PROSPER PORTLAND

GENERAL CONDITIONS

FOR CONSTRUCTION CONTRACTS

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1. GENERAL PROVISIONS

1.A. CONVENTIONS

1.A.1. Grammar in the General and Supplemental Conditions is written in the indicative mood, in which the subject is expressed. Technical specifications and beyond are generally written in the imperative mood, in which the subject is implied.

1.A.2. The subject, "the Contractor, the Owner or this Contract, this Work" or similar conventions are implied.

1.A.3. "Shall" refers to action required of the Contractor, and is implied. "Will" refers to decisions or action of the Owner or Owner's Authorized Representative, or Architect/Engineer.

1.A.4. The following words, or words of equivalent meaning, refer to the actions of the Owner and/or Architect/Engineer, unless otherwise stated: "directed", "established" , "permitted" , "ordered", "designated", "prescribed", "required", "determined".

1.A.5. The words "approved" , "acceptable ", "authorized", "satisfactory" , "suitable" , "considered", and "rejected" , "denied" , "disapproved" , "denied" or words of equivalent meaning, mean by or to the Owners Authorized Representative or Architect/Engineer.

1.A.6. The words "as shown", "shown", "as indicated", or "indicated" or similar conventions mean as implied "as indicated in the Plans".

1.A.7. Capitalized terms, other than titles, abbreviations and grammatical usage, sections, indicate they have been given a defined meaning as set forth in Section 1.B. Definition of Terms. Only punctuation that is part of the quoted matter is placed within quotation marks.

1.B. DEFINITION OF TERMS

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

1.B.1. **ARCHITECT/ENGINEER**, means the Person appointed by the Owner to make drawings and specifications and, to provide contract administration of the Work contemplated by the Contract to the extent provided herein or by supplemental instruction of Owner (under which Owner may delegate responsibilities of the Owner's Authorized Representative to the Architect/Engineer), in accordance with ORS Chapter 671 (Architects) or ORS Chapter 672 (Engineers) and administrative rules adopted thereunder.

1.B.2. **CHANGE ORDER**, means a written statement signed by the Commission and the Contractor prior to the Contractor's performance of certain Work, stating their agreement upon all or part of the following, subject to particular terms and conditions of the Contract: (a) a described change in the Work, if any; (b) the amount of the total adjustment in the original Contract Price, if any; (c) the extent of the total adjustment in the Work performance period; and (d) any changes to the drawings and technical specifications, or other changes to the Contract , if any.

1.B.3. **CLAIM,** means a demand by Contractor pursuant to Section 4.C for review of the denial of Contractor's initial request for an adjustment of Contract terms, payment of money, extension of Contract Time or other relief, submitted in accordance with the requirements and within the time limits established for review of Claims in these General Conditions.

1.B.4. **COMMISSION**, means the Portland Development Commission, the duly designated urban renewal agency of the City of Portland, a political subdivision of the State of Oregon.

1.B.5. **CONSTRUCTION CHANGE FIELD DIRECTIVE:** means, a written order given by the Commission to a Contractor directing a change in the Work or performance period and stating a proposed adjustment or methodology in adjustment to the Contract.

1.B.6. **CONTRACT**, means the written agreement that sets forth rights and obligations of the parties with respect to a particular transaction, including, but not limited to all general and special conditions, drawings, specifications, price terms and legal requirements.

1.B.7. **CONTRACT DOCUMENTS**, means the Solicitation and addenda thereto, the Portland Development Commission Contract, any Amendments to the Contract, General Conditions, Supplemental General Conditions, if any, the accepted Offer, Plans, Specifications, Construction Change Field Directives and Change Orders.

1.B.8. **CONTRACT PRICE**, means the total amount paid or to be paid under a Contract including any approved Bid alternates, unit Bid prices, fully executed Change Orders, Contract Amendments and/or any, Construction Change Field Directives.

1.B.9. **CONTRACT TIME,** means any incremental period of time allowed under the Contract to complete any portion of the Work as reflected in the project schedule, as increased or decreased by Change Orders.

1.B.10. **CONTRACTOR**, means the Entity awarded a Contract.

1.B.11. **DAYS**, means calendar days unless otherwise specified.

1.B.12. **DEFECTIVE WORK**, means Work that a) is performed in an unsatisfactory, faulty, or deficient manner, b) does not conform to the Contract Documents, c) does not meet the requirements of any reference standard, test, or approval referred to or incorporated by the Contract Documents, or d) has been damaged by anyone other than the Owner prior to acceptance of the Work, whether or not such Work is in possession of Owner or in use by Owner.

1.B.13. **DIRECT COSTS**, means, unless otherwise provided in the Contract Documents, the cost of materials, including sales tax, cost of delivery; cost of labor, including social security, old age and unemployment insurance, and fringe benefits required by agreement or custom; worker's compensation insurance; project specific insurance (including Builder's Risk Insurance and Builder's Risk Installation Floater); bond premiums, rental cost of equipment, and machinery required for execution of the work; and the additional costs of field personnel directly attributable to the Work.

1.B.14. **ENTITY,** means a natural person capable of being legally bound, sole proprietorship, corporation, partnership, limited liability company or partnership, limited partnership, profit or nonprofit unincorporated association, business trust, two or more persons having a joint or common economic interest, or any other person with legal capacity to contract, or a government or governmental subdivision.

1.B.15. **EQUITABLE ADJUSTMENT**, means an adjustment to the Contract Price, Contract Time, or both in consideration of costs or credits when the Contract authorizes such a change.

