

## **ATTENTION BIDDERS**

If you download this Invitation to Bid from this website, **it is your responsibility to advise WOU's Planning Office** that you have done so. This will allow us to add you to the Respondent's List, and advise you of any addenda issued for this project.

Failure to do so may cause your submittal to be rejected as non-responsive.

To add your company to the Respondent's List, simply email or fax a signed copy of your firm's letterhead to Donna Litchfield at:

**[litchfid@wou.edu](mailto:litchfid@wou.edu)**

Or

**Fax: 503 838-8081**

**Be sure to clearly identify the name and email address of a contact person within your firm.**

**WESTERN OREGON UNIVERSITY**

**INVITATION TO BID**

**DATE:** January 27, 2012

**BID TYPE:** Public Works Contract

**PROJECT: WESTERN OREGON UNIVERSITY ELEVATOR MAINTENANCE 2012-2014** on the campus of Western Oregon University (WOU), located in Monmouth, OR. The bid is for providing elevator maintenance services as described in the attached Technical Specifications Elevator Maintenance 2012-2014.

**PROJECT MANAGER:** Tony Kment **TELEPHONE NO:** 503-838-8974

Questions related to the Project should be directed to the Project Coordinator. Questions related to the Invitation to Bid should be directed to John Kurz in the Physical Plant Purchasing/Stores Office at 503-838-8079 or Donna Litchfield in the Physical Plant Planning Office at 503-838-8903.

**SITE INSPECTION:** A **mandatory** pre-bid site inspection is scheduled for Wednesday, **February 22<sup>nd</sup>, 2012 at 10:00AM.**

**CONTRACT PERIOD:** Date on Notice to Proceed to March 31, 2014, with the option for 3 additional years..

**No work shall commence under this contract until all bonding and insurance requirements have been met and a Notice to Proceed has been issued.**

**ATTACHMENTS:**

Western Oregon University Technical Specifications Elevator Maintenance 2012-2014  
Standard Instructions to Bidders  
General Conditions for Public Improvement Contracts (B-8) February 1, 2011

**INSTRUCTIONS TO BIDDERS**

*Each bidder must read and comply with the following instructions. Failure to do so may result in bid rejection.*

**The successful bidder for the WESTERN OREGON UNIVERSITY ELEVATOR MAINTENANCE 2012-2014 will be subject to all the terms and conditions in the attached OUS Contract Form B-8 'General Conditions for Public Improvement Projects', and Prevailing Wage Rates dated January 1, 2012, including any Amendments as defined by BOLI, if applicable.**

**BID CLOSING DATE:** Bids must be received by **3:00 PM, Wednesday, March 14, 2012.** Bids received after the time fixed will not be considered. Bids will be opened at the time stated above.

**BID SUBMISSION AND FORMAT:** The following must be submitted for bid acceptance:

- **BID FORM AND SCHEDULE OF HOURLY RATES (ON SEPARATE PAGE)**
- **BIDDER DISCLOSURE FORM**
- **CERTIFICATE OF COMPLIANCE WITH TAX LAWS**
- **CONTRACT AS A RESULT OF INVITATION TO BID**
- **BIDDER QUALIFICATIONS AND REFERENCE FORM**

Return Bids to Western Oregon University, Physical Plant Purchasing/ Stores Office, 345 N. Monmouth Ave., Monmouth, OR 97361, by **3:00 PM, Wednesday, March 14, 2012**. Bids may be emailed to [litchfid@wou.edu](mailto:litchfid@wou.edu), [kmentt@wou.edu](mailto:kmentt@wou.edu) or mailed to:

Western Oregon University  
Planning Office-Elevator Maint. Bid  
345 N. Monmouth Ave.  
Monmouth, OR 97361

*No Faxed bids will be accepted*

**BID BOND/PERFORMANCE BOND:** None required if bids are less than \$100,000.

**BIDDERS NOTE:** If bids are greater than \$50,000, then provisions for Prevailing Wage Rate (PWR) apply.

**BID MODIFICATION:** Modifications or erasures made before bid submission should be initialed in ink by the person signing the bid. Bids, once submitted, may only be modified in writing before the time and date set for bid closing. Any modifications should be prepared on company letterhead, signed by an authorized representative, and state that the new document supersedes or modifies the prior bid. Bidders may not modify bid after bid closing time.

**BID ADDENDA:** Only documents issued as addenda serve to change the plans and specifications in any way. No other direction received by the Contractor, written or verbal, serves to change these documents. **Bidders must acknowledge all addenda on their bid form where indicated.**

**BID WITHDRAWAL:** Bids may be withdrawn in writing on company letterhead signed by an authorized representative and received by the WOU Planning Office prior to bid closing time. Bids may also be withdrawn in person before bid closing time upon presentation of appropriate identification.

#### **BID EVALUATION AND AWARD**

**METHOD OF AWARD:** This bid shall be awarded on an "all or none" basis. Award will be given to the bidder who offers the best proposal to WOU, as in the best interest of WOU. WOU reserves the right to withdraw any item from the award if it is in the best interest of WOU to do so. WOU reserves the right to reject any or all bids.

#### **CONTRACTOR NOTIFICATION**

OUS will not knowingly contract with or procure goods or services from any Entity that discriminates on the basis of age, disability, national origin, race, marital status, religion, sex or sexual orientation.

Bidders and Proposers will certify, as part of the Bids or Proposals that such Bidder or Proposer has not discriminated against Minority, Women or Emerging Small Business Enterprises in obtaining any required subcontracts.

All Contractors are hereby notified that the Board has adopted policies applicable to Contractors that prohibit sexual harassment and the Contractor's company and employees are required to adhere to the Institution's policy prohibiting sexual harassment in their interactions with members of the Institution's community.

Contractors will use recyclable products to the maximum extent economically feasible in the performance of the Contract.

**STATEMENT OF INSURANCE:** All Contractors will provide and maintain bonding and/or insurance required by the Institution. Statements must be received by Western Oregon University Physical Plant Purchasing/Stores Office within ten (10) business days of notification of award. Failure to present the required documents within ten (10) business days may be grounds for bid rejection.

**WORKERS COMPENSATION:** The Contractor, its subcontractors, if any, and any other employers providing work, labor or materials under this Project Contract are subject employers under the Oregon Workers' Compensation Law and shall either comply with ORS 656.017, which requires such employers to provide Oregon Workers' Compensation coverage for all their subject workers working in Oregon, or shall comply with the exemption in ORS 656.126.

**BID FORM**

I, the undersigned, submit the following bid for furnishing all material, equipment and labor, and perform all work for the Western Oregon University project designated as:

**WESTERN OREGON UNIVERSITY ELEVATOR MAINTENANCE 2012-2014**

In strict accordance with the specifications, terms and conditions attached, on the basis of the pricing as follows:

**1. MONTHLY MAINTENANCE FEE:** \_\_\_\_\_ Dollars

(\$ \_\_\_\_\_)

**2. Schedule of hourly rates and charges for non routine maintenance and repairs – please attach a separate page.**

**ADDENDA RECEIVED:** \_\_\_\_\_

Acknowledge, by number, all addenda received as of Bid Closing Date.

**NAME OF BIDDER:** \_\_\_\_\_

**ADDRESS:** \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**CONTACT PERSON:** \_\_\_\_\_

**TELEPHONE NO.** \_\_\_\_\_

**SIGNATURE OF AUTHORIZED COMPANY OFFICIAL:**

\_\_\_\_\_

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

## BIDDER DISCLOSURE FORM

Each bidder must read and comply with the following sections. Failure to do so may result in bid rejection. Signature on a bid certifies that the:

1. Bidder agrees to furnishing all material, equipment and labor, necessary to finish this project complete, except as may be noted elsewhere in the contract documents. The work shall be completed within the time stipulated and specified in the Bid Documents.
2. Bid is made without connection with any person, firm or corporation making a bid for the same goods and/or services and is in all respects fair and without collusion or fraud.
3. The Undersigned certifies that: (1) This Bid has been arrived at independently and is being submitted without collusion with and without any agreement, understanding, or planned common course of action with any other vendor of materials, supplies, equipment or services described in the Invitation to Bid designed to limit independent bidding or competition; and (2) The contents of the Bid have not been communicated by the Undersigned or its employees or agents to any person not an employee or agent of the Undersigned or its surety on any Bond furnished with the Bid and will not be communicated to such person prior to the official opening of the Bid.
4. The Undersigned agrees, if awarded a contract, to comply with the provisions of ORS 279C.800 through 279C.870 pertaining to the payment of the prevailing rates of wage.
5. Bidder, to the best of my knowledge as the duly authorized representative of the bidder, is not in violation of any Oregon tax law.
6. The successful Bidder hereby certifies that, in compliance with the Worker's Compensation Law of the State of Oregon, Worker's Compensation Insurance will be provided by: Policy No. \_\_\_\_\_
7. Contractor's CCB registration no. \_\_\_\_\_
8. As a condition to submitting a bid, a Contractor must be registered with the Oregon Construction Contractors Board in accordance with ORS 701.035 to 701.055, and disclose the registration number. Failure to register and disclose the number will make the bid unresponsive and it will be rejected, unless contrary to federal law.
9. Before starting Work the Contractor shall have on file with the CCB the separate public works bond required by Oregon Laws 2005, Chapter 360 and OAR 839-025-0015. The Contractor shall also verify that the Subcontractors they have on contract have filed a public works bond before permitting the Subcontractor to start Work.
10. The successful Bidder hereby certifies that all subcontractors who will perform construction work as described in ORS 701.005 were registered with the Construction Contractors Board in accordance with ORS 701.035 to 701.055 at the time the subcontractor(s) made a bid to work under the contract.
11. The Undersigned HAS, HAS NOT (circle applicable status) paid unemployment or income taxes in Oregon within the past 12 months and HAS, HAS NOT (circle applicable status) a business address in Oregon.

**CERTIFICATE OF COMPLIANCE WITH TAX LAWS**

**PROJECT: WESTERN OREGON UNIVERSITY ELEVATOR MAINTENANCE 2012-2014**

The individual signing on behalf of the Contractor hereby certifies and swears under penalty of perjury:

- (a) The following taxpayer identification number is the Contractor's correct taxpayer identification.  
Taxpayer Identification No. \_\_\_\_\_
  
- (b) Contractor is not subject to 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 the Contractor that Contract 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, Contractor is not in violation of any Oregon Tax laws, including, without limitation, the following pursuant to OAR 150-305.385(6)(B):

For purposes of this certificate, "Oregon Tax Laws" means a state tax imposed by ORS 401.792 to 401.816 and ORS chapters 118, 314, 316, 317, 318, 320, 321 and 323; the elderly rental assistance program under OR 310.630 to 31.0706; and local taxes administered by the Department of Revenue under OR 305.620.

- (d) The supplied Contractor data is true and accurate.

Business Designation (check one):  Corporation     Partnership     Sole Partnership  
 Governmental/ Non-Profit     Limited Partnership     Limited Liability Partnership  
 Limited Liability Company

**CONTRACTOR**

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

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

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

GENA7276





**BIDDER QUALIFICATIONS AND REFERENCE FORM**

Note: Failure to provide complete information may be cause for bid rejection.

- 1. Business Name \_\_\_\_\_
- 2. Owner Name \_\_\_\_\_
- 3. Business Address \_\_\_\_\_
- 4. Business Telephone No. Daytime: \_\_\_\_\_ Eves/Weekends: \_\_\_\_\_
- 5. Number of Employees \_\_\_\_\_ Annual Sales \$ \_\_\_\_\_
- 6. Date Business Established \_\_\_\_\_
- 7. Name, Address and Telephone No. of Insurance Agent(s)  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

For This Proposal Only:

- 1. Name of Job Supervisor \_\_\_\_\_  
(First) (Last)
- 2. Business Telephone No. Daytime: \_\_\_\_\_ Eves/Weekends: \_\_\_\_\_
- 3. Business Address \_\_\_\_\_
- 4. References
  - A. Firm Name \_\_\_\_\_  
Address \_\_\_\_\_  
Name of Reference \_\_\_\_\_  
Position \_\_\_\_\_  
Title \_\_\_\_\_  
Telephone \_\_\_\_\_
  - B. Firm Name \_\_\_\_\_  
Address \_\_\_\_\_  
Name of Reference \_\_\_\_\_  
Position \_\_\_\_\_  
Title \_\_\_\_\_  
Telephone \_\_\_\_\_
  - C. Firm Name \_\_\_\_\_  
Address \_\_\_\_\_  
Name of Reference \_\_\_\_\_  
Position \_\_\_\_\_  
Title \_\_\_\_\_  
Telephone \_\_\_\_\_

**WESTERN OREGON UNIVERSITY  
TECHNICAL SPECIFICATIONS  
ELEVATOR MAINTENANCE**

1. General Information:

The initial term of the contract will be April 1, 2012 through March 31, 2014 with an option for three additional one-year extensions, upon approval of the University, for a total of five years.

Prices shall remain firm for the initial two-year contract term. Upon contract extension, price increases not-to-exceed a maximum of 5% will be considered. Price shall be subject to increase only in the same proportion as increases in the Contractor's costs directly attributable to this contract. Such costs must be verifiable to the University. The written request for price increase shall be accompanied by positive means of substantiation to the satisfaction of the University. The University shall have the option of accepting the price increase or canceling the contract effective 30 days after receipt of the written request or on the requested effective date, whichever is later.

2. Preparatory equipment, microprocessor equipment for the testing, troubleshooting, diagnostics, and repair of microprocessor logic programs, if provided by University, shall remain the property of University, and shall be returned to University by Contractor in good working order at the end of the contract term.

