

**OSU RESERVE CONTRACT
FOR CONSTRUCTION RELATED SERVICES**

This OSU Reserve Contract (“Reserve Contract” or “Contract”), is between:

“Contractor”:

Contractor Name
Contractor Address
[Contractor City], [Contractor State] [Contractor Zip]
[Contractor Authorized Signer Email]

and “Owner”:

Oregon State University
Construction Contracts Administration
644 SW 13th St.
Corvallis, OR 97333
constructioncontracts@oregonstate.edu

(each, a “Party” and collectively, the “Parties”).

This Reserve Contract is effective on the date it has been signed by every Party hereto and the requirements of Section 9 have been met (“Reserve Effective Date”).

RECITALS

WHEREAS, Owner issued certain Solicitation Documents inviting construction firms to provide construction related services to Owner;

WHEREAS, Owner having received and evaluated Contractor’s response to the Solicitation Documents, now desires to award a Reserve Contract to Contractor;

WHEREAS, Contractor desires to provide construction related services to Owner;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties, intending to be legally bound agree as follows:

AGREEMENT

1. INCORPORATION OF TERMS AND DOCUMENTS

Contractor agrees to provide construction related services (“Work”, as defined in the General Conditions) to Owner in accordance with Contractor’s completed construction related services Required Information Form (RIF) and with OSU General Conditions for Reserve Contracts (the “General Conditions”), dated as of May 1, 2024 and included as Attachment I attached hereto and all incorporated herein by these references. Capitalized terms not otherwise defined in this Reserve Contract shall have the meanings ascribed to them in the General Conditions.

2. WORK

Owner may request Work of Contractor pursuant to Contract Documents for specific scopes of Work (each, a "Scope") throughout the Term (as defined below) of the Contract. Upon receipt of such a request (each such request, a "Request"), Contractor may respond to the Request for the Scope, as defined in the Request. Contractor's response shall state fixed-price or a maximum not-to-exceed price for the Scope, in accordance with the Request, this Reserve Contract and the conditions of the Scope.

Upon Owner's election to award a Scope to Contractor, the Work and cost with regard to each such specific Scope will be specified in a written Reserve Contract Supplement (each, a "Supplement") and a Notice to Proceed may be issued. Each such Supplement shall be incorporated into the Contract Documents upon full execution thereof. From time to time, Owner and Contractor may elect to amend a Supplement by way of a Change Order to the Supplement (as defined in the General Conditions). Each such Change Order shall be incorporated into the Contract Documents upon full execution thereof.

Contractor's Work shall comply with the Contract Documents and Applicable Laws and shall be performed in accordance with the professional skill, care, and standards of other professionals performing similar work under similar conditions.

3. OWNER DOES NOT GUARANTEE THAT WORK WILL BE REQUESTED

Contractor acknowledges and agrees that Owner does not warrant or guarantee that any Work will be requested or any Scope authorized under this Reserve Contract. No Work shall be undertaken by Contractor pursuant to this Reserve Contract without a fully executed Supplement, detailing the specific Scope. Owner will not be obligated to make payments to Contractor for any Work performed without a fully executed Supplement.

4. COMPENSATION

Owner agrees to compensate Contractor for Work in accordance with the Contract Documents. If Contractor is to be compensated on a time and materials basis, Contractor shall provide Owner with a listing of wage rates, material unit costs, and overhead charges for the Scope in Contractor's response to Owner's Request.

Maximum compensation for all Scope of any given Supplement, including Direct Costs, Overhead and Profit, professional fees, subcontractor fees and Reimbursable Expenses, under any Supplement to this Reserve Contract shall not exceed the greater of \$2,000,000.00 or the maximum allowable under OSU Standards and Policies.

Pursuant to ORS 305.385, Contractor shall provide Owner with its Social Security or federal employer identification number, as applicable.

5. TERM AND TERMINATION

The term of this Reserve Contract (the "Term") shall commence on the Reserve Effective Date and shall expire on November 30, 2030, unless terminated earlier in accordance with the terms of this Reserve Contract. In addition to Owner's rights provided in the General Conditions, Owner may terminate this Reserve Contract immediately upon discovery that information set forth in the Contractor's completed RIF is no longer true or is false or misleading. Owner, in its sole discretion, may extend the Term of the Reserve Contract; the total Term will not exceed ten (10) years from the Reserve Effective Date.

6. MINIMUM WAGE RATES FOR PUBLIC WORKS

All Work performed pursuant to an executed Supplement is subject to Prevailing Wage Rate Laws (ORS 279C.800 to 279C.870, and hereafter, "PWR Law").

- A. Contractor shall comply with the requirements of ORS 279C.800 to 279C.870 as they relate to the payment of prevailing wages.
- B. Contractor shall pay workers not less than the specified minimum hourly rate of wages set forth in the applicable BOLI schedule of Prevailing Wage Rates for Public Works Contracts in Oregon, as indicated below. Contractor shall include the preceding requirement in any subcontract with a Sub-Contractor.
 - a. April 5, 2024 Prevailing Wage Rates ("PWR") Apprenticeship Rates
 - b. January 5, 2024 PWR for Public Works Contracts in Oregon
 - c. April 5, 2024 PWR Amendments
 - d. July 1, 2018 Definitions of Covered Occupations for Public Works Contracts in Oregon
 - e. These PWR are available online at:
http://www.boli.state.or.us/BOLI/WHDPWR/pwr_state.shtml
- C. If Contractor's Scope is subject to both the state prevailing wage rate law and the federal Davis-Bacon Act, Contractor shall pay the higher of the applicable state or federal prevailing rate of wage.
- D. Contractor, and any Sub-Contractor(s) retained by Contractor, must have a public works bond filed the Construction Contractors Board before starting work on the Project, unless exempt.
- E. In every agreement with Sub-Contractors providing services on the Project, Contractor shall require its Sub-Contractor(s) to provide a public works bond filed with the Construction Contractor's Board before starting work on the Project, unless exempt.

7. PERFORMANCE AND PAYMENT BONDS

Contractor shall provide to Owner a performance bond and a separate payment bond in accordance with the General Conditions for each separate Scope, pursuant to a Supplement in the amount of the Contract Price. Receipt of such bonds by Owner shall be a condition precedent to the effectiveness of any Supplement and to any payment due Contractor under

such Supplement.

8. PAYMENTS

Contractor shall submit invoices or applications for payment and Owner shall make payments for Work completed by Contractor in accordance with the General Conditions.

9. INSURANCE

Contractor shall maintain in full force, at its own expense, and for the duration of this Reserve Contract insurance required by Section G of the General Conditions, specifically Commercial General Liability, Business Automobile Liability, Workers Compensation and Umbrella Liability. In addition, upon request by the Owner, for each Supplement executed under this Reserve Contract, Contractor shall maintain in full force, at its own expense, and for the duration of the Supplement coverage(s) for Pollution Liability, Professional Liability, Builder's Risk Insurance and or an Installation Floater. Receipt by Owner of Certificates of Insurance, or other evidence of coverage, acceptable to Owner, of such insurance coverage(s) shall be a condition precedent to the effectiveness of this Reserve Contract as well as any Supplement and to any payment due Contractor under such Supplement.

10. OWNERSHIP OF WORK PRODUCT

A. Definitions. The following terms used in this Section 10 have the meanings set forth below:

- i. "Contractor Intellectual Property" means any intellectual property owned by the Contractor that is not Original Work Product.
- ii. "Original Work Product" means all Work Product created, conceived, or reduced to practice by the Contractor in connection with the Work.
- iii. "Third Party Intellectual Property" means any intellectual property owned by parties other than Owner or Contractor.
- iv. "Work Product" means every invention, discovery, work of authorship, documents (including without limitation Project Drawings), trade secret, or other tangible or intangible item, in any state of completion, and all intellectual property rights therein, that the Contractor is required to deliver to Owner under the Reserve Contract.

B. Ownership. Original Work Product is the exclusive property of Owner. Original Work Product that constitutes original works of authorship is "work made for hire" and Owner is the author within the meaning of the United States Copyright Act to the extent it qualifies as such. The Contractor hereby irrevocably assigns to Owner any and all of its rights, title, and interest in all Original Work Product, whether arising from copyright, patent, trademark, trade secret, or any other state or federal intellectual property law or doctrine. Upon Owner's reasonable request, the Contractor shall execute such further documents and instruments necessary to fully vest rights to Original Work Product in

Owner. The Contractor waives any and all rights relating to Original Work Product, including without limitation, any and all rights arising under 17 USC §106A.

- C. Contractor Intellectual Property.** To the extent that any portion of the Work Product is Contractor Intellectual Property or to the extent any Contractor Intellectual Property is necessary for Owner to reasonably enjoy and use Work Product, the Contractor hereby grants to Owner an irrevocable, non-exclusive, non-transferable, perpetual, royalty-free license to use Contractor Intellectual Property to the extent necessary to obtain the full benefit of the Work Product, including the right of Owner to authorize contractors, consultants, and others to do the same on Owner's behalf.
- D. Third Party Intellectual Property.** To the extent that any portion of the Work Product is Third Party Intellectual Property or to the extent any Third Party Intellectual Property is necessary for Owner to reasonably enjoy and use Work Product, the Contractor shall secure on Owner's behalf, and in the name of Owner, an irrevocable, non-exclusive, non-transferable, perpetual, royalty-free license to use the Third Party Intellectual Property to the extent necessary to obtain the full benefit of the Work Product, including the right of Owner to authorize contractors, consultants, and others to do the same on Owner's behalf.

11. AMENDMENTS

Any change to the terms and conditions of this Reserve Contract shall be made only upon a fully executed written Amendment executed by both Parties.

12. NOTICES

Except as otherwise expressly provided in this Reserve Contract or any Supplement, any notice required or permitted to be given under this Reserve Contract shall be given in writing by personal delivery, by email, or by mailing the same, postage prepaid to Contractor or Owner at the address set forth on the first page of this Reserve Contract or to such other address as either Party may from time to time specify in writing to the other Party. To be effective against Owner, such email transmission must be confirmed by email acknowledgment. Any communication or notice so addressed and mailed will be deemed to be given seven (7) days after mailing. Any communication or notice by personal delivery will be deemed to be given when actually delivered. Regular, day-to-day communication between the Parties may be transmitted through one of the methods set forth above, in person, by telephone, by e-mail, or by other similar electronic transmission.