1.B.16. **FINAL COMPLETION**, means the final completion of all requirements under the Contract, including Contract Closeout as described in Section 11 but excluding Warranty Work as described in Section 9.B.

1.B.17. **FORCE MAJEURE**, means an act, event or occurrence caused by fire, riot, war, acts of God, nature, sovereign, or public enemy, strikes, freight embargoes or any other act, event or occurrence that is beyond the control of the party to this Contract who is asserting Force Majeure.

1.B.18. **NOTICE TO PROCEED**, means the official written notice from the Owner stating that the Contractor is to proceed with the Work defined in the Contract Documents. Notwithstanding the Notice to Proceed, Contractor shall not be authorized to proceed with the Work until all initial Contract requirements, including the Contract, performance bond and payment bond, and certificates of insurance, have been fully executed and submitted to Owner in a suitable form.

1.B.19. **OFFER**, means a Bid, Proposal, or Quotation, as applicable.

1.B.20. **OFFEROR**, means an Entity that offers to enter into a Contract by submitting a Bid, Quote or Proposal to the Commission.

1.B.21. **OVERHEAD**, means those items which may be included in the Contractor's markup (general and administrative expense and profit) and that shall not be charged as Direct Cost of the Work, including without limitation such Overhead expenses as wages or salary of personnel above the level of Superintendent (i.e., project engineers, project coordinators, project managers, cost estimators, detailers and other field and home office personnel including owners), and expenses of Contractor's offices at the job site (e.g. job trailer) including expenses of personnel staffing the job site office, and Commercial General Liability Insurance and Automobile Liability Insurance.

1.B.22. **OWNER,** means PROSPER PORTLAND, the assumed business name of the Portland Development Commission, the redevelopment and urban renewal agency of the City of Portland, or PDC or Commission.

1.B.23. **OWNER'S AUTHORIZED REPRESENTATIVE**, means those individuals identified in writing by the Owner to act on behalf of the Owner for this project. Owner may elect, by written notice to Contractor, to delegate certain duties of the Owner's Authorized Representative to more than one party, including without limitation, to an Architect/Engineer. However, nothing in these General Conditions is intended to abrogate the separate design professional responsibilities of Architects under ORS Chapter 671 or of Engineers under ORS Chapter 672.

1.B.24. **PLANS**, means the drawings which show the location, type, dimensions, notes and details of the Work to be done under the Contract.

1.B.25. **PUNCHLIST**, means the list of Work yet to be completed or deficiencies which need to be corrected in order to achieve Final Completion of the Contract.

1.B.26. **RECORD DOCUMENT,** means the as-built Plans, Specifications, testing and inspection records, product data, samples, manufacturer and distributor/supplier warranties evidencing transfer to Owner, operational and maintenance manuals, shop drawings, Change Orders, correspondence, certificate(s) of occupancy, and other documents listed in Section 2.I.1 of these General Conditions and the Specifications, recording all Work performed.

1.B.27. **REQUEST FOR INFORMATION (RFI)**, means a documented communication, generally on a predetermined form, between the Contactor and the Architect/Engineer or Owner, to clarify a detail, Specification or note on the Plans or to secure a directive or clarification. A RFI is not a Notice to Proceed with a changed condition if modification to Contract Price or Contract Time is required.

1.B.28. **SCHEDULE OF VALUES,** means a general itemization of work to be performed accompanied by an associated cost required when the Work, or a portion of the Work, has been priced on a lump sum basis. When accepted by the Owner, the Schedule of Values determines how much money the Contractor is entitled to receive for work performed in a given time period based on its progress in completing the items of work listed.

1.B.29. **SOLICITATION**, means any oral or written invitation to one or more potential Contractor(s) to submit a Bid, Proposal, Quote, Statement of Qualifications or letter of interest to the Commission with respect to a proposed project, procurement or other contracting opportunity.

1.B.30. **SPECIFICATION**, means any description, or compilation of descriptions, of the physical or functional characteristics of the Work, or of the nature of a supply, service or construction item. A Specification may include a description of any process or any requirement for inspecting, testing or preparing a supply, service or construction item for delivery and the quantities or qualities of materials to be furnished under the Contract. Specifications generally will state the results or products to be obtained and may, on occasion, describe the method and manner of doing the

work to be performed. Specifications may be incorporated by reference and/or may be attached to the Contract Documents.

1.B.31. **SUBCONTRACTOR**, means a Person, supplier or company having a direct contract with the Contractor, or another Subcontractor, to perform one or more items of the Work.

1.B.32. **SUBMITTAL**, means shop drawings, material data, samples, product data and other information provided by the Contractor to the Owner and/or Architect/Engineer to verify that the correct products will be installed on the project and to transmit other required information.

1.B.33. **SUBSTANTIAL COMPLETION**, means the date when the Owner issues a Punchlist and accepts in writing the construction, alteration or repair of the improvement to real property or any designated portion thereof as having reached that state of completion when it may be used or occupied for its intended purpose.

1.B.34. **SUBSTITUTIONS**, means items that in function, performance, reliability, quality, and general configuration are the same or better than the product(s) specified. Approval of any substitute item shall be solely determined by the Owner's Authorized Representative. The decision of the Owner's Authorized Representative is final.

1.B.35. **SUPERINTENDENDENT** means a competent superintendent or project manager who shall represent the Contractor on the site and have overall field responsibility for the Work.

1.B.36. **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 or may be a separate attachment to the Contract.