3. Scope of Services Required:

The following services are to be provided by the Contractor:

- a) The Contractor shall be able to demonstrate their ability to satisfactorily maintain and repair elevators of the type and to the degree as specified herein.
- b) The Contractor shall provide all labor, tools, materials, equipment, and all incidentals required and/or implied for the complete and satisfactory maintenance and repair of the University's elevators, chair lifts, book-lifts and dumbwaiters. This work shall include, but not be limited to, preventive maintenance, servicing, repairs, testing, and modifications as required keeping elevator equipment in a first class operating condition.
- c) Testing, including one-year, five-year, and fireman recall tests shall be performed as required by code and the authority having jurisdiction.
- d) Non-routine repairs shall be performed as required by the specified personnel at the hourly rates as bid, with materials and parts to be purchased from this contractor or others.
- e) Routine maintenance and servicing is considered to be full maintenance, 24 hours per day, 365 per year, and includes routine preventive maintenance and servicing to be performed on a regularly scheduled

basis, with repairs to be made as necessary. This work shall be performed for set monthly rates, to include all equipment listed on Attachment A. ELEVATOR INVENTORY. The monthly rates shall include all materials, parts, labor, and equipment required for the work. This work shall include the following:

- i) Systematically examine, clean, adjust, lubricate as required and if conditions warrant, repair or replace with original manufacturer's equal or better renewal parts as follows:  
  
Machine, worm gear, thrust bearings, drive sheave, drive sheave shaft bearings, brake pulley, brake coil, brake contact, linings and component parts, motor and motor generator, motor windings, rotating element, commutator, brushes, brush holders and bearings, controller, selector and dispatching equipment, all relays resistors, condensers, transformers, contacts, leads, dashpots, timing devices, computer devices, steel selector tape and mechanical and electrical driving equipment; governor, governor sheave and shaft assembly, bearing contacts and governor jaws, deflector or secondary sheave, bearing, car and counterweight buffers, car and counterweight guide rails, top and bottom limit switches, governor tensioned sheave assembly, compensating sheave assembly, counterweight and counterweight guide shoes including rollers or gibs; hoistway door interlocks, hoistway door hangers, door sills, bottom door guides and auxiliary door closing devices, automatic power operated door operator, car door hanger, car door contact, door protective device, loading weighing equipment, car frame, and car safety mechanism, entire "jack unit", pipe fittings, vibration dampeners, silencers and pumping plant equipment, and any other parts not specifically mentioned having to do with the maintenance of the listed elevators.
- ii) The Contractor shall keep the guide rails clean and properly lubricated, except when roller type guides are involved, no rail lubrication shall be used. The Contractor shall regularly vacuum lint and dirt from the guide rails, overhead sheaves and beams, counterweight frames, car tops, and bottom of platforms.
- iii) The Contractor shall keep the exterior of machinery and other parts of the equipment subject to rust, properly painted and presentable at all times, including jack frames and pit ladders.
- iv) The Contractor shall only use lubricant furnished by the manufacturer of the equipment or those as recommended by the manufacturers.
- v) Upon notification by the University, or discovery through inspection, Contractor shall repair and correct all code and safety violations involving the following:

- vi) Machine motors, controller, selector, worms, gears, thrusts, bearings, brake magnet coils, brake shoes, brushes, windings, commutations, rotating elements, contacts, coils, resistors for operating and motor circuits, magnet frames, leveling devices, cams, car and hoistway door hangers, door tracks and guides, all door operating devices, interlocks and contracts. Hall lanterns, starter indicator and control panel, corridor position indicators, signal, bell, hatch and car door operators, and car operating panels. All parts shall be of the original manufacturer's specification and design, equal or better, no substitution will be permitted.
- vii) The Contractor further agrees to lubricate, adjust, repair and/or replace all signal controls used in conjunction with the operation of the elevator equipment.
- viii) The Contractor shall lubricate all sheave bearings and hoistway ropes, repack matching stuffing box.
- ix) And refill gear cases when required. All oil reservoirs shall be kept properly sealed to prevent leakage.
- x) The Contractor shall replace the wire rope and repair or replace traveling conductor cables on all elevators at no cost to the University during the term of the Contract, when a notice of replacement is received from the Department of Consumer and Business Services, Building Codes Division, Elevator Section or as necessary to maintain safe operation.
- xi) The Contractor shall replace guide rollers and counterweight on car as required ensuring smooth and quiet operation.
- xii) Contractor shall maintain and repair all elevator cab lighting, including emergency lighting.
- xiii) Contractor shall maintain/repair and test monthly all communication devices. University shall be responsible for phone lines up to machine room inter-tie point.

4. **QUALITY OF WORKMANSHIP:** All work shall be quality work performed according to the standards of the industry, and to the complete satisfaction of the University. All work shall be performed in accordance with the latest version of ANSI/ASME A17.1 Safety Code for Elevators and Escalators. The Contractor shall establish and follow a quality control program for the purpose of identifying and correcting deficiencies in the work before the level of service becomes unacceptable to the University. Except as specified otherwise by the

ANSI/ASME A17.1, elevators shall be maintained to operate at the originally specified performance levels or better, including but not limited to the following:

- a) Contract speed, brake flight times.
  - b) Leveling accuracy.
  - c) Closing times of hoistway and car doors within limits of ANSI A17.1, assuring minimum standing time at each floor, opening times of hoistway and car doors at minimum allowed by operator design.
  - d) Door reversals to initiate within the stroke of the safety shoe, on elevators equipped with mechanical safety shoes. Proximity edge devices, light ray devices operable at all times.
  - e) Variable car and hall door open times.
  - f) Minimum rated load.
  - g) Gravity stopping distances.
  - h) Governor tripping speeds.
  - i) Stopping distances for car and counterweight safeties.'
  - j) Factors of safety for suspension wire ropes for power elevators.
  - k) Impact on buffer supports.
5. PERSONNEL: All personnel used by the Contractor for the performance of this work shall be properly trained, licensed and qualified for work of this type and shall have at least the minimum ability and experience required for his work.

The University reserves the right to refuse to accept services from any personnel deemed by the University to be unqualified, disorderly, or otherwise unable to perform assigned work. The Contractor shall provide evidence of qualifications for any personnel performing work under this contract upon request by the University.

- a) Elevator Mechanic: Shall be an experienced (minimum five years) elevator mechanic, with the ability to independently perform maintenance, repair, and modifications to the types of elevators included in this contract. Shall be able to analyze equipment and trouble- shoot to determine malfunctions, and make recommendations for repairs. Shall have a thorough knowledge of the equipment, codes, and standards of the elevator industry particularly ANSI/ASME A17.1. Shall be equipped with

all tools and equipment necessary for this work, including transportation to and from work sites.

- b) **Mechanic Helper:** Shall be an apprentice or assistant level elevator mechanic with the ability to assist in all types of elevator maintenance, repair, and modifications under the supervision of an Elevator Mechanic. Shall be equipped with all tools and equipment necessary for this work, including transportation to and from work sites.
- c) The contractor shall maintain a qualified elevator mechanic in the Monmouth area at all times to perform major repair work, as well as routine maintenance services.

6. **ROUTINE MAINTENANCE AND SERVICING:** Routine maintenance and servicing, including repairs, shall be performed as necessary to keep equipment operating properly and to minimize malfunctions and down time. Preventive maintenance shall be performed at a minimum per Schedule B for elevators and at least every 60 days for chair lifts, dumbwaiters and book-lifts, to make adjustments, clean equipment, perform inspections, lubricate all parts, maintain oil and other fluid levels, ensure proper operation, and perform routine recommended examination.

Other maintenance and repairs required due to malfunctions occurring between preventative maintenance calls shall be performed as necessary on a call basis. All maintenance and repairs are included in the routine Maintenance and Servicing and corresponding monthly rates, except those defined as non-routine repairs.

7. **NON-ROUTINE REPAIRS:** Repairs which are needed due to non-routine malfunctions and failures will not be included in the lump sum monthly rates, but shall be performed on an hourly rate basis as specified elsewhere in this contract by qualified elevator mechanic and helper if required. The University reserves the right to bid separately any of these repair projects. Non-routine repairs and failures are limited to:

- a) Repairs needed due to vandalism or acts of God.
- b) Modifications or repairs needed to bring elevators up to standard in accordance with ANSI/ASME A17.1 and ANSI/ASME A17.2 Inspectors' Manual for Elevators and Escalators. This only applies to deficiencies which occur due to code changes.
- c) Extra testing which may be required and which is outside of the scope of the testing defined in 8 TESTING below.

8. TESTING: The Contractor shall perform all testing as required by ANSI/ASME A17.1 and A17.2 to include one-year tests, five-year tests, fireman's recall testing and communications device testing. A copy of each required test shall be forwarded to the University within thirty (30) days of completion. Metal tags indicating test performed, and date tested, shall be attached to tested devices.
9. MATERIALS AND PARTS: All materials and parts are included in the monthly rate for routine maintenance and servicing. For non-routine repairs, materials and parts may be purchased from this Contractor or from others at the sole discretion of the University. Materials and parts shall be of equivalent material, strength, and design as replaced material or part, and shall be new, top quality, and made by or recommended by the original manufacturer of the replaced part or material. Materials and parts purchased from this Contractor shall be at the Contractor's cost, including transportation costs, verifiable by the Contractor's invoices.
10. SPARE PARTS:
  - a) The Contractor must maintain at all times for immediate delivery and installation, sufficient supply of emergency parts for repair of each type of elevator. This inventory shall include a minimum of materials or parts to be used, and are to be of the original manufacturer's specification and design, equal or better. All replacement parts warehoused at any building job site must be contained in a locked cabinet supplied by the Contractor.
  - b) The following parts are to be warehoused in Portland, Eugene, Salem, or a Maintenance Stock Warehouse at another suitable site of comparable distance:
    - i) Supply of selector tapes to handle highest rise.
    - ii) Roller guides and gibs for car and counterweight.
    - iii) Power supplies and pre-amplifier for electronic proximity device.
    - iv) Reasonable parts on hand to repair safety edge (mechanical).
    - v) Door operator gear reduction units of parts for each type used.
    - vi) Controller and selector coils for each type used.
    - vii) Component parts, including contacts, for each type used.
    - viii) Car and hall buttons, including electronic, with contacts for each type used.

- ix) Replacement replay for each type used.
  - x) Geared machine brake shoe and lining assembly; minimum of one (1) set for each type or existing shoes relined within a twenty-four hour period.
- c) The following replacement parts are to be owned or rewound and ready for immediate shipment within thirty-six (36) hours:
- i) Rotating elements for each type and size used.
  - ii) Stators for each type and size used.
  - iii) Brake coils for each type and size used.

11. INSPECTIONS: The Contractor hereby agrees to allow the University's authorized representative to visit the contractor's parts storage facilities before the award of the contract, to enable the University to make certain that the inventory is complete and in compliance with the terms set forth under the heading "SPARE PARTS", Section 10, in this bid.

12. SCHEDULING:

- a) Preventative maintenance for elevators shall be performed as required, with the first maintenance to be performed during the first month of the contract.
- b) Preventative maintenance for book-lifts, chair-lifts, and dumbwaiters shall be performed every 60 days, with the first maintenance to be performed during the first 60 days of the contract.
- c) One-year testing shall be performed every 12 months, with all testing to be performed prior to due date.
- d) Five-year testing shall be performed every five years, with all testing to be performed prior to due date. These tests shall be scheduled at least two weeks in advance. All dates and times for these tests must be approved by the University.
- e) All repair work, routine and non-routine shall be performed on a call basis, where the Contractor shall respond on-site to an emergency call within sixty minutes (60 minutes), and a non-emergency call within two (2) hours. Emergencies will be determined by the University at the time the problem occurs, and will normally be based on the nature of the problem, building occupancy, and other factors. Contractor shall respond by communication device, within ten (10) minutes, and provide the estimated time of arrival. If



Contractor cannot respond as specified, University reserves the right to call other companies at Contractor's expense.

13. OTHER REQUIREMENTS:

- a) Reports shall be submitted within 72 hours each time a preventive maintenance or repair call is made, and shall include the following as a minimum:
  - i) Time and date of work.
  - ii) Identification of work as routine or non-routine.
  - iii) Hours worked, if non-routine.
  - iv) Personnel name(s).
  - v) Equipment worked on, building name and unit number.
  - vi) Complete list of inspections performed.
  - vii) Condition of items inspected.
  - viii) Work performed.
  - ix) Description.
  - x) Recommendations.
- b) Elevator files: The Contractor shall keep and maintain a complete file on each elevator, by building name and University elevator number, to contain accurate records of all maintenance calls, inspections, testing and repairs, including parts used and all wiring, circuit changes, and modifications made. These files shall be made available to the University upon request, and shall be turned over to the University at the end of the contract. A service record card indicating all services and repairs shall be maintained for each elevator, dumbwaiter, chair-lift, or book-lift in the associated machine room or control cabinet
- c) Work Schedule: For routine maintenance and repair work, the Contractor shall be expected to conform to the University's work schedule, which at present is 7:30 a.m. to 5:00 p.m., Monday through Friday, excepting State holidays. Contractor is expected to have an elevator mechanic on-site during these working hours.

- d) Work Progress: Contractor shall call in at the Western Oregon University, Physical Plant, Monmouth, OR 97361, in person, on a daily basis to discuss work schedules.
- e) Time paid for hourly rate work shall start upon arrival and sign-in at Western Oregon University, Physical Plant, and end upon sign-out, not including travel time, lunch breaks, or other breaks. Sign-in is required for after hours work. Contractor shall sign in at the Western Oregon University, Physical Plant, and sign out when work is completed. Time shall be rounded to the nearest ½ hour or less.
- f) Parking: Parking permits will not be needed for company vehicles. Vehicles must have company name clearly identified on the exterior. If personal vehicles are driven, permits can be issued by Campus Public Safety or purchased at Contractor's expense. If personal vehicle is cited for not having a parking permit, payment is responsibility of the Contractor.
- g) Service Interruptions: All elevator repairs which are not of an emergency nature shall require a minimum of five (5) working days prior notification to the University. Whenever practical, major work, or disruptive testing, shall be scheduled during State vacation periods. Whenever elevators are out of service for any reason, all landings shall have an out-of-order sign provided.
- h) Contractor shall pay for all State of Oregon Building Codes Division re-inspections caused by Contractor failure to maintain acceptable equipment standards.
- i) During normal hours, Contractor shall be required to carry communication device in order to be immediately available for service requests. In addition, Contractor provided method of contact shall be maintained at all times.