13. LICENSING; LEGAL CAPACITY TO CONDUCT BUSINESS

Contractor shall be registered to do business in the State of Oregon and shall continuously maintain all licenses required by Applicable Laws for the operation of its business or performance of the Work under this Reserve Contract throughout the Term. Contractor shall

demonstrate its legal capacity to do business and perform the Work in the State of Oregon before entering into any Supplement.

14. APPLICABLE LAW; JURISDICTION AND VENUE

This Reserve Contract, as it may from time to time be amended, shall be governed and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, or suit between Owner and Contractor that arises out of or relates to performance of this Reserve Contract shall be brought and conducted solely and exclusively within the Circuit Court for Benton County, for the State of Oregon. Provided, however, that if any such claim, action, or suit must be brought only a federal forum, it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. In no way shall this Section 14 be construed as a waiver by Owner of any form of defense or immunity, whether it is 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 RESERVE CONTRACT, HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS.

15. SUCCESSORS IN INTEREST

The provisions of this Reserve Contract, including all Supplements, Supplement Amendments, Change Orders, and Amendments shall be binding upon and inure to the benefit of the Parties hereto, and their respective authorized successors and assigns.

16. EXECUTION AND COUNTERPARTS

This Reserve Contract and any Supplement Change Order and or Amendment hereto may be executed in several counterparts, each of which shall be an original, all of which shall constitute but one and the same instrument.

17. RESERVED

18. MERGER CLAUSE

THIS RESERVE CONTRACT, TOGETHER WITH THE OTHER CONTRACT DOCUMENTS, CONSTITUTES THE ENTIRE AGREEMENT BETWEEN THE PARTIES. THERE ARE NO UNDERSTANDINGS, AGREEMENTS, OR REPRESENTATIONS, ORAL OR WRITTEN, NOT SPECIFIED HEREIN REGARDING THIS RESERVE CONTRACT. NO AMENDMENT, CONSENT, OR WAIVER OF TERMS OF THIS RESERVE CONTRACT WILL BIND EITHER PARTY UNLESS IN WRITING, CLEARLY IDENTIFIED AS AN AMENDMENT, CONSENT, OR WAIVER, AND SIGNED BY THE PARTY AGAINST WHOM IT IS TO BE ENFORCED. ANY SUCH AMENDMENT, CONSENT, OR WAIVER WILL BE EFFECTIVE ONLY IN THE SPECIFIC INSTANCE AND FOR THE SPECIFIC PURPOSE GIVEN. CONTRACTOR, BY THE SIGNATURE BELOW OF ITS AUTHORIZED REPRESENTATIVE, ACKNOWLEDGES HAVING READ AND

UNDERSTOOD THIS RESERVE CONTRACT AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

IN WITNESS HEREOF, the Parties have duly executed this Reserve Contract as of the dates set forth below.

[Contractor name], Contractor

Oregon State University, Owner

Signature: _____

Signature: _____

Print Name: _____

Bruce Daley
Associate Vice President University
Facilities, Infrastructure and Operations

Title: _____

Date: _____

Date: _____

OREGON STATE UNIVERSITY GENERAL CONDITIONS FOR RESERVE CONTRACTS

May 1, 2024

INSTRUCTIONS: These Oregon State University General Conditions for Reserve Contracts ("General Conditions") apply to all designated Reserve Contracts. Changes to the General Conditions (including any additions, deletions or substitutions) can only be made by attaching Supplemental General Conditions. The text of these General Conditions should not otherwise be altered.

TABLE OF SECTIONS

SECTION A GENERAL PROVISIONS

- A.1 DEFINITION OF TERMS
- A.2 SCOPE OF WORK
- A.3 INTERPRETATION OF CONTRACT DOCUMENTS
- A.4 EXAMINATION OF PLANS, SPECIFICATIONS, AND SITE
- A.5 INDEPENDENT CONTRACTOR STATUS
- A.6 RETIREMENT SYSTEM STATUS AND TAXES
- A.7 GOVERNMENT EMPLOYMENT STATUS

SECTION B ADMINISTRATION OF THE SUPPLEMENT

- B.1 OWNER'S ADMINISTRATION OF THE SUPPLEMENT
- B.2 CONTRACTOR'S MEANS AND METHODS
- B.3 MATERIALS AND WORKMANSHIP
- B.4 PERMITS
- B.5 COMPLIANCE WITH GOVERNMENT REGULATIONS
- B.6 SUPERINTENDENCE
- B.7 INSPECTION
- B.8 SEVERABILITY
- B.9 ACCESS TO RECORDS
- B.10 WAIVER
- B.11 SUBCONTRACTS AND ASSIGNMENT
- B.12 SUCCESSORS IN INTEREST
- B.13 OWNER'S RIGHT TO DO WORK
- B.14 OTHER CONTRACTS
- B.15 GOVERNING LAW
- B.16 LITIGATION
- B.17 SUBMITTALS, SHOP DRAWINGS, PRODUCT DATA, AND SAMPLES
- B.18 SUBSTITUTIONS
- B.19 USE OF PLANS AND SPECIFICATIONS
- B.20 FUNDS AVAILABLE AND AUTHORIZED
- B.21 NO THIRD-PARTY BENEFICIARIES
- B.22 OWNER PROJECT MANAGEMENT SOFTWARE

SECTION C WAGES AND LABOR

- C.1 MINIMUM WAGES RATES ON PUBLIC WORKS
- C.2 PAYROLL CERTIFICATION AND FEE REQUIREMENTS
- C.3 PROMPT PAYMENT AND SUPPLEMENT CONDITIONS
- C.4 PAYMENT FOR MEDICAL CARE
- C.5 HOURS OF LABOR

**SECTION D
CHANGES IN THE SCOPE**

- D.1 CHANGES IN THE SCOPE
- D.2 DELAYS
- D.3 CLAIMS REVIEW PROCESS

**SECTION E
PAYMENTS**

- E.1 SCHEDULE OF VALUES
- E.2 APPLICATIONS FOR PAYMENT
- E.3 PAYROLL CERTIFICATION REQUIREMENT
- E.4 DUAL PAYMENT SOURCES
- E.5 RETAINAGE
- E.6 FINAL PAYMENT

**SECTION F
JOB SITE CONDITIONS**

- F.1 USE OF PREMISES
- F.2 PROTECTION OF WORKERS, PROPERTY, AND THE PUBLIC
- F.3 CUTTING AND PATCHING
- F.4 CLEANING UP
- F.5 ENVIRONMENTAL CONTAMINATION
- F.6 ENVIRONMENTAL CLEAN-UP
- F.7 FORCE MAJEURE

**SECTION G
INDEMNITY, BONDING AND INSURANCE**

- G.1 RESPONSIBILITY FOR DAMAGES/INDEMNITY
- G.2 PERFORMANCE AND PAYMENT SECURITY, PUBLIC WORKS BOND
- G.3 INSURANCE

**SECTION H
SCHEDULE OF WORK**

- H.1 SUPPLEMENT PERIOD
- H.2 SCHEDULE
- H.3 PARTIAL OCCUPANCY OR USE

**SECTION I
CORRECTION OF SCOPE**

- I.1 CORRECTIONS OF SCOPE BEFORE FINAL PAYMENT
- I.2 WARRANTY WORK

**SECTION J
SUSPENSION AND/OR TERMINATION OF THE WORK**

- J.1 OWNER'S RIGHT TO SUSPEND THE WORK
- J.2 CONTRACTOR'S RESPONSIBILITIES
- J.3 COMPENSATION FOR SUSPENSION
- J.4 OWNER'S RIGHT TO TERMINATE SUPPLEMENT
- J.5 TERMINATION FOR CONVENIENCE
- J.6 ACTION UPON TERMINATION

SECTION K
SUPPLEMENT CLOSE-OUT

- K.1 RECORD DOCUMENTS
- K.2 OPERATION AND MAINTENANCE MANUALS
- K.3 COMPLETION NOTICES
- K.4 TRAINING
- K.5 EXTRA MATERIALS
- K.6 ENVIRONMENTAL CLEAN-UP
- K.7 CERTIFICATE OF OCCUPANCY
- K.8 OTHER CONTRACTOR RESPONSIBILITIES
- K.9 SURVIVAL

SECTION A GENERAL PROVISIONS

A.1 DEFINITION OF TERMS

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

ALLOWANCE, means items of Scope that Contractor offers to perform at a price that is reasonably estimated but not definitive.

AMENDMENT, means a writing which, when fully executed by the Parties to this Supplement, constitutes a change to a Contract Document. Amendments to Supplements (hereinafter a "Change Order") shall be issued in accordance with the changes provisions of Section D and, if applicable, establish a Supplement Price or Supplement Time adjustment.

APPLICABLE LAWS, means federal, state and local laws, codes, rules, regulations and ordinances applicable to the Work, Scope, Reserve Contract, and to the Supplement.

AUTHORITIES HAVING JURISDICTION (AHJ), means any federal, state, county, municipal, local or other governmental body having jurisdiction over approval of Drawings, Specifications, the Work, the Scope, the Project or the job site.

CHANGE ORDER, means Owner's written order, signed by Owner and Contractor, authorizing and directing a modification to the Contract Documents due to a change to: (i) the scope of the Work, (ii) the Supplement Time or a material change to the schedule of performance of the Scope or the Project, or (iii) the Supplement Sum or Contractor's compensation.

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 Supplement terms, payment of money, extension of Supplement Time or other relief, submitted in accordance with the requirements and within the time limits established for review of Claims in these General Conditions.

CONSTRUCTION CHANGE DIRECTIVE, means a written order by the Owner 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.

CONSTRUCTION SCHEDULE, means the schedule prepared by the Contractor in Critical Path Method format and approved by the Owner, and all adjustments thereto approved by the Owner, that describes sequence and timing of the Work.

CONTRACT DOCUMENTS, means collectively, the Reserve Contract, these General Conditions, Supplemental General Conditions if any, Supplement(s), the accepted Request, Plans (including all addenda), Specifications (including all addenda), Change Orders, Amendments, Construction Change Directives, Solicitation Document and addenda thereto, Instructions to Offerors, and Supplemental Instructions to Offerors (if any), the Construction Schedule prepared and approved in accordance with the Construction Documents, and all other required Submittals.

