to such consultants, including, without limitation, all requests for information, correspondence, submittals, notices, and change order proposals. Contractor shall confirm oral communications in writing.
  - 3.1.5. Project Boundary. Contractor shall confine operations at the site to areas permitted by law, ordinances, permits, and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

- 3.1.6. Taxes. Contractor shall pay all applicable taxes for the Work provided by Contractor that are legally applicable at the time the bid is submitted, whether or not yet effective or merely scheduled to go into effect.
- 3.1.7. Permits, Fees and Notices. Except as otherwise provided in the Contract Documents, Contractor shall secure and pay for all permits, licenses, and certificates that are the Contractor's responsibility under the Contract Documents and that are necessary for prosecution of Work before the date of the commencement of the Work or before the permits, licenses, and certificates are legally required to continue the Work without interruption. Contractor shall obtain and pay, when legally required, for all licenses, permits, inspections, and inspection certificates required by any authority having jurisdiction over any part of the Work included in the Contract. Contractor shall deliver all final permits, licenses, and certificates to Agency before demand is made for final payment.
- 3.2. Worksite Conditions.
  - 3.2.1. Benchmarks and Monuments. Contractor shall protect and preserve established benchmarks and monuments and shall not change locations of benchmarks and monuments without Agency's prior written approval. Contractor shall replace any benchmarks or monuments that are lost or destroyed subsequent to proper notification of Agency and with Agency's approval.
  - 3.2.2. Field Verification. Prior to the commencement of the Work, Contractor shall review the Project Site with Agency in detail and identify the area of the Work, staging areas, connections or interfacing with existing structures and operations, and restrictions on the Work site area. Contractor shall ensure that all forces on the Project Site are instructed about the acceptable working and staging areas and restrictions on use of the site. Contractor, with advance consent of Agency, shall erect such barriers and devices as are necessary to restrict access within the Work site to authorized areas and to prevent unauthorized access to non-Work areas.
  - 3.2.3. Utility Locates. Contractor will be responsible to locate existing utilities and underground facilities that are indicated in the Contract Documents or that are known or reasonably should be known to exist in proximity to the Work. Contractor shall provide timely notice and locate requests with any affected utility or through contact with appropriate notification centers before commencing excavation or demolition Work that Contractor knows or reasonably should know is in proximity to such utilities or facilities. Contractor assumes the sole risk and will be responsible for all delay and expense arising out of Contractor's failure to do so. Contractor acknowledges that utility companies and other third parties owning or managing facilities that may need to be relocated are not Agency's agents and do not act for the Agency.
- 3.3. Responsibility for Performance.
  - 3.3.1. Before beginning the Work, Contractor shall examine and compare the drawings and specifications with information furnished by Agency that are Contract Documents, relevant filed measurements made by the Contractor, and any visible conditions at the worksite affecting the Work.

- 3.3.2. Reporting Inconsistencies. Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, building codes, and rules and regulations, but Contractor shall promptly report any nonconformity it discovers to Agency. Contractor will be liable to Agency for damages if it fails, in the exercise of normal diligence, to recognize any error, inconsistency, omission or difference between field conditions and the Contract Documents. Contractor shall promptly report any errors, inconsistencies, or omissions it discovers, as a request for information, in such a form as Agency or Architect may require. Contractor will not be entitled to any modification in Contract Total or Contract Time solely by the request for information. Contractor shall carefully study and compare all Contract Documents, including Drawings, Specifications, and other instructions and shall at once report, in writing to Agency any error, inconsistency, or omission that Contractor or its employees or subcontractors may discover. In the event of an inconsistency within or between parts of the Contract Documents, or between the Contract Documents and applicable law, and regardless of whether Contractor reports the inconsistency to the Agency, the Contractor must: (i) provide the better quality or greater quantity of Work; or (ii) comply with the more stringent requirement as applicable.
- 3.3.3. Unnecessary Inquiries. Contractor is liable for costs incurred by Agency for professional services for interpretations or decisions of matters where the information sought is equally available to the party making the request.
- 3.4. Construction Materials and Supplies.
  - 3.4.1. Quantities of Materials. Contractor shall provide materials in sufficient quantities on hand at such times as to insure uninterrupted progress of Work and shall store materials properly and protect materials as required.
  - 3.4.2. Complete Assembly. For all materials and equipment specified or indicated in the Drawings, Contractor shall provide all labor, materials, equipment, and services necessary for complete assemblies and complete working systems, functioning as intended. Contractor shall furnish incidental items not indicated on Drawings, nor mentioned in the Specifications, that can be legitimately and reasonably inferred to belong to the Work described, or necessary in good practice to provide a complete assembly or system, as though itemized here in every detail. In all instances, Contractor shall install material and equipment in strict accordance with each manufacturer's most recent published recommendations and specifications. Contractor shall be responsible for appropriately sequencing the Work and for verification of suitability of prior work before subsequent construction activities.
  - 3.4.3. Timely Ordering of Materials. Contractor shall coordinate submittal approvals and place orders for materials and/or equipment so that delivery of same will be made without delays to the Work. Contractor shall, upon Agency's reasonable request, provide documentary evidence that orders have been placed.



- 3.4.4. No Right to Lien. Contractor warrants good title to all material, supplies, and equipment installed or incorporated in Work and agrees upon completion of all Work to deliver the site to Agency, together with all improvements and appurtenances constructed or placed thereon by it, and free from any claims, liens, or charges. Because Agency's property is public property, Contractor and any person, firm, or corporation furnishing any materials or labor for any Work covered by this Contract, will not have any right to lien any portion of the Project Site or any improvement or appurtenance thereon.
- 3.4.5. Storage. Contractor and its subcontractors shall obtain Agency approval before delivering or storing materials or tools on Agency's premises. Upon approval, Contractor shall store materials and tools so that they do not hamper the operation of equipment or persons and do not present a fire or safety hazard.
- 3.5. Construction Personnel and Supervision.
  - 3.5.1. Supervision. During progress of the Work, Contractor shall keep on the Project Site, and at all other locations where any Work related to this Contract is being performed, a competent project manager, construction superintendent and staff, who are employees of Contractor, to whom Agency does not object and at least one of whom is fluent in English, written and verbal. Contractor shall provide efficient supervision to the Work, using its best skill and attention. Before commencing the Work, Contractor shall give written notice to Agency of the name of its project manager and construction superintendent. Contractor is bound by all directions given to Contractor's project manager and/or construction superintendent as if such direction was given to Contractor.
  - 3.5.2. Replacement of Supervision. Contractor shall not otherwise remove or replace the construction superintendent or project manager for any reason, including their need to work on other projects, or to take extended vacations, without submitting thirty (30) days' written notice to Agency. If Contractor's project manager, construction superintendent, or support staff member is no longer employed by Contractor, Contractor shall provide Agency with notice of the termination of the employment relationship and shall consult with Agency with respect to replacement personnel.
  - 3.5.3. Discipline and Removal. Contractor shall at all times enforce strict discipline and good order among its subcontractors and employees and shall not employ or work any unfit person, or anyone not skilled in work assigned to that person. Agency may require Contractor to permanently remove unfit persons from Project Site. Contractor shall not employ any person whom Agency may deem incompetent or unfit on the Project except with the prior written consent of Agency. Agency may require removal and replacement of any or all construction superintendents or project managers upon ten (10) days' notice to Contractor.
  - 3.5.4. Acts or Omissions. Contractor is responsible to Agency for acts and omissions of Contractor's employees, subcontractors and their agents and employees, and other persons or entities performing portions of the Work for or on behalf of Contractor or any of its subcontractors.

- 3.5.5. Identification Badges. The Contractor and its subcontractors, and the employees and the agents of any of them shall comply with Agency's policies and requirements to obtain, display, and return identification badges at any time while they are present on Agency's property.
- 3.6. Contractor's Construction Master Schedule.
  - 3.6.1. Schedule Required. Within no more than ten (10) days of being awarded the Contract, and before commencing the Work, Contractor shall prepare and submit to Agency for Agency's approval a construction master schedule for the Work. The construction schedule shall be in a detailed precedence-style critical path method (CPM) type format, which will include any interim dates that are critical in insuring the timely completion of the Work as provided in the Contract Documents. Agency shall provide approval or comment on the submitted schedule within seven (7) days. Contractor shall be responsible for amending construction schedule in response to Agency comments.
  - 3.6.2. Logic. Schedule shall use retained logic during the development and updating of the schedule. Any function that would cause the retained logic of the logic network to be overridden is prohibited unless approved, in writing and in advance, by the Architect and Agency.
  - 3.6.3. Schedule shall include: date of Notice to Proceed, date of Substantial Completion, and date of Final Completion in accordance with Contract Documents.
  - 3.6.4. Schedule Maintenance. The schedule shall not exceed the Contract Time for the Work. Contractor shall revise and update the schedule at appropriate intervals, no greater than monthly, or as required by Agency or the conditions of the Work and Project. Should the Contractor fail to meet any scheduled date as shown on the current Construction Progress Schedule, the Contractor shall promptly notify the Agency, and if requested, be required at its own expense to submit within five (5) days of the request an updated Construction Progress Schedule. If the Contractor's progress indicates to the Agency that the Work will not be Substantially Completed within the Contract Time, the Architect and Agency may require the Contractor develop a Recovery Schedule that adequately demonstrates how the Contractor will, at its own expense, increase its work force and/or working hours to bring the actual completion dates of the activities into conformance with the Construction Progress Schedule and Substantial Completion within the Contract Time. Neither the Agency nor the Architect will, however, be obligated to review the substance or sequence of the Construction Progress Schedule or otherwise determine whether it is correct, appropriate or attainable.
  - 3.6.5. Submittal Schedule. Contractor shall prepare and keep current, for Agency's review and acceptance, a schedule of submittals that is coordinated with the construction schedule and allows Agency and its consultants reasonable time to review submittals and to provide information necessary for procurement and installation of Work for which allowances are provided under the Contract Documents. Agency may require Contractor to include preparation of Contract submittals as a line item payment in the schedule of values.

3.6.6. Execution of Schedule. Contractor shall perform the Work in general accordance with the most recent schedules submitted to and accepted by Agency. Contractor shall indicate in the schedule updates any Work that is not proceeding according to the schedule and shall provide a written plan of action to bring the Work into compliance with the schedule or to otherwise ensure that the Work will be completed within the Contract Time.

3.7. Documents and Records.

3.7.1. Record Documents. Contractor shall update at least weekly, at the Project Site, or at such other location as Agency may authorize in writing, one legible copy of all Contract Documents annotated with all changes ("Record Documents"), including but not limited to Addenda, RFIs, ASIs, and Change Orders. Contractor shall also maintain on site a complete record and copy of all approved submittals, shop drawings and product samples. Failure to update in a timely manner as required by this section may result in withholding payment by Agency. Contractor shall keep these documents in good order and available to Agency's consultants or representatives and all authorities having jurisdiction. Contractor shall coordinate with Agency's representatives and consultants and shall submit its verified report(s) according to Oregon law or as required by authorities having jurisdiction. The Contractor shall submit the completed and finalized project record to Agency in accordance with the contract documents prior to Final Acceptance.