#### 14. ESTIMATES FOR WORK:

- a) Upon request by the University, for non-routine repairs and renovations and for hourly rate work with adequate plans and specifications or written directions, the Contractor shall prepare and submit a written estimate of labor, equipment, and/or materials which will be required to perform work specified. Contractor must use the hourly rate submitted with bid response in calculating estimates. This work may then be performed only with the University's written authorization. Upon authorization, actual work shall not exceed the Contractor's estimate without the University's prior written approval.

- b) The University reserves the right, for non-routine repairs and renovations, to bid separately any of these repair projects. (Reference Section 7 for Non-Routine Repairs.)
  - c) The University may request additional elevators be added to this contract during its term. If so, the added cost per device shall not exceed any similar device's monthly cost. Devices removed from service during this contract shall be credited at their monthly rate.
15. ESTIMATED QUANTITIES: Any quantities listed within this document are approximate and are intended for use only on the evaluation of bids. Actual purchases may range from zero to more than that listed.
16. PROTECTION OF PERSONS AND PROPERTY:
- a) The Contractor shall take every precaution at all times for the protection of persons and property, including the University's employees, officers, agents, students, and property, and its own.
  - b) The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with work under this contract.
  - c) The Contractor shall continuously maintain adequate protection of all work from damage and shall protect the University's property from injury or loss arising in connection with this contract. The Contractor shall make good any such damage, injury, or loss, except such as may be directly due to errors in the contract documents or caused by agents or employees of the University.
  - d) In an emergency affecting the safety or life of individuals, or of the work, or of adjoining property, the Contractor, without special instruction or authorization from the University, is hereby permitted to act, at its discretion, to prevent such threatened loss or injury. Also, should the Contractor in order to prevent threatened loss or injury be instructed or authorized to act by the University, the contractor shall so act, without appeal.
  - e) Safety: The Contractor shall maintain an adequate safety program to insure the safety of contractor's employees, subcontractor's employees, and all other individuals working under this contract. The Oregon Occupational Health Act (OROSHA) provides for safety and health protection for employees on the job. The Contractor is required to comply with the OROSHA standards. In addition, the Contractor must also provide the University with a written safety program which Contractor intends to follow in pursuing work under this contract. No work under this

contract shall be permitted until the University is assured that the Contractor has an adequate safety program in effect. Damages or costs resulting from noncompliance will be the responsibility of Contractor.

17. **SUBCONTRACTS:** No portion of the work shall be subcontracted without prior written approval of the University. In the event that the Contractor desires to subcontract some part of the work specified herein, the Contractor shall furnish the University the names, qualifications, and experience of the proposed subcontractors. The Contractor shall, however, remain fully liable and responsible for the work to be done by the subcontractors, and shall assure compliance with requirements of this contract.
18. **SUPERINTENDENCE BY CONTRACTOR:** The Contractor shall be responsible for all work means, methods, techniques, sequences, and procedures and for coordinating all portions of the work under the contract, except where otherwise specified in the contract documents. The Contractor shall, at all times, enforce strict discipline and good order among the workers, and shall not employ any unfit person or anyone not skilled in their work.
19. **WARRANTY:** All work shall be fully guaranteed against defects in materials (if provided), and workmanship for a period of at least one year following dates of delivery. Should any defect be noted by the University, the University will notify the Contractor of such defect or non-conformance. Notification will state either (1) that the Contractor shall replace or correct, or (2) the University does not require replacement or correction. If the Contractor is required to replace or correct, it shall be at no cost to the University and shall be subject to all provisions of this clause to the same extent as work originally performed. If the Contractor fails or refuses to replace or correct the deficiency, the University may have the work corrected or replaced and charges the Contractor the costs occasioned thereby, or obtain an equitable adjustment in the contract price. If correction or replacement is not required by the University, the University may negotiate an equitable adjustment in the contract price to compensate for the defects.
20. **WORKSITE CONDITIONS:** Unless specifically directed otherwise by the University, the Contractor shall.
  - a) Perform the work under this contract in such a manner as not to interrupt or interfere with operation of any existing activity on the premises or at the location of the work.
  - b) Store its apparatus, materials, supplies, and equipment in such orderly fashion at the site of the work that will not unduly interfere with the progress of its work or the work of the University or any other contractor.

- c) Place upon the work or existing structure only such loads as are consistent with the safety of that portion of the work or existing structure.
- d) Clean up frequently all refuse, rubbish, scrap materials, and debris caused by its operations, to the end that at all times the site of the work shall present a neat and orderly appearance.
- e) Prevent damages or endangerment to any portion of the work or existing structure as may be caused by cutting, patching, excavation, or other alterations to the work or existing structures during the course of the work.
- f) Comply with elevator code, ASME/ANSI A17.1, Safety Code for Elevators and Escalators.

21. **PRICES AND TERMS:** Contractor represents that all prices, terms and benefits offered by Contractor in this contract are equal to or better than the equivalent prices, terms, and benefits being offered by Contractor to any other state or local government unit or commercial customer.

Should Contractor, during the term of this contract, enter into any contract, agreement, or arrangement that provides lower prices, more favorable terms or greater benefits to any other such government unit or commercial customer, this contract shall thereupon be deemed amended to provide the same price or prices, terms, and benefits to the University. This provision applies to comparable products, supplies and services, and to purchase volumes by the University which are not less than the purchase volumes of the government unit or commercial customer that has received the lower prices, greater benefits, or more favorable terms.

Donations of products, supplies or services to charitable, non-profit, or government entities, if the donations are recognized as such and are deductible under the federal Internal Revenue Code, shall not be considered contracts, agreements, sales or arrangements with other governmental units or commercial customers which call for the application of this paragraph.

22. **CONTACT PERSONS:** Contractor shall designate one or more person(s) responsible for Contractor's work under this contract. Contractor shall provide to University the names, addresses, and telephone numbers of such person(s), and shall keep this information current at all times. Should contact with such person(s) require long distance calls, the University reserves the right to call collect.

23. **MAINTENANCE SCHEDULE:** Contractor shall comply with the attached Maintenance Schedule, Attachment B.

24. **UNIVERSITYAL RESPONSIBILITIES AND PREROGATIVES:**

- a) University will authorize payment to the Contractor, after receiving satisfactory service and receipt of invoice for services rendered.
- b) Payment for hourly rate work will be made for the amount of time service is performed at the hourly rates as bid, where the time to be paid for shall be as defined herein.
- c) Payment for “routine maintenance and servicing” shall be made on a monthly basis at the monthly rate as bid.

**Attachment A**

**Elevator Inventory**

<b>Administration Building</b>	<b>Passenger hydraulic elevator</b>	<b>Montgomery</b>	<b>PXH 7655</b>
<b>Ackerman Hall East</b>	<b>Passenger hydraulic elevator</b>	<b>Schindler</b>	<b>PXH 19255</b>
<b>Ackerman Hall West</b>	<b>Passenger hydraulic elevator</b>	<b>Schindler</b>	<b>PXH 19256</b>
<b>Campbell Hall</b>	<b>Passenger hydraulic elevator</b>	<b>Dover</b>	<b>PXH 11441</b>
<b>APSC</b>	<b>Passenger hydraulic elevator</b>	<b>Otis</b>	<b>PXH 15310</b>
<b>Natural Science</b>	<b>Passenger hydraulic elevator</b>	<b>Portland</b>	<b>PXH 5751</b>
<b>Valsetz Hall-West-Freight</b>	<b>Passenger hydraulic elevator</b>	<b>Sturm</b>	<b>PXH 5933</b>
<b>Valsetz Hall-East</b>	<b>Passenger hydraulic elevator</b>	<b>Otis</b>	<b>PXH 12485</b>
<b>Bellamy Hall HSS</b>	<b>Passenger hydraulic elevator</b>	<b>Montgomery</b>	<b>PXH 7653</b>
<b>Maaske Hall</b>	<b>Passenger hydraulic elevator</b>	<b>Montgomery</b>	<b>PXH 7654</b>
<b>Administration</b>	<b>Passenger hydraulic elevator</b>	<b>Montgomery</b>	<b>PXH 7655</b>
<b>Werner University Center-South</b>	<b>Passenger hydraulic elevator</b>	<b>Esco</b>	<b>PXH 8950</b>
<b>Werner University Center-North</b>	<b>Passenger hydraulic elevator</b>	<b>Montgomery</b>	<b>PXH 12487</b>
<b>Instruction Technology Center</b>	<b>Passenger hydraulic elevator</b>	<b>Dover</b>	<b>PXH 9163</b>
<b>Winters Building Math,Nursing</b>	<b>Passenger hydraulic elevator</b>	<b>Esco</b>	<b>PXH 9177</b>
<b>Heritage Hall</b>	<b>Passenger hydraulic elevator</b>	<b>Dover</b>	<b>PXH 9511</b>
<b>Todd Hall</b>	<b>Passenger hydraulic elevator</b>	<b>Otis</b>	<b>PXH 16343</b>
<b>Education Building</b>	<b>Passenger hydraulic elevator</b>	<b>Otis</b>	<b>PXH 12051</b>
<b>Cedar Hall</b>	<b>Passenger hydraulic elevator</b>	<b>Thyssenkrupp</b>	<b>PXH1 4895</b>
<b>Noble Hall</b>	<b>Passenger hydraulic elevator</b>	<b>Thyssenkrupp</b>	<b>PXH 14894</b>
<b>Spruce Hall</b>	<b>Passenger hydraulic elevator</b>	<b>Thyssenkrupp</b>	<b>PXH 14893</b>
<b>Health And Wellness-North</b>	<b>Passenger hydraulic elevator</b>	<b>Schindler</b>	<b>PXH 19389</b>
<b>Health And Wellness-South</b>	<b>Passenger hydraulic elevator</b>	<b>Schindler</b>	<b>PXH 19390</b>
	<b>TOTAL UNITS</b>		<b>23</b>

NOTE: It is Contractor's responsibility to confirm elevator inventory. No adjustment to bid documents will be allowed due to failure to verify this list.

## Attachment B

### MAINTENANCE SCHEDULE

#### 1. GEARED PASSENGER AND SERVICE – VARIABLE VOLTAGE CONTROL

##### FREQUENCY 4 WEEKS (OR MONTHLY)

- a) Clean and inspect machine, controller, selector, motor, motor generator and governor.
- b) Clean and inspect car top, operating switches, door operator and controls, car door hangers, gibs, photo eyes, proximity edges and safety edges, door sills (car/hall).
- c) Clean and inspect hoistway door hangers, interlocks, linkage, pickup assembly, door gibs, non-vision wing and hoistway switches.
- d) Clean and inspect governor tension sheave, car and counter-weight buffers, compensating sheave assembly, and clean pit and check safety plank and travel cable loop.
- e) Clean machine room, check commutators and brushes, clean and adjust controller and selector contracts and relays, clean elevator pit.
- f) Check car and hall fixture lamps, emergency lighting, leveling and floor stops, alarm bell and emergency stop, inspect travel cable and retiring cam, test communication device.

##### FREQUENCY 8 WEEKS (OR 2 MONTHS)

- a) Inspect rope shackles, car and counterweight guides, TM and slow down switches, adjust and lubricate as required.
- b) Inspect motor coupling, check brake operation, end thrust, backlash, selector drive, motor generator start and run switches, blow out motor and motor generator, clean controls.
- c) Clean car and hall station contacts, check door closing force, check and lubricate safety edge linkage pins and adjust. Check car and hoistway hanger rollers and adjust up thrusts, lubricate safety edge linkage pins and adjust, check car and hoistway hanger rollers and adjust up thrusts.
- d) Check gear oil level, machine and motor bearings, lubricate governor linkage, and check transformers, rectifiers and timers.



### FREQUENCY 12 WEEKS (OR 3 MONTHS)

- a) Check control and main line fuses, voltage readings, motor and motor generator wire connections, overloads, armature clearance and brake cores.
- b) Check car safety mechanism, governor rope hitch, hoistway switch rollers, and door closing devices, inspect and equalize hoist ropes.

### FREQUENCY ANNUAL

- a) Drop brake shoes, clean, lubricate and adjust, flush and replace worm gear oil.
- b) Check car frame, guide rails and bracket fastenings, clean guide rails and brackets, overhead sheaves, door hangers.
- c) Annual lubrication motor, motor generator and machine bearing, deflector, compound and compensating sheaves and governor tension sheave bearings.
- d) Annual car safety test. Check buffer oil level.
- e) Blow out motor and motor generator set.
- f) Adjust motor control and check logic operation.

### FREQUENCY 260 WEEKS (OR 5 YEARS)

- g) Five-year safety and buffer test.

## 2. GEARED FREIGHT – VARIABLE VOLTAGE CONTROL FREQUENCY 4 WEEKS (OR MONTHLY)

- a) Clean and inspect machine, controller, selector, motor, motor generator and governor, clean elevator pit
- b) Clean and inspect car top car gate or doors and guides.
- c) Clean and inspect hoistway door guides, interlocks, and related devices.
- d) Clean and inspect governor tension sheave, car and counter-weight buffers, compensating sheave assembly. Clean pit and check safety plant and travel cable loop.