CONTRACTOR, means the Entity awarded a Reserve Contract and or Supplement for the Scope contemplated.

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

DESIGN PROFESSIONAL, means the Entity(ies) appointed by the Owner to make drawings and specifications and, to provide administration of the Work to the extent set forth in a Supplement or by supplemental instruction of Owner (under which Owner may delegate responsibilities to the Design professional), in accordance with ORS Chapter 671 (Architects) or ORS Chapter 672 (Engineers) and administrative rules adopted thereunder.

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, Medicare and unemployment insurance, and fringe benefits required by agreement or custom; project specific insurance (including, without limitation, Builder's Risk Insurance and/or Installation Floater Insurance); bond premiums, rental cost of equipment, and machinery required for execution of the Work; and the additional costs of field personnel directly attributable to the Work.

FINAL COMPLETION, means the final completion of all requirements under the Contract Documents, including Supplement 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.

FINAL PAYMENT, means the last payment to the Contractor, including retainage, in connection with the Work.

FORCE MAJEURE, means any reasonably unanticipated circumstance not within a Party's reasonable control, which prevents a Party from performing its obligations under the Reserve Contract where such cause is beyond the Party's reasonable control and the non-performing party has been unable to avoid or overcome the act by the exercise of due diligence. Such acts or events include without limitation, acts of God, flood, earthquake, fire, maritime or aviation disaster, pandemic, epidemic, civil disturbance, embargo, terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo or breaking off of diplomatic relations, or nuclear, chemical or biological contamination. The nonperforming Party shall, however, make all reasonable efforts to remove or eliminate such a cause of delay or default and shall, upon cessation of the cause, diligently pursue performance of its obligations.

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 Scope. A MWESB report is required as a condition of final payment for all Supplements. The 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 Supplements and Amendments incorporated during the course of the project. The report 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 Scope defined in the Contract Documents. Notwithstanding the Notice to Proceed, Contractor shall not be authorized to proceed with the Scope until all initial Supplement requirements, including the Supplement, performance bond and payment bond, and certificates of insurance, have been fully executed and submitted to Owner in a suitable form.

OFFEROR, means an Entity who submits a response to a Solicitation Document or Request, also known as Bidder, Proposer or Respondent.

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 expenses as wages or salary of personnel above the level of working foreman (i.e., superintendents and project managers), Reimbursable Expenses, expenses of Contractor's offices and supplies at the job site (e.g. job trailer) and at Contractor's principal place of business and including expenses of personnel staffing the job site office and Contractor's principal place of business, and Commercial General Liability Insurance, Automobile Liability Insurance, Workers' Compensation coverage, Umbrella Liability Insurance and Professional Liability Insurance.

OWNER, means Oregon State University (OSU). Owner may elect, by written notice to Contractor, to delegate certain duties to more than one party, including without limitation, to a Design Professional. However, nothing in these General Conditions is intended to abrogate the separate design professional responsibilities of Architects under ORS Chapter 671 or of Engineers under ORS Chapter 672.

PLANS, means the drawings which show the location, type, dimensions, and details of the Scope to be done under a given Supplement.

PROJECT, means the total design, development and construction of which the Work performed under the Construction Documents may be the whole or a part.

PUNCH LIST, means the list of Work yet to be completed or deficiencies which need to be corrected in order to achieve Final Completion of the Supplement.

RECORD DOCUMENT, means the as-built Plans, Specifications, testing and inspection records, product data, samples, manufacturer and distributor/supplier warranties evidencing transfer of ownership to Owner, operational and maintenance

manuals, shop drawings, Construction Change Directives, MWESB Reports, correspondence, certificate(s) of occupancy, and other documents listed in Subsection B.9.1 of these General Conditions, recording all Services performed.

REIMBURSABLE EXPENSES, means those expenses incurred (without overhead, fee, markup or profit) made by the Contractor and its subcontractors in the interest of the Project for mileage and travel expenses required for the performance of the Work (not including daily travel to and from the job site).

REQUEST, means a binding bid or proposal submitted by an Entity in response to Solicitation Document or Request by Owner.

SCOPE, means a specific scope of Work, as detailed in a particular Supplement.

SOLICITATION DOCUMENT, means a document used in a comprehensive or limited procurement soliciting two or more qualified sources by public notice for the same specifications and requirements.

SPECIFICATION, means a description of the physical, functional, or performance characteristics, or of the nature of the goods, services or construction, including any requirement to be satisfied by a product, material or process indicating, if appropriate, the procedures to determine whether the requirements are satisfied. Specifications may be incorporated by reference and/or may be attached to a given Supplement.

SUBCONTRACT, means a contract between the Contractor and a subcontractor for the performance of a portion of the Scope.

SUBCONTRACTOR, means an Entity having a direct contract with the Contractor, or another Subcontractor, to perform one or more items of the Scope.

SUBSTANTIAL COMPLETION, means the date when the Owner accepts in writing the construction, alteration or repair of the improvement to real property constituting the Scope or any designated portion thereof as having reached that state of completion when it may be used or occupied for its intended purpose in accordance with the Contract Documents. 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.3.2 unless otherwise modified by Supplemental General Conditions.

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

SUPPLEMENT, means a writing which, when fully executed by the Parties thereto, constitutes written agreement between the Owner and the Contractor comprised of the Contract Documents which describe the Scope to be completed and the obligations between the Parties.

SUPPLEMENT PERIOD, as set forth in the Contract Documents, means the total period of time beginning with the full execution of a Supplement and, if applicable, the issuance of a Notice to Proceed and concluding upon Final Completion.

SUPPLEMENT PRICE, means the total dollar amount payable by Owner to Contractor, as increased or decreased by the price of approved alternates, Supplement Amendments, Construction Change Directives and Change Orders, as indicated in the Contract Documents.

SUPPLEMENT TIME, means any incremental period of time allowed under the Supplement to complete any portion of the Scope as reflected in the project schedule.

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

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

A.2 SCOPE

The Scope contemplated under any given Supplement must include 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. Execution of any given Supplement by the Contractor is an express and unqualified representation that the Contractor understands the intent stated therein with respect to the Scope.

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.

A.3.2 Contract Documents are intended to be complementary. Whatever is called for in one is interpreted to be called for in all.

A.3.3 In the event of conflicts, inconsistencies, or ambiguities between or among the Contract Documents, interpretations shall be based on the following order of precedence:

- (a) Supplements, Amendments, Change Orders and Construction Change Directives, with those of later date having precedence over those of an earlier date;

- (b) The Reserve Contract.

- (c) The Supplemental General Conditions;

- (d) 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);

- (1) Large-scale drawings on Plans;

- (2) Small-scale drawings on Plans;

- (3) Dimension numbers written on Plans which shall prevail and take precedence over dimensions scaled from Plans;

- (h) The Solicitation Document, and any addenda thereto with those of later date having precedence over those of an earlier date.

A.3.4 In the event that there are inconsistencies between the other provisions or terms in the Contract Documents and these General Conditions, the more specific Contract provision or terms shall govern. All provisions of the Contract Documents shall be read with a purpose and intent to fully complete the Project Work with a greater degree of the quality or quantities referenced in the Contract Documents, to complete the same in a timely and workmanlike manner.

A.3.5 In the event of conflicts, inconsistencies, discrepancies or ambiguities between or among the Drawings, or between or among the Specifications, remaining after application of Section A.3.3 those Drawings or Specifications of later date shall have precedence over those of earlier date. If a conflict, inconsistency, discrepancy or ambiguity nonetheless remains, the Contractor shall provide written notice thereof to the Design Professional and Owner. Thereafter, the Contractor shall proceed as ordered in writing by the Design Professional. Thereafter, unless otherwise ordered in writing by the Design Professional, the Contractor shall provide the better quality of, and the greater quantity of, the Work. The provisions of this Section A.3.5 shall apply only to conflicts, inconsistencies, discrepancies or ambiguities in express requirements of the Drawings and Specifications and not to interpretations thereof by the Owner or Design Professional.

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 Request, has made a careful examination of the Contract Documents; fully understands the responsibilities and obligations the Contractor is accepting, including indemnity and insurance obligations, 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 site 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 Scope. No oral agreement or conversation with any officer, agent, or personnel of the Owner, or with the Design Professional either before or after the execution of any given Supplement, 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 Scope, Contractor shall have the duty to make inquiry of the Owner and as applicable, the Design Professional 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 Supplement requirements.

A.4.3 Any design errors or omissions noted by the Contractor shall be reported promptly to the Owner, and confirmed in writing including without limitation, any nonconformity with Applicable Laws.

A.4.4 If the Contractor believes that adjustments to cost or Supplement Time is involved because of clarifications or instructions issued by the Owner (or Design Professional) in response to the Contractor's notices or requests for information, the Contractor must submit a written request to the Owner, setting forth the nature and specific extent of the request, including all time and cost impacts against the Supplement as soon as possible, but no later than thirty (30) Days after receipt by Contractor of the clarifications or instructions issued. If the Owner denies Contractor's request for additional compensation, additional Supplement 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 any given Supplement 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 any given Supplement. Contractor will not be eligible for any benefits from these 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 any given Supplement.

SECTION B ADMINISTRATION OF THE SUPPLEMENT

B.1 OWNER'S ADMINISTRATION OF THE SUPPLEMENT

B.1.1 The Owner shall administer any given Supplement 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 under the given Scope. The Owner will act as provided in the Contract Documents, unless modified in writing in accordance with other provisions of the Supplement. In performing these tasks, the Owner may rely on the Design Professional or other consultants to perform some or all of these tasks.

B.1.2 The Owner will visit the site at intervals appropriate to the stage of the Contractor's operations (1) to become generally familiar with and to keep informed about the progress and quality of the portion of the Scope completed, (2) to endeavor to guard against defects and deficiencies in the Work, and (3) to determine in general if Work is being performed in a manner indicating that the Scope, when fully completed, will be in accordance with the Contract Documents. The Owner will not make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Owner 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 Scope. Inspection of the progress, quantity, or quality of the Work performed by the Owner, any Owner representative, and public agency, the Design Professional, or any inspector, shall not relieve the Contractor of any responsibility for the compliance of all Scope with the Contract Documents.