3.7.2. Daily Job Reports. Contractor shall maintain at least one (1) set of reports on the Project prepared by Contractor's employee(s) present on site, and which includes following information: a brief description of all Work performed on that day; a summary of all pertinent events and/or occurrences on that day including records of all tests and inspections; a list of all subcontractor(s) working on that day; a list of each Contractor employee working on that day; the total hours worked for each employee; a complete list of all equipment on the Project that day, whether in use or not; the time Work commenced and ended; weather conditions; accidents or injuries; and Work progress made for that day ("Daily Job Reports"). Contractor shall keep the Daily Job Reports current and in good order and shall make current copies available to Agency upon request.

- 3.7.3. Maintenance of Records after Final Payment. Contractor shall make available at its office at all reasonable times the materials described in this paragraph for the examination, audit, or reproduction until six (6) years after final payment under this Contract: (a) all Daily Job Reports or other Project records of Contractor's project manager(s), construction superintendent(s), and/or project foreperson(s); (b) all certified payroll records and/or related documents including, without limitation, payroll, payment, timekeeping and tracking documents; (c) all books, estimates, records, contracts, documents, bid documents, bid cost data, subcontract job cost reports, and other data of Contractor, any subcontractor, and/or supplier, including computations and projections related to bidding, negotiating, pricing, or performing the Work or Contract modification, in order to evaluate the accuracy, completeness, and currency of the cost, manpower, coordination, supervision, or pricing data at no additional cost to Agency. These documents may be duplicative and/or be in addition to any bid documents held in escrow by Agency.
- 3.7.4. Submittals. Contractor shall submit shop drawings, product data, samples and mock ups as required by the Contract Documents that have been verified and coordinated with the requirements of the Work and of the Contract Documents. Contractor shall not perform any portion of the Work until the submittals for that portion have been approved by Agency.
- 3.7.5. Professional Design Services. Agency will not require Contractor to perform professional services which constitute the practice of architecture, engineering, or surveying unless such services are specifically required by the Contract Documents as a part of the Work or unless Contractor must provide such services in order to carry out Contractor's responsibilities under the Contract. Agency shall specify performance and design criteria that such professional services must satisfy.
- 3.7.6. Ownership of Documents. All copies of Drawings, Specifications, and copies of other incidental architectural and engineering work, or copies of other Contract Documents furnished by Agency or generated by Contractor, including those in electronic form, are the property of Agency.
- 3.7.7. Copyright and License. Neither Contractor nor any subcontractor, or material or equipment supplier, will own or claim a copyright in the documents prepared by the Agency's consultants. Agency hereby grants Contractor, subcontractors, sub-subcontractors, and material or equipment suppliers a limited license to use applicable portions of the Drawings and Specifications prepared for the Project in the execution of their Work under the Contract Documents.

- 3.7.8. Royalties, Licenses and Copyrights. Contractor shall obtain and pay, when required by law, all royalties and license fees necessary for prosecution of Work before the earlier of the date of the commencement of the Work or the date the license is legally required to continue the Work without interruption. Contractor shall defend suits or claims of infringement of patent, copyright, or other rights and shall hold Agency, Agency's consultants, and Agency's representatives harmless and indemnify them from loss on account of claims for infringement to the extent Contractor knew, or with reasonable diligence should have known, that the use of a specified design, process, or product would constitute infringement.
- 3.7.9. Intellectual Property. The review by Agency or Architect of any method of construction, invention, appliance, process, article, device, or material of any kind is limited to a review for adequacy for the Work and is not approval for use by Contractor in violation of any patent or other rights of any person or entity.
- 3.8. Tests and Inspections.
  - 3.8.1. Tests, inspections and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of public authorities.
  - 3.8.2. Unless otherwise provided, Contractor shall arrange for such tests, inspections, and approvals, and shall bear the associated costs. Contractor shall notify Agency of scheduled tests and/or inspections and approvals, so that Agency or its designated representative may be present for such procedures, which presence shall be at Agency's expense.
  - 3.8.3. Contractor shall not incorporate any material into the Work that has not satisfied all testing, inspection, or approval requirements of the Contract Documents.
  - 3.8.4. Contractor shall secure and promptly deliver required certificates of testing, inspection or approval to Agency, unless otherwise provided by the Contract Documents.
  - 3.8.5. If testing, inspection, or approval required by the Contract Documents, or otherwise required by Agency, reveal failure of the Work to comply with requirements of the Contract Documents, all costs made necessary by such failure, including those of repeated procedures and compensation of Agency's costs, shall be at Contractor's expense.
- 3.9. Work Under the Contract.
  - 3.9.1. Defective Work. At Agency's sole option, Contractor shall repair or replace any and all Work, together with any other Work that may be displaced in doing so, that may prove defective in workmanship and/or materials within a one (1) year period from Substantial Completion of the Work without expense whatsoever to Agency. In the event Contractor fails to commence and diligently pursue such replacements or repairs within ten (10) days after being notified in writing, Contractor hereby acknowledges and agrees that Agency may correct such defects, without voiding any guarantee or warranty, at Contractor's expense. Payment shall become due upon Agency's demand, and shall be an obligation secured by Contractor's performance bond.

- 3.9.2. Correction of Work. If, in the opinion of Agency, defective Work creates an exigent or dangerous condition or requires immediate correction or attention to prevent injury to persons or property or to prevent interruption of Agency operations, Agency may, upon making a good faith attempt to notify Contractor, proceed to make some or all replacements or repairs as may be reasonably required in the circumstances. The costs of such work will be charged against Contractor and shall become due upon Agency's demand.
- 3.9.3. Manufacturer's Warranties. The above provisions do not in any way limit the guarantees on any items for which a longer guarantee is specified or on any items for which a manufacturer gives a guarantee for a longer period. Contractor shall furnish to Agency all appropriate guarantee or warranty certificates as indicated in the Specifications or upon request by Agency. Contractor shall obtain and preserve for the benefit of Agency, manufacturer's warranties on material, fixtures, and equipment incorporated into the Work. Contractor shall furnish Agency with all guarantee or warranty certificates as indicated in the Specifications or upon Agency's request.
- 3.9.4. Cutting and Patching. Contractor shall do all cutting, fitting, patching, and preparation of Work as required to make its several parts come together properly, to fit it to receive, or be received by work of other Contractors, and to coordinate tolerances to various pieces of work, showing upon, or reasonably implied by, the Drawings and Specifications for the completed structure, and shall conform them as Agency may direct.
- 3.9.5. Alteration of Work by Contractor or Others. Contractor shall not endanger any Work performed by it or anyone else by cutting, excavating, or otherwise altering Work and shall not cut or alter Work of any other Contractor except with consent of Agency.
- 3.9.6. Cleaning up. Contractor shall keep the Project Site and surrounding area, including public rights of way, free from dust, mud, dirt, or accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the Work, Contractor shall clean the site, streets, and sidewalks and shall remove from the Project waste materials, rubbish, Contractor's tools, construction equipment, machinery, and surplus materials.
- 3.9.7. Access to Work. Contractor shall provide Agency and its representatives access to the Work in preparation and progress wherever located.
- 3.10. Allowances.
  - 3.10.1. Contractor shall include all allowances stated in the Contract Documents in the Contract Total. Unless the Contract Documents provide otherwise, Contractor shall include in the Contract Total, separate from allowances, amounts necessary to cover the cost of materials and equipment delivered at the site and all required taxes, less applicable trade discounts, Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit and other expenses contemplated for stated allowance. Agency shall adjust the Contract Total through a Change Order whenever costs are more than allowances. Agency shall provide a Change Order amount that reflects the difference between the actual cost and the allowance.

3.11. Warranty.

- 3.11.1. Contractor warrants to Agency and Architect 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 not inherent in the quality required or permitted, and that the Work will conform to the requirements of the Contract Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. Contractor's warranty excludes remedy for damage or defect caused by abuse, modifications not executed by Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by Architect or Agency, Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.
- 3.11.2. Contractor guarantees all work against defects in material or workmanship for a period of one (1) year from the date of substantial completion.
- 3.11.3. If, after 10 days' notice, Contractor fails to proceed to cure any breach of this warranty, Agency may have the defects corrected and Contractor and its surety shall be liable for all expenses incurred. In case of an emergency, where, in the opinion of Agency or Architect, delay would cause serious loss or damage, corrective work may be undertaken without advance notice to Contractor; but Contractor and its surety shall remain liable for all expenses incurred. The remedies stated in this subsection are not exclusive, but are cumulative of any other remedies Agency may have.
- 3.11.4. Contractor shall assign, and shall obtain from subcontractors and assign, all manufacturers' warranties to Agency and all guarantees and warranties of goods supplied under this Contract shall be deemed to run to the benefit of Agency. Contractor shall provide Agency with all manufacturers' warranty documentation and operations and maintenance manuals not later than the date of Final Acceptance of the Work by the Agency.

4. **SUBCONTRACTORS.**

- 4.1. Subcontractor Disclosure. Contractor shall provide Agency a list of all subcontractors and major suppliers with a name, address, telephone and fax numbers, Oregon license number(s), classification, and monetary value of each subcontract for labor, material, or equipment. If Agency objects, Agency shall promptly provide a written notice of objection. Contractor shall not contract with a proposed person or entity to which Agency reasonably objects or that is ineligible to receive a subcontract under ORS 279C.860, and shall procure a replacement subcontractor that is acceptable to Agency. Agency shall provide a Change Order before commencement of substitute subcontractor's Work for the increase or decrease in the Contract Total and Contract Time occasioned by such change, unless the subcontractor is ineligible under ORS 279C.860, and Contractor shall be fully responsible for performance of the substituted subcontractor under the Contract Documents. Contractor shall be solely responsible to determine whether any proposed subcontractor is eligible.

- 4.2. Pass-Through. Contractor shall require each subcontractor, by written agreement, to be bound to Contractor by terms of this Contract to the extent it applies to the Work performed by subcontractor. Contractor shall provide copies of subcontract agreements upon Agency's request.
- 4.3. No Waiver. Agency's consent or failure to object to any subcontractor does not relieve Contractor of any obligations under this Contract and is not a waiver of any provisions of this Contract. A waiver is not effective unless it is in writing and is signed by the Agency.
- 4.4. Substitution and Assignment. Contractor shall not, without Agency's written consent:
  - 4.4.1. Substitute any person as a subcontractor in place of the subcontractor designated in the original bid.
  - 4.4.2. Permit any Subcontract to be assigned or transferred, or allow any portion of the Work to be performed by anyone other than the subcontractor listed in the original bid; or
  - 4.4.3. Sublet or subcontract any portion of the Work in excess of one-half of one percent (1/2 of 1%) of Contractor's total bid as to which his original bid did not designate a subcontractor.
- 4.5. Coordination of Work. Contractor shall coordinate the trades, subcontractors, sub-subcontractors and material or equipment suppliers working on the Project.
- 4.6. Subcontractor Dispute Resolution. Contractor shall settle any difference between Contractor and its subcontractor(s) or between subcontractors.
- 4.7. Assignment. Contractor shall include assignment provisions in each subcontract as indicated in the termination provisions set forth in these General Conditions.
  - 4.7.1. Contingent Assignment of Subcontractors. Contractor shall assign to Agency each subcontract agreement for a portion of the Work provided that:
    - 4.7.1.1. Assignment is effective only after termination of this Contract by Agency for cause or stoppage of the Work by Agency, and only for those subcontract agreements which Agency accepts in its sole discretion by notifying the subcontractor and Contractor in writing; and
    - 4.7.1.2. Assignment is subject to the prior rights of the surety, if any, obligated under bond relating to this Contract.
  - 4.7.2. Upon such assignment, if the Work has been suspended for more than thirty (30) days, Agency shall equitably adjust subcontractor's compensation for increases in cost resulting from the suspension.
- 4.8. Prompt Payment of Subcontractors. Contractor shall promptly pay subcontractors as required by the Contract.