### HYDRAULIC PASSENGER AND SERVICE FREQUENCY 4 WEEKS (OR MONTHLY)

- e) Clean machine room, clean and adjust controller and selector contacts and relays.
- f) Check car and hall fixture lamps, leveling and floor stops, alarm bell and emergency stop; inspect travel cable and retiring cam, communication device and emergency lighting.
- g) Inspect leveling and limit switches and check emergency light.
- h) Inspect power drive (belts and coupling) and pump, clean controls, clean elevator pit, check hydraulic oil level.
- i) Clean car and hall station contacts, check door closing force, check and lubricate safety edge linkage pins and adjust. Check car and hoistway hanger rollers and adjust up thrusts.
- j) Check motor bearings, transformers, rectifiers and timers. Check hydraulic fluid levels, clean car and hall sills. Notify University representative of excessive oil consumption.

### FREQUENCY 24 WEEKS (OR 6 MONTHS)

- k) Check control and mainline fuses, voltage readings, motor connections and overloads.
- l) Check bolster plate and channels, hoistway switches and door closing devices.
- m) Check drive belt tension and adjust valves.
- n) Clean guide rails and brackets, door hangers.
- o) Annual pressure test and lubricate motor.
- p) Annual valve control adjustment and check logic operation.

### FREQUENCY 156 WEEKS (OR 3 YEARS)

- q) Three-year pressure test (where flexible hose is present).

## 3. HYDRAULIC FREIGHT

### FREQUENCY 4 WEEKS (OR MONTHLY)

- a) Clean and inspect power unit, controller, valves, motor and belts, check hydraulic oil level.
- b) Clean and inspect car top, car gate or doors and guides.
- c) Clean and inspect hoistway door guides, interlocks and related devices.
- d) Clean and inspect buffers and jack packing, clean elevator pit, check travel cable loop.
- e) Clean machine room, clean and adjust controller and selector contacts and relays.
- f) Check car and hall fixture lamps, leveling and floor stops, alarm bell and emergency stop, inspect travel cable and retiring cam.

FREQUENCY 8 WEEKS (OR 2 MONTHS)

- g) Inspect leveling and limit switches and check emergency light.
- h) Inspect power drive (belts and coupling) and pump, clean controls.
- i) Clean car and hall station contacts, check door operator, check hoistway door guides and lubricate.
- j) Check motor, bearing, transformers, rectifiers and timers. Clean pit, check hydraulic fluid levels. Notify University representative of excessive oil consumption.

**WESTERN OREGON UNIVERSITY  
STANDARD INSTRUCTIONS TO BIDDERS**

All bids are subject to the provisions and requirements of the Oregon Revised Statutes, and the Administrative Rules of the Oregon University System.

**BID PREPARATION**

**BID FORMAT:** Bids must be typewritten or prepared in ink and must be submitted on the form indicated in the Invitation to Bid or Request for Proposal. Unless otherwise indicated in the ITB or RFP, no oral, telegraphic or telephone bids will be accepted.

**CONFORMANCE TO BID REQUIREMENTS:** Bids must conform to the requirements of the Invitation to Bid or Request for Proposal. All necessary attachments (residency statement, bid bond, references, descriptive literature, etc.) must be submitted with the bid and in the required format. Bid prices must be for the unit indicated on the bid. Failure to comply with all requirements may result in bid rejection.

**ADDENDA:** Only documents issued as addenda by the WOU Purchasing/Stores Office or Planning Office serve to change the ITB or RFP in any way. No other direction received by the Contractor, written or verbal, serve to change the ITB or RFP document.

**USE OF BRAND OR TRADE NAMES:** Any brand or trade names used by WOU in bid specifications are for the purpose of describing and establishing the standard of quality, performance and characteristics desired and are not intended to limit or restrict competition. Bidders may submit bids for substantially equivalent products to those designated unless the Invitation to Bid provides that a specific brand is necessary because of compatibility requirements, etc. All such brand substitutions shall be subject to purchaser's approval.

**PRODUCT IDENTIFICATION:** Bidders must clearly identify all products bid. Brand name and model or number must be shown. WOU reserves the right to reject any bid when the product information submitted with the bid is incomplete.

**FOB DESTINATION:** Unless specifically allowed in the ITB or RFP, BID PRICE MUST BE F.O.B. DESTINATION with all transportation and handling charges paid by the bidder.

**DELIVERY:** Delivery time must be shown in number of calendar days after receipt of order.

**DELINQUENT OREGON TAXES:** Bidders must certify, under penalty of perjury, that they are not in violation of any Oregon tax laws. No contract for the purchase of goods and/or services will be awarded to bidder who cannot so certify.

**EXCEPTIONS:** Any deviation from bid specifications, terms and conditions may result in bid rejection.

**SIGNATURE ON BID:** Bids must be signed in ink by an authorized representative of the bidder. Signature on a bid certifies that the bid is made without connection with any person, firm or corporation making a bid for the same goods and/or services and is in all respects fair and without collusion or fraud.

Signature on a bid also certifies that the bidder has read and fully understands all bid specifications, terms and conditions. No consideration will be given to any claim resulting from bidding without comprehending all requirements of the Invitation to Bid or Request for Proposal.

**BID MODIFICATION:** Modifications or erasures made before bid submission should be initialed in ink by the person signing the bid. Bids, once submitted, may be modified in writing before the time and date set for bid closing. Any modifications should be prepared on company letterhead, signed by an authorized representative, and state that the new document supersedes or modifies the prior bid. Bidders may not modify bids after bid closing time.

**BID WITHDRAWALS:** Bids may be withdrawn in writing on company letterhead signed by an authorized representative and received by the WOU Purchasing/Stores Office prior to bid closing time. Bids may also be withdrawn in person before bid closing time upon presentation of appropriate identification.

**PROTEST OF BID SPECIFICATIONS:** A bidder who believes bid specifications are unnecessarily restrictive or limit competition may submit a protest, in writing, to the WOU Purchasing/Stores Office. To be considered, protests must be received at least five days before the bid closing date (ten

days if the bid is for a public improvement), unless otherwise specified in the bid documents.

**BID SUBMISSION:** Sealed bids must be received and time-stamped by the WOU Purchasing/Stores Office (unless a different department is specified in bid documents) prior to bid closing time. No bid received after bid closing time will be considered. To assure that your bid receives priority treatment within our mailing system please mark as follows: Bid Name, Bid Due Date & Time: DD/MM/YY XX:XX WESTERN OREGON UNIVERSITY, PURCHASING/STORES OFFICE, 345 N MONMOUTH AVE, MONMOUTH OR 97361.

The University shall not be responsible for the proper identification and handling of any bid not submitted in a timely manner.

**BID OPENING:** Bids will be opened at the scheduled opening time at the WOU Purchasing/Stores Office (unless otherwise specified), 345 N Monmouth Ave, Monmouth OR 97361. Bidders may be present; however, award decisions will not be made at the opening.

**BID EVALUATION AND AWARD**

**EVALUATION CRITERIA:** Bids will be awarded based upon the evaluation criteria in the Invitation to Bid or Request for Proposal or in Oregon administrative rules or laws. Ordinarily, bids will be evaluated to identify the "lowest responsible bidder." The "lowest responsible bidder" is the lowest bidder who has substantially complied with all requirements of the Invitation to Bid and who can be expected to deliver promptly and perform reliably. Evaluation criteria may be different if a Request for Proposal is issued.

**PRIOR ACCEPTANCE OF DEFECTIVE PROPOSALS:** Due to limited resources, WOU generally will not completely review or analyze bid responses which on their faces fail to comply with the requirements of the bid documents or which clearly are not the best bids, nor will WOU generally investigate the references or qualifications of those who submit such bid responses. Therefore, neither the release of a bidder's bid bond, the return of a bid response, nor acknowledgment that the selection is complete shall operate as a representation by WOU that an unsuccessful response was complete, sufficient, or lawful in any respect.

**RECIPROCAL PREFERENCE:** In determining the lowest responsible bidder, WOU will add a percent increase to each out-of-state bidder's bid price which is equal to the percent given to local bidders in that bidder's home state. For example, if the lowest responsible bidder is from a state that grants a 10 percent preference to local bidders, WOU will add 10 percent to that bidder's price when evaluating the bid.

**DELIVERY:** Significant delays in delivery may be considered in determining award if early delivery is required.

**CASH DISCOUNTS:** Cash discounts will not be considered for award purposes unless stated in the bid documents.

**PAYMENT:** Bids which require payment in less than 30 days after receipt of invoice or delivery of goods, whichever is later, may be rejected.

**INVESTIGATION OF REFERENCES:** WOU reserves the right to investigate the references and the past performance of any bidder with respect to its successful performance of similar services, compliance with specifications and contractual obligations, and its lawful payment of suppliers, sub-contractors, and workers. WOU may postpone the award or execution of the contract after the announcement of the apparent successful bidder in order to complete its investigation. WOU reserves the right to reject any bid response or to reject all bid responses at any time prior to execution of the contract if it is determined to be in the best interest of WOU.

**METHOD OF AWARD:** WOU reserves the right to make the award by item, groups of items, or entire bid, whichever is in the best interest of WOU.

**BID REJECTION:** WOU reserves the right to reject any and all bids.

**BID RESULTS:** Bidders who receive awards will be notified of bid results. Bidders may request tabulations of awarded bids. Awarded bid files are public records and available for review at the WOU Purchasing/Stores Office between 8:00 a.m. and 4:30 p.m., Monday through Friday; no appointment is necessary. If an alternate viewing time is needed, special arrangements need to be made with the Planning Office.

(rev 4/2010)

**OREGON UNIVERSITY SYSTEM**  
**GENERAL CONDITIONS**  
**FOR PUBLIC IMPROVEMENT CONTRACTS**

**February 1, 2011**

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

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**OREGON UNIVERSITY SYSTEM  
GENERAL CONDITIONS FOR PUBLIC IMPROVEMENT CONTRACTS  
("OUS General Conditions")**

**SECTION A  
GENERAL PROVISIONS**

**A.1 DEFINITION OF TERMS**

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

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

**CHANGE ORDER**, means a written order issued by the Owner's Authorized Representative to the Contractor requiring a change in the Work within the general scope of the Contract Documents, issued under the changes provisions of Section D, including Owner's written change directives as well as changes reflected in a writing executed by the parties to this Contract and, if applicable, establishing a Contract Price or Contract Time adjustment for the changed Work.

**CLAIM**, means a demand by Contractor pursuant to Section D.3 for review of the denial of Contractor's initial request for an adjustment of Contract terms, payment of money, extension of Contract Time or other relief, submitted in accordance with the requirements and within the time limits established for review of Claims in these OUS General Conditions.

**CONSTRUCTION CHANGE DIRECTIVE**, means a written order by the Owner's Authorized Representative to the Contractor requiring a change in the Work within the general scope of the Contract Documents, issued under the changes provisions of Section D.

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

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

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

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

**CONTRACT TIME**, means any incremental period of time allowed under the Contract to complete any portion of the Work as reflected in the project schedule.

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

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

**DIRECT COSTS**, means, unless otherwise provided in the Contract Documents, the cost of materials, including sales tax, cost of delivery; cost of labor, including social security, old age and unemployment insurance, and fringe benefits required by agreement or custom; worker's compensation insurance; project specific insurance (including, without limitation, Builder's Risk Insurance and Builder's Risk Installation Floater); bond premiums, rental cost of equipment, and machinery required for execution of the work; and the additional costs of field personnel directly attributable to the Work.

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

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

**MWESB REPORT**, means an accurate report by the Contractor to the Owner identifying all Minority, Women and Emerging Small Business (MWESB) enterprises, as those terms are defined in ORS 200.005, receiving contracts throughout the course of the Work. An initial MWESB report is required (see Section E.2.9) and MWESB Reports are required annually (see Section E.2.9) and as a condition of final payment (see Section K.1). The initial report shall include the total number of contracts and subcontracts awarded to MWESB enterprises and the dollar value of their respective contracts and subcontracts. The annual reports shall include the total number of contracts and subcontracts awarded to MWESB enterprises, the dollar value of each, and the expenditure toward each contract and subcontract during the previous twelve (12) months. The final report shall include the total number of contracts and subcontracts awarded to MWESB enterprises and the dollar value of their respective contracts and subcontracts including all Change Orders incorporated during the course of the project. The reports shall only include enterprises certified with the State of Oregon as MWESB enterprises and shall include individual identification of each enterprise as a Minority business enterprise, a Women business enterprise, and/or an Emerging Small Business Enterprise, as applicable.

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

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

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

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

office, and Commercial General Liability Insurance and Automobile Liability Insurance.

**OWNER**, means the State of Oregon acting by and through the Oregon State Board of Higher Education, in its own right or on behalf of one of its institutions as identified in the Solicitation Document, also known as the Oregon University System (OUS).

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

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

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

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

**RECORD DOCUMENT**, means the as-built Plans, Specifications, testing and inspection records, product data, samples, manufacturer and distributor/supplier warranties evidencing transfer to Owner, operational and maintenance manuals, shop drawings, Change Orders, Construction Change Directives, MWESB Reports, correspondence, certificate(s) of occupancy, and other documents listed in Subsection B.9.1 of these OUS General Conditions, recording all Services performed.

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

**SPECIFICATION**, means any description of the physical or functional characteristics of the Work, or of the nature of a supply, service or construction item. Specifications may include a description of any requirement for inspecting, testing or preparing a supply, service or construction item for delivery and the quantities or qualities of materials to be furnished under the Contract. Specifications generally will state the results or products to be obtained and may, on occasion, describe the method and manner of doing the work to be performed. Specifications may be incorporated by reference and/or may be attached to the Contract.