B.1.3 Except as otherwise provided in the Contract Documents or when direct communications have been specifically authorized, the Owner and Contractor shall communicate with each other about matters arising out of or relating to the Supplement. Communications by and with the Design Professional's consultants shall be through the Design Professional. Communications by and with Subcontractors and material suppliers shall be through the Contractor. Communications by and with separate contractors shall be through the Owner.

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 Scope under the Supplement, 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 and site during the course of construction and to mitigate any adverse impacts to the Scope or site, 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 Scope 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 for performing the Work as required by the Contract Documents. Defective Work shall be corrected at the Contractor's expense.

B.3.3 Work performed, and materials furnished shall be subject to inspection and/or observation and testing by the Owner or Owner's other Contractors, as applicable, to determine if Work performed and or materials furnished conform to the Contract Documents. Inspection of the Work by the Owner, or Owner's other Contractors, as applicable, 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 to have safe access to the Scope and site 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 and include the cost of the samples in the Supplement Price.

B.4 PERMITS

Owner shall obtain and pay for the general building permit and pay for any specialty permits required for the Scope. Contractor shall obtain and pay for all other 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, Owner, and its departments, divisions, members and employees.

B.5 COMPLIANCE WITH GOVERNMENT REGULATIONS

B.5.1 Contractor shall comply with Applicable Laws pertaining to the Work and any given Scope under a Supplement. Failure to comply with such requirements shall constitute a breach of contract and shall be grounds for Contract and or Supplement termination. Without limiting the generality of the foregoing, Contractor expressly agrees to comply with the following, as applicable:

(a) 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 Chapters 659 and 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 Business Enterprise, Minority, Women, Socially Disadvantaged Individual, Service Disabled Veterans, Economically Disadvantaged 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 Applicable Laws or any given Supplement 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 Scope as described in ORS 701.005 under any given Supplement unless such Subcontractors are registered with the Construction Contractors Board in accordance with ORS 701.021 to 701.068 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 Scope under any given Supplement 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 952-001-0100. 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 and or Supplement 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 Scope, 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 shall be confirmed in writing to the Contractor.

B.7 INSPECTION

B.7.1 Owner shall have access to the site at all times.

B.7.2 Inspection of the Work will be made by the Owner at its discretion. The Owner 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, at the discretion of the Owner, 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 Scope required by the Contract Documents or by Applicable Laws or orders of public AHJ. 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 timely notice of when and where tests and inspections are to be made so that the Owner 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.

B.7.4 As required by the Contract Documents, Work performed, or material used without required inspection or testing and/or without providing timely notice to the Owner 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 Supplement. If the Work uncovered is unacceptable or was done without required testing or inspection or sufficient notice to the Owner, 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, the uncovering and restoration will be paid for pursuant to a Change Order.

B.7.6 If any testing or inspection reveals failure of the portions of the Scope 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 and Design Professional'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 Scope, or the Owner has an agreement with other public or private organizations, or if any portion of the Scope is being performed for a third party or in close proximity to third party facilities, representatives of these organizations shall have the right to inspect the Work affecting their interests or property. Their right to inspect shall not make them a party to the Supplement and shall not interfere with the rights of the Parties of the Supplement. Instructions or orders of such parties shall be transmitted to the Contractor, through the Owner.

B.8 SEVERABILITY

If any provision of the Contract and or any given Supplement 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 Documents 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 site, one record copy of the complete Contract Documents, 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 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 Work Supplement shall be subject to litigation, Contractor shall retain all such records until all litigation is resolved and Contractor shall continue to provide Owner and/or its agents with full access to such records until such time as all litigation is complete and all periods for appeal have expired and full and final satisfaction of any judgment, order or decree is recorded and Owner receives a record copy of documentation from Contractor.

B.10 WAIVER

Failure of the Owner to enforce any provision of the Contract and or any given Supplement 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 the Contract and or any given Supplement.

B.11 SUBCONTRACTS AND ASSIGNMENT

B.11.1 Contractor shall require each Subcontractor, to the extent of the Scope to be performed by the Subcontractor, to be bound by the terms and conditions of these 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 tier.

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 the Supplement 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 the Contract and or any given Supplement, in whole or in part, without the prior written approval of the Owner. No such written approval shall relieve Contractor of any obligations of the Contract and or any given Supplement, 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 and or any given Supplement as if no assignment had occurred.

B.12 SUCCESSORS IN INTEREST

The provisions of the Contract and any given Supplement shall be binding upon and shall accrue to the benefit of the Parties to the Contract and any given Supplement 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 shall coordinate work with the other contractors or forces, cooperate with all other contractors or forces, carry out the Scope 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 will resolve any disagreements that may arise between or among Contractor and the other contractors over the method or order of performing all work (including the Scope). In case of unavoidable interference, the Owner will establish work priority (including the Scope) 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 Scope of any given Supplement. The Contractor of the Supplement shall 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

The Contract and any given Supplement 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 the Contract and or any given Supplement 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 Benton 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 SUBMITTALS, SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

B.17.1 The Contractor shall prepare and keep current, for the Design Professional's approval (or for the approval of Owner if approval authority has not been delegated to the Design Professional), a schedule and list of submittals which is coordinated with the Contractor's construction schedule and allows the Design Professional 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 Scope by the Contractor or a Subcontractor (including any sub-subcontractor), manufacturer, supplier or distributor to illustrate some portion of the Scope.
- (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 Scope.
- (c) Samples are physical examples which illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

B.17.2 Shop drawings, product data, samples and similar submittals are not Contract Documents. The purpose of which is to demonstrate for those portions of the Scope (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 Design Professional 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 Design Professional, 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 Design Professional's review of the Contractor's Submittals shall not relieve the Contractor of its obligations under the Contract Documents. The Design Professional'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 Design professional 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 Design professional without action.

B.17.3 The Contractor shall review for compliance with the Contract Documents, approve and submit to the Design professional 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 Scope 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 Design professional without action.

B.17.4 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 Scope and of the Contract Documents.

B.17.5 The Contractor shall perform no portion of the Scope 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 Design Professional.

B.17.6 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 Design Professional's review or approval of Shop Drawings, Product Data, Samples or similar Submittals unless the Contractor has specifically informed the Design professional in writing of such deviation at the time of submittal and (i) the Design professional has given written approval to the specific deviation as a minor change in the Scope, or (ii) a Supplement Amendment 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 Design professional's review or approval thereof.

B.17.7 In the event that Owner elects not to have the obligations and duties described under this Section B.17 performed by the Design professional, or in the event no Design Professional is employed by Owner on the project, all obligations and duties assigned to the Design Professional hereunder shall be performed by the Owner.

B.18 SUBSTITUTIONS

The Contractor may make Substitutions only with the written consent of the Owner, after evaluation by the Owner and only in accordance with a Supplement Amendment 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 shall 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 any given Supplement 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 Scope to be completed in all respects.

B.19 USE OF PLANS AND SPECIFICATIONS

Plans, Specifications and related Contract Documents furnished to Contractor by Owner or Owner's Design Professional shall be used solely for the performance of the Work under any given Supplement. Contractor and its Subcontractors and suppliers are authorized to use and reproduce applicable portions of such documents appropriate to the execution of the Scope 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.20 FUNDS AVAILABLE AND AUTHORIZED

If Owner fails to receive funding, appropriations, allocations or other expenditure authority as contemplated by Owner's budget and Owner determines, in its assessment and ranking of the policy objectives explicit or implicit in Owner's budget, Owner may determine it is necessary to and may terminate the Reserve Contract and or any Supplements.

B.21 NO THIRD-PARTY BENEFICIARIES

Owner and Contractor are the only parties to this Contract and any given Supplement and are the only parties entitled to enforce its terms. Nothing in this Contract and or any given Supplement 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 and or any given Supplement.

B.22 OWNER PROJECT MANAGEMENT SOFTWARE

Owner may require Contractor to be an active participant in Owner's Project Management Software. Active participation may include but is not limited to data entry for request for information, potential change orders, and invoice entry.

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. Pursuant to ORS 279C.830(1)(c), Contractor shall pay workers at not less than the specified minimum hourly rate of wage and shall include that requirement in all subcontracts. If the Work is subject to both the state prevailing wage rate law and the federal Davis-Bacon Act, Contractor shall pay the higher of the applicable state or federal prevailing rate of wage. Contractor shall provide written notice to all workers of the number of hours per day and days per week such workers may be required to work.

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, 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 Scope of any given Supplement.

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 SUPPLEMENT CONDITIONS

C.3.1 As a condition to Owner's performance hereunder, the Contractor shall:

- (a) Make payment promptly, as due, to all persons supplying to Contractor labor or materials for the prosecution of the Work provided for in any given Supplement.

(b) Pay all contributions or amounts due to the State Industrial Accident Fund from such Contractor or Subcontractor incurred in the performance of any given Supplement.

(c) 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.

(d) 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 any given Supplement. 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 any given Supplement 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

C.5.1 As a condition to Owner's performance hereunder, no person shall be employed to perform Work under any given Supplement 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.

C.5.2 This section C.5 will not apply to Contractor's Scope under any given Supplement to the extent Contractor is currently a party to a collective bargaining agreement with any labor organization.

C.5.3 This Section C.5 shall not excuse Contractor from completion of the Scope within the time required under any given Supplement.

SECTION D CHANGES IN THE SCOPE

D.1 CHANGES IN SCOPE

D.1.1 The terms of the Contract and or any given Supplement shall not be waived, altered, modified, supplemented or amended in any manner whatsoever, without prior written agreement by the Parties and then only after any necessary approvals have been obtained. A Supplement, Amendment, Construction Change Directive and or Change Order is required, which shall not be effective until its execution by the Parties to the Contract and or any given Supplement and any required approvals.

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 any given Supplement, the Owner may, at any time, without notice to the sureties and without impairing the Supplement, require changes consistent with this Section D.1. All changes to Scope shall be documented and Change Order or Construction Change Directive 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 Scope.
- (d) Addition or elimination of any Scope item.
- (e) Change in the duration of the project.
- (f) Acceleration or delay in performance of Scope.
- (g) Deductive changes.
- (h) Changed conditions.