5. **CONSTRUCTION BY AGENCY.**

- 5.1. Other Contractors. Agency may let other contractors perform work with its own forces, in connection with the Project. Contractor shall afford other contractors reasonable opportunity for introduction and storage of materials and execution of their work and shall properly coordinate and connect the Work with the work of other contractors. If Contractor claims that delay or additional cost is involved because of such action by Agency, Contractor shall make such claim in the manner provided in the Contract Documents.
  - 5.1.1. Contractor shall protect the work of other contractors that it encounters while working on the Project.
  - 5.1.2. If any part of Contractor's Work depends upon completion of the work of Agency or others for proper execution, Contractor shall inspect and promptly report to Agency any discrepancy or defective condition in such work. Contractor's failure to inspect and report will be deemed acceptance of all work of others as fit and proper for reception of Contractor's Work. Contractor is liable for damages for work of others that Contractor failed to inspect, except for defects that were not discoverable and may develop in Agency's or any other contractor's work after execution of Contractor's Work.
- 5.2. Mutual Responsibility. Contractor shall reimburse Agency for costs incurred by Agency which are payable to a separate contractor because of delays, improperly timed activities or defective construction of Contractor. Agency shall reimburse Contractor for costs incurred by Contractor because of delays, improperly timed activities, and damage to the Work or defective construction of a separate contractor.
- 5.3. Agency's Right to Clean Up. If a dispute arises among Contractor, separate contractors and Agency as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, Agency may clean up and the Agency shall allocate the cost among those responsible.

6. **CHANGES IN THE WORK.**

- 6.1. Change Orders.
  - 6.1.1. Change Order. A document prepared by the Agency Representative and signed by the Agency, the Agency Representative, the Architect, and the Contractor or assigned designee, stating their agreement upon all of the following: (1) a change in the Work; (2) the amount of the adjustment in the Contract Total, including all costs, overhead and profit, if any; and (3) the extent of the adjustment in the Contract Time, if any, issued after the effective date of the Agreement.
  - 6.1.2. A Proposed Change Order (PCO) is a document prepared by the Contractor to seek additional compensation and/or time from the Agency. The Contractor shall provide a written PCO narrative explaining its reasons for requesting additional compensation or time. The written PCO narrative shall reference all related schedule activities and contract specification sections and drawings directly pertaining to the PCO, include all costs, overhead and profit.
  - 6.1.3. Change Pricing. In the absence of applicable unit prices or other agreement, the changed work will be priced in accordance with the following provisions:

- 6.1.3.1. In no case shall the sum of the individual markups applied to a General Contractor's Modification exceed fifteen percent (15%), regardless of the number of Subcontractor tiers involved in performing the Work.
- 6.1.3.2. The total combined mark-up for a Subcontractor and his lower-tier Subcontractor shall not exceed ten percent (10%). Costs of tax and insurance shall not be marked up.
- 6.1.3.3. For work perform by a subcontractor, the subcontractor will receive 10% markup for direct costs. The General Contractor shall receive a five percent (5%) of the subcontractor's direct costs for processing.
- 6.1.3.4. For self-performed work by the General Contractor, the markup shall equal fifteen percent (15%) of the direct cost as defined herein.
- 6.1.3.5. Bonding may be increased a maximum of one percent (1%) provided the Contractor demonstrates to the Agency a requirement to increase bonding.
- 6.1.3.6. If the net value of a change results in a credit from the Contractor or subcontractor, the credit shall be the actual net cost, plus five percent (5%) for overhead and profit. When both additions and credits covering related work or substitutions are involved in any one change, the allowance for overhead and profit shall be figured on the basis of the net increase or decrease, if any, with respect to the change.

6.1.4. Equipment Costs:

- 6.1.4.1. The allowance for equipment costs (both rental as well as Contractor owned equipment) shall be based on actual and verified rental company rates. Hourly, daily, weekly, or monthly rates shall be used, whichever is lower. Hourly rates including operator shall not be used. Unless otherwise specified, manufacturer's ratings and manufacturer approved modifications shall be used to classify equipment for determination of applicable rental rates.
- 6.1.4.2. The actual time to be paid for equipment shall be the time that the equipment is in productive operation on the Work under Contract Modification. In computing the hourly rental of equipment, any time less than thirty (30) minutes shall be considered one half (1/2) hour. No payment will be made for time while equipment is inoperative due to breakdown, or for non workdays. In addition, the rental time shall not include the time required to move the equipment to and from the project site. No mobilization or demobilization will be allowed for equipment already on site. If such equipment is not moved by its own power, then loading and transportation costs will be paid in lieu of rental time thereof. However, neither moving time nor loading and transportation costs will be paid if the equipment is used on the Project Site in any other way than upon the work directly related to the Contract Modification.

- 6.1.5. Small Tools. Individual pieces of equipment having a replacement value of two thousand dollars (\$2,000) or less shall be considered to be small tools or small equipment, and no payment will be made since the costs of these tools and equipment is included as part of the markup for overhead and profit defined herein.
- 6.1.6. Labor rates will not be recognized when in excess of the applicable prevailing wage rate pursuant to ORS 279C.800 to 279C.870 or wage established in any applicable collective bargaining agreement, whichever is higher. The costs for all supervision, including general superintendents and foreman, shall be included in the markup defined herein. Working foreman will be considered a direct cost if the individual is on the project site only installing Work under Contract Modification with no other work being performed at the time. A breakdown of the payroll rates for each trade used for Contract Modifications shall be furnished to the Agency within thirty (30) calendar days of the Contract Notice to Proceed.
- 6.1.7. Premium Time Rate. Shall be the difference between the Overtime Hourly Rate and Straight Time Rate per specific trade and classification as more fully defined herein. Agency will pay taxes on the Premium Time Rate only. The Premium Time Rate shall be paid without overhead and profit calculated against the differential.
- 6.1.8. Material costs directly required for the performance of the Contract Modification. Such costs may include the cost of transportation. If a trade reduction by an actual supplier is available to the Contractor, it shall be credited to the Agency. If the materials are obtained from a supplier or source owned wholly by or in part by the Contractor, payment thereof will not exceed the current wholesale price for the materials. The term trade reduction includes the concept of cash discounting.
- 6.1.9. Agreement on Change Order. Agreement on any Change Order is a final settlement of all matters relating to the change in the Work that is the subject of the Change Order, including, but not limited to, all direct and indirect costs associated with such change and any and all adjustments to the Contract Total and the construction schedule.
- 6.1.10. Additional Credits. Contractor shall credit all trade discounts, rebates, refunds, and returns from the sale of surplus material to Agency
- 6.1.11. Cost Accounting Records. Contractor shall provide all cost accounting records to Agency upon Agency's request.
- 6.2. Construction Change Directives. A Construction Change Directive is a written order signed by Agency, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Total or Contract Time, or both. Agency may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract, the Contract Total and Contract Time being adjusted accordingly. Agency and Contractor may use a Construction Change Directive in the absence of total agreement on the terms of a Change Order. Upon receipt of a Construction Change Directive, Contractor shall promptly proceed with the change in Work directed and shall advise Agency of Contractor's agreement or disagreement with the proposed method, if any, provided in the Construction Change Directive for adjustment in the Contract Total or Contract Time.

- 6.2.1. Force Account. When a definite price has not been agreed upon in advance and it is to be paid on a force account basis, Agency may establish a not-to-exceed budget. Contractor shall submit daily all direct costs necessarily incurred and paid for labor, material, equipment, permit fees, taxes, and increased costs of bonds and insurance related to the Work for approval by Agency. Contractor shall not exceed the budget unless Agency specifically authorizes the overrun in writing. Agency shall pay only for actual costs verified in the field by Agency on a daily basis. When Agency and Contractor reach agreement upon the adjustment for price and time, Contractor and Agency shall prepare and execute an appropriate Change Order.
- 6.2.2. Negotiating Changes. If Agency and Contractor are unable to agree upon change order terms, or if in the opinion of Agency the Work must proceed before an agreement can be negotiated, Agency may order Contractor to proceed with the changes, and Contractor shall comply. In such event, Contractor shall keep detailed daily records as to all labor employed in connection with the changes. Contractor's records will itemize costs for labor, materials, equipment rental, and transportation. Contractor shall submit the records for approval to the Agency. If Contractor fails to keep such records, all such Work will be deemed to have been performed at Contractor's own expense. Agency and Contractor shall attempt to negotiate fair and reasonable adjustments to the Contract for changes in the Work. Contractor shall submit to Agency all evidence in support of Contractor's proposals.
- 6.2.3. Markup. No fee or other markup of any kind will be applicable to any premium portion of wages, taxes, or related benefits. In the event of addition or deletion of like items in a change order or change directive, the like item quantity will be summed and the unit prices or the percentage fee will be applied to the total.
- 6.2.4. Written Authorization Required. In no event shall Contractor proceed with changes in the Work without a written order from Agency to so proceed. Agency will be under no obligation to pay for unauthorized extra, additional, or changed Work performed by Contractor without a written Change Order, Construction Change Directive, or other written order to proceed duly authorized and executed by Agency.
- 6.2.5. Minor Changes. Contractor shall promptly carry out minor changes in the Work issued through written order of Agency's representative, through the authority granted to it by Agency, not involving adjustment in the Contract Total or extension of the Contract Time, and not inconsistent with the intent of the Contract Documents.

7. **TIME.**

- 7.1. Time is of the Essence. Time limits stated in the Contract Documents are of the essence of the Contract. Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.
- 7.2. No Work Without Insurance. Contractor shall not, except by written direction by Agency, prematurely commence operations on the site or elsewhere prior to the effective date of insurance to be furnished by Agency and Contractor. The date of commencement of the Work is not changed by the effective date of insurance.