1.B.37. **UNFORESEEN CONDITIONS**, means those conditions which differ materially from what was represented in the Contract Documents or from conditions that would normally be expected to exist and be inherent to the construction activities defined in the Contract Documents.

1.B.38. **WARRANTY**, means the Contractor's guarantee that all work completed, including but not limited to workmanship, materials and equipment is free of defects for the period set forth in the Contract. Unless otherwise specified in the Contract, the Warranty period shall be for a one (1) year period commencing upon the date of Substantial Completion of all successfully completed Work.

1.B.39. **WORK**, means furnishing all materials, labor, equipment, services, subcontracts and/or incidentals according to the Statement of Work and Solicitation Documents necessary to successfully complete or carry out all the duties and obligations as set forth in the Contract.

1.C. SCOPE OF WORK

The Work contemplated under this Contract includes all labor, materials, transportation, equipment and services for, and incidental to, the completion of all construction work in connection with the project described in the Contract Documents and in full compliance with all permits. 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.

1.D. INTERPRETATION OF CONTRACT DOCUMENTS

1.D.1. Unless otherwise specifically defined in the Contract Documents, words which have well-known technical meanings or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings. Contract Documents are intended to be complementary. Whatever is called for in one, is interpreted to be called for in all. However, in the event of conflicts or discrepancies among the Contract Documents, interpretations will be based on the following descending order of precedence:

1.D.1.a. Contract amendments to the Contract, with those of later date having precedence over those of an earlier date;

1.D.1.b. The Contract;
1.D.1.c. Change Orders and Construction Change Field Directives, with those of later date having precedence over those of an earlier date;
1.D.1.d. The Supplemental General Conditions;
1.D.1.e. The General Conditions;
1.D.1.f. The Plans and Specifications;
1.D.1.g. The Solicitation and any addenda thereto; and
1.D.1.h. The accepted Offer.

1.D.2. In the case of an inconsistency between Plans and Specifications or within either document not clarified by addendum or Change Order, the better quality or greater quantity of Work shall be provided in accordance with the Owner or Owner's Authorized Representative's interpretation in writing.

1.D.3. If the Contractor finds discrepancies in, or omissions from the Contract Documents, or if the Contractor is in doubt as to their meaning, the Contractor shall at once notify the Owner or Owner's Authorized Representative in writing by submitting a Request For Information. Matters concerning performance under, and interpretation of requirements of, the Contract Documents will be decided by the Owner's Authorized Representative, who may delegate that duty in some instances to the Architect/Engineer. Responses to Contractor's requests for interpretation of Contract Documents will be made in writing by Owner's Authorized Representative (or the Architect/Engineer) within any time limits agreed upon or otherwise with reasonable promptness.

1.D.4. Interpretations and decisions of the Owner's Authorized Representative (or Architect/Engineer) will be consistent with the intent of and reasonably inferable from the Contract Documents. Contractor shall not proceed without direction in writing from the Owner's Authorized Representative (or Architect/Engineer).

1.D.5. 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, except as may be otherwise specifically stated. Contractor shall comply with all referenced documents.

1.E. EXAMINATION OF PLANS, SPECIFICATIONS, AND SITE

1.E.1. It is understood that the Contractor, before submitting an Offer, has made a careful examination of the Contract Documents; has become fully informed as to the quality and quantity of materials and the character of the Work required; and has made a careful examination of the location and conditions of the Work, weather, permit requirements and the sources of supply for materials. The Owner will in no case be responsible for any loss or for any unanticipated costs that may be suffered by the Contractor as a result of the Contractor's failure to acquire full information in advance in regard to all conditions pertaining to the Work. No oral agreement or conversation with any officer, agent, or personnel of the Owner, or with the Architect/Engineer either before or after the execution of this Contract, shall affect or modify any of the terms or obligations herein contained.

1.E.2. It is the Contractor’s sole responsibility to understand the Work, the Plans and Specifications, determine what notes on the Plans apply to the Work and sequence the Work, coordinate all trade work to reduce and/or avoid conflicts with the Work.

1.E.3. Should the Plans or Specifications fail to particularly describe the materials, kind of goods, or details of construction of any aspect of the Work, Contractor shall have the duty to promptly, pursuant to Section 4.A.10, make inquiry in writing by Request For Information to the Owner’s

Authorized Representative and Architect/Engineer as to what is required prior to performance of the Work. Absent Specifications to the contrary, the materials or processes that would normally be used to produce first quality finished Work shall be considered a part of the Contract requirements.

1.E.4. Any design conflicts, errors or omissions noted by the Contractor shall be reported in writing by Request For Information promptly, pursuant to Section 4.A.10, to the Owner's Authorized Representative and Architect/Engineer, including without limitation, any nonconformity with applicable laws, statutes, ordinances, building codes, rules and regulations.

1.E.5. If the Contractor believes that additional cost or Contract Time is involved because of clarifications or instructions issued by the Owner's Authorized Representative or Architect/Engineer in response to the Contractor's notices or Requests For Information, the Contractor must submit a written request to the Owner's Authorized Representative, setting forth the nature and specific extent of the request, including all time and cost impacts against the Contract according to Section 4.

1.E.6. If the Contractor fails to perform the obligations of Sections 1.E.1 to 1.E.5, the Contractor waives any right to submit a claim and shall pay such costs and damages to the Owner as would have been avoided if the Contractor had performed such obligations.