Deductive changes are those that reduce the Scope 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 adjustments to or deletions from the Scope 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 adjustments to Scope, and a binding obligation exists under the Supplement on the Parties covering the terms and conditions of the adjustment to Scope.
- (b) The Owner may choose (in their sole discretion) a fixed pricing model for adjustments to or deletions from the Scope. In fixed pricing, the basis of payments or total price for Direct Costs shall be agreed upon in writing between the Parties to the Supplement and shall be established before the additional Work commencing whenever feasible. Notwithstanding the foregoing, the mark-ups set forth in D.1.3(c) shall be utilized in establishing fixed pricing, and such mark-ups shall not be exceeded. Cost and price data relating to adjustments to or deletions from the Scope shall be supplied by Contractor to Owner upon request, but Owner shall be under no obligation to make such requests.
- (c) The Owner may choose (in their sole discretion) a cost reimbursement basis for Direct Costs model for adjustments to or deletions from the Scope. Such Work shall be compensated on the basis of the actual,

reasonable and allowable cost of labor, equipment, and material furnished in the additional Scope performed or Scope removed. 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 the additional Scope directly performed with the Contractor's or Subcontractor's own forces:

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

(d) When adjustments to or deletions from the Scope under D.1.3(c) are proposed by an authorized Subcontractor at any level, each ascending tier Subcontractor or Contractor will be allowed mark-up on each piece of subcontracted Scope of 7.5%.

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 adjustments to or deletions from the Scope pursuant to a Supplement Amendment, Construction Change Directive or Change Order. Cost allocation per asset must be reflected in all Supplement Amendments, Construction Change Directive or Change Order. Owner may establish a maximum cost for additional Scope under this Section D.1.3, which shall not be exceeded for reimbursement without additional written authorization from Owner in the form of a Supplement Amendment, Construction Change Directive or Change Order. Contractor shall not be required to complete such additional Scope without additional authorization.

Any necessary adjustment of Supplement Time that may be required as a result of adjustments to or deletions from the Scope must be agreed upon by the parties before the start of the revised Scope unless Owner authorizes Contractor to start the revised Scope before agreement on Supplement Time adjustment. Contractor shall submit any request for additional compensation (and additional Supplement Time if Contractor was authorized to start Scope before an adjustment of Supplement Time was approved) as soon as possible but no later than thirty (30) Days after receipt of Owner's request for additional Scope. Contractor agrees that this thirty (30) Day notice period is adequate time for it to request and document the amount of additional compensation or adjustment of Supplement Time. If Contractor's request for additional compensation or adjustment of Supplement Time is not made within the thirty (30) Day time limit, Contractor agrees its requests pertaining to that additional Scope shall be 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 Supplement Time, unless an extension is granted in writing by Owner. If the Owner denies Contractor's timely request for additional compensation or adjustment of Supplement 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.1.4 If any adjustment to Scope under Section D.1.3 causes an increase or decrease in the Contractor's cost of, or the Supplement Time required for the performance of any other part of the Work under this Contract, Contractor shall submit a written request to the Owner, setting forth the nature and specific extent of the request, including all time and cost impacts against the Supplement as soon as possible, but no later than thirty (30) Days after receipt of Owner's request for adjustments to or deletions from the Scope by Contractor.

The thirty (30) Day time limit applies to claims of Subcontractors, suppliers, or manufacturers who may be affected by Owner's request for adjustments to or deletions from the Scope and who request additional compensation or an extension of Supplement 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 Scope 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 adjustments to compensation and Supplement Time requested. The Contractor shall 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 adjustments to compensation or Supplement Time that Contractor submits to the Owner. Failure of Subcontractors, suppliers, manufacturers or others to submit their requests to Contractor for inclusion with Contractor's requests submitted to Owner within the time period and by the means described in this section shall constitute a waiver of these Subcontractor claims. The Owner will not consider direct requests or claims from Subcontractors, suppliers, manufacturers or others not a party to this Supplement. The consideration of such requests and claims under this section does not give any Entity, not a party to the Supplement, the right to bring a claim against Owner, whether in this claims process, in litigation, or in any dispute resolution process.

If the Owner denies the Contractor's request for adjustment to compensation or Supplement Time, and the request is timely as set forth herein, the Contractor may proceed to file a Claim under Section D.3, Claims Review Process.

D.1.5 Contractor agrees that no request or Claim for additional costs or an adjustment of Supplement Time shall be allowed if made after receipt of Final Payment application under this Supplement. Final Payment application must be made by Contractor within the time required under Section E.6.4.

D.1.6 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 Scope cannot be defined at this time. The Contractor is notified that numerous changes may be required and that there will be no compensation made, unless and only to the extent otherwise provided in the Contract Documents, to the Contractor directly related to the number of changes. Each change will be evaluated for extension of Supplement 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.(a), and "Unavoidable Delays", which are defined in Section D.2.1.(b). 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.

- (a) Avoidable Delays include any delays other than Unavoidable Delays, and include delays that otherwise would be considered Unavoidable Delays but that:
 - (i) Could have been avoided by the exercise of care, prudence, foresight, and diligence on the part of the Contractor or its Subcontractors.
 - (ii) Affect only a portion of the Scope and do not necessarily prevent or delay the prosecution of other parts of the Scope or the completion of the whole Scope within the Supplement Time.
 - (iii) Do not impact activities on the accepted Construction Schedule.
 - (iv) Are associated with the reasonable interference of other contractors employed by the Owner that do not necessarily prevent the completion of the whole Scope within the Supplement Time.
- (b) Unavoidable Delays include delays other than Avoidable Delays that are:
 - (i) To the extent caused by any actions of the Owner, or any other employee or agent of the Owner, or by separate contractor employed by the Owner.
 - (ii) To the extent caused by any site conditions that 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 agrees to notify the Owner immediately of differing site conditions before the area has been disturbed. The Owner will investigate the area and make a determination as to whether the conditions differ materially from either the conditions stated in the Contract Documents or those that could reasonably be expected in execution of this particular Supplement. If Contractor and Owner agree that a differing site condition exists, any adjustment to compensation or Supplement Time will be determined based on the process set forth in Section D.1.3 for adjustments to or deletions from Scope. If the Owner disagrees that a differing site condition exists and denies Contractor's request for additional compensation or Supplement Time, Contractor may proceed to file a Claim under Section D.3, Claims Review Process.
 - (iii) To the extent 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.
 - (iv) To the extent 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:

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

The Office of the Environmental Data Service of the National Oceanic and Atmospheric Administration 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 agrees it is not entitled to additional compensation or additional Supplement Time for Avoidable Delays.

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

(a) Additional compensation or additional Supplement Time, or both, for Unavoidable Delays described in Section D.2.1.2 (a) and (b) and or;

(b) Additional Supplement 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 Supplement Time, or both, as applicable, arising under this Section D.2.3 for Unavoidable Delays, other than requests for additional compensation or additional Supplement Time for differing site conditions for which a review process is established under Section D.2.1.2 (b), Contractor must submit a written notification of the delay to the Owner no more than five (5) Days of the onset 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 Supplement 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 agrees to submit to the Owner, a complete and detailed request for additional compensation or additional Supplement Time, or both, as applicable, resulting from the delay. If the Owner denies Contractor's request for additional compensation or adjustment of Supplement Time, the Contractor may proceed to file a Claim under Section D.3, Claims Review Process, provided Contractor has complied with the requirement in this Section D.2.3. Contractor agrees any Claim it may have is barred if Contractor does not comply with the requirements herein.

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 for review. Contractor's Claims, including Claims for adjustments to compensation or Supplement Time, shall be submitted in writing by Contractor to the Owner within seven (7) Days after a denial of Contractor's initial request for an adjustment of Supplement terms, payment of money, extension of Supplement 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 General Conditions. Within thirty (30) Days after the initial Claim, Contractor shall submit to the Owner a complete and detailed description of the Claim (the "Detailed Notice") that includes all information required by Section D.3.2. Contractor agrees that, unless the Claim is made in accordance with these time requirements, Contractor voluntarily waived all rights to prosecute its Claim.

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 and or Supplement 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 Supplement Time adjustment requested for the Claim. If the Claim involves Scope 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. The Owner will not consider direct claims from Subcontractors, suppliers, manufacturers, or others not a party to the Contract and or any given Supplement. 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 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 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 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 any given Supplement. 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 plaintiff shall promptly cause to be entered by the Court a stipulated general judgment of dismissal with prejudice, or other appropriate order limiting the scope of litigation as provided in the settlement.

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 Unless otherwise directed by Owner, Contractor shall proceed with the Scope while any Claim, or mediation or litigation arising from a Claim, is pending. Regardless of the review period or the final decision of the Owner, the Contractor shall continue to diligently pursue the Scope as identified in the Contract Documents. In no case is the Contractor justified or allowed to cease or Delay performance of the Scope, in whole or in part, without a written stop work order from the Owner.

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 Scope. This schedule shall provide a breakdown of values for the contracted Scope. The breakdown shall demonstrate reasonable, identifiable, and measurable components of the Work of the particular Scope and be allocated by asset, if applicable. Owner will provide asset list in the Solicitation

Documents. If no solicitation was performed, the Owner will provide the asset list upon Supplement execution. Unless objected to by the Owner, this schedule shall be used as the basis for reviewing Contractor's applications for payment. If objected to by Owner, Contractor shall revise the Schedule of Values and resubmit the same for approval of Owner.

E.2 APPLICATIONS FOR PAYMENT

E.2.1 Owner shall make progress payments on any given Supplement monthly as Work progresses, in accordance with the requirements of this Section E.2. Applications for payment shall be based upon estimates of Scope completed, the Schedule of Values, and allocated by asset. As a condition precedent to Owner's obligation to pay, all applications for payment shall be approved by the Owner. A progress payment shall not be considered acceptance or approval of any Scope or waiver of any defects therein. Owner shall pay to Contractor interest for overdue invoices at the rate of two-thirds of one percent per month on the progress payment, not including retainage, due the Contractor. Overdue invoices 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 Owner receives a correct application for payment if no invoice is received;
- (c) The date all goods and services have been received; or
- (d) The date a 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 may reject the pay application in full by notifying 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. 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 such amounts which are 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 shall arrange for receipt of the EFT/ACH payments.