- 7.3. Notice to Proceed. Agency shall issue a Notice to Proceed within a reasonable time following the date of execution of this Contract. To the maximum extent permitted by law, Contractor is not entitled to additional compensation as a result of a postponement of the issuance of Notice to Proceed. The Parties acknowledge the sole remedy for the Contractor in such circumstances is an extension of Contract Time to achieve Substantial Completion.
- 7.4. Working Hours. Contractor shall perform Work during regular working hours as permitted by Agency. Contractor shall, when required to achieve Substantial Completion within the Contract Time, Work outside of regular working hours such as evenings and/or weekends at no additional cost to Agency. Contractor shall perform all evening and/or weekend work only upon Agency's advance approval and in compliance with all applicable rules, regulations, laws, and local ordinances including, without limitation, all noise and light limitations.
- 7.5. Delays and Extensions of Time.
- 7.5.1. Float and Slack. Float or slack is the amount of time between the early start date and the late start date, or the early finish date and the late finish date, of any activity in the schedule. Any float time to activities not on the critical path shall belong to the Project, and may be used by the Project to optimize its construction process. Any float time between the end of the final construction activity and the final completion date shall belong to the Agency, and may be used by the Agency in determining if additional contract days are to be awarded for changes in the contract or for delays to the contract caused by the Agency. The Contractor will not be entitled to any adjustment in the Contract Time, the Construction Schedule, or the Contract Total, or to any additional payment of any sort by reason of the Agency's use of float time between the end of the final construction activity and the final completion date or by reason of the loss or use of any float time, including time between the Contractor's anticipated completion date and end of the Contract Time, whether or not the float time is described as such on the Construction Progress Schedule.
- 7.5.2. Adverse Weather. Contract Time is determined with consideration given to the average climate weather conditions prevailing in the County in which the Project is located during any given month as published by the National Oceanic and Atmospheric Administration (NOAA) and averaged over the past 10 years. Contractor may request a time extension for adverse weather if it causes delays that unreasonably increase the labor required to complete the scheduled tasks on the day affected by adverse weather not reasonably anticipated. Contractor shall not be allowed an increase in Contract Total for the delay. Contractor shall work additional days if necessary at no cost to Agency, irrespective of adverse weather, to maintain access and the Contract Schedule, and to protect the Work from the effects of Adverse Weather.

- 7.5.3. Extensions of Time. Extensions of Contract Time will be permitted for a delay only to the extent the delay: (1) is not caused or could not have been anticipated by the Contractor; (2) could not be limited or avoided by the Contractor's timely notice to the Agency of the delay or reasonable likelihood that a delay will occur; and (3) is of a duration not less than one day.. Such occurrences may include industry-wide labor dispute, fire, unavoidable casualties, adverse weather conditions not reasonably anticipated, or other occurrences that Agency determines may justify delay. Any extension the Agency grants will be net of any delays caused by or due to the fault or negligence of Contractor, and net of any contingency or "float" allowance included in the Progress Schedule. Contractor will not be allowed an increase in Contract Total for an extension of Contract Time. The Contractor shall be deemed to have control over the supply of labor, materials, equipment, methods, techniques and over the Contractor's subcontractors and suppliers.
- 7.5.4. Requests for Extension. Contractor shall submit requests for extension of time in writing and shall include (a) the duration of the activity relating to changes in the Work and the resources, including manpower, equipment, and material, required to perform the activities within the stated duration; (b) specific logical ties to the Contract Schedule for the proposed change showing the activities that are affected by the change and/or delay; and (c) recovery schedule.

8. **PROTECTION OF PERSONS, PROPERTY, AND THE ENVIRONMENT.**

- 8.1. Safety Program. Contractor shall initiate, maintain, and supervise all safety precautions and programs in connection with performance of the Contract. Contractor is solely and completely responsible for conditions of the Work site, including safety of all persons and property during performance of the Work, including the property of third-parties and real and personal property outside the Project area. This requirement will apply continuously and is not limited to normal working hours.
- 8.2. Agency's Policies. This Contract and all individual contracts and purchase orders incorporate by this reference Agency's safety policies current as of the date of commencement of Work, which have been or will be made available to Contractor.
- 8.3. Subcontractor Safety. Contractor shall review with all subcontractors the methods, materials, tools, and equipment to be used to verify their compliance with all safety standards and laws and Contractor shall comply with them, to ensure safe, hazard-free conditions for all persons visiting or working on the entire Project Site and Agency's adjoining facilities. Contractor shall implement and maintain a safety program that is specifically adapted for the Project and complies with all applicable requirements of Oregon OSHA. Contractor shall furnish a copy of the safety program to Agency before commencing Work.
- 8.4. MSDS Sheets. Contractor shall provide Material Safety Data Sheets to Agency for all chemicals used on the Project Site as required by law.

- 8.5. Safety Coordinator. Contractor shall designate a responsible member of its organization on the Project, whose duty is to post information regarding protection and obligations of workers and other notices required under occupational safety and health laws, to comply with reporting and other occupational safety requirements, and to protect the life, safety, and health of workers. Contractor shall report the name and position of person so designated to Agency.
- 8.6. Correction of Unsafe Conditions. Contractor shall correct any violations of safety laws, rules, orders, standards, or regulations. Contractor shall correct violations promptly upon the issuance of a citation or notice of violation by the Division of Occupational Safety and Health.
- 8.7. Personal Protection Equipment. Contractor's personnel and all workers shall wear personal protective equipment at all times. Contractor shall maintain supplies of protective equipment sufficient to properly equip all employees and visitors.
- 8.8. Safety Devices. Contractor shall take, and require subcontractors to take, all reasonably necessary precautions for safety of workers on the Project. Contractor shall furnish, erect, and properly maintain at all times, all necessary safety devices, safeguards, construction canopies, signs, nets, barriers, lights, and watchmen for protection of workers and the public and shall post danger signs warning against hazards created by such features in the course of the Work.
- 8.9. Barricades and Signage. Contractor shall post necessary warning signs and barricades to ensure the safety of all occupants. Contractor shall not display any signs not required by law or the Contract Documents without Agency's prior written approval.
- 8.10. Labeling of Containers. Contractor shall ensure proper labeling of substances on the Project Site.
- 8.11. Storage. Contractor shall confine apparatus, the storage of materials, and the operations of workers to limits indicated by law, ordinances, permits, or directions of Agency, and shall not interfere with the Work or unreasonably encumber the Project Site or overload any structure with materials. Contractor shall enforce all instructions of Agency regarding signs, advertising, fires, and smoking, and require that all workers comply with all regulations while on Project Site.
- 8.12. Protection of Work. Contractor shall protect the Work, including stored materials and equipment, from all damage or harm, including damage from heat, cold, rain, snow, wind, flooding, and dampness. Contractor shall provide and maintain temporary roofs, window and door coverings, enclosures, or other construction reasonably required to protect the Work at all times during the course of construction. Contractor shall take all additional steps reasonably necessary, or as directed by Agency, to protect the Project, the Site, and the Work from damage associated with anticipated extreme weather events. Contractor shall not be entitled to additional payment or time to the extent its costs or delays would have been avoided if Contractor had complied.

- 8.13. Protection of Existing Structures. Contractor shall protect existing structures, walks, curbs, pavements, roads, trees, landscaping, survey markers, monuments, or other devices marking property boundaries or corners, and/or improvements in working areas, utilities, and adjoining property (including, without limitation, protection from settlement or loss of lateral support). Contractor shall replace same at his expense with same kind, quality, and size of Work or item if temporary removal is necessary, or damage occurs due to the Work.
  - 8.14. Water Quality. Contractor shall comply with all applicable water quality laws and regulations, including permitting, monitoring, and reporting of storm water discharge applicable to the Work, at no additional cost to Agency. Contractor shall indemnify and hold Agency harmless from loss, cost, or liability arising out of Contractor's violation of such laws or regulations.
  - 8.15. Neighborhood Impacts. Contractor shall take all reasonable precautions to protect neighborhood property from damage or nuisance associated with the Work. Contractor shall promptly respond to complaints by neighbors or authorities concerning impacts to neighboring properties and public facilities and shall be solely responsible for cleaning, repair, or replacement of property soiled or damaged by Contractor's operations and settlement of claims or demands of neighbors associated with conduct of its personnel.
  - 8.16. Housekeeping. Contractor shall maintain good housekeeping practices to reduce the risk of fire damage and shall make a fire extinguisher, fire blanket, and/or fire watch, as applicable, available at each location where cutting, braising, soldering, and/or welding is being performed or where there is an increased risk of fire.
  - 8.17. Security and Site Access. Contractor shall ensure that all existing or operating systems, utilities, existing on-site services and access avenues are on and in operating condition before leaving the Project Site each day. If any system, utility, or access avenue is not operable, Contractor shall notify Agency before Contractor leaves the Project Site that day.
9. **HAZARDOUS MATERIALS.**
    - 9.1. With respect to Hazardous Materials to be used during the course of the Work, the Contractor will implement and enforce a program to inventory and properly store and secure all Hazardous Materials that may be used or present on the Project site, maintain available for inspection at the Project site all material safety data sheets, and comply with all regulations required by law for the storage, use, and disposal of Hazardous Materials. The program must provide for notification of all personnel of potential chemical hazards. Review of these hazards must be included in the Contractor's safety training program. The Contractor shall submit to the Agency a list of all Hazardous Materials to be brought by the Contractor or its Subcontractors onto the Agency's property, including the purpose for their use on the Project.



- 9.2. In the event of a release or discovery of a preexisting release of Hazardous Materials, or if it is foreseeable that injury or death to persons may occur because of any material or substance (including without limitation Hazardous Materials) encountered on the Project site, the Contractor shall immediately (a) stop the Work or the portion of the Work affected; (b) notify the Agency orally and in writing; and (c) protect against exposure of persons to the Hazardous Materials. The Contractor shall provide all written warnings, notices, reports, or postings required at law or by contract for the existence, use, release, or discovery of Hazardous Materials.
- 9.3. With respect to any Hazardous Materials or other material or substance reported to the Agency under the above that was not introduced to the Project site by the Contractor or its Subcontractors of any tier, the Agency shall obtain the services of a qualified environmental consultant to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to verify it to be rendered harmless. Unless otherwise required by the Contract Documents, the Agency shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. The Contractor and the Architect will promptly reply to the Agency in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Agency. If either the Contractor or Architect has an objection to a person or entity proposed by the Agency, the Agency shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Agency and Contractor. By Change Order, the Contract Time may, subject to agreement by the Agency and the Contractor, be extended appropriately and the Contract Total shall be increased in the amount of the Contractor's reasonable additional costs of shut-down, delay and start-up, which adjustments shall be accomplished as provided in the Contract.
- 9.4. With respect to any Hazardous Materials or other material or substance reported to the Agency under the above that was introduced to the Project site by the Contractor or its Subcontractors of any tier, the Contractor shall be responsible to carry out the duties of (a) proposing to the Agency and the Architect a qualified environmental consultant; (b) obtaining and paying for the services of the environmental consultant; and (c) verifying that the material is rendered harmless, as otherwise set forth in the above. The Contractor will not be entitled to an increase in the Contract Total if the Contractor or its Subcontractors of any tier are responsible for the condition requiring the testing of the material and the stoppage of the Work. Remediation work must be conducted by properly qualified contractors approved in advance by the Agency. Generally, the Agency may at its option contract directly with environmental consultants, and remediation contractors, regardless of whether the work will be performed at the Contractor's expense.