1.F. INTERPRETATION OF SPECIFICATIONS

1.F.1. Reference in Specifications to an article, device or piece of equipment in the singular number shall apply to as many such articles as are shown on Plans or required to complete installation. Mention in Specifications or indication on Plans of articles, materials, operations, or methods requires the Contractor to provide and install such items including all necessary plant, labor and appurtenances.

1.F.2. Notes on the Plans are considered Specifications equal in force to those in the printed text.

1.F.3. When several materials are specified or approved for one use, select for use any of those so specified. For specified materials and brands, no substitutions are permitted other than as approved by addenda before the bid opening or otherwise approved by the Owner's Authorized Representative in writing by Substitution Request per Section 2.T.

1.G. INDEPENDENT CONTRACTOR STATUS

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

1.H. RETIREMENT SYSTEM STATUS AND TAXES

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

1.I. GOVERNMENT EMPLOYMENT STATUS

1.I.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.

1.I.2. Contractor represents and warrants that Contractor is not an employee of the City of Portland or the Portland Development Commission for purposes of performing Work under this Contract.

2. ADMINISTRATION OF THE CONTRACT

2.A. OWNER'S ADMINISTRATION OF THE CONTRACT

2.A.1. The Owner's Authorized Representative will provide administration of the Contract as described in the Contract Documents from Notice to Proceed (1) during construction (2) during closeout issuance of final payment and retainage and (3) during and to the end of the warranty period for correction of Work. The Owner's Authorized Representative will act on behalf of the Owner to the extent provided in the Contract Documents, unless modified in writing in accordance with other provisions of the Contract. In performing these tasks, the Owner's Authorized Representative may rely on the Architect/Engineer or other consultants to perform some or all of these tasks.

2.A.2. The Owner's Authorized Representative will visit the site at intervals appropriate to the stage of the Contractor's operations (1) to become generally familiar with and to keep the Owner informed about the progress and quality of the portion of the Work completed, (2) to endeavor to guard the Owner against defects and deficiencies in the Work, and (3) to determine in general if Work is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. The Owner's Authorized Representative will not make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Owner's Authorized Representative will neither have control over or charge of, nor be responsible for the construction means, methods, techniques, sequences or procedures, Contractor or Subcontractor forces or for the safety precautions and programs in connection with the Work.

2.A.3. Except as otherwise provided in the Contract Documents or when direct communications have been specifically authorized, the Owner and Contractor shall endeavor to communicate with each other through the Owner's Authorized Representative or designee about matters arising out of or relating to the Contract. Communications by and with the Owner's Architect/Engineer's subconsultants shall be through the Architect/Engineer with copy to Owner's Authorized Representative. Communications by and with Subcontractors and material suppliers shall be through the Contractor with copy to the Contractors Superintendent. Communications by and with separate contractors shall be through the Owner's Authorized Representative.

2.A.4. The Owner's Authorized Representative may, upon reasonable notice, call meetings with Contractor and/or Architect/Engineer and any of Contractor's representatives and/or Subcontractors and/or others as the Owner's Authorized Representative may determine and reserves the right to determine the frequency, location, participants and the agenda of meetings and to record and publish minutes of the meetings. Contractor and Subcontractors shall comply with all such requests as part of the Contract Price.

2.A.5. The Owner's Authorized Representative may consult with the Architect/Engineer on any evaluations of the Contractor's Application for Payment, or unless otherwise stipulated by the Owner's Authorized Representative, the Architect/Engineer will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

2.A.6. The Owner's Authorized Representative's decisions will be final, binding and conclusive on the Contractor on all questions that arise regarding the quantity of materials and work, the quality of materials and work, the acceptability of materials furnished and work performed, the acceptable rate of progress of the Work, the interpretation of the Plans and Specifications, the measurement

of all quantities, the acceptable fulfillment of the Contract on the part of the Contractor, and payments under the Contract.

2.A.7. Owner's decisions on matters relating to aesthetic effect will be final.

2.B. CONTRACTOR'S MEANS AND METHODS

2.B.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, scheduling and procedures and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences, scheduling 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, scheduling or procedures.

2.B.2. The Contractor is responsible to protect and maintain the Work and work site, including any Owner provided staging areas and other work areas off-site, during the course of construction and to mitigate any adverse impacts to the project, including those caused by authorized changes, which may affect cost, schedule, or quality.

2.B.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. The Contractor shall promptly comply with any order from the Owner's Authorized Representative to remove any unfit, unskilled or unsafe worker or Subcontractor.

2.B.4. The Contractor is responsible to safely and legally perform the work according to all state, federal and local laws, codes and regulations, including but not limited to earthwork shoring, confined space entry, hoisting and rigging, and other practices incidental to the normal prosecution of the Work. The Contractor is responsible for all compliance with OR-OSHA job safety requirements to include but not limited to job safety personnel protective equipment, preparing a health and safety plan and providing all safety measures as may be necessary or required.

2.B.5. The Work shall be subject to observation and approval by Owner, Owner's Authorized Representative, Architect/Engineer, special inspectors and representatives of governmental agencies with jurisdiction over the Project. Neither the supervision, inspection, testing, observation, nor approval of the Work by Owner or any of Owner's Authorized Representatives (including, but not limited to, Architect/Engineer and others separately retained by Owner) shall relieve Contractor from its obligation to perform the Work in strict accordance with the Contract Documents and industry standards.