E.2.2 Contractor shall submit to the Owner 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 Scope 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: _____
Dated: _____"

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 shall be granted the right to access the material for the purpose of removal or inspection at any time during the Supplement 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 will be issued to the Owner, upon Owner's request.

(e) Payments shall be made for materials and equipment only. The submitted amount in the application for payment shall be reduced by the cost of transportation from the storage site to the project site and for the cost of an inspector to verify delivery and condition of the goods at the storage site. The cost of storage and 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 and/or equipment stored and of payment for the storage site.

(g) Payment for stored materials and/or equipment shall in no way indicate acceptance of the materials and/or equipment or waive any rights under this Supplement for the rejection of the Work or materials and/or equipment not in conformance with the Contract Documents.

(h) All required documentation shall 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 Applicable Laws or 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.);

(d) Reasonable evidence that the Scope cannot be completed for the unpaid balance of the Supplement Price;

(e) Damage to the Work, Owner or another contractor;

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

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

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 Supplement Price properly allocable to completed Scope as determined by multiplying the percentage completion of each portion of the Scope by the share of the total Supplement Price allocated to that portion of the Scope 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 Scope, no amounts for changes in the Scope can be included in applications for payment until the Supplement Price has been adjusted by a Supplement Amendment, Construction Change Directive and or Change Order;

(b) Add that portion of the Supplement 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 has withheld or nullified payment as provided in the Contract Documents.

E.2.6 Contractor's applications for payment shall not include requests for payment for portions of the Scope 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 Scope 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 Scope 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 financing, labor, materials and equipment relating to the Scope.

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

E.3 PAYROLL CERTIFICATION REQUIREMENT

Owner's receipt of payroll certification pursuant to Section C.2 of any given Supplement shall be a condition precedent to Owner's obligation to pay any progress payments or final payment otherwise due.

E.4 DUAL PAYMENT SOURCES

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

E.5 RETAINAGE

E.5.1 Retainage shall be withheld and released in accordance with the requirements of law and as set forth in OSU standards and policies, as set forth below.

E.5.2 Owner may reserve as retainage from any progress payment an amount not to exceed five percent of the payment. As performance of the Scope progresses, Owner may reduce the amount of retainage on or may eliminate retainage on any remaining monthly pay applications after 50 percent of the Scope under any given Supplement is completed if, in the Owner's discretion, such Scope is progressing satisfactorily. Elimination or reduction of retainage shall be allowed only at Owner's sole discretion and only upon written application by the Contractor, such application shall include written approval of Contractor's surety; except that when the Scope is 97-1/2 percent complete the Owner may, at its discretion and without application by the Contractor, reduce the retained amount to 100 percent of the value of the Scope remaining to be performed. Upon receipt of written application by the Contractor, Owner shall respond in writing within a reasonable time.

E.5.3 Consistent with Chapter 2 Oregon Laws (2024), Contractor may request in writing:

- (a) To be paid all or a portion of the funds which have been or otherwise would have been retained from progress payments where Contractor has
 - (i) deposited acceptable bonds and securities with Owner or in a custodial account or other mutually agreed account satisfactory to Owner, with an approved bank or financial institution to be held in lieu of the cash retainage for the benefit of Owner; or
 - (ii) deposited a surety bond for the benefit of the Owner, in a form and manner set out in ORS 701.435; or
- (b) That retainage, as it accumulates
 - (i) be deposited in an interest-bearing account in a bank, or other financial institution for the benefit of Owner, with earnings from such account accruing to the Contractor; or

(ii) bear interest at the rate of two percent plus the discount rate on 90-day commercial paper that is in effect at the Federal Reserve Bank in the Federal Reserve district that includes this state on the date that the retainage is paid.

When the Contractor has elected option (a)(i), (ii) 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 (a)(ii), Contractor shall accept like bonds from Subcontractors and suppliers on the project from which Contractor has required retainages. Any deposited bonds and securities, any surety bonds, and any proceeds therefrom must be subject to all claims in the manner and priority as set forth for retainage.

E.5.4 The retainage held by Owner, if any, shall be included in and paid to the Contractor as part of the Final Payment of the Supplement Price.

E.5.5 Owner shall, within thirty (30) Days after receiving either acceptable bonds and securities or a security bond under Section E.5.1.3, reduce the moneys the Owner holds as retainage in an amount equal to the value of the bonds and securities or surety bond and pay the amount of the reduction to the Contractor.

E.5.6 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 provisions of Chapter 2 Oregon Laws (2024).

E.6 FINAL PAYMENT

E.6.1 Upon completion of all the Work under any given Supplement (including without limitation compliance by the Contractor with provisions in Section K, and Contractor's satisfaction of other provisions of the Contract Documents as may be applicable), the Contractor shall notify the Owner, in writing, that Contractor has completed Contractor's obligations under any given Supplement and shall prepare and deliver to Owner its application requesting final payment, and Owner shall, within fifteen (15) Days after receiving the written notice and application for payment, either accept the Scope or notify the Contractor of Scope yet to be performed on the Supplement. If Owner does not within the time allowed, notify the Contractor of Scope yet to be performed to fulfill the contractual obligations, the interest due on the final payment, at the rate of one percent per month, shall commence to run thirty (30) Days after the end of the 15-Day period. Such interest that may be due is to run until the date when final payment is tendered to Contractor. Upon approval of this final application for payment by the Owner, 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 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 Final Completion issued by the Owner, 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 Entity of matters arising out of or relating to any given Supplement. If Contractor fails to submit its Final Payment application within ninety (90) Days after issuance of Final Completion by the Owner, and Contractor has not obtained written extension by Owner, all requests or Claims for additional costs or an extension of Supplement 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, Applicable Laws, permits or directions of the Owner. Contractor shall follow the Owner'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 the Work from damage and shall protect the Owner, workers and property from injury or loss arising in connection with any given Supplement. 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 or otherwise engaged in the undertaking of the Scope and shall comply with the Contract Documents, best practices 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 Scope is being performed. Contractor shall erect and properly maintain at all times, as required by the conditions and progress of the Scope, 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 job site, whose duty shall be the prevention of accidents. The name and position of the person designated shall be reported to the Owner. The Owner has no responsibility for job site safety; job site safety shall be 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 any given Supplement 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 all pertinent facts relating to such property damage and the ultimate disposition of the claim for damage.

F.2.4 Contractor shall be responsible for protection of adjacent work areas including impacts brought about by activities, equipment, labor, utilities, vehicles and materials on the site.

Contractor shall verify that all mechanical or electrical equipment in the construction areas that may be affected by the Scope is in working order and shall notify the Owner, in writing, of any equipment not in working order prior to the start of the Work. Start of Work will be considered as acknowledgement that all equipment is in good working order. Contractor shall be required to restore equipment to its original, or better, condition upon completion of the project.

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 shall 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 limb or of the Work or of adjoining property, the Contractor, without special instruction or authorization from the Owner, shall act reasonably to prevent threatened loss or injury, and shall so act, without appeal, if instructed by the Owner. 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 Scope 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 prudent or ordered by the Owner and, in any event, immediately after completion of the Scope, the Contractor shall, at its own expense, clean up and remove all refuse and unused materials of any kind resulting from the Scope. 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 shall be held responsible for and shall indemnify, defend (with counsel of Owner's choice), and hold harmless Owner from and against any and all costs, expenses, damages, claims, and causes of action, (including attorney fees), resulting from all spills, releases, discharges, leaks and disposal of environmental pollution, including storage, transportation, and handling during the performance of the Work or Contractor's obligations under any given Supplement 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.

- (a) Contractor agrees to promptly dispose of such spills, releases, discharge or leaks to the satisfaction of Owner and regulatory agencies having jurisdiction in a manner that complies with Applicable Laws. Cleanup shall be at no cost to the Owner and shall be performed by properly qualified and, if applicable, licensed personnel.
- (b) Contractor shall obtain the Owner's written consent prior to bringing onto the job site any (i) environmental pollutants or (ii) hazardous substances or materials, as the same or reasonably similar terms are used in any Applicable Laws. Notwithstanding such written consent from the Owner, the Contractor, at all times, shall:
 - (i) Properly handle, use and dispose of all environmental pollutants and hazardous substances or materials brought onto the job site, in accordance with all Applicable Laws;
 - (ii) 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 job site; and
 - (iii) Promptly clean up and remediate, without cost to the Owner, such spills, releases, discharges, or leaks to the Owner's satisfaction and in compliance with all Applicable Laws.

F.5.2 Contractor shall report all reportable quantity releases, as such releases are defined in Applicable Laws, including but not limited to 40 CFR Part 302, Table 302.4 and in OAR 340-142-0050, to applicable federal, state, and local regulatory and emergency response agencies. 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 numbers, and any and all other documentation required by law.)
- (b) Whether amount of items released is EPA/DEQ reportable, and, if so, when 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 between Contractor and members of the press or State, local or federal officials other than Owner.
- (f) Description of cleanup procedures employed or to be employed at the site, including disposal location of spill residue.
- (g) Personal 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 any given Supplement 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 Scope required by the Supplement. "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 by 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, property or the environment.

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

F.7 FORCE MAJEURE

A Party to the Contract or any given Supplement 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 the Contract or any given Supplement upon written notice after determining that delay or default caused by Force Majeure acts, events or occurrences will reasonably prevent successful performance of the Supplement.