- 9.5. To the extent permitted by the Oregon Constitution and the Oregon Tort Claims Act, the Agency shall indemnify and hold harmless the Contractor, Subcontractors, Architect, Architect's consultants and the agents and employees of the Contractor, Subcontractors, Architect, and Architect's consultants from and against claims, damages, losses and expenses, including without limitation attorney fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance was not introduced to the Project site by the Contractor or its Subcontractors of any tier, presents the risk of bodily injury or death, and has not been rendered harmless. No indemnification provided by the Agency under this Section will be required to indemnify the Contractor, Subcontractors, or their employees or agents to the extent of liability for death or bodily injury to persons or damage to property caused in whole or in part by the Contractor's own negligence, but will require indemnity to the extent of the fault of the Agency or its agents or representatives.
- 9.6. To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Agency, the Agency's Representatives, and the employees of the Agency from and against claims, damages, losses, and expenses, including without limitation attorney fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance was introduced to the Project site by the Contractor or its Subcontractors of any tier, presents the risk of bodily injury or death, and has not been rendered harmless. No indemnification provided by the Contractor under this Section will be required to indemnify the Agency or its agents or representatives to the extent of liability for death or bodily injury to persons or damage to property caused in whole or in part by the Agency's own negligence, but will require indemnity to the extent of the fault of the Agency or its agents or representatives.
- 9.7. Hazardous Materials are any substance defined or designated as being radioactive, infectious, hazardous, dangerous, or toxic by any federal, state, or local statute, regulation, or ordinance presently in effect or subsequently enacted. For purposes of Article 9, the term "introduce" means the physical placement or transportation of Hazardous Materials in or on the Project site regardless of whether the Hazardous Material was specified, required, or otherwise addressed in the Contract Documents.
10. **INSURANCE AND BONDS.**
- 10.1. Contractor's Insurance. Contractor shall procure, prior to commencement of Work, and maintain for the duration of this Contract, or such longer time as may be provided, insurance against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the Work by Contractor, its agents, representatives, employees and subcontractors as set forth in the Contract Documents. Contractor's liabilities, including but not limited to Contractor's indemnity obligations, under this Contract, will not be deemed limited in any way to the insurance coverage required herein. Maintenance of insurance coverage is a material requirement of this Contract and Contractor's failure to maintain or renew coverage or to provide evidence of renewal during the term of this Contract, as required or when requested, may be treated as a material breach.

- 10.1.1. Workers' Compensation and Employers' Liability Insurance. Contractor and its subcontractors, if any, are subject to Oregon Workers' Compensation Law, which requires all employers that employ subject workers who work under this Contract in the State of Oregon to comply with ORS 656.017 and provide the required Workers' Compensation coverage, unless such employers are exempt under ORS 656.126. Contractor shall ensure that each of its subcontractors, if any, complies with these requirements (ORS 279B.230(2)). Unless otherwise exempt, Contractor shall provide the Agency with certification of Workers' Compensation Insurance and shall maintain Employers' Liability Insurance with limits not less than \$1,000,000 for each accident, \$1,000,000 for disease each employee and \$1,000,000 each policy limit.
- 10.2. Performance Bond and Payment Bond. Contractor shall provide a performance bond and a payment bond as required by the Contract prior to start of Work.
- 11. **UNCOVERING AND CORRECTION OF WORK.**
  - 11.1. Uncovering of Work. If a portion of the Work is covered without Project Inspector and/or Architect approval or not in compliance with the Contract Documents, Contractor shall, if required in writing by Agency, Project Inspector, or Architect, uncover the Work for observation and replace it at Contractor's expense without change in Contract Total or Contract Time.
  - 11.2. Correction of Work. Contractor shall, at its own expense, promptly correct Work that is rejected by Agency, Architect, or any governmental authority or otherwise fails to conform to the requirements of the Contract Documents, regardless of when it is discovered and regardless of whether the Work is fabricated, installed or completed. Contractor shall pay for all additional testing, inspection, or other compensation including Agency and Architect's additional services required for the correction of Work.
  - 11.3. Correction of Work after Substantial Completion. If, after Substantial Completion, any Work is not in accordance with the requirements of the Contract Documents, Agency shall provide Contractor with written notice to correct the Work promptly after discovery of the condition. Contractor shall correct the nonconforming Work within a reasonable time after receipt of notice.
- 12. **RIGHTS AND REMEDIES.**
  - 12.1. No Waiver. The duties and obligations imposed by the Contract Documents and rights and remedies available are in addition to and not a limitation of duties, obligations, rights, and remedies otherwise imposed or available by law. No action or failure to act by any party shall constitute a waiver of a right or duty afforded the party under this Contract, nor does any act or omission constitute approval of or acquiescence in a breach, except as may be specifically agreed in writing.
  - 12.2. Independent Contractor.
    - 12.2.1. Contractor is engaged as an independent Contractor. Although Agency reserves the right: (a) to determine (and modify) the delivery schedule for the Work; and (b) to evaluate the quality of the completed performance, Agency cannot and will not control the means or manner of Contractor's performance, nor provide any tools or equipment for the performance of the Work, except as provided elsewhere in this Contract. Contractor shall determine the appropriate means and manner of performing the Work.

- 12.2.2. Contractor is wholly responsible for the manner in which it and its subcontractors perform the Work required of it by the Contract Documents. Agency may monitor Contractor's activities to determine compliance with the terms of this Contract.
- 12.2.3. Contractor shall pay all federal, state and local taxes applicable to compensation or payments paid to Contractor under this Contract and, unless Contractor is subject to backup withholding, Agency shall not withhold from such compensation or payments any amount(s) to cover Contractor's tax obligations.
- 12.2.4. Contractor is not an employee of the federal government or the State of Oregon.
- 12.2.5. Contractor is not a contributing member of the Public Employees Retirement System.
- 12.2.6. Neither Contractor, nor any of Contractor's subcontractors, agents or employees are "officers," "employees," or "agents" of Agency or any of Agency's employees or agents, as those terms are used in ORS 30.265. Contractor bears exclusive responsibility for the acts of its employees as they relate to the services to be provided during the course and scope of their employment. Contractor, its subcontractors, agents, and its employees are not entitled to any rights or privileges of Agency employees.

**13. COMPLIANCE WITH LAWS.**

- 13.1. Contractor shall comply with all laws, codes, regulations, and applicable requirements imposed by governmental authorities having jurisdiction over the Work, including but not limited to, environmental, zoning, building code, public contracting, and other related laws.
- 13.2. Environmental Mitigation. Contractor shall comply with all applicable mitigation measures, if any, adopted by any public agency with respect to this Project pursuant to the environmental protections laws of the State of Oregon.
- 13.3. Work Performed Illegally. Contractor will bear all costs arising from Work performed that it knew, or through exercise of reasonable care should have known, was contrary to any applicable laws, ordinance, rules, or regulations.
- 13.4. Prior Approvals. Contractor shall obtain approval of material, processes, or procedures by the Oregon state agencies or other body or agency where required by the Specifications or Drawings.

**14. CLAIMS AND DISPUTES.**

- 14.1. Claim. A Claim is a demand or assertion by a party seeking, as a matter of right, adjustment or interpretation of Contract terms, payment of money, extension of time, or other relief with respect to the terms of the Contract. Claim includes other disputes and matters in question between Agency and Contractor arising out of or relating to the Contract. Parties will initiate Claims only by written notice. The party making the Claim is responsible for substantiating the Claim.

- 14.2. Time to Initiate Claim. The party making a Claim shall initiate the Claim within fourteen (14) days after the occurrence of the event giving rise to such Claim or within fourteen (14) days after the claimant first recognizes the condition giving rise to the Claim, whichever is later. The party making the Claim shall submit written notice to the other party that identifies the known bases for each Claim and the nature and amount of relief sought.
- 14.3. Written Notice of Claim. If Contractor claims that any instructions issued after the effective date of this Contract, by Drawings or otherwise, involve extra costs, Contractor will be entitled to reimbursement for such extra costs only to the extent Contractor so notifies Agency in writing before proceeding to execute the affected Work and within five (5) days after receipt of such instructions. Claims and demands for any other cause, whatsoever, by Contractor against Agency must be served in writing upon Agency within five (5) days from the occurrence of the cause giving rise to the claim. Timely compliance with the written claim requirements of this Contract is a condition precedent to Contractor's right to payment on account of any claim and failure to provide such written claim or demand or notice will constitute a waiver of such claim.
- 14.4. No Work Stoppage. Contractor shall proceed diligently with performance of this Contract and Agency shall continue to make payments in accordance with the Contract Documents pending final resolution of a Claim, except as otherwise agreed in writing or provided for in this Contract.
- 14.5. Differing Site Conditions. A party shall give notice to the other party promptly, and in no event later than five (5) days after first observation, before conditions encountered at the site are disturbed that are: (a) subsurface or otherwise concealed physical conditions that differ materially from those indicated on the Contract Documents; or (b) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents. The parties shall promptly investigate such conditions, and if they differ materially and cause an increase or decrease in the cost of or time required for performance of any part of the Work, Agency will propose an equitable adjustment in the Contract Total, Contract Time, or both. If Agency does not find that the conditions differ materially and cause an increase or decrease in the cost of or time required for performance of any part of the Work, Agency will notify Contractor in writing. If Contractor disputes Agency's determination, Contractor shall proceed with the Work and may initiate a Claim no later than twenty one (21) days after receiving notice of the decision.
- 14.6. Claim for Additional Cost. Contractor shall file a Claim for additional cost under this section if Contractor believes additional cost is involved for reasons including: (a) Agency's written interpretation of the Contract Documents; (b) Agency's order to stop Work where Contractor is not at fault; (c) written order for a minor change in Work issued by Agency's consultant or representative; (d) failure of payment by Agency; (e) termination of Contract by Agency; (f) Agency's suspension; or (g) other reasonable grounds.