2.C. MATERIALS AND WORKMANSHIP

2.C.1. The intent of the Contract Documents is to provide for the construction and completion in every detail of the Work described. All Work shall be performed in a professional manner and unless the means or methods of performing a task are specified elsewhere in the Contract Documents, Contractor shall employ methods that are generally accepted and used by the industry, in accordance with industry standards.

2.C.2. The Contractor is responsible to perform the Work as required by the Contract Documents. Defective Work shall be corrected at the Contractor's expense.

2.C.3. Work done and materials furnished shall be subject to inspection and/or observation and testing by the Owner's Authorized Representative to determine if they conform to the Contract Documents. Inspection and/or observation of the Work by the Owner's Authorized Representative does not relieve the Contractor of responsibility for the Work in accordance with the Contract Documents.

2.C.4. Contractor shall furnish adequate facilities, as required, for the Owner's Authorized Representative to have safe access to the Work including without limitation walkways, railings, ladders, tunnels, and platforms. Producers, suppliers, and fabricators shall also provide proper facilities and access to their facilities.

2.C.5. The Contractor shall furnish all Submittals and samples of materials for testing by the Owner's Authorized Representative and include the cost of the samples in the Contract Price. The Specifications may include other Contractor furnished mockup, testing, samples and include the cost of such items in the Contract Price.

2.D. PERMITS

2.D.1. Contractor shall obtain and pay for as part of the Contract Price all necessary permits and licenses generally consisting of trade and like permits, except for those specifically excluded in the Specifications or Supplemental General Conditions. Trade permits generally consist of those required 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.

2.D.2. Contractor shall be responsible for all violations of the law, in connection with the construction or caused by obstructing streets, sidewalks or otherwise.

2.D.3. Contractor shall give all requisite notices to public permit authorities and shall schedule and comply with all permit inspection requirements.

2.D.4. Unless otherwise set forth in the Specifications or Supplemental General Conditions, the Owner will obtain all City Planning and Zoning approvals, City General Building Permit and City Street or Limited Street Permits.

2.E. COMPLIANCE WITH GOVERNMENT LAWS AND REGULATIONS

2.E.1. Contractor shall become familiar with and comply with all federal, state and local laws, codes, regulations and ordinances applicable to the Work and the Contract.

2.E.2. Without limiting the generality of the foregoing Section 2.E.1, Contractor expressly agrees to comply with the following as applicable:

2.E.2.a. Title VI and VII of Civil Rights Act of 1964, as amended;

2.E.2.b. Section 503 and 504 of the Rehabilitation Act of 1973, as amended;

2.E.2.c. The Health Insurance Portability and Accountability Act of 1996;

2.E.2.d. The Americans with Disabilities Act of 1990, as amended;

2.E.2.e. ORS Chapter 659A; as amended;

2.E.2.f. All regulations and administrative rules established pursuant to the foregoing laws; and

2.E.2.g. All other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.

2.E.3. Contractor shall comply with the provisions of ORS 279C.505, 279C.510, 279C.515, 279C.520, and 279C.530, which are incorporated herein by reference.

2.E.4. Contractor shall comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations; and

2.E.4.a. Contractor shall not discriminate against Disadvantaged, Minority, Women or Emerging Small Business enterprises, as those terms are defined in ORS 200.005, or a business

enterprise that is owned or controlled by or that employs a disabled veteran, as that term is defined in ORS 408.225, in the awarding of subcontracts (ORS 279A.110).

2.E.4.b. Contractor shall maintain, in current and valid form, all licenses and certificates required by law, regulation, or this Contract when performing the Work.

2.E.5. Contractor's Employees and Subcontractors

2.E.5.a. Employee Drug Testing Program. Contractor shall certify to Owner that Contractor has initiated, and shall maintain through the completion of the Work of the Project, an employee drug testing program.

2.E.5.b. Employee Notice. Contractor must give to employees who work on a public works contract, notice of the number of hours per day and days per week that the employees may be required to work as specified in ORS 279C.520, either: (a) in writing, either at the time of hire or before commencement of work on the contract, or (b) by posting a notice in a location frequented by employees.

2.E.6. Licensed Contractors

2.E.6.a. Contractor and Subcontractors shall be licensed by the Oregon Construction Contractor's Board, and others as required, to perform the Work. Such licenses shall be maintained in good standing throughout the duration of this Contract.

2.E.6.b. Unless contrary to federal law, Contractor shall certify that it shall not accept a bid from Subcontractors to perform Work as described in ORS 701.005 under this Contract unless such Subcontractors are registered with the Construction Contractors Board in accordance with ORS 701.035 to 701.055 at the time they submit their bids to the Contractor.

2.E.6.c. Unless contrary to federal law, Contractor shall certify that each landscape contractor, as defined in ORS 671.520(2), performing Work under this Contract holds a valid landscape contractor's license issued pursuant to ORS 671.560.

2.E.6.d. Excavation Contractors: The following notice is applicable to Contractors who perform excavation Work. ATTENTION: Law requires you to follow rules adopted by the Oregon Utility Notification Center. Those rules are set forth in OAR 952-001-0010 through OAR 952-001-0090. You may obtain copies of the rules by calling the center at (503)232-1987.

2.E.6.e. Other Special Licensing Requirements: The Supplemental General Conditions set forth other special Contractor or Subcontractor licensing requirements including but not limited to Asbestos, Heating Oil, Lead Based Paint, etc. Contractor shall comply with any and all laws, rules or other requirements.

2.E.7. Equal Employment Opportunity (EEO) Certification. Contractor shall be an EEO employer as certified by the City of Portland.