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 Scope to be done under any given Supplement, or from any act, omission or neglect of the Contractor, its Subcontractors, sub-subcontractors of any tier, suppliers, employees, guests, visitors, invitees and 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, Design Professional, Design Professional's consultants, and their respective officers, directors, agents, trustees, employees, partners, members, stockholders and affiliated companies (collectively "Indemnitees") from and against all claims, suits, actions, losses, liens, damages, liabilities, costs and expenses, including reasonable attorneys' fees, experts' fees and costs, of whatsoever nature resulting in any way from, arising out of, or relating to the activities of the Work of the Contractor or the Contractor's, suppliers, partners, joint venturers, subcontractors (of any tier), consultants, officers, agents or employees, but only to the extent caused by the negligence or other wrongful conduct of the Contractor or the Contractor's suppliers, partners, joint venturers, subcontractors (of any tier), consultants, officers, agents or employees; provided, however, to the extent Contractor provides architectural, engineering, photogrammetric mapping, transportation planning or land surveying services or related services (as that term is defined under ORS 279C.100), Contractor has no duty to defend Owner against a claim for professional negligence and relating to the professional services provided by the Contractor, except to the extent that Contractor's liability or fault is determined by adjudication or alternative dispute resolution or otherwise resolved by settlement agreement, and not to exceed the proportionate fault of the Contractor or the Contractor's suppliers, partners, joint venturers, subcontractors (of any tier), consultants, officers, agents or employees.

G.1.3 In claims against any person or entity indemnified under 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 any given Supplement Price is \$150,000 or more, the Contractor shall furnish and maintain in effect at all times during the Supplement Period a performance bond in a sum equal to the Supplement Price and a separate payment bond also in a sum equal to the Supplement Price. Contractor shall furnish such bonds even if the Supplement Price is less than the above thresholds if otherwise 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 any given Supplement, 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 2015, Chapter 279C, 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 commencement of the Work under the applicable Scope, unless otherwise exempt, and shall verify that the Subcontractor has filed a public works bond before permitting any Subcontractor to commence with the Work under the applicable Scope.

G.3 INSURANCE

G.3.1 General Requirements. The required insurance amounts set forth below do not in any way limit the amount or scope of liability of Contractor under the Contract Documents. The coverages and limits listed indicate only the minimum coverages and limits of insurance, Owner is willing to accept to help ensure full performance of all terms and conditions of any given Supplement.

- (a) Primary Coverage and Non-Contributory Coverage. Insurance carried by Contractor under this Supplement shall be primary and non-contributory.
- (b) Additional Insured. Each liability policy, except Workers' Compensation and Professional Liability, shall be endorsed to include Owner, its trustees, officers, employees and agents as additional insured with respect to the Contractor's activities to be performed under the Contract and or any given Supplement.
 - (i) If Contractor cannot name the Owner as additional insured, 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 Owner as additional insured with minimum limits of \$2,000,000 per occurrence and \$2,000,000 aggregate. This policy must be kept in effect for 36 months following Final Completion. As evidence of coverage, Contractor shall furnish the actual policy to Owner prior to execution of any given Supplement.
- (c) Company Ratings. All policies of insurance must be written by companies having an A.M. Best rating of no less than "A-VII", or equivalent. Owner may, upon thirty (30) days written notice to Contractor, require Contractor to change any carrier whose rating drops below an "A-VII" rating. 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 conduct an insurance business and issue policies of insurance in the state of Oregon, and certain non-admitted surplus lines insurers that satisfy the requirements of applicable Oregon law and which are subject to approval the Owner.
- (d) Notice of Cancellation, Change, or Exhaustion of Limits. If the Contractor receives a non-renewal or cancellation notice from an insurance carrier affording coverage required herein, or receives notice that coverage no longer complies with the insurance requirements herein, or if Contractor exhausts 50% or more of the aggregate limit of any required policy, Contractor agrees to notify Owner in writing within five (5) business days with a copy of the non-renewal or cancellation notice, written specifics as to which coverage is no longer in compliance, or notice of depletion of 50% or more of a policy aggregate. When notified by Owner, the Contractor agrees to stop Work until all required insurance is confirmed in effect. Any failure to comply with the reporting provisions of this insurance, shall not alter the Contractor's obligations.

- (e) Owner shall have the right, but not the obligation, to prohibit the Contractor from entering the job site until a new certificate(s) of insurance is provided to Owner evidencing replacement coverage is in place. The Contractor agrees Owner reserves the right to withhold payment to Contractor until evidence of reinstated or replacement coverage is provided to Owner.
- (f) Deductibles and Self-insured Retentions. Any deductible, self-insured retention and/or self-insurance in excess of \$50,000 must be approved by the Owner in writing.
- (g) Tail Coverage. If any required policy is arranged on a "claims made" basis, tail coverage will be required at the completion of any given Supplement for a duration of 36 months or the maximum time period available in the marketplace if less than 36 months. Continuous "claims made" coverage will be acceptable in lieu of tail coverage, provided its retroactive date is on or before the effective date of the Supplement. Contractor shall furnish certificates of insurance evidencing the required tail coverage or continuous "claims made" liability coverage for 36 months following Final Completion. Owner's receipt of the certificate of insurance and/or endorsement evidencing such coverage shall be a condition precedent to Owner's obligation to make final payment and to Owner's final acceptance of Scope or services and related warranty (if any).

G.3.2 Workers' Compensation. All employers, including Contractor, that employ subject workers who work under this Contract and or any given Supplement 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, and Employer's Liability Insurance with minimum limits of \$1,000,000 each accident; \$1,000,000 disease-each employee; and \$1,000,000 disease-policy limit. 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 and sub-subcontractors of any tier comply with these requirements. The Contractor shall require proof of such Workers' Compensation coverage 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 Commercial General Liability ("CGL"). Contractor shall obtain and keep in effect at Contractor's expense for the term of the Contract, CGL insurance covering bodily injury and property damage in the amount of \$1,000,000 per occurrence and \$2,000,000 aggregate. This insurance shall include bodily injury liability, products and completed operations, and contractual liability coverage for the indemnities provided under the Contract and or any given Supplement (to the extent contractual liability coverage for the indemnity is available in the marketplace).

- (a) CGL insurance shall be written on current ISO occurrence for CG 00 01 or its equivalent if Owner approves and shall cover liability arising from premises, operations, independent contractors, products-completed operations, death, bodily injury, property damage, personal injury and advertising injury and liability assumed under an insured contract.
- (b) The additional insured coverage under the CGL shall be on current ISO additional insured endorsements CG 20 10 (07 04) and CG 20 37 (07 04) or substitutes providing equivalent coverage if Owner approves. Such insurance shall apply as primary insurance to the additional insureds.

G.3.4 Business Automobile Liability. Contractor shall obtain, at Contractor's expense, and keep in effect during the term of this Contract, Business Automobile Liability Insurance with "symbol 1" coverage (owned, hired and non-owned vehicles) with a minimum combined single limit of \$1,000,000. The coverage may be written in combination with the Commercial General Liability Insurance.

- (a) Business auto coverage shall be written on ISO form CA 00 01, CA 00 05, CA 00 12, CA 00 20 or its equivalent if Owner approves.

G.3.5 Umbrella Liability. Contractor shall obtain, at Contractor's expense, and keep in effect during the term of this Contract, Umbrella Liability Insurance over and above the Commercial General Liability, Business Automobile Liability and Employers' Liability insurance coverages with minimum limits of \$1,000,000 per occurrence and \$1,000,000 aggregate. If Contractor has annual gross revenue greater than \$15,000,000, the required Umbrella Liability coverage shall have minimum limits of \$5,000,000 per occurrence and \$5,000,000 aggregate.

- (a) Umbrella Insurance coverage shall be provided on a follow-form basis and Contractor shall be responsible for any gaps between underlying coverage and excess coverage for all policies required under the term of the Contract and or any given Supplement.

G.3.6 Professional Liability (if required by issuance of Supplemental General Conditions). Contractor shall obtain, at Contractor's expense, Professional Liability/Errors & Omissions insurance covering damages caused by any negligent error, omission, or professional misconduct of the Contractor with minimum limits of \$3,000,000 each claim and a \$3,000,000 aggregate. Contractor shall require that each of its Major Consultants and subcontractors (including structural, civil, mechanical, plumbing, electrical engineering, survey, geotechnical and materials testing) secures and maintains Professional Liability/Errors & Omissions coverage with minimum limits of \$2,000,000 each claim and a \$2,000,000 aggregate. All other Consultants and subcontractors not listed above shall have coverage with minimum limits of \$1,000,000 each claim and \$1,000,000 aggregate.

G.3.7 Pollution Liability (if required by Owner through issuance of Supplemental General Conditions). Contractor shall obtain, at Contractor's expense, and keep in effect during the term of this Contract, Pollution Liability Insurance with minimum limits of \$3,000,000 per occurrence and \$3,000,000 aggregate, naming Owner as Additional Insured, as noted in the Additional Insured section.

G.3.8 Builder's Risk Insurance – Completed Value Basis. Unless otherwise provided, the Contractor shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, Builder's Risk Insurance in the amount of the initial Supplement Price, plus value of subsequent modifications, Change Orders, and cost of material supplied or installed by others, comprising total value of the entire Project at the site on a replacement cost basis without optional deductibles. The earthquake and flood insurance sub limits will be equal to the maximum probable loss.

- (a) Policy must provide coverage from the time any covered property becomes the responsibility of the Contractor, and continue without interruption during construction, renovation, or installation, through final completion, including any time during which the covered property is being transported to the construction installation site, or awaiting installation, whether on or off site.
- (b) The Builder's Risk Insurance shall include the Owner, the Contractor, and subcontractors of every tier as named insureds on the policy and shall include a waiver of subrogation provision in favor of all parties.
- (c) The Builder's Risk Coverage shall be written on a Special Covered Cause of Loss form and shall include theft, vandalism, malicious mischief, collapse, false-work, temporary buildings, transit, debris removal including demolition, increased cost of construction, architect's fees and expenses, flood (including water damage), earthquake, and if applicable, all below and above ground structures, piping, foundations including underground water and sewer mains, piling including the ground on which the structure rests and excavation, backfilling, filling, and grading.
- (d) The Builder's Risk shall include a Beneficial Occupancy Clause. The policy shall specifically permit occupancy of the building during construction. Contractor shall take reasonable steps to obtain consent of the insurance company and delete any provisions with regard to restrictions within any Occupancy Clauses within the Builder's Risk Policy.
- (e) Equipment Breakdown Coverage (a.k.a. Boiler & Machinery) shall be included as required by the Contract Documents or by law, which shall specifically cover insured equipment during installation and testing (including cold and hot testing).
- (f) The Builder's Risk shall include loss of use due to delays in project completion caused by covered peril losses to the Project, including loss of income and rents and soft costs.
- (g) The deductible shall not exceed \$50,000 for physical damage and shall be the responsibility of the Contractor. The earthquake and flood deductible shall not exceed 2 percent of each loss or \$50,000, whichever is greater.
- (h) OSU shall be provided with a certificate of insurance, as well as a copy of the policy.