- 14.7. Claim for Delay. If Contractor wishes to make a Claim for a delay, written notice shall be given within fourteen (14) calendar days of the occurrence of the event giving rise to the delay. Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary. Contractor will not be entitled to additional Contract Time for delays that do not affect the critical path of the Work.
- 14.8. Claim for Additional Time (Adverse Weather). If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated, and had an adverse effect on the scheduled construction. Contractor shall not be entitled to additional compensation for delays caused by adverse weather conditions or any causes beyond Agency's control. If the Oregon Office of Emergency Management orders Contractor to halt the Work for reasons beyond Contractor's control and that were not reasonably anticipated, the Contract Time shall be equitably extended by Change Order, but only on condition that Contractor provides Agency with written notice of the delay in accordance with the notice requirements of this Contract.
- 14.9. Claim for Injury or Damage to Person or Property. If any person suffers physical injury or property damage arising from the Work, regardless of the cause, the party shall immediately give notice of such injury or damage, whether or not insured, to Agency and Contractor with sufficient detail to enable Agency and any other party affected to investigate the matter.
- 14.10. Acceptance of Claim. Upon timely receipt of a properly completed Claim and all documentation and/or evidence necessary to substantiate the Claim, Agency shall evaluate the Claim and provide Contractor with its written decision either accepting the Claim (in whole or in part) or rejecting the Claim (in whole or in part) within twenty (20) days. Should Agency reject the Claim in whole or in part, Agency shall generally explain the reasons for such rejection.
- 14.11. Mediation. Contractor and Agency agree that any dispute that may arise under the Contract will be submitted to a mediator agreed to by both parties as soon as such dispute arises, but in any event prior to commencement of arbitration or litigation. This provision shall be specifically enforceable in any arbitral or judicial proceeding through stay or abatement of the proceeding upon petition of a party. Mediation shall be conducted in Portland, Oregon, and the mediation fee and expenses shall be shared equally by the parties who agree to exercise their best efforts in good faith to resolve all disputes in mediation.

15. **TERMINATION OR SUSPENSION BY CONTRACTOR.**

- 15.1. Termination by Contractor for Work Stoppage. Contractor may terminate this Contract if the Work is stopped for a period of thirty (30) consecutive days through no act or fault of Contractor, subcontractor, or sub subcontractor, or their agents or employees, or any other persons or entities performing portions of the Work under direct or indirect contract with Contractor, for any of the following reasons: (a) issuance of an order of a court or other public authority having jurisdiction which requires all Work to be stopped; (b) an act of government, such as a declaration of a national emergency which requires all Work to be stopped; (c) because the Architect has not issued a Certificate of Payment and has not notified Contractor of the reason for withholding certification, or because Agency has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or (d) Agency failed to furnish to Contractor reasonable evidence that financial arrangements have been made to fulfill Agency's obligations under this Contract.
- 15.2. Termination by Contractor for Work Interruption. Contractor may terminate this Contract if, through no act or fault of Contractor, subcontractor, or sub subcontractor, or their agents or employees, or any other persons or entities performing portions of the Work under direct or indirect contract with Contractor, repeated suspensions, delays or interruptions of the entire Work by Agency constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365 day period, whichever is less, or if Work is stopped for a period of sixty (60) consecutive days.
- 15.3. Compensation. Contractor may recover from Agency payment for Work executed and for proven loss with respect to materials, equipment, tools, and construction equipment and machinery including reasonable profit and overhead if it provides seven (7) days' written notice to Architect and Agency prior to termination for the reasons set forth above.

16. **TERMINATION OR SUSPENSION BY AGENCY.**

- 16.1. Termination by Agency for Cause. Agency may terminate Contract and/or terminate Contractor's right to perform the Work of this Contract without prejudice to any other rights or remedies by providing seven (7) days' written notice to Contractor and Contractor's surety if Contractor:
- 16.1.1. refuses or fails to execute the Work or any separable part with sufficient diligence to ensure its completion within the time specified or any extension;
- 16.1.2. persistently or repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- 16.1.3. fails to make payment to subcontractors in accordance with respective agreements;
- 16.1.4. persistently disregards laws, ordinances, or rules, regulations or orders of a public authority having jurisdiction;
- 16.1.5. files a petition for relief as a debtor, or a petition is filed against Contractor without its consent, and the petition is not dismissed within sixty (60) days;
- 16.1.6. makes a general assignment for the benefit of its creditors, or a receiver is appointed on account of its insolvency; or

- 16.1.7. is otherwise guilty of a substantial breach of a provision of the Contract Documents or fails to observe the training, safety, and other precautions including Agency's policies and Contractor's own safety policies for the Project.
- 16.2. Agency's Right to Take Possession. Upon termination for cause, Agency may take possession of the site and of all materials, equipment, tools, and construction equipment and machinery on the site owned by Contractor, accept assignment of subcontracts, and finish the Work by whatever reasonable method Agency may deem expedient. Upon request, Agency shall provide Contractor a detailed accounting of the costs incurred in finishing the Work.
- 16.3. Compensation. Contractor will not be entitled to receive further payment until the Work is finished. If the unpaid balance of the Contract Total exceeds Agency's costs to finishing the Work, including compensation for Agency's consultants and representatives for services made necessary by Contractor's default, and other damages incurred by Agency which have not been expressly waived, Agency shall pay the excess to Contractor. If Agency's costs and damages exceed the unpaid balance, Contractor shall pay the difference to Agency.
- 16.4. Suspension for Convenience. Agency may, without cause, order Contractor in writing to suspend, delay, or interrupt the Work in whole or in part for such period of time as Agency may determine. Agency shall adjust Contract Total and Contract Time for increases in the cost (including profit) and time caused by the suspension, delay, or interruption referenced in Section 16.3.1, so long as the performance would not have been suspended, delayed, or interrupted by another cause for which Contractor is responsible and Agency has not already made or denied another equitable adjustment under another provision of this Contract for the suspension, delay, or interruption.
- 16.5. Termination for Convenience. Agency may terminate all or part of this Contract for Agency's convenience at any time and without cause. Contractor shall, upon written notice of such termination, cease operations as directed by Agency, take actions necessary to protect and preserve the Work, and terminate all existing subcontracts and purchase orders that are not required to perform the Work up to the effective date of termination and the portion of Work not terminated, and enter into no further subcontracts or purchase orders for the portion of this Contract that was terminated. Agency shall pay Contractor for Work executed and costs reasonably incurred by reason of such termination, along with reasonable overhead and profit on the Work completed. Agency will not pay profit or overhead allocable to Work which is not performed at the time of termination. If the Agency terminates Contractor for cause and a court or other tribunal finds that Agency did not have cause to terminate Contractor, then the court or other tribunal will deem the Agency's termination a termination for convenience under this section.
17. **PAYMENTS AND COMPLETION.**
- 17.1. Contract Total. The Contract Total is stated in the Contract, and including authorized adjustments, is the total amount payable by Agency to Contractor for performance of Work under the Contract Documents.



- 17.2. Schedule of Values. Prior to submission of the first Application for Payment, Contractor shall submit a preliminary schedule of values for all of the Work, including quantities and prices of items aggregating the Contract Total and subdividing the Work into component parts in sufficient detail to serve as the basis for progress payments during construction. Contractor shall include, at a minimum: (a) overhead and profit; (b) supervision; (c) general conditions; (d) layout; (e) mobilization; (f) scheduling; (g) submittals; (h) bonds and insurance; (i) close-out documentation; (j) demolition; (k) installation; (l) rough-in; (m) finishes; (n) testing; and (o) punch list and acceptance ("Schedule of Values").
- 17.3. Applications for Payment. Contractor shall submit an itemized and notarized application for payment for operations completed in accordance with the Schedule of Values and reflecting applicable retainage ("Application for Payment"). Applications for Payment shall be prepared using forms provided by the Agency. Contractor shall submit data substantiating Contractor's right to payment where required, such as copies of requisitions from subcontractors and material suppliers, Construction Change Directives, Change Orders, and/or force account information. Contractor shall provide:
- 17.3.1. The amount paid to the date of the Application for Payment to Contractor, all its subcontractors, and all others furnishing labor, material, or equipment for this Contract;
  - 17.3.2. The amount being requested by Contractor on its own behalf and separately stating the amount requested on behalf of each of the subcontractors and all others furnishing labor, material, or equipment for this Contract;
  - 17.3.3. The balance that is due to each of such entities after payment is made;
  - 17.3.4. Certification that the Record Documents are current;
  - 17.3.5. Itemized breakdown of Work done for the purpose of requesting partial payment;
  - 17.3.6. Updated construction schedule;
  - 17.3.7. Additions and subtractions from the Contract Total and Contract Time;
  - 17.3.8. Total of retainage held;
  - 17.3.9. Material invoices, evidence of equipment purchases, rentals, and other support Agency may request;
  - 17.3.10. Percentage complete of Contractor's Work by line item;
  - 17.3.11. A Schedule of Values updated from the preceding Application for Payment; and
  - 17.3.12. Contractors' Certified Payroll.

- 17.4. Waivers and Releases. Contractor shall submit conditional waivers and releases upon progress payment from Contractor and each subcontractor of any tier and supplier to be paid from current progress payment along with an unconditional waiver and release upon progress payment from Contractor and each subcontractor of any tier that received payment from the previous progress payment. Contractor shall certify as follows: "Contractor warrants title to all Work performed and materials purchased as of the date of the payment application; and Contractor warrants that all Work performed and materials purchased as of the date of the payment application are free and clear of liens, claims, security interests, or encumbrances in favor of any persons or entities making a claim by reason of having provided labor, materials, or equipment relating to the Work, except those of which Agency has been informed."
- 17.5. False Claims. Contractor is subject to the False Claims Act set forth under ORS Chapter 180 for information provided with any Application for Payment.
- 17.6. Certificates for Payment.
- 17.6.1. Agency shall review the Contractor's Application for Payment within a reasonable time after receipt not to exceed seven (7) days for the purpose of determining that it is properly submitted. Agency shall either return the Application for Payment to Contractor with a document setting forth the reasons why the Application for Payment is not proper, or shall issue a Certificate for Payment for the amounts properly due.
- 17.6.2. Agency's issuance of a Certificate for Payment is a representation by Agency, based upon Agency's evaluation of the Work and the data comprising the Application for Payment, that Contractor is entitled to payment in the amount certified because the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. Agency's approval of the certified Application for Payment is based on Contractor complying with all requirements for a fully complete and valid certified Application for Payment.
- 17.7. Decisions to Withhold Certification.

- 17.7.1. Agency shall notify Contractor in writing if any amounts are not due, and the reasons for withholding certification in whole or in part. If Contractor and Agency cannot agree on a revised amount, Agency shall promptly issue a Certificate for Payment for the amount for which Agency determines that Contractor is entitled to payment. Agency may withhold Certificate for Payment or nullify the whole or part of a Certificate for Payment previously issued, to such extent as may be reasonably necessary to protect Agency from loss for which Contractor is responsible, including loss resulting from acts and omissions because of defective Work not remedied, third party claims filed or reasonable evidence indicating probable filing of such claim unless security acceptable to Agency is provided by Contractor, failure of Contractor to make payments properly to subcontractors or for labor, materials, or equipment, reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Total, damage to Agency or another contractor, reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay, persistent failure to carry out the Work in accordance with the Contract Documents, or failure to maintain Record Documents.
- 17.7.2. Contractor shall not receive any interest on any retainage or amounts withheld due to the failure of Contractor to perform in accordance with the Contract Documents.
- 17.7.3. Agency may apply any withheld amount to pay outstanding claims or obligations on behalf of Contractor, without prior judicial determination of the claim or obligation. If any payment is made by Agency, that amount is deemed a payment made under this Contract by Agency to Contractor.
- 17.7.4. Agency shall promptly issue a Certificate for Payment for amounts previously withheld when the reasons for withholding certification are removed.
- 17.8. Progress Payments.
  - 17.8.1. Agency shall make payment in the manner and within the time provided in the Contract Documents. Agency may withhold the portion of any progress payment for which certified payroll statements have not been received until such certified statements are submitted.
  - 17.8.2. Contractor shall promptly pay each subcontractor, upon receipt of payment from Agency, out of the amount Agency paid to Contractor on account of each subcontractor's portion of the Work. Contractor shall, by written agreement, require each subcontractor to make payments to sub-subcontractors in a similar manner.
  - 17.8.3. Agency may issue joint checks made payable to Contractor, subcontractor(s) and material or equipment suppliers. Joint check payees are responsible for the allocation and disbursement of funds included as part of any such joint check payment. Joint check payment does not create a contract, rights, or obligations between Agency and any subcontractor or material or equipment supplier.