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

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

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

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

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

## A.2 SCOPE OF WORK

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

## A.3 INTERPRETATION OF CONTRACT DOCUMENTS

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

- (a) Contract amendments, Change Orders and Construction Change Directives, with those of later date having precedence over those of an earlier date;
- (b) The Supplemental General Conditions;
- (c) The OUS Public Improvement Agreement Form;
- (d) The OUS General Conditions;
- (e) Division One (General Requirements) of the Specifications;
- (f) Detailed Schedules of finishes, equipment and other items included in the Specifications;
- (g) Plans and Specifications (other than Division One and the Detailed Schedules to the Specifications);
- (h) Large-scale drawings on Plans;
- (i) Small-scale drawings on Plans;
- (j) Dimension numbers written on Plans which shall prevail and take precedence over dimensions scaled from Plans;
- (k) The Solicitation Document, including Instructions to Offerors and Supplemental Instructions to Offerors, and any addenda thereto;
- (l) The accepted Offer.

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

A.3.3 If the Contractor finds discrepancies in, or omissions from the Contract Documents, or if the Contractor is in doubt as to their meaning, the Contractor shall at once notify the Owner or Owner's Authorized Representative. Matters concerning and interpretation of requirements of, the Contract Documents will



be decided by the Owner's Authorized Representative, who may delegate that duty in some instances to the Architect/Engineer. Responses to Contractor's requests for interpretation of Contract Documents will be made in writing by Owner's Authorized Representative (or the Architect/Engineer) within any time limits agreed upon or otherwise with reasonable promptness. Interpretations and decisions of the Owner's Authorized Representative (or Architect/Engineer) will be consistent with the intent of and reasonably inferable from the Contract Documents. Contractor shall not proceed without direction in writing from the Owner's Authorized Representative (or Architect/Engineer).

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

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

- A.4.1 It is understood that the Contractor, before submitting an Offer, has made a careful examination of the Contract Documents; has become fully informed as to the quality and quantity of materials and the character of the Work required; and has made a careful examination of the location and conditions of the Work and the sources of supply for materials. The Owner will in no case be responsible for any loss or for any unanticipated costs that may be suffered by the Contractor as a result of the Contractor's failure to acquire full information in advance in regard to all conditions pertaining to the Work. No oral agreement or conversation with any officer, agent, or personnel of the Owner, or with the Architect/Engineer either before or after the execution of this Contract, shall affect or modify any of the terms or obligations herein contained.
- A.4.2 Should the Plans or Specifications fail to particularly describe the materials, kind of goods, or details of construction of any aspect of the Work, Contractor shall have the duty to make inquiry of the Owner and Architect/Engineer as to what is required prior to performance of the Work. Absent Specifications to the contrary, the materials or processes that would normally be used to produce first quality finished Work shall be considered a part of the Contract requirements.
- A.4.3 Any design errors or omissions noted by the Contractor shall be reported promptly to the Owner's Authorized Representative, including without limitation, any nonconformity with applicable laws, statutes, ordinances, building codes, rules and regulations.
- A.4.4 If the Contractor believes that additional cost or Contract Time is involved because of clarifications or instructions issued by the Owner's Authorized Representative (or Architect/Engineer) in response to the Contractor's notices or requests for information, the Contractor must submit a written request to the Owner's Authorized Representative, setting forth the nature and specific extent of the request, including all time and cost impacts against the Contract as soon as possible, but no later than thirty (30) Days after receipt by Contractor of the clarifications or instructions issued. If the Owner's Authorized Representative denies Contractor's request for additional compensation, additional Contract Time, or other relief that Contractor believes results from the clarifications or instructions, the Contractor may proceed to file a Claim under Section D.3, Claims Review Process. If the Contractor fails to perform the obligations of Sections A.4.1 to A.4.3, the Contractor shall pay such costs and damages to the Owner as would have been avoided if the Contractor had performed such obligations.

**A.5 INDEPENDENT CONTRACTOR STATUS**

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

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

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

**A.7 GOVERNMENT EMPLOYMENT STATUS**

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

**SECTION B  
ADMINISTRATION OF THE CONTRACT**

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

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

and with separate contractors shall be through the Owner's Authorized Representative.

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

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

- B.2.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures.
- B.2.2 The Contractor is responsible to protect and maintain the Work during the course of construction and to mitigate any adverse impacts to the project, including those caused by authorized changes, which may affect cost, schedule, or quality.
- B.2.3 The Contractor is responsible for the actions of all its personnel, laborers, suppliers, and Subcontractors on the project. The Contractor shall enforce strict discipline and good order among Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of persons who are unfit or unskilled for the tasks assigned to them.

**B.3 MATERIALS AND WORKMANSHIP**

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

**B.4 PERMITS**

Contractor shall obtain and pay for all necessary permits and licenses, except for those specifically excluded in the Supplemental

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

**B.5 COMPLIANCE WITH GOVERNMENT  
REGULATIONS**

- B.5.1 Contractor shall comply with all federal, state and local laws, codes, regulations and ordinances applicable to the Work and the Contract. Failure to comply with such requirements shall constitute a breach of Contract and shall be grounds for Contract termination. Without limiting the generality of the foregoing, Contractor expressly agrees to comply with the following, as applicable:
- (i) Title VI and VII of Civil Rights Act of 1964, as amended; (ii) Section 503 and 504 of the Rehabilitation Act of 1973, as amended; (iii) the Health Insurance Portability and Accountability Act of 1996; (iv) the Americans with Disabilities Act of 1990, as amended; (v) ORS Chapter 659A; as amended; (vi) all regulations and administrative rules established pursuant to the foregoing laws; and (vii) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.
- B.5.2 Contractor shall comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations, and
- (a) Contractor shall not discriminate against Disadvantaged, Minority, Women or Emerging Small Business enterprises, as those terms are defined in ORS 200.005, or a business enterprise that is owned or controlled by or that employs a disabled veteran, as that term is defined in ORS 408.225, in the awarding of subcontracts.
  - (b) Contractor shall maintain, in current and valid form, all licenses and certificates required by law, regulation, or this Contract when performing the Work.
- B.5.3 Unless contrary to federal law, Contractor shall certify that it shall not accept a bid from Subcontractors to perform Work as described in ORS 701.005 under this Contract unless such Subcontractors are registered with the Construction Contractors Board in accordance with ORS 701.035 to 701.055 at the time they submit their bids to the Contractor.
- B.5.4 Unless contrary to federal law, Contractor shall certify that each landscape contractor, as defined in ORS 671.520(2), performing Work under this Contract holds a valid landscape contractor's license issued pursuant to ORS 671.560.
- B.5.5 The following notice is applicable to Contractors who perform excavation Work. ATTENTION: Oregon law requires you to follow rules adopted by the Oregon Utility Notification Center. Those rules are set forth in OAR 952-001-0010 through OAR 952-001-0090. You may obtain copies of the rules by calling the center at (503)232-1987.
- B.5.6 Failure to comply with any or all of the requirements of B.5.1 through B.5.5 shall be a breach of Contract and constitute grounds for Contract termination. Damages or costs resulting from such noncompliance shall be the responsibility of Contractor.

**B.6 SUPERINTENDENCE**

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

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

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

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

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

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

- B.9.1 Contractor shall keep, at all times on the Work site, one record copy of the complete Contract Documents, including the Plans, Specifications, Change Orders, Construction Change Directives and addenda, in good order and marked currently to record field changes and selections made during construction, and one record copy of Shop Drawings, Product Data, Samples and similar submittals, and shall at all times give the Owner's Authorized Representative access thereto.
- B.9.2 Contractor shall retain and the Owner and its duly authorized representatives shall have access, for a period not less than ten (10) years, to all Record Documents, financial and accounting records, and other books, documents, papers and records of Contractor which are pertinent to the Contract, including records pertaining to Overhead and indirect costs, for the purpose of making audit, examination, excerpts and transcripts. If for any reason, any part of the Contract is involved in litigation, Contractor shall retain all such records until all litigation is resolved. The Owner and/or its agents shall continue to be provided full access to the records during litigation.

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

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

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

- B.11.1 Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound by the terms and conditions of these OUS General Conditions, and to assume toward the Contractor all of the obligations and responsibilities which the Contractor assumes toward the Owner thereunder, unless (1) the same are clearly inapplicable to the subcontract at issue because of legal requirements or industry practices, or (2) specific exceptions are requested by Contractor and approved in writing by Owner. Where appropriate, Contractor shall require each Subcontractor to enter into similar agreements with sub-subcontractors at any level.
- B.11.2 At Owner's request, Contractor shall submit to Owner prior to their execution either Contractor's form of subcontract, or the subcontract to be executed with any particular Subcontractor. If Owner disapproves such form, Contractor shall not execute the form until the matters disapproved are resolved to Owner's satisfaction. Owner's review, comment upon or approval of any such form shall not relieve Contractor of its obligations under this Agreement or be deemed a waiver of such obligations of Contractor.
- B.11.3 Contractor shall not assign, sell, or transfer its rights, or delegate its responsibilities under this Contract, in whole or in part, without the prior written approval of the Owner. No such written approval shall relieve Contractor of any obligations of this Contract, and any transferee shall be considered the agent of the Contractor and bound to perform in accordance with the Contract Documents. Contractor shall remain liable as between the original parties to the Contract as if no assignment had occurred.

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

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

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

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

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

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

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

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

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

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

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

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

B.17.2 Unless otherwise provided in the Contract Documents:

- (a) when finally reconciled, allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;

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

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

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

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

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

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

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

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

B.18.2 Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. The purpose of their submittal is to demonstrate for those portions of the Work for which submittals are required by the Contract Documents the way by which the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents. Review of submittals by the Architect/Engineer is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, or for approval of safety precautions or, unless otherwise specifically stated by the Architect/Engineer, of any construction means, methods, techniques, sequences or procedures, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect/Engineer's review of the Contractor's submittals shall not relieve the Contractor of its obligations under the Contract Documents. The Architect/Engineer's approval of a specific item shall not indicate approval of an assembly of which the item is a component. Informational submittals upon which the Architect/Engineer is not expected to take responsive action may be so identified in the Contract Documents. Submittals which are not required by the Contract Documents may be returned by the Architect/Engineer without action.

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

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

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

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

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

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

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

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

Plans, Specifications and related Contract Documents furnished to Contractor by Owner or Owner's Architect/Engineer shall be used solely for the performance of the Work under this Contract. Contractor and its Subcontractors and suppliers are authorized to use and reproduce applicable portions of such documents appropriate to the execution of the Work, but shall not claim any ownership or other

interest in them beyond the scope of this Contract, and no such interest shall attach. Unless otherwise indicated, all common law, statutory and other reserved rights, in addition to copyrights, are retained by Owner.

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

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

#### **B.22 NO THIRD PARTY BENEFICIARIES**

Owner and Contractor are the only parties to this Contract and are the only parties entitled to enforce its terms. Nothing in this Contract gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly, or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Contract.

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

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

Contractor shall comply fully with the provisions of ORS 279C.800 through 279C.870. Documents establishing those conditions, as determined by the Commissioner of the Bureau of Labor and Industries (BOLI), are included as attachments to or are incorporated by reference in the Contract Documents. Contractor shall pay workers at not less than the specified minimum hourly rate of wage, and shall include that requirement in all subcontracts.

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

C.2.1 In accordance with ORS 279C.845, the Contractor and every Subcontractor shall submit written certified statements to the Owner's Authorized Representative, on the form prescribed by the Commissioner of the Bureau of Labor and Industries, certifying the hourly rate of wage paid each worker which the Contractor or the Subcontractor has employed on the project and further certifying that no worker employed on the project has been paid less than the prevailing rate of wage or less than the minimum hourly rate of wage specified in the Contract, which certificate and statement shall be verified by the oath of the Contractor or the Subcontractor that the Contractor or Subcontractor has read the certified statement, that the Contractor or Subcontractor knows the contents of the certified statement, and, that to the Contractor's or Subcontractor's best knowledge and belief, the certified statement is true. The certified statements shall set out accurately and completely the payroll records for the prior week, including the name and address of each worker, the worker's correct classification, rate of pay, daily and weekly number of hours worked, deductions made, and actual wages paid. Certified statements for each week during which the Contractor or Subcontractor has employed a worker on the project shall be submitted once a month, by the fifth business day of the following month. The Contractor and Subcontractors shall preserve the certified

statements for a period of ten (10) years from the date of completion of the Contract.

- C.2.2 Pursuant to ORS 279C.845(7), the Owner shall retain 25 percent of any amount earned by the Contractor on this public works project until the Contractor has filed the certified statements required by section C.2.1. The Owner shall pay to the Contractor the amount retained under this subsection within 14 days after the Contractor files the required certified statements, regardless of whether a Subcontractor has failed to file certified statements.
- C.2.3 Pursuant to ORS 279C.845(8), the Contractor shall retain 25 percent of any amount earned by a first-tier Subcontractor on this public works project until the first-tier Subcontractor has filed with the Owner the certified statements required by C.2.1. Before paying any amount retained under this subsection, the Contractor shall verify that the first-tier Subcontractor has filed the certified statement. Within 14 days after the first-tier Subcontractor files the required certified statement the Contractor shall pay the first-tier Subcontractor any amount retained under this subsection.
- C.2.4 In accordance with statutory requirements and administrative rules promulgated by the Commissioner of the Bureau of Labor and Industries, the fee required by ORS 279C.825(1) will be paid by Owner to the Commissioner.

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

- C.3.1 As a condition to Owner's performance hereunder, the Contractor shall:
- C.3.1.1 Make payment promptly, as due, to all persons supplying to Contractor labor or materials for the prosecution of the Work provided for in this Contract.
- C.3.1.2 Pay all contributions or amounts due the State Industrial Accident Fund from such Contractor or Subcontractor incurred in the performance of the Contract.
- C.3.1.3 Not permit any lien or claim to be filed or prosecuted against the Owner on account of any labor or material furnished. Contractor will not assign any claims that Contractor has against Owner, or assign any sums due by Owner, to Subcontractors, suppliers, or manufacturers, and will not make any agreement or act in any way to give Subcontractors a claim or standing to make a claim against the Owner.
- C.3.1.4 Pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.
- C.3.2 As a condition to Owner's performance hereunder, if Contractor fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to the Contractor of a Subcontractor by any person in connection with the project as such claim becomes due, the proper officer(s) representing the Owner may pay the claim and charge the amount of the payment against funds due or to become due Contractor under this Contract. Payment of claims in this manner shall not relieve the Contractor or the Contractor's surety from obligation with respect to any unpaid claims.
- C.3.3 Contractor shall include in each subcontract for property or services entered into by the Contractor and a first-tier subcontractor, including a material supplier, for the purpose of performing a construction contract, a payment clause that obligates the Contractor to pay the first-tier Subcontractor for satisfactory performance under its subcontract within ten (10)

Days out of such amounts as are paid to the Contractor by the public contracting agency under such contract.