2.E.8. City of Portland Business License. Contractor shall be licensed to do business in the City of Portland.

2.E.9. Authority to Transact. Corporations (for-profit and non-profit) and sole proprietors operating under an assumed business name (e.g., "John Coltrane d/b/a Coltrane Enterprises") must register with the Oregon Secretary of State's Corporation Division. Sole proprietors operating under their legal name are not required to register with the Secretary of State. Only officers or designees authorized to sign documents on behalf of the Contractor shall execute any application for payment, Change Order or submit any Claim.

2.E.10. Compliance with PDC Local Contract Review Board Rules. The Portland Development Commission Boards has adopted Local Contract Review Board Rules ("LCRB") and their amendments to establish contracting procedures for the Portland Development Commission. The Oregon Administrative Rules ("OAR") adopted by the Oregon Attorney General do not apply to the Commission except for those model rules that are specifically referenced and adopted in the body of the LCRB but may be used as supplemental rules if needed to address circumstances not

provided for by the LCRB. Contractor shall comply with any requirements set forth in the PDC LCRB Rules that pertain to the Contract.

2.E.11. Failure to comply with all requirements of Sections 2.E.1 through 2.E.10 for the duration of this Contract shall constitute a breach of Contract and shall be grounds for Contract termination pursuant to Section 10. Damages or costs resulting from such noncompliance shall be the sole responsibility of Contractor and may be deducted from the Contract Price.

2.E.12. The Contractor shall pay all royalties and license fees. The Contractor shall defend all suits or claims for infringement of any patent or other proprietary rights and save harmless and blameless from loss, on account thereof, the Portland Development Commission, and its departments, divisions, members and employees.

2.F. SUPERINTENDENCE

2.F.1. Contractor shall keep on the site, during the progress of the Work, a competent Superintendent or project manager 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 or project manager by the Owner's Authorized Representative are binding on the Contractor.

2.F.2. Contractor’s project manager and Superintendent shall not be removed from the Project by Contractor, temporarily or otherwise, without Owner’s Authorized Representative advance written approval. If the project manager or Superintendent becomes ill, resigns or otherwise must terminate his/her position with Contractor, then Contractor shall appoint a substitute subject to Owner’s Authorized Representative written approval.

2.G. INSPECTION OF WORK

2.G.1. Owner's Authorized Representative and Architect/Engineer shall have access to the Work at all times. Contractor shall interlock all access gates with Owner’s lock and/or provide duplicate access key(s) or lock combination to Owner’s Authorized Representative.

2.G.2. Observation of the Work will be made by the Owner's Authorized Representative or Architect/Engineer at its discretion. The Owner’s Authorized Representative will have authority to reject Work that does not conform to the Contract Documents. Any Work found to be not in conformance with the Contract Documents, in the discretion of the Owner's Authorized Representative, shall be removed and replaced at the Contractor's expense.

2.G.3. Contractor shall make or obtain at the appropriate time all tests, inspections and approvals of portions of the Work required by the Contract Documents or by laws, ordinances, rules, regulations or orders of public authorities having jurisdiction. Unless otherwise set forth in the Specifications or Supplemental General Conditions, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner’s Authorized Representative, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals as part of the Contract Price. Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work. The Contractor shall give the Owner’s Authorized Representative timely notice of when and where tests and inspections are to be made so that the Owner’s Authorized Representative may be present for such procedures. Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Owner’s Authorized Representative.

2.G.4. As required by the Contract Documents or as directed by the Owner’s Authorized Representative, Work done or material used without observation, inspection or testing by the Owner's Authorized Representative may be ordered removed and replaced at the Contractor's expense.

2.G.5. If directed to do so any time before the Work is accepted, the Contractor shall uncover portions of the completed Work for observation or inspection. After observation or inspection, the Contractor shall restore such portions of Work to the standard required by the Contract. If the Work uncovered is unacceptable or was done without sufficient notice to the Owner's Authorized Representative, the uncovering and restoration shall be done at the Contractor's expense. If the Work uncovered is acceptable and was done with sufficient notice to the Owner's Authorized Representative, the uncovering and restoration will be paid for by Owner as a Change Order.

2.G.6. If any testing or inspection reveals failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure, including those of repeated procedures and compensation for the Owner's Authorized Representative's, Special Inspector and Architect/Engineer's services and expenses, shall be at the Contractor's expense and deducted from the Contract Price.

2.G.7. When the United States government, State of Oregon or City of Portland participates in the cost of the Work, or the Owner has an agreement with other public or private organizations, or if any portion of the Work is being performed for a third party or in close proximity to third party facilities, representatives of these organizations have the right to inspect the Work affecting their interests or property. Their right to inspect shall not make them a party to the Contract and shall not interfere with the rights of the parties of the Contract. Instructions or orders of such parties shall be transmitted to the Contractor, through the Owner's Authorized Representative.

2.H. SEVERABILITY

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

2.I. ACCESS TO RECORDS

2.I.1. Contractor shall keep, at all times on the Work site, one record copy of the complete Contract Documents, including the Plans, Specifications, Change Orders and addenda, in good order and marked currently to record field changes and selections made during construction, and one record copy of shop drawings, product data, samples and similar Submittals, and shall at all times give the Owner's Authorized Representative or Architect/Engineer access thereto.