- 17.8.4. Certificate for Payment, progress payment, or partial or entire use or occupancy of the Project does not constitute acceptance of Work not in accordance with the Contract Documents.
- 17.9. Substantial Completion.
  - 17.9.1. Substantial Completion. Substantial completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that Agency can occupy or utilize the Work for its intended purpose.
  - 17.9.2. Punch List. When Contractor considers the Work or a designated portion of the Work to be substantially complete, Contractor shall prepare and submit to the Agency a comprehensive list of items to be completed or corrected prior to final payment ("Punch List"). The Punch List does not alter Contractor's responsibility to complete the Work in accordance with the Contract Documents.
  - 17.9.3. Certificate of Substantial Completion. Upon receipt of Contractor's Punch List, Agency shall make an inspection to determine whether the Work or designated portion thereof is substantially complete. If Agency determines that the Work is not substantially complete, Agency shall notify Contractor of any Work to be completed in accordance with the Contract Documents before the Work or designated portion can be certified as such, and Contractor shall complete all such items. Upon determining that the Work or designated portion thereof is substantially complete, Agency and Contractor shall execute a Certificate of Substantial Completion.
  - 17.9.4. Commencement of Warranty. Contractor's general and special warranties shall be effective as of the date that the Work is deemed finally complete.
  - 17.9.5. Close-Out Documentation. Contractor shall assemble for Agency's approval within thirty (30) days of Substantial Completion all close-out documentation as required by the Contract Documents, including the required number of copies of operating, maintenance, and warranty data from all manufacturers whose equipment is installed in the Work, and Record Documents of the Work.
- 17.10. Final Completion.
  - 17.10.1. The Work will be deemed finally complete when all conditions set out in the Contract Documents are satisfied and Agency accepts such Work. Final completion is achieved when all punchlist work is complete, all close-out documentation has been received, all final testing, equipment calibration and training have been completed, and the Contractor is entitled to Final Payment. Unless special circumstances exist that are defined at the time of Punch List creation, Contractor shall achieve Final Completion within 45 days of Substantial Completion.
  - 17.10.2. Final Inspection. When Contractor considers all of the Punch List Work to be complete, Contractor shall notify Agency which shall inspect such Work.
  - 17.10.3. Final Application for Payment. If Agency finds the Punch List Work complete and acceptable under the Contract Documents, Agency shall notify Contractor, who shall then submit its Final Application for Payment.

- 17.10.4. Payment of Retainage. Agency shall make payment of retainage applying to such Work or designated portion thereof after receiving all Close Out Documentation, an affidavit that bills for indebtedness connected with the Work for which Agency's property might be encumbered have been satisfied; a certificate to indicate that insurance required by the Contract Documents shall remain in force after final payment is in effect and will not be cancelled or expire until thirty (30) days' prior written notice is given to Agency and that Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents; the consent of surety to final payment; and valid waivers of all construction lien claims, bond claims, and other claims by Contractor and each subcontractor in a form acceptable to Agency.
- 17.10.5. Bond in Lieu of Waiver. If a subcontractor refuses to furnish a release or waiver required by Agency, Contractor may furnish a bond satisfactory to Agency to indemnify Agency against such lien. If such lien remains unsatisfied after payments are made, Contractor shall refund to Agency all money that Agency may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.
- 17.10.6. Delay in Final Completion. Agency shall make payment of the balance due for any portion of the Work fully completed and accepted if final completion is materially delayed through no fault of Contractor or by issuance of Change Orders affecting final completion. In the event that final completion is not accomplished within thirty (30) days after the date of Substantial Completion due to any fault of Contractor, Agency may withhold from the final payment 150 percent of the reasonable cost to complete the unfinished Work and to attain final completion. In the event Contractor fails to complete the Work necessary to attain final completion after forty five (45) days from Substantial Completion, Agency may, without waiving other remedies it may have, complete the Work and deduct the actual cost thereof from the funds withheld.
- 17.10.7. Contractor's Waiver of Claims. Contractor's acceptance of final payment constitutes a waiver of claims except those previously made in writing and identified by Contractor as unsettled at the time of final Application for Payment.

18. **INDEMNITY AND LIABILITY.**

- 18.1. To the fullest extent permitted by Oregon law, Contractor shall indemnify, defend with legal counsel reasonably acceptable to Agency, and hold harmless Agency and its consultants and separate contractors, and their respective council members, board members, officers, representatives, agents, trustees, volunteers, and employees, in both individual and official capacities ("Indemnitees"), against all suits, claims, damages, losses, and expenses, including but not limited to attorney's fees, caused by, arising out of, resulting from, or incidental to, the performance of the Work under this Contract by Contractor, its subcontractors, vendors, or suppliers, including, without limitation, any such suit, claim, damage, loss, or expense attributable to, without limitation, bodily injury, sickness, disease, death, alleged patent violation or copyright infringement, or to injury to or destruction of tangible property (including damage to the Work itself) including the loss of use resulting therefrom, except to the extent caused by the sole negligence, active negligence, or willful misconduct of the Indemnitees, and/or to any extent that would render these provisions void or unenforceable. This agreement and obligation of Contractor will not be construed to negate, abridge, or otherwise reduce any right or obligation of indemnity that would otherwise exist as to any party or person described herein. This indemnification, defense, and hold harmless obligation includes any failure or alleged failure by Contractor to comply with any provision of law, any failure or alleged failure to timely and properly fulfill all of its obligations under the Contract Documents in strict accordance with their terms.
- 18.2. Contractor shall fully indemnify, defend, and hold harmless Agency, and each person, entity, firm, or agency that owns or has any interest in adjacent property in any action arising out of any agreement between Contractor and adjacent property owners that is made for the purpose of entering upon the adjacent property to perform the Work. Contractor shall obtain Agency's approval of the form and content of the agreement prior to the commencement of any Work on or about the adjacent property.
- 18.3. Severability of Indemnity Provisions. Contractor shall give prompt notice to Agency in the event of any injury (including death), loss, or damage included herein. Without limitation of the provisions herein, if Contractor's agreement to indemnify, defend, and hold harmless the Indemnitees as provided herein against liability for damage arising out of bodily injury to persons or damage to property caused by or resulting from the negligence of any of the Indemnitees will to any extent be or be determined to be void or unenforceable, it is the intention of the parties that these circumstances will not otherwise affect the validity or enforceability of Contractor's agreement to indemnify, defend, and hold harmless the rest of the Indemnitees, as provided herein, and in the case of any such suits, claims, damages, losses, or expenses caused in part by the default, negligence, or act or omission of Contractor, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, and in part by any of the Indemnitees, Contractor shall be and remain fully liable on its agreements and obligations herein to the full extent permitted by law.

- 18.4. In any and all claims against any of the Indemnitees by any employee of Contractor, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, Contractor's indemnification obligation herein shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Contractor or any subcontractor under workers' compensation acts, disability benefit acts, or other employee benefit acts, unless it is limited by ORS 30.140.
- 18.5. Contractor's defense and indemnification obligations survive the completion of Work, including any warranty period and/or termination of this Contract.
19. **SECURITY.**
- 19.1. Security. Contractor shall not use or disturb Agency's property, materials or documents except for the purpose of responding to Agency's request for proposal or invitation to bid or pursuant to completion of the Work under this Contract. Contractor shall treat all documents as confidential and shall not disclose such documents without approval from Agency. Any unauthorized disclosure of documents or removal of Agency property will be deemed a substantial breach of this Contract. Contractor shall bear sole responsibility for any liability including, but not limited to, attorneys' fees, resulting from any action or suit brought against Agency as a result of Contractor's willful or negligent release of information, documents, or property contained in or on Agency property. Agency hereby deems all information, documents, and property contained in or on Agency property privileged and confidential.
- 19.2. Employee Removal. At Agency's request, Contractor shall immediately remove any employee from all Agency properties in cases where Agency determines in its sole discretion that removal of that employee is in Agency's best interests.
20. **MISCELLANEOUS PROVISIONS.**
- 20.1. Non-Appropriation; Adequate Funding. Agency shall, at Contractor's written request, prior to commencement of Work, provide Contractor with reasonable evidence that financial arrangements have been made to fulfill Agency's obligations under the Contract. If payment for Work under this Contract extends into Agency's next fiscal year, Agency's obligation to pay for such Work is subject to approval of future Agency council appropriations to fund this Contract. Continuation of this Contract at specified levels is specifically conditioned on adequate funding under Agency's budget adopted in June of each year. Agency may adjust the Work provided for in this Contract in accordance with funding levels adopted by the Agency Council.
- 20.2. Law and Venue. Any dispute under this Contract or related to this Contract is governed by all provisions of the Oregon Constitution and laws of Oregon governing, controlling, or affecting Agency, or the property, funds, operations, or powers of Agency, which are incorporated herein by reference. This Contract is deemed to include any provision that the law requires to be included. Any litigation arising out of this Contract shall be conducted in in the Circuit Court for Washington County, Oregon. The Contractor consents to the personal jurisdiction of this court.

- 20.3. Severability. If any term or provision of this Contract is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions are not affected, and the rights and obligations of the parties are construed and enforced as if this Contract did not contain the particular term or provision held to be invalid.
- 20.4. No Waiver. The failure of Agency in any one or more instances to insist upon strict performance of any of the terms of this Contract or to exercise any option herein conferred is not a waiver or relinquishment to any extent of the right to assert or rely upon any such terms or option on any future occasion. No action or failure to act by Agency, Architect, or Construction Manager waives any right or duty afforded Agency under this Contract, nor does action or failure to act constitute an approval of or acquiescence in any breach, except as specifically agreed in writing.
- 20.5. Non-discrimination. Contractor shall comply with all applicable federal, state and local laws, rules and regulations regarding nondiscrimination in employment because of race, color, ancestry, national origin, religion, sex, marital status, age, medical condition, or disability.
- 20.6. No Third Party Beneficiaries. Agency and Contractor are the only parties to this Contract and are the only parties entitled to enforce its terms. Nothing in this Contract provides any benefit or right, directly or indirectly, to third persons unless they are individually identified by name in this Contract and expressly described as intended beneficiaries of this Contract. The Contract Documents shall not be construed to create a contractual relationship of any kind: (a) between Contractor and Agency's representatives or consultants, (b) between Agency and a subcontractor or a sub-subcontractor, (c) between Agency and a supplier; or (d) between any persons or entities other than Agency and Contractor.
- 20.7. Media Contacts. Contractor shall issue no news release, press release, or other statement to members of the news media or any other publication regarding this Agreement or the Project within one (1) year of Project completion without Agency's prior written authorization. Contractor shall not post or publish any textual or visual representations of the Project without approval of Agency.
- 20.8. Successors in Interest. This Contract will bind, and inure to the benefit of, the parties, their successors, and approved assigns, if any.
- 20.8.1. Contractor shall not assign all or any part of this Contract including, without limitation, any services or money to become due under this Contract without the prior written consent of Agency. Assignment without Agency's prior written consent is null and void. Any assignment of money due or to become due under this Contract is subject to a prior lien for services rendered or material supplied for performance of Work called for under this Contract in favor of all persons, firms, or corporations rendering services or supplying material to the extent that claims are filed pursuant to Oregon law, and is also subject to deductions for liquidated damages or withholding of payments as determined by Agency in accordance with this Contract. Contractor shall not assign or transfer in any manner to a subcontractor or supplier the right to prosecute or maintain an action against Agency.