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

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

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

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

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

- (a) For all overtime in excess of eight (8) hours a day or forty (40) hours in any one week when the work week is five consecutive Days, Monday through Friday; or
- (b) For all overtime in excess of ten (10) hours a day or forty (40) hours in any one week when the work week is four consecutive Days, Monday through Friday; and
- (c) For all Work performed on Saturday and on any legal holiday specified in ORS 279C.540.

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

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

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

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

- D.1.1 The terms of this Contract shall not be waived, altered, modified, supplemented or amended in any manner whatsoever, without prior written approval of the Owner's Authorized Representative, and then only in a manner consistent with the Change Order provisions of this Section D.1 and after any necessary approvals required by public contracting laws have been obtained. Otherwise, a formal contract amendment is required, which shall not be effective until its execution by the parties to this Contract and all approvals required by public contracting laws have been obtained.
- D.1.2 It is mutually agreed that changes in Plans, quantities, or details of construction are inherent in the nature of construction and may be necessary or desirable during the course of construction. Within the general scope of this Contract, the Owner's Authorized Representative may at any time, without notice to the sureties and without impairing the Contract, require changes consistent with this Section D.1. All Change Order Work shall

be executed under the conditions of the Contract Documents. Such changes may include, but are not limited to:

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

Deductive changes are those that reduce the scope of the Work, and shall be made by mutual agreement whenever feasible. In cases of suspension or partial termination under Section J, Owner reserves the right to unilaterally impose a deductive change and to self perform such Work, for which the provisions of B.13 (Owner's Right to Do Work) shall then apply. Adjustments in compensation shall be made under the provisions of D.1.3, in which costs for deductive changes shall be based upon a Direct Costs adjustment together with the related percentage markup specified for profit, Overhead and other indirect costs, unless otherwise agreed to by Owner.

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

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

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

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

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

Payments made to the Contractor shall be complete compensation for Overhead, profit, and all costs that were

incurred by the Contractor or by other forces furnished by the Contractor, including Subcontractors, for Change Order Work. Owner may establish a maximum cost for Change Order Work under this Section D.1.3(c), which shall not be exceeded for reimbursement without additional written authorization from Owner. Contractor shall not be required to complete such Change Order Work without additional authorization.

D.1.4 Any necessary adjustment of Contract Time that may be required as a result of a Change Order must be agreed upon by the parties before the start of the Change Order Work unless Owner's Authorized Representative authorizes Contractor to start the Work before agreement on Contract Time adjustment. Contractor shall submit any request for additional compensation (and additional Contract Time if Contractor was authorized to start Work before an adjustment of Contract Time was approved) as soon as possible but no later than thirty (30) Days after receipt of the Change Order. If Contractor's request for additional compensation or adjustment of Contract Time is not made within the thirty (30) Day time limit, Contractor's requests pertaining to that Change Order are barred. The thirty (30) Day time limit for making requests shall not be extended for any reason, including without limitation Contractor's claimed inability to determine the amount of additional compensation or adjustment of Contract Time, unless an extension is granted in writing by Owner. If the Owner's Authorized Representative denies Contractor's request for additional compensation or adjustment of Contract Time, Contractor may proceed to file a Claim under Section D.3, Claims Review Process. No other reimbursement, compensation, or payment will be made, except as provided in Section D.1.5 for impact claims.

D.1.5 If any Change Order Work under Section D.1.3 causes an increase or decrease in the Contractor's cost of, or the Contract Time required for the performance of any other part of the Work under this Contract, the Contractor must submit a written request to the Owner's Authorized Representative, setting forth the nature and specific extent of the request, including all time and cost impacts against the Contract as soon as possible, but no later than thirty (30) Days after receipt of the Change Order by Contractor.

The thirty (30) Day time limit applies to claims of Subcontractors, suppliers, or manufacturers who may be affected by the Change Order and who request additional compensation or an extension of Contract Time to perform; Contractor has responsibility for contacting its Subcontractors, suppliers, or manufacturers within the thirty (30) Day time limit, and including their requests with Contractor's requests. If the request involves Work to be completed by Subcontractors, or materials to be furnished by suppliers or manufacturers, such requests shall be submitted to the Contractor in writing with full analysis and justification for the compensation and additional Contract Time requested. The Contractor will analyze and evaluate the merits of the requests submitted by Subcontractors, suppliers, and manufacturers to Contractor prior to including those requests and Contractor's analysis and evaluation of those requests with Contractor's requests for additional compensation or Contract Time that Contractor submits to the Owner's Authorized Representative. Failure of Subcontractors, suppliers, manufacturers or others to submit their requests to Contractor for inclusion with Contractor's requests submitted to Owner's Authorized Representative within the time period and by the means described in this section shall constitute a waiver of these Subcontractor claims. The Owner's Authorized Representative and the Owner will not consider direct requests or claims from Subcontractors, suppliers, manufacturers or others not a party to this Contract. The consideration of such requests and claims under this section does not give any person, not a party to the Contract the right to bring a claim against the State of Oregon, whether in this claims process, in litigation, or in any dispute resolution process.

If the Owner's Authorized Representative denies the Contractor's request for additional compensation or an extension of Contract Time, the Contractor may proceed to file a Claim under Section D.3, Claims Review Process.

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

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

## **D.2 DELAYS**

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

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

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

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

- (a) Caused by any actions of the Owner, Owner's Authorized Representative, or any other employee or agent of the Owner, or by separate contractor employed by the Owner.
- (b) Caused by any site conditions which differ materially from what was represented in the Contract Documents or from conditions that would normally be expected to exist and be inherent to the construction activities defined in the Contract Documents. The Contractor shall notify the Owner's Authorized Representative immediately of differing site conditions before the area has been disturbed. The Owner's Authorized Representative will investigate the area and make a determination as to whether or not the conditions differ materially from either the conditions stated in the Contract Documents or those which could reasonably be expected in execution of this particular Contract. If Contractor and the Owner's Authorized Representative agree that a differing site condition exists, any additional compensation or additional Contract Time will be determined based on the process set forth in Section

D.1.5 for Change Order Work. If the Owner's Authorized Representative disagrees that a differing site condition exists and denies Contractor's request for additional compensation or Contract Time, Contractor may proceed to file a Claim under Section D.3, Claims Review Process.

- (c) Caused by Force Majeure acts, events or occurrences that could not have been avoided by the exercise of care, prudence, foresight, and diligence on the part of the Contractor or its Subcontractors.
- (d) Caused by adverse weather conditions. Any adverse weather conditions must be substantiated by documentary evidence that weather conditions were abnormal for the specific time period claimed, could not have been anticipated by the Contractor, and adversely impacted the project in a manner that could not be avoided by rescheduling the Work or by implementing measures to protect against the weather so that the Work could proceed. A rain, windstorm, high water, or other natural phenomenon for the specific locality of the Work, which might reasonably have been anticipated from the previous 10-year historical records of the general locality of the Work, shall not be construed as abnormal. The parties agree that rainfall greater than the following levels cannot be reasonably anticipated:

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

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

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

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

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

In the event of any requests for additional compensation or additional Contract Time, or both, as applicable, arising under this Section D.2.3 for Unavoidable Delays, other than requests for additional compensation or additional Contract Time for differing site conditions for which a review process is established under Section D.2.1.2 (b), Contractor shall submit a written notification of the delay to the Owner's Authorized Representative within two (2) Days of the occurrence of the cause of the delay. This written notification shall state the cause of the potential delay, the project components impacted by the delay, and the anticipated additional Contract Time extension or the additional compensation, or both, as applicable, resulting from the delay. Within seven (7) Days after the cause of the delay has been mitigated, or in no case more than thirty (30) Days after the initial written notification, the Contractor shall submit to the Owner's Authorized Representative, a complete and detailed request for additional compensation or additional Contract Time, or both, as applicable, resulting from the delay.



If the Owner's Authorized Representative denies Contractor's request for additional compensation or adjustment of Contract Time, the Contractor may proceed to file a Claim under Section D.3, Claims Review Process.

If Contractor does not timely submit the notices required under this Section D.2, then unless otherwise prohibited by law, Contractor's Claim shall be barred.

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

- D.3.1 All Contractor Claims shall be referred to the Owner's Authorized Representative for review. Contractor's Claims, including Claims for additional compensation or additional Contract Time, shall be submitted in writing by Contractor to the Owner's Authorized Representative within five (5) Days after a denial of Contractor's initial request for an adjustment of Contract terms, payment of money, extension of Contract Time or other relief, provided that such initial request has been submitted in accordance with the requirements and within the time limits established in these OUS General Conditions. Within thirty (30) Days after the initial Claim, Contractor shall submit to the Owner's Authorized Representative a complete and detailed description of the Claim (the "Detailed Notice") that includes all information required by Section D.3.2. Unless the Claim is made in accordance with these time requirements, it shall be waived.
- D.3.2 The Detailed Notice of the Claim shall be submitted in writing by Contractor and shall include a detailed, factual statement of the basis of the Claim, pertinent dates, Contract provisions which support or allow the Claim, reference to or copies of any documents which support the Claim, the dollar value of the Claim, and the Contract Time extension requested for the Claim. If the Claim involves Work to be completed by Subcontractors, the Contractor will analyze and evaluate the merits of the Subcontractor claim prior to forwarding it and that analysis and evaluation to the Owner's Authorized Representative. The Owner's Authorized Representative and the Owner will not consider direct claims from Subcontractors, suppliers, manufacturers, or others not a party to this Contract. Contractor agrees that it will make no agreement, covenant, or assignment, nor will it commit any other act that will permit or assist any Subcontractor, supplier, manufacturer, or other to directly or indirectly make a claim against Owner.
- D.3.3 The Owner's Authorized Representative will review all Claims and take one or more of the following preliminary actions within ten (10) Days of receipt of the Detailed Notice of a Claim: (1) request additional supporting information from the Contractor; (2) inform the Contractor and Owner in writing of the time required for adequate review and response; (3) reject the Claim in whole or in part and identify the reasons for rejection; (4) based on principles of equitable adjustment, recommend approval of all or part of the Claim; or (5) propose an alternate resolution.
- D.3.4 The Owner's Authorized Representative's decision shall be final and binding on the Contractor unless appealed by written notice to the Owner within fifteen (15) Days of receipt of the decision. The Contractor must present written documentation supporting the Claim within fifteen (15) Days of the notice of appeal. After receiving the appeal documentation, the Owner shall review the materials and render a decision within thirty (30) Days after receiving the appeal documents.
- D.3.5 The decision of the Owner shall be final and binding unless the Contractor delivers to the Owner its request for mediation, which shall be a non-binding process, within fifteen (15) Days of the date of the Owner's decision. The mediation process will be considered to have commenced as of the date the Contractor delivers the request. Both parties acknowledge and agree that participation in mediation is a prerequisite to commencement of litigation of any disputes relating to the Contract. Both parties further agree to exercise their best efforts in good faith to resolve all disputes within sixty (60) Days of the commencement of the mediation through the mediation process set forth herein.
- In the event that a lawsuit must be filed within this sixty (60) Day period in order to preserve a cause of action, the parties agree that notwithstanding the filing, they shall proceed diligently with the mediation to its conclusion prior to actively prosecuting the lawsuit, and shall seek from the Court in which the lawsuit is pending such stays or extensions, including the filing of an answer, as may be necessary to facilitate the mediation process. Further, in the event settlements are reached on any issues through mediation, the parties agree to promptly submit the appropriate motions and orders documenting the settlement to the Court for its signature and filing.
- D.3.6 Should the parties arrive at an impasse regarding any Claims or disputed Claims, it is agreed that the parties shall participate in mediation as specified in Section D.3.5. The mediation process will be considered to have been commenced as of the date one party delivers to the other its request in writing to mediate. The mediator shall be an individual mutually acceptable to both parties, but in the absence of agreement each party shall select a temporary mediator and the temporary mediators shall jointly select the permanent mediator. Each party shall pay its own costs for the time and effort involved in mediation. The cost of the mediator shall be split equally between the two parties. Both parties agree to exercise their best effort in good faith to resolve all disputes in mediation. Participation in mediation is a mandatory requirement of both the Owner and the Contractor. The schedule, time and place for mediation will be mutually acceptable, or, failing mutual agreement, shall be as established by the mediator. The parties agree to comply with Owner's administrative rules governing the confidentiality of mediation, if any, and shall execute all necessary documents to give effect to such confidentiality rules. In any event, the parties shall not subpoena the mediator or otherwise require the mediator to produce records, notes or work product, or to testify in any future proceedings as to information disclosed or representations made in the course of mediation, except to the extent disclosure is required by law.
- D.3.7 Owner may at any time and at its discretion issue a Construction Change Directive adding to, modifying or reducing the scope of Work. Contractor and Owner shall negotiate the need for any adjustment to compensation or additional Contract Time related to the change, subject to the procedures for submitting requests or Claims for additional compensation or additional Contract Time established in this Section D. Unless otherwise directed by Owner's Authorized Representative, Contractor shall proceed with the Work while any request or Claim for additional compensation or additional Contract Time resulting from Work under a Change Order or Construction Change Directive is pending. Regardless of the review period or the final decision of the Owner's Authorized Representative, the Contractor shall continue to diligently pursue the Work as identified in the Contract Documents. In no case is the Contractor justified or allowed to cease Work without a written stop work order from the Owner or Owner's Authorized Representative.