- (i) The Contractor shall be responsible for the payment of premium, giving or receiving notice of cancellation; and requesting amendments to this policy and accepting amendments to this policy made by the company.
- (j) Owner reserves the right to purchase the Builder's Risk insurance policy. In the event Owner purchases the Builder's Risk, the policy shall adhere to the terms of G.3.8.

G.3.9 Installation Floater. At Owner's sole discretion through issuance of Supplemental General Conditions the requirements of G.3.8 may be replaced by G.3.9 Installation Floater. Contractor shall obtain and keep in effect during the term of any given Supplement, an Installation Floater policy for coverage of the Contractor's materials to be used for completion of the work performed under the Supplement. The minimum amount of coverage to be carried shall be equal to the full amount of the materials supplied for the Supplement. The policy will include as loss payees Owner, the Contractor and its Subcontractors as their interests may appear.

G.3.10 Certificate(s) of Insurance. As evidence of the insurance coverages required by the Contract and or any given Supplement, the Contractor shall furnish certificate(s) of insurance to the Owner prior to the execution of any given Supplement. The certificate(s) will specify all of the parties who are additional insured or loss payees for the Supplement and or Contract, and the applicable endorsements will be attached. Additional insured endorsements must include completed operations without restriction to contractual requirements. At Owner's request, Contractor shall deliver to Owner the full insurance policies and all endorsements and riders. The coverages shall include cross-claim and severability of interests endorsements.

G.3.11 Subcontractors. Subject to and following the written approval of the Owner as outlined in B.11.3 as related to Subcontracts and Assignment, the Contractor shall require Subcontractors to have insurance as outlined in section G.3.1 through G.3.4 with minimum limits of \$1,000,000 per occurrence.

G.3.12 Owner may adjust the required insurance coverages and limits through the issuance of Supplemental General Conditions.

SECTION H SCHEDULE OF WORK

H.1 SUPPLEMENT PERIOD

H.1.1 Time is of the essence. The Contractor shall at all times carry on the applicable Scope diligently, without delay and punctually fulfill all requirements herein. Contractor shall commence Work on the job site within fifteen (15) Days of Notice to Proceed of the applicable Scope, unless directed otherwise.

H.1.2 Unless specifically extended by Supplement Amendment, Construction Change Directive or Change Order, all Scope for an applicable supplement shall be complete by the date contained in the Contract Documents. The Owner shall have the right to accelerate the completion date of the Scope, which may require the use of overtime. Any such accelerated schedule shall be an acceleration in performance of the Scope under Section D.1.2 (f) and shall be subject to the provisions of Section D.1.

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

H.2 SCHEDULE

H.2.1 Contractor shall provide, no later than the pre-construction conference, a detailed Construction Schedule for review and acceptance by the Owner. The submitted Construction Schedule must illustrate Work by significant Project components, significant labor trades, long lead items, broken down by building and/or floor where applicable. Each Construction Schedule item shall account for no greater than 5% of the monetary value of the project or 5% of the available time. Construction Schedules with activities of less than one day or valued at less than 1% of the Supplement Sum shall be considered too detailed and shall not be accepted. Construction Schedules lacking adequate detail, or unreasonably detailed, shall be rejected. Included within the Construction Schedule are the following: 1) Notice to Proceed, 2) Substantial Completion, and 3) Final Completion. Contractor shall provide an updated, full Project Construction Schedule with each payment request. In addition, twice monthly, the Contractor shall provide an updated three-week forward-

looking schedule. Acceptance of the Construction 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 Supplement completion date is float owned by the Project. Use of the float shall be negotiated. In no case shall the Contractor make a claim for delays if the Scope is completed within the Supplement 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 Scope. 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 Scope not complying with the requirements of the Contract Documents.

SECTION I CORRECTION OF SCOPE

I.1 CORRECTION OF SCOPE BEFORE FINAL PAYMENT

The Contractor warrants to the Owner that materials and equipment furnished under any given Supplement 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, 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 Design Professional or Owner as applicable. Should the Work not be complete, and all corrections made, the costs for all subsequent re-inspections 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. 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. 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.

I.2.2 Nothing in this Section I.2 provision shall 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 such portion of the Work covered by the applicable warranty has been accepted in writing by the Owner.

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 Supplement Price will be reduced as appropriate and equitable. Such adjustment shall be assessed whether or not final payment has been made.

SECTION J SUSPENSION AND/OR TERMINATION OF THE SCOPE

J.1 OWNER'S RIGHT TO SUSPEND THE SCOPE

J.1.1 The Owner has the authority to suspend portions or all of the Scope 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 and or any given Supplement;
- (c) Failure of the Contractor to carry out orders;
- (d) Conditions, in the opinion of the Owner, which are unsuitable for performing the Scope;
- (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 the Scope.

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 Scope were in progress. This includes, but is not limited to, protection of completed Scope, 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 Scope, 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 may be due compensation which shall be defined using Section D, Changes in Scope. If the suspension was required through no fault of the Contractor or the Owner, neither party shall owe 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 and or any given Supplement 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 and or any given Supplement 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
- (f) If Contractor is otherwise in breach of any part of the Contract Documents.
- (g) If Contractor is in violation of Applicable Laws, either in the conduct of its business or in its performance of the Scope.

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 Scope by whatever method it may deem expedient. In such case, the Contractor shall not be entitled to receive further payment until the Scope is completed. If the Owner's cost of finishing the Scope exceeds the unpaid balance of the Supplement Price, Contractor shall pay the difference to the Owner.

J.5 TERMINATION FOR CONVENIENCE

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

J.5.2 The Owner shall provide the Contractor with seven (7) Days prior written notice of a termination for Owner's or 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 Scope terminated by the Owner under this provision will be according to Section E. In no circumstance shall Contractor be entitled to lost profits for Scope 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 Scope 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 Supplement had been completed, would have been required to be furnished to the Owner.

J.6.3 Upon Owner's notice of termination pursuant to either Section J.4 or J.5, if Owner shall so elect, Contractor shall assign the Owner such subcontracts and orders as Owner shall specify. In the event Owner elects to take assignment of any such subcontract or order, Contractor shall take such action and shall execute such documents as Owner shall reasonably require for the effectiveness of such assignment and Contractor shall ensure that no contractual arrangement between it and its subcontractors or suppliers of any tier or sub-tier shall prevent such assignment.

SECTION K SUPPLEMENT 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 as applicable. 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,

K.2 OPERATION AND MAINTENANCE MANUALS

As part of the Work in any given supplement, Contractor shall submit one (1) electronic draft operation and maintenance manual ("O & M Manual") for review by the Owner prior to submission of any pay request for more than 75% of the Scope. Owner's receipt of the O & M Manual shall be a condition precedent to any payment thereafter due. The O & M Manual shall contain a complete set of all Submittals, all product data as required by the specifications, training information, telephone list and contact information for all 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 may review O & M Manual and provide comments in regard to any modifications or adjustments required. Prior to submission of its final pay request, Contractor shall deliver one (1) complete and approved O & M Manual in electronic form. Owner's receipt of the O & M Manual shall be a condition precedent to Owner's obligation to make final payment.

K.3 COMPLETION NOTICES

K.3.1 Contractor shall provide Owner written 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 Punch List accompanying the Certificate. If the Owner agrees with the certificate, the Owner will issue a Substantial Completion letter based on the certificate of Substantial Completion provided by the Contractor. The Contractor may request that a Punch List be prepared by the Owner and included with the letter of Substantial Completion. The Final Completion letter will be issued by the Owner when the Contractor has completed all items on the Punch List and met all other conditions of Final Completion as provided in the Contract Documents. The letters issued by the Owner shall take precedence over the certificates provided by the Contractor.

K.3.2 A certificate of occupancy or temporary certificate of occupancy issued by the AHJ for a portion of the Scope, or the entire Scope must be obtained on or before the date of Substantial Completion. In addition, Substantial Completion of a Scope that includes 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. All equipment contained in the Scope, 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.

K.4 TRAINING

As part of the Work in any given supplement, and prior to submission of the final application for payment, the Contractor shall schedule with the Owner training sessions for all equipment and systems as required by the Contract Documents. Contractor shall schedule training sessions at least two weeks in advance of the date of training to allow Owner to provide its personnel with adequate notice. The O & M Manual shall be used as a basis for training. In addition to any off-site training required by the Contract Documents, training shall include a formal session conducted at the job site after the equipment and/or system is completely installed and operational in its normal operating environment.

K.5 EXTRA MATERIALS

As part of the Work in any given supplement, Contractor shall provide spare parts, extra maintenance materials, and other materials or products in the quantities specified in the Contract Documents prior to final payment. Delivery point for extra materials shall be designated by the Owner.

K.6 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 and pollution clean-up, remediation and closure have been completed in accordance with all Applicable Laws and pursuant to the authority of all agencies having jurisdiction, and Contractor shall provide Owner with any and all documentation related to the same, including but not limited to directives, orders, letters, certificates and permits related to or arising from such environmental pollution. The notice shall reaffirm the indemnification given under Section F.5.1 above. Contractor's completion of its obligations under this Section K.6 and Owner's receipt of documents evidencing such completion shall be a condition precedent to Owner's obligation to make final payment.

K.7 CERTIFICATE OF OCCUPANCY

Owner's receipt of an unconditioned certificate of occupancy from the authorities having jurisdiction shall be a condition precedent to Owner's obligation to make final payment, except to the extent failure to obtain an unconditional certificate of occupancy is due to the sole fault or neglect of Owner.

K.8 OTHER CONTRACTOR RESPONSIBILITIES

The Contractor shall be responsible for returning to the Owner all property of Owner issued to Contractor during construction such as keys, security passes, site admittance badges, and all other pertinent items. If Contractor obtained utility services during construction, 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 be delayed until Final Completion, if the Owner does not take beneficial use of the facility and the Contractor's forces continue with the Scope of a particular Supplement.

K.9 SURVIVAL

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

[Remainder of page left blank intentionally]