20.8.2. Contractor shall first notify Agency prior to any change in the name or legal nature of Contractor's entity. Agency shall determine if Contractor's intended change is permissible while performing this Contract.

20.9. Liquidated Damages.

20.9.1. Failure to complete the Project by the specified time will result in damages to the Agency. The parties to this contract agree that establishing the exact amount of damages the Agency will incur will be difficult. In order to compensate the Agency, the parties to this contract have estimated the amount the Agency would be damaged for every calendar day completion is delayed. Consequently, the Contractor agrees to pay the Agency the sum of \$XXX.YY per day, not as a penalty but as liquidated damages, for each day elapsed beyond the Substantial Completion date set forth in the bid document. The total liquidated damages shall be deducted from the final payment due the Contractor. The Agency may waive its right to claim part or all of the liquidated damages due under this provision, but such full or partial waiver shall not negate or abridge any other right of action the Agency may have to enforce the provisions of this Contract. Contractor will not contest such sums as being other than a reasonable measure of delay damages in the event those damages become payable under these provisions.

20.10. Workers' Compensation.

20.10.1. All employers, including Contractor, that employ subject workers who work under this contract in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage, unless such employers are exempt under ORS 656.126. This shall include Employer's Liability Insurance with coverage limits of not less than \$1,000,000 for each accident. Contractors who perform the Work without the assistance or labor of any employee need not obtain such coverage if the Contractor certifies so in writing. Contractor shall ensure that each of its Subcontractors complies with these requirements. The Contractor shall require proof of such Workers' Compensation by receiving and keeping on file a certificate of insurance from each Subcontractor or anyone else directly employed by either the Contractor or its Subcontractors.

## **EXHIBIT B**

### **PUBLIC IMPROVEMENT CONTRACT**

#### **INSURANCE REQUIREMENTS**

##### **1. ADDITIONAL INSURANCE.**

Contractor shall maintain all insurances required of it by law. In addition, the Contractor shall maintain the following:

- 1.1. Required Coverage. Without waiver of any other requirement of the Contract Documents, the Contractor will provide, pay for, and maintain in full force and effect at all times during the performance of the Work until final acceptance of the Work or for such further duration as required, the following policies of insurance issued by a responsible carrier. All of the Contractor's insurance carriers shall be rated A VII or better by A.M. Best's rating service, unless otherwise approved by the Agency.
  - 1.1.1. Workers' Compensation. Workers' compensation coverage sufficient to meet statutory liability limits.
  - 1.1.2. Employer's Liability. The Contractor shall purchase and maintain employer's liability insurance in addition to its workers' compensation coverage with at least the minimum limits in section 1.2 below.
  - 1.1.3. Commercial General Liability. The Contractor shall purchase and maintain commercial general liability ("CGL") insurance for off-site exposures on an occurrence basis, written on ISO Form CG 00 01 (12/04 or later) or an equivalent form approved in advance by the Agency. CGL coverage shall include all major coverage categories including bodily injury, property damage and products/completed operations coverage. The CGL insurance will also include the following: (1) separation of insureds; (2) incidental medical malpractice; and (3) per-project aggregate for premises operations.
  - 1.1.4. Professional Liability/Errors and Omissions. To the extent that the Contractor accepts design or design/build responsibilities, the Contractor shall purchase and maintain professional liability/errors and omissions insurance or cause those Subcontractors providing design services do so.
  - 1.1.5. Automobile Liability. The Contractor shall purchase and maintain automobile liability insurance with coverage for owned, hired, and non-owned vehicles on ISO form CA 00 01 or an equivalent form approved in advance by the Agency. The automobile liability insurance shall include pollution liability coverage resulting from vehicle overturn and collision.

- 1.2. Limits. The insurance required by this exhibit shall be written for at least the limits of liability specified in this Section or required by law, whichever is greater.

<b>Workers' Compensation</b>	<b>Statutory Limits</b>
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<u>Employer's Liability</u>	
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Each Accident:	\$1,000,000
Each Bodily Injury Disease:	\$1,000,000
Aggregate Bodily Injury Disease:	\$1,000,000

<u>Commercial General Liability</u>	
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Each Occurrence:	\$1,000,000
General Aggregate:	\$2,000,000
Product/Completed Operations:	\$2,000,000
Personal & Advertising Injury:	\$1,000,000
Fire Damage Limit:	\$100,000
Medical Expense Limit:	\$5,000
Automobile Liability	
Combined Single Limit:	\$1,000,000

<u>Professional Liability/Errors &amp; Omissions</u>	
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Single Limit:	\$1,000,000
Aggregate:	\$1,000,000

- 1.3. Additional Insureds. The Contractor's third-party liability insurance policies shall include the Agency and its officers, employees, and agents as additional insureds. The policy endorsement must extend premises operations and products/completed operations to the additional insureds. The additional insured endorsement for the CGL insurance must be written on ISO Form CG 20 10 (11/85), a CG 20 37 (07/04) together with CG 20 33 (07/04), or the equivalent; but shall not use the following forms: CG 20 10 (10/93) or CG 20 10 (03/94).
- 1.4. Joint Venture. If the Contractor is a joint venture, the joint venture shall be a named insured for the liability insurance policies.
- 1.5. Primary Coverage. The Contractor's insurance shall be primary insurance coverage and may not seek contribution from any insurance or self-insurance carried by the Agency or the Architect including any property damage coverage carried by the Agency. Contractor's insurance shall apply separately to each insured against whom a claim is made or suit is brought. The Contractor's insurance shall not include any cross-suit exclusion or preclude an additional insured party from asserting a claim as a third party.
- 1.6. Contractor's Failure to Maintain Insurance. If the Contractor for any reason fails to maintain required insurance coverage, such failure shall be deemed a material breach of the Contract and the Agency, at its sole discretion, may suspend or terminate the Contract pursuant to Section 108.11 of the General Conditions. The Agency may, but has no obligation to, purchase such required insurance, and without further notice to the Contractor, the Agency may deduct from the Contract Total any premium costs advanced by the Agency for such insurance. Failure to maintain the insurance coverage required by this exhibit shall not waive the Contractor's obligations to the Agency.

- 1.7. Certificates of Insurance. Prior to commencement of the Work, and before bringing any equipment or construction equipment on to the project site, the Contractor shall provide Certificates of Insurance, to the Agency Representative, for the insurance policies required by this contract.
  - 1.7.1. Additional Certificates. To the extent that the Contractor's insurance coverage's are required to remain in force after final payment and are reasonably available, an additional certificate evidencing continuation of such coverage shall be submitted with the final Application for Payment. Information concerning reduction of coverage on account of revised limits or claims paid under the general aggregate, or both, shall be furnished by the Contractor with reasonable promptness in accordance with the Contractor's information and belief.
  - 1.7.2. Prohibition Until Certificates Received. The Agency shall have the right, but not the obligation, to prohibit the Contractor and its Subcontractors from entering the Project site until the required certificates (or other competent evidence that insurance has been obtained in complete compliance with this exhibit) are received and approved by the OCIP Administrator and or Agency.
  - 1.7.3. Deductibles/Self-Insured Retentions. Payment of deductibles or self-insured retentions is a Cost of the Work within the Guaranteed Maximum Price and does not justify a Change Order. Satisfaction of all self-insured retentions or deductibles will be the sole responsibility of the Contractor.
- 1.8. Subcontractors Insurance. The Contractor shall cause each Subcontractor to purchase and maintain in full force and effect policies of insurance as specified in this exhibit, except for coverage limits, which will be agreed upon between the Agency and the Contractor. The Contractor will be responsible for the Subcontractors' coverage if the Subcontractors fail to purchase and maintain the required insurance. When requested by the Agency, the Contractor will furnish copies of certificates of insurance establishing coverage for each Subcontractor.
- 1.9. Limitations on Coverage.
  - 1.9.1. No insurance provided by the Contractor under this exhibit will be required to indemnify the Agency, the Architect, or their employees or agents to the extent of liability for death or bodily injury to persons or damage to property caused in whole or in part by their own negligence, but will require indemnity to the extent of the fault of the Contractor or its agents, representatives, or Subcontractors.
  - 1.9.2. The obligations of the Contractor under this exhibit shall not extend to the liability of the Architect or its consultants for (1) the preparation or approval of maps, Drawings, opinions, reports, surveys, Change Orders, designs, or specifications, or (2) the giving or failure to give directions or instructions, to the extent that the directions, or failure to provide directions, are the cause of the injury or damage.
  - 1.9.3. By requiring insurance, the Agency does not represent that coverage and limits will necessarily be adequate to protect the Contractor. Insurance in effect or procured by the Contractor will not reduce or limit the Contractor's contractual obligations to indemnify and defend the Agency for claims or suits that result from or are connected with the performance of the Contract.

2. **PROPERTY INSURANCE.**

- 2.1. Builder's Risk: (For new construction or building additions) During the term of this Contract, the Contractor shall maintain in force, at its own expense, Builder's Risk insurance on an all risk form, including earthquake and flood, for an amount equal to the full amount of the Contract. Any deductible shall not exceed \$50,000 for each loss, except the earthquake and flood deductible shall not exceed 2 percent of each loss or \$50,000, whichever is more. The policy will include as loss payees the Agency, the Contractor and its Subcontractors as their interests may appear.
- 2.2. Builder's Risk Installation Floater: (For other than new construction) The Contractor shall obtain, at the Contractor's expense, and keep in effect during the term of this Contract, a Builder's Risk Installation Floater for coverage of the Contractor's labor, materials and equipment to be used for completion of the Work performed under this Contract. The minimum amount of coverage to be carried shall be equal to the full amount of the Contract. This insurance shall include as loss payees the Agency, the Contractor and its Subcontractors as their interests may appear.
- 2.3. Such insurance shall be maintained until the Agency has occupied the facility.
- 2.4. Contractor must provide insurance for its own machinery, tools, equipment, or supplies that are not to become a part of the Project.