## **SECTION E PAYMENTS**

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

The Contractor shall submit, at least ten (10) Days prior to submission of its first application for progress payment, a schedule of values ("Schedule of Values") for the contracted Work. This schedule will provide a breakdown of values for the contracted Work and will be the basis for progress payments. The breakdown will demonstrate reasonable, identifiable, and measurable components of the Work.

Unless objected to by the Owner's Authorized Representative, this schedule shall be used as the basis for reviewing Contractor's applications for payment. If objected to by Owner's Authorized Representative, Contractor shall revise the schedule of values and resubmit the same for approval of Owner's Authorized Representative.

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

E.2.1 Owner shall make progress payments on the Contract monthly as Work progresses. Payments shall be based upon estimates of Work completed and the Schedule of Values. All payments shall be approved by the Owner's Authorized Representative. A progress payment shall not be considered acceptance or approval of any Work or waiver of any defects therein. Owner shall pay to Contractor interest for over due claims at the rate of two-thirds of one percent per month on the progress payment, not including retainage, due the Contractor. Over due claims will be those that have not been paid within forty five (45) days from the latest of:

- (a) The date of the receipt of the accurate invoice;
- (b) The date of the initial billing statement if no invoice is received;
- (c) The date all goods have been received; or
- (d) The date the claim is made certain by agreement of the parties or by operation of law.

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

Owner reserves the right, instead of requiring the Contractor to correct or resubmit a defective or improper application for payment, to reject the defective or improper portion of the application for payment and pay the remainder of the application for payment that is correct and proper.

Owner, upon written notice to the Contractor, may elect to make payments to the Contractor only by means of Electronic Funds Transfers (EFT) through Automated Clearing House (ACH) payments. If Owner makes this election, the Contractor will be required to arrange for receipt of the EFT/ACH payments.

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

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

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

E.2.3 Generally, applications for payment will be accepted only for materials that have been installed. Under special conditions,

applications for payment for stored materials will be accepted at Owner's sole discretion. Such a payment, if made, will be subject to the following conditions:

- (a) The request for stored material shall be submitted at least thirty (30) Days in advance of the application for payment on which it appears. Applications for payment shall be entertained for major equipment, components or expenditures only.
- (b) The Contractor shall submit applications for payment showing the quantity and cost of the material stored.
- (c) The material shall be stored in a bonded warehouse and Owner's Authorized Representative shall be granted the right to access the material for the purpose of removal or inspection at any time during the Contract Period.
- (d) The Contractor shall name the Owner as co-insured on the insurance policy covering the full value of the property while in the care and custody of the Contractor until it is installed. A certificate noting this coverage shall be issued to the Owner.
- (e) Payments shall be made for materials only. The submitted amount of the application for payment shall be reduced by the cost of transportation and for the cost of an inspector to check the delivery at out of town storage sites. The cost of said inspection shall be borne solely by the Contractor.
- (f) Within sixty (60) Days of the application for payment, the Contractor shall submit evidence of payment covering the material stored.
- (g) Payment for stored materials shall in no way indicate acceptance of the materials or waive any rights under this Contract for the rejection of the Work or materials not in conformance with the Contract Documents.
- (h) All required documentation must be submitted with the respective application for payment.

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

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

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

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

- (a) Take that portion of the Contract Price properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the total Contract Price allocated to that portion of the Work in the Schedule of Values, less retainage as provided in Section E.5. Pending final determination of cost to the Owner of changes in the Work, no amounts for changes in the Work can be included in applications for payment until the Contract Price has been adjusted by Change Order;
- (b) Add that portion of the Contract Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction (or, if approved in advance by the Owner pursuant to Section E.2.3, suitably stored off the site at a location agreed upon in writing), less retainage as provided in Section E.5;
- (c) Subtract the aggregate of previous payments made by the Owner; and
- (d) Subtract any amounts for which the Owner's Authorized Representative has withheld or nullified payment as provided in the Contract Documents.

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

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

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

E.2.9 Contractor shall submit its initial MWESB Report within ten (10) Days of Contractor's execution of the Contract, or if there will be a Guaranteed Maximum Price (GMP) Amendment, then within ten (10) Days of Contractor's execution of the GMP Amendment. Contractor shall submit annual MWESB Reports on June 30 of each year the Contract is active. Contracts (or GMP Amendments) first executed by Contractor within ninety (90) Days before June 30 of the year of execution by Contractor may at the discretion of Owner be exempt from submitting the annual MWESB Report otherwise due on that June 30. The final MWESB Report shall be filed with the application for final payment. Timely receipt of MWESB Reports by Owner's Authorized Representative shall be a condition of any progress payments or final payment otherwise due.

### **E.3 PAYROLL CERTIFICATION REQUIREMENT**

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

### **E.4 DUAL PAYMENT SOURCES**

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

### **E.5 RETAINAGE**

E.5.1 Retainage shall be withheld and released in accordance with OAR 580-063-0045.

E.5.1.1 Owner may reserve as retainage from any progress payment an amount not to exceed five percent of the payment. As Work progresses, Owner may reduce the amount of retainage on or may eliminate retainage on any remaining monthly Contract payments after 50 percent of the Work under the Contract is completed if, in the Owner's opinion, such Work is progressing satisfactorily. Elimination or reduction of retainage shall be allowed only upon written application by the Contractor, which application shall include written approval of Contractor's surety; except that when the Work is 97-1/2 percent completed the Owner may, at its discretion and without application by the Contractor, reduce the retained amount to 100 percent of the value of the Work remaining to be done. Upon receipt of written application by the Contractor, Owner shall respond in writing within a reasonable time.

E.5.1.2 Contractor may request in writing:

- (a) to be paid amounts which would otherwise have been retained from progress payments where Contractor has deposited acceptable bonds and securities of equal value with Owner or in a custodial account or other mutually-agreed account satisfactory to Owner, with an approved bank or trust company to be held in lieu of the cash retainage for the benefit of Owner;
- (b) for construction projects over \$1,000,000, that retainage be deposited in an interest bearing account, established through the State Treasurer for state agencies, in a bank, savings bank, trust company or savings association for the benefit of Owner, with earnings from such account accruing to the Contractor; or
- (c) that the Owner allow Contractor to deposit a surety bond for the benefit of Owner, in a form acceptable to Owner, in lieu of all or a portion of funds retained, or to be retained. Such bond and any proceeds therefrom shall be made subject to all claims in the manner and priority as set forth for retainage.

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

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

fulfill contractual obligations, the interest provided by this subsection shall commence to run forty five (45) Days after the end of the 15-Day period.

- E.5.1.4 Owner will reduce the amount of the retainage if the Contractor notifies the controller of the Owner that the Contractor has deposited in an escrow account with a bank or trust company, in a manner authorized by the Owner's Authorized Representative, bonds and securities of equal value of a kind approved by the Owner's Authorized Representative.
- E.5.1.5 Contractor agrees that if Contractor elects to reserve a retainage from any progress payment due to any Subcontractor or supplier, such retainage shall not exceed five percent of the payment, and such retainage withheld from Subcontractors and suppliers shall be subject to the same terms and conditions stated in Subsection E.5 as apply to Owner's retainage from any progress payment due to Contractor.
- E.5.2 As provided in subsections C.2.2 and C.2.3, additional retainage in the amount of 25% of amounts earned shall be withheld and released in accordance with ORS 279C.845(7) when the Contractor fails to file certified statements as required by section C.2.1.

## **E.6 FINAL PAYMENT**

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

payee except those previously made in writing and identified by that payee as unsettled at the time of final application for payment.

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

## **SECTION F JOB SITE CONDITIONS**

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

Contractor shall confine equipment, storage of materials and operation of Work to the limits indicated by Contract Documents, law, ordinances, permits or directions of the Owner's Authorized Representative. Contractor shall follow the Owner's Authorized Representative's instructions regarding use of premises, if any.

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

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

F.2.5 Contractor shall at all times direct its activities in such a manner as to minimize adverse effects on the environment. Handling of all materials will be conducted so no release will occur that may pollute or become hazardous.

F.2.6 In an emergency affecting the safety of life or of the Work or of adjoining property, the Contractor, without special instruction or authorization from the Owner's Authorized Representative, shall act reasonably to prevent threatened loss or injury, and shall so act, without appeal, if instructed by the Owner's Authorized Representative. Any compensation claimed by the Contractor on account of emergency work shall be determined in accordance with section D.

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

F.3.1 Contractor shall be responsible for coordinating all cutting, fitting, or patching of the Work to make its several parts come together properly and fit to receive or be received by work of other contractors or Subcontractors shown upon, or reasonably implied by, the Contract Documents.

F.3.2 Contractor shall be responsible for restoring all cut, fitted, or patched surfaces to an original condition; provided, however, that if a different condition is specified in the Contract Documents, then Contractor shall be responsible for restoring such surfaces to the condition specified in the Contract Documents.

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

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

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

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

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

F.5.1.2 Contractor shall obtain the Owner's written consent prior to bringing onto the Work site any (i) environmental pollutants or (ii) hazardous substances or materials, as the same or reasonably similar terms are used in any applicable federal, state, or local statutes, rules or ordinances. Notwithstanding

such written consent from the Owner, the Contractor, at all times, shall:

- (a) properly handle, use and dispose of all environmental pollutants and hazardous substances or materials brought onto the Work site, in accordance with all applicable federal, state, or local statutes, rules, or ordinances;
- (b) be responsible for any and all spills, releases, discharges, or leaks of (or from) environmental pollutants or hazardous substances or materials which Contractor has brought onto the Work site; and
- (c) promptly clean up, without cost to the Owner, such spills, releases, discharges, or leaks to the Owner's satisfaction and in compliance with all applicable federal, state, or local statutes, rules or ordinances.

F.5.2 Contractor shall report all reportable quantity releases to applicable federal, state, and local regulatory and emergency response agencies. Reportable quantities are found in 40 CFR Part 302, Table 302.4 for hazardous substances and in OAR 340-142-0050 for all products addressed therein. Upon discovery, regardless of quantity, Contractor must telephonically report all releases to the Owner. A written follow-up report shall be submitted to Owner within 48 hours of the telephonic report. Such written report shall contain, as a minimum:

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

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

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

F.6.2 Upon being notified by Contractor of the presence of hazardous substance(s) on the project site, Owner shall arrange for the proper disposition of such hazardous substance(s).

#### **F.7 FORCE MAJEURE**

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

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

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

G.1.1 Contractor shall be responsible for all damage to property, injury to persons, and loss, expense, inconvenience, and delay that may be caused by, or result from, the carrying out of the Work to be done under this Contract, or from any act, omission or neglect of the Contractor, its Subcontractors, personnel, or agents.

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

G.1.3 In claims against any person or entity indemnified under this Section G.1.2 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under Section G.1.2 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

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

G.2.1 When the Contract Price is \$100,000 or more (or \$50,000 or more in the case of Contracts for highways, bridges and other transportation projects), the Contractor shall furnish and

maintain in effect at all times during the Contract Period a performance bond in a sum equal to the Contract Price and a separate payment bond also in a sum equal to the Contract Price. The bonds may be required if the Contract Price is less than the above thresholds if required by the Contract Documents.

G.2.2 Bond forms furnished by the Owner and notarized by awarded Contractor's surety company authorized to do business in Oregon are the only acceptable forms of performance and payment security, unless otherwise specified in the Contract Documents.

G.2.3 Before execution of the Contract the Contractor shall file with the Construction Contractors Board, and maintain in full force and effect, the separate public works bond required by Oregon Laws 2005, Chapter 360, and OAR 839-025-0015, unless otherwise exempt under those provisions. The Contractor shall also include in every subcontract a provision requiring the Subcontractor to have a public works bond filed with the Construction Contractors Board before starting Work, unless otherwise exempt, and shall verify that the Subcontractor has filed a public works bond before permitting the Subcontractor to start Work.

#### **G.3 INSURANCE**

G.3.1 Primary Coverage: Insurance carried by Contractor under this Contract shall be the primary coverage, and the Owner's insurance is excess and solely for damages or losses for which the Owner is responsible. The coverages indicated are minimums unless otherwise specified in the Contract Documents.

G.3.2 Workers' Compensation: All employers, including Contractor, that employ subject workers who work under this contract in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage, unless such employers are exempt under ORS 656.126. This shall include Employer's Liability Insurance with coverage limits of not less than \$100,000 for each accident. Contractors who perform the Work without the assistance or labor of any employee need not obtain such coverage if the Contractor certifies so in writing. Contractor shall ensure that each of its Subcontractors complies with these requirements. The Contractor shall require proof of such Workers' Compensation by receiving and keeping on file a certificate of insurance from each Subcontractor or anyone else directly employed by either the Contractor or its Subcontractors.

G.3.3 Builder's Risk Insurance:

G.3.3.1 Builder's Risk: During the term of this Contract, for new construction the Contractor shall obtain and keep in effect Builder's Risk insurance on an all risk form, including earthquake and flood, for an amount equal to the full amount of the Contract. Any deductible shall not exceed \$50,000 for each loss, except the earthquake and flood deductible shall not exceed 2 percent of each loss or \$50,000, whichever is more. The policy will include as loss payees the Owner, the Contractor and its Subcontractors as their interests may appear.

G.3.3.2 Builder's Risk Installation Floater: For other than new construction the Contractor shall obtain and keep in effect during the term of this Contract, a Builder's Risk Installation Floater for coverage of the Contractor's labor, materials and equipment to be used for completion of the Work performed under this Contract. The minimum amount of coverage to be carried shall be equal to the full amount of the Contract. This insurance shall include as loss payees the State of Oregon, the Owner, the Contractor and its Subcontractors as their interests may appear.