2.I.2. Contractor shall retain and the Owner and its duly authorized representatives shall have access to, for a period not less than six (6) years, all Record Documents, financial and accounting records, and other books, documents, papers and records of Contractor and Subcontractors which are pertinent to the Contract including records pertaining to Overhead, Direct and indirect costs, for the purpose of making audit, examination, excerpts and transcripts. If for any reason, any part of the Contract is involved in any claims or litigation, Contractor shall retain all such records until all litigation is resolved. The Owner and/or its agents shall continue to be provided full access to the records during litigation.

2.I.3. Owner shall have the right to conduct an independent audit of Contractor's or any Subcontractor's records, books and all other cost documentation at any time during or after the Project. Contractor shall allow reasonable access to Contractor's offices and other sites where the documentation is kept, and Contractor shall cooperate fully in the audit. Contractor understands and agrees that the audit may require more than one visit to Contractor's offices or other sites. Owner and its audit representatives will endeavor to minimize interference to Contractor's operations while the audit is being conducted.

2.I.4. To the extent that the audit reveals any malfeasance, Contractor shall reimburse Owner for any costs associated with the audit and Contractor shall promptly correct any deviations discovered as a result of the audit.

2.J. WAIVER

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

2.K. SUBCONTRACTS AND ASSIGNMENT

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

2.K.2. At Owner's request, Contractor shall submit to Owner prior to their execution either Contractor's form of subcontract, or the subcontract to be executed with any particular Subcontractor. If Owner disapproves such form, Contractor shall not execute the form until the matters disapproved are resolved to Owner's satisfaction. Owner's review, comment upon or approval of any such form shall not relieve Contractor of its obligations under this Contract or be deemed a waiver of such obligations of Contractor. Owner may request from the Contractor copies of any executed subcontract, material or supply contract for any Subcontractor at any level.

2.K.3. Owner reserves the right to approve and Subcontractors prior to performing any work.

2.K.4. Contractor shall not assign, sell, or transfer its rights, or delegate its responsibilities under this Contract, in whole or in part, without the prior written approval of the Owner. No such written approval shall relieve Contractor of any obligations of this Contract, and any transferee shall be considered the agent of the Contractor and bound to perform in accordance with the Contract Documents. Contractor shall remain liable as between the original parties to the Contract as if no assignment had occurred.

2.K.5. No Contractual Relationship between Owner and any Subcontractor, supplier or manufacturer. Nothing in this Contract shall be construed to establish a contractual relationship between Owner and any Subcontractor, supplier or manufacturer; provided, however, that nothing in this Contract shall prevent Owner from maintaining any third-party beneficiary claims against Subcontractors, suppliers or manufacturers.

2.L. SUCCESSORS IN INTEREST

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

2.M.OWNER'S RIGHT TO DO WORK

2.M.1. Owner reserves the right to perform other or additional work at or near the project site with other forces than those of the Contractor.

2.M.2. Contractor shall not be responsible for work performed by Owner's own forces or separate contractors nor shall Contractor be responsible for the acts or omissions of such parties.

2.M.3. Contractor agrees to cooperate with Owner and Owner's separate contractors, and Owner agrees to cooperate with Contractor and to require its separate contractors to do the same, with

respect to scheduling, material, and equipment deliveries, storage, security, cleanup, work activities, and other aspects of the Project.

2.M.3.a. Owner shall be responsible for any avoidable interference in or delays to the Work caused by Owner's own forces or separate contractors.

2.M.3.b. Contractor shall be responsible for any avoidable interference in or delays to the work on the Project performed by Owner's own forces or separate contractors caused by Contractor.

2.M.4. The Owner's Authorized Representative will resolve any disagreements that may arise between or among Contractor and the other contractors over the method or order of doing all work (including the Work). In case of unavoidable interference, the Owner's Authorized Representative will establish work priority (including the Work) which generally will be in the sequence that the contracts were awarded.

2.M.5. Any work performed by Owner's own forces or separate contractors shall not be covered by Contractor's warranties under this Contract. In the event Owner furnishes materials, equipment or components, Contractor's warranties under this Contract shall extend to the installation but not to the materials, equipment, or components per se.

2.N. OTHER CONTRACTS

In all cases and at any time without notice, the Owner has the right to execute other contracts related to or unrelated to the Work of this Contract. The Contractor of this Contract shall fully cooperate with any and all other contractors without additional cost to the Owner in the manner described in Section 2.M.

2.O. GOVERNING LAW

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

2.P. LITIGATION

Any Claim between Owner and Contractor that arises from or relates to this Contract and that is not resolved through the Claims Resolution Procedures in Section 4.C shall be brought and conducted solely and exclusively within the Circuit Court of Multnomah County; 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 Portland Development Commission 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 2.P.

2.Q. ALLOWANCES

2.Q.1. The Contractor shall include in the Contract Price all allowances stated in the Contract Documents. Items covered by allowances shall be supplied by Contractor for such amounts and by such persons or entities as the Owner may direct.

2.Q.2. Unless otherwise provided in the Contract Documents when finally reconciled, allowances shall cover all cost to the Contractor for the items covered by the allowance including, but not limited to:

2.Q.2.a. Materials and equipment

2.Q.2.b. All required taxes, less applicable trade discounts;

2.Q.2.c. Contractor's costs for unloading and handling at the site,

2.Q.2.d. Labor and installation costs

2.Q.2.e. Overhead, profit and other expenses contemplated for stated allowance amounts.

2.Q.3. Whenever costs are more than or less than allowances, the Contract Price shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect the difference between actual costs and the allowances under Section 2.Q.2.

2.Q.4. As may be required, the Contractor shall provide to the Owner's Authorized Representative a proposed not to exceed or fixed price for any allowance work prior to its performance.