G.3.3.3 Such insurance shall be maintained until Owner has occupied the facility.

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

G.3.4 Liability Insurance:

G.3.4.1 Commercial General Liability: Contractor shall obtain, at Contractor's expense, and keep in effect during the term of this Contract, Commercial General Liability Insurance covering bodily injury and property damage in a form and with coverages that are satisfactory to the State. This insurance shall include personal injury liability, products and completed operations, and contractual liability coverage for the indemnity provided under this Contract (to the extent contractual liability coverage for the indemnity is available in the marketplace), and shall be issued on an occurrence basis. Contractor shall provide proof of insurance of not less than the following amounts:

Bodily Injury/Death:

Amounts not less than the amounts listed in the following schedule:

Per occurrence limit for any single claimant :

From commencement of the Contract term to  
 June 30, 2011: \$1,600,000  
 July 1, 2011 to June 30, 2012: \$1,700,000  
 July 1, 2012 to June 30, 2013: \$1,800,000  
 July 1, 2013 to June 30, 2014: \$1,900,000  
 July 1, 2014 to June 30, 2015: \$2,000,000  
 July 1, 2015 and thereafter the adjusted limitation as determined by the State Court Administrator pursuant to Oregon Laws 2009, chapter 67, section 3 (Senate Bill 311).

Per occurrence limit for any number of claimants:

From commencement of the Contract term to  
 June 30, 2011: \$3,200,000  
 July 1, 2011 to June 30, 2012: \$3,400,000  
 July 1, 2012 to June 30, 2013: \$3,600,000  
 July 1, 2013 to June 30, 2014: \$3,800,000  
 July 1, 2014 to June 30, 2015: \$4,000,000  
 July 1, 2015 and thereafter the adjusted limitation as determined by the State Court Administrator pursuant to Oregon Laws 2009, chapter 67, section 3 (Senate Bill 311).

Property Damage:

Amounts not less than the amounts listed in the following schedule:

Per occurrence limit for any single claimant:

From commencement of the Contract term to June 30, 2011: \$100,100.  
 Effective as of July 1 of each year the adjusted limitation will be as determined by the State Court Administrator pursuant to Oregon Laws 2009, chapter 67, section 5 (Senate Bill 311).

Per occurrence limit for any number of claimants:

From commencement of the Contract term to June 30, 2011: \$500,600.  
 Effective as of July 1 of each year the adjusted limitation will be as determined by the State Court Administrator pursuant to Oregon Laws 2009, chapter 67, section 5 (Senate Bill 311).

G.3.4.2 Automobile Liability: Contractor shall obtain, at Contractor's expense, and keep in effect during the term of this Contract, Automobile Liability Insurance covering owned, non-owned and/or hired vehicles, as applicable. The coverage may be written in combination with the Commercial General Liability Insurance. Contractor shall provide proof of insurance of not less than the following amounts:

Bodily Injury/Death:

Amounts not less than the amounts listed in the following schedule:

Per occurrence limit for any single claimant:

From commencement of the Contract term to  
 June 30, 2011: \$1,600,000.  
 July 1, 2011 to June 30, 2012: \$1,700,000.  
 July 1, 2012 to June 30, 2013: \$1,800,000.  
 July 1, 2013 to June 30, 2014: \$1,900,000.  
 July 1, 2014 to June 30, 2015: \$2,000,000.  
 July 1, 2015 and thereafter the adjusted limitation as determined by the State Court Administrator pursuant to Oregon Laws 2009, chapter 67, section 3 (Senate Bill 311).

Per occurrence limit for any number of claimants:

From commencement of the Contract term to  
 June 30, 2011: \$3,200,000.  
 July 1, 2011 to June 30, 2012: \$3,400,000.  
 July 1, 2012 to June 30, 2013: \$3,600,000.  
 July 1, 2013 to June 30, 2014: \$3,800,000.  
 July 1, 2014 to June 30, 2015: \$4,000,000.  
 July 1, 2015 and thereafter the adjusted limitation as determined by the State Court Administrator pursuant to Oregon Laws 2009, chapter 67, section 3 (Senate Bill 311).

Property Damage:

Amounts not less than the amounts listed in the following schedule:

Per occurrence limit for any single claimant:

From commencement of the Contract term to June 30, 2011: \$100,100.  
 Effective as of July 1 of each year the adjusted limitation will be as determined by the State Court Administrator pursuant to Oregon Laws 2009, chapter 67, section 5 (Senate Bill 311).

Per occurrence limit for any number of claimants:

From commencement of the Contract term to June 30, 2011: \$500,600.  
 Effective as of July 1 of each year the adjusted limitation will be as determined by the State Court Administrator pursuant to Oregon Laws 2009, chapter 67, section 5 (Senate Bill 311).

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

G.3.5 Additional Insured: The liability insurance coverage, except Professional Liability if included, required for performance of

this Contract shall include the State of Oregon, its departments, divisions, officers, and employees, as Additional Insureds but only with respect to the Contractor's activities to be performed under this Contract.

If Contractor cannot obtain an insurer to name the State of Oregon, its departments, divisions, officers and employees as Additional Insureds, Contractor shall obtain at Contractor's expense, and keep in effect during the term of this Contract, Owners and Contractors Protective Liability Insurance, naming the State of Oregon, its departments, divisions, officers and employees as Named Insureds with not less than a \$1,500,000.00 limit per occurrence. This policy must be kept in effect for 12 months following Final Completion. As evidence of coverage, Contractor shall furnish the actual policy to Owner prior to execution of the Contract.

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

**G.3.7** Certificate(s) of Insurance: As evidence of the insurance coverage required by this Contract, the Contractor shall furnish certificate(s) of insurance to the Owner prior to execution of the Contract. The certificate(s) will specify all of the parties who are Additional Insureds or Loss Payees. Insurance coverage required under this Contract shall be obtained from insurance companies or entities acceptable to the Owner that are allowed to provide such insurance under Oregon law. Eligible insurers include admitted insurers that have been issued a certificate of authority from the Oregon Department of Consumer and Business Services authorizing them to do an insurance business in the state of Oregon, and certain non-admitted surplus lines insurers that satisfy the requirements of applicable Oregon law and are approved by the Owner. The certificates will also specify that there shall be no cancellation, material change, potential exhaustion of aggregate limits or intent not to renew insurance coverages without thirty (30) Days' written notice from the insurer(s) to the Owner. To the extent Certificates of Insurance contain words to the effect that Contractor shall "endeavor to send notice of cancellation" or similar language, Contractor shall require its insurer to send such notice by making sure that the words "endeavor to" or similar words are removed from the Certificate. The Contractor shall be financially responsible for all deductibles, self-insured retentions and/or self-insurance included hereunder. Any deductible, self-insured retention and/or self-insurance in excess of \$50,000 shall be approved by the Owner in writing prior to execution of the Contract and is subject to Owner's approval.

**G.3.8** Retainer Contract Program: For the OUS Retainer Contract Program the term "Contract" as used in this Section G in the phrases "keep in effect during the term of this Contract" and "prior to execution of the Contract" shall mean each Retainer Contract Supplement issued under the Retainer Contract.

## **SECTION H SCHEDULE OF WORK**

### **H.1 CONTRACT PERIOD**

H.1.1 Time is of the essence on this Contract. The Contractor shall at all times carry on the Work diligently, without delay and punctually fulfill all requirements herein. Contractor shall

commence Work on the site within fifteen (15) Days of Notice to Proceed, unless directed otherwise.

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

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

### **H.2 SCHEDULE**

H.2.1 Contractor shall provide, by or before the pre-construction conference, a detailed schedule for review and acceptance by the Owner. The submitted schedule must illustrate Work by significant project components, significant labor trades, and long lead items broken down by building and/or floor where applicable. Each schedule item shall account for no greater than 5 % of the monetary value of the project or 5 % of the available Contract Time. Schedules with activities of less than one Day or valued at less than 1% of the Contract will be considered too detailed and will not be accepted. Schedules lacking adequate detail, or unreasonably detailed, will be rejected. Included within the schedule are the following: Notice to Proceed, Substantial Completion, and Final Completion. Schedules will be updated monthly and submitted with the monthly payment application. Acceptance of the Schedule by the Owner does not constitute agreement by the Owner as to the Contractor's sequencing, means, methods, or durations. Any positive difference between the Contractor's scheduled completion and the Contract completion date is float owned by the Owner. Owner reserves the right to negotiate the float if it is deemed to be in Owner's best interest to do so. In no case shall the Contractor make a claim for delays if the Work is completed within the Contract Time but after Contractor's scheduled completion.

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

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

## **SECTION I CORRECTION OF WORK**

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

The Contractor warrants to the Owner that materials and equipment furnished under the Contract will be of good quality and new unless otherwise required or permitted by the Contract Documents,



that the Work will be free from defects, and that the Work will conform to the requirements of the Contract Documents. Work failing to conform to these requirements shall be deemed defective. Contractor shall promptly remove from the premises and replace all defective materials and equipment as determined by the Owner's Authorized Representative, whether incorporated in the Work or not. Removal and replacement shall be without loss or expense to the Owner, and Contractor shall bear the cost of repairing all Work destroyed or damaged by such removal or replacement. Contractor shall be allowed a period of no longer than thirty (30) Days after Substantial Completion for completion of defective (punch list) work. At the end of the thirty-day period, or earlier if requested by the Contractor, Owner shall arrange for inspection of the Work by the Architect/Engineer. Should the work not be complete, and all corrections made, the costs for all subsequent reinspections shall be borne by the Contractor. If Contractor fails to complete the punch list work within the thirty (30) Day period, Owner may perform such work and Contractor shall reimburse Owner all costs of the same within ten (10) Days after demand without affecting Contractor's obligations.

## **I.2 WARRANTY WORK**

I.2.1 Neither the final certificate of payment nor any provision of the Contract Documents shall relieve the Contractor from responsibility for defective Work and, unless a longer period is specified, Contractor shall correct all defects that appear in the Work within a period of one year from the date of issuance of the written notice of Substantial Completion by the Owner except for latent defects which will be remedied by the Contractor at any time they become apparent. The Owner shall give Contractor notice of defects with reasonable promptness. Contractor shall perform such warranty work within a reasonable time after Owner's demand. If Contractor fails to complete the warranty work within such period as Owner determines reasonable, or at any time in the event of warranty work consisting of emergency repairs, Owner may perform such work and Contractor shall reimburse Owner all costs of the same within ten (10) Days after demand, without affecting Contractor's obligations. The Contractor shall perform the warranty Work by correcting defects within twenty-four (24) hours of notification by Owner, unless otherwise specified in the Contract Documents. Should the Contractor fail to respond within the specified response time, the Owner may, at its option, complete the necessary repairs using another contractor or its own forces. If Owner completes the repairs using Owner's own forces, Contractor shall pay Owner at the rate of one and one-half (1½) times the standard hourly rate of Owner's forces, plus related overhead and any direct non-salary costs. If Owner completes the repairs using another contractor, Contractor shall pay Owner the amount of Owner's direct costs billed by the other contractor for the work, plus the direct salary costs and related overhead and direct non-salary expenses of Owner's forces who are required to monitor that contractor's work. Work performed by Owner using Owner's own forces or those of another contractor shall not affect the Contractor's contractual duties under these provisions, including warranty provisions.

I.2.2 This provision does not negate guarantees or warranties for periods longer than one year including without limitation such guarantees or warranties required by other sections of the Contract Documents for specific installations, materials, processes, equipment or fixtures.

I.2.3 In addition to Contractor's warranty, manufacturer's warranties shall pass to the Owner and shall not take effect until affected Work has been accepted in writing by the Owner's Authorized Representative.

I.2.4 The one-year period for correction of Work shall be extended with respect to portions of Work performed after Substantial Completion by the period of time between Substantial Completion and the actual performance of the Work, and shall be extended by corrective Work performed by the Contractor

pursuant to this Section, as to the Work corrected. The Contractor shall remove from the site portions of the Work which are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

I.2.5 Nothing contained in this Section I.2 shall be construed to establish a period of limitation with respect to other obligations which the Contractor might have under the Contract Documents. Establishment of the period for correction of Work as described in this Section I.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

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

## **SECTION J**

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

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

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

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

J.1.2 The Owner shall notify Contractor and the Contractor's Surety in writing of the effective date and time of the suspension, and Owner shall notify Contractor and Contractor's surety in writing to resume Work.

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

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

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

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

J.3.1 Depending on the reason for suspension of the Work, the Contractor or the Owner may be due compensation by the other party. If the suspension was required due to acts or omissions of Contractor, the Owner may assess the Contractor actual costs of the suspension in terms of administration, remedial work by the Owner's forces or another contractor to correct the problem associated with the suspension, rent of temporary facilities, and other actual costs related to the suspension. If the suspension was caused by acts or omissions of the Owner, the Contractor shall be due compensation which shall be defined using Section D, Changes in Work. If the suspension was required through no fault of the Contractor or the Owner, neither party owes the other for the impact.

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

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

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

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

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

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

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

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

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

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

### **SECTION K CONTRACT CLOSE OUT**

#### **K.1 RECORD DOCUMENTS**

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

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

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

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

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

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

K.4.1 Contractor shall provide Owner notice of both Substantial and Final Completion. The certificate of Substantial Completion shall state the date of Substantial Completion, the responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance,

and the time within which the Contractor shall finish all items on the punchlist accompanying the Certificate. Both completion notices must be signed by the Contractor and the Owner to be valid. The Owner shall provide the final signature on the notices. The notices shall take effect on the date they are signed by the Owner.

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

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

#### **K.5 TRAINING**

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

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

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

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

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

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

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

#### **K.9 OTHER CONTRACTOR RESPONSIBILITIES**

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

#### **K.10 SURVIVAL**