2.R. UNIT PRICES

2.R.1. The Contract will set forth any unit prices which shall be additive/deductive price unless otherwise set forth. Unless otherwise set forth in the Contract the unit price shall cover any and all costs related to that work to include but not limited to Direct Costs and Overhead.

2.R.2. The Owner may establish not to exceed costs for unit prices based on estimates quantities or volumes of work to be completed. Contractor shall track any and all unit costs and provide documentation to the Owner's Authorized Representative and give prompt notice if any not to exceed costs are likely to be exceeded prior to its performance.

2.R.3. A Change Order will be issued to make any adjustments to not to exceed unit costs.

2.S. SUBMITTALS, SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

2.S.1. The Owner may establish and the Contractor shall keep current, for the Architect's/Engineer's approval (or for the approval of Owner's Authorized Representative if approval authority has not been delegated to the Architect/Engineer), a schedule and list of Submittals which is coordinated with the Contractor's construction schedule and allows the Architect/Engineer reasonable time to review Submittals. Owner reserves the right to finally approve the schedule and list of Submittals. Submittals include, without limitation, Shop Drawings, Product Data, and Samples which are described below:

2.S.1.a. Shop Drawings are drawings, diagrams, schedules and other data specially prepared for the Work by the Contractor or a Subcontractor (including any sub-subcontractor), manufacturer, supplier or distributor to illustrate some portion of the Work.

2.S.1.b. Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

2.S.1.c. Samples are physical examples which illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

2.S.2. Shop Drawings, Product Data, Samples and similar Submittals are not Contract Documents. The purpose of their Submittal is to demonstrate for those portions of the Work for which Submittals are required by the Contract Documents the way by which the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents. Review of Submittals by the Architect/Engineer is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, or for approval of safety precautions or, unless otherwise specifically stated by the Architect/Engineer, of any construction means, methods, techniques, sequences or procedures, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect/Engineer's review of the Contractor's Submittals shall not relieve the Contractor of its obligations under the Contract Documents. The Architect/Engineer's review and/or approval of a specific item shall not indicate approval of an assembly of which the item is a component. Informational Submittals upon which the Architect/Engineer is not expected to take responsive action may be so identified

in the Contract Documents. Submittals which are not required by the Contract Documents may be returned by the Architect/Engineer without action.

2.S.3. Prior to submitting Shop Drawings, Product Data, Samples and similar Submittals, the Contractor shall review all components for compliance with the Contract Documents. By submitting the Submittal, Contractor represents that Contractor has determined and verified all materials, field measurements and field construction criteria related thereto, or will do so, and has checked and coordinated the information contained within such Submittals with the requirements of the Work and of the Contract Documents.

2.S.4. The Contractor shall submit to the Architect/Engineer Shop Drawings, Product Data, Samples and similar Submittals required by the Contract Documents with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of separate contractors. Submittals which are not marked as reviewed for compliance with the Contract Documents and approved by the Contractor may be returned by the Architect/Engineer without action.

2.S.5. The Contractor shall perform no portion of the Work for which the Contract Documents require Submittal and review of Shop Drawings, Product Data, Samples or similar Submittals until the respective Submittal has been approved by the Architect/Engineer.

2.S.6. The Work shall be in accordance with approved Submittals except that the Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Architect/Engineer's review or approval of Shop Drawings, Product Data, Samples or similar Submittals unless the Contractor has specifically informed the Architect/Engineer in writing of such deviation at the time of Submittal and (i) the Architect/Engineer has given written approval to the specific deviation as a minor change in the Work, or (ii) a Construction Change Field Directive or Change Order has been executed by Owner's Authorized Representative authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar Submittals by the Architect/Engineer's review or approval thereof.

2.S.7. In the event that Owner elects not to have the obligations and duties described under this Section 2.S performed by the Architect/Engineer, or in the event no Architect/Engineer is employed by Owner on the project, all obligations and duties assigned to the Architect/Engineer hereunder shall be performed by the Owner's Authorized Representative.

2.T. SUBSTITUTIONS

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

2.U. USE OF PLANS AND SPECIFICATIONS

Plans, Specifications and related Contract Documents furnished to Contractor by Owner or Owner's Architect/Engineer shall be used solely for the performance of the Work under this Contract. Contractor and its Subcontractors including but not limited to manufacturers and suppliers are

authorized to use and reproduce applicable portions of such documents appropriate to the execution of the Work, but shall not claim any ownership or other interest in them beyond the scope of this Contract, and no such interest shall attach. Unless otherwise indicated, all common law, statutory and other reserved rights, in addition to copyrights, are retained by Owner.

2.V. FUNDS AVAILABLE AND AUTHORIZED

The Commission reasonably believes at the time of entering into this Contract that sufficient funds are available and authorized for expenditure to finance the cost of this Contract within the Commissions budget appropriation. Contractor understands and agrees that, to the extent that sufficient funds are not available and authorized for expenditure to finance the cost of this Contract, Commission's payment of amounts under this Contract attributable to work performed after the last day of the current budget period is contingent on the Commission receiving additional appropriations, limitations or other expenditure authority for this work sufficient to allow the Commission, in the exercise of its reasonable administrative discretion, to continue to make payments under this Contract in the next budget period. If additional funds are not made available to finance the cost of this Contract, this Contract will be Terminated according to Section 10.E.

2.W.NO THIRD PARTY BENEFICIARIES

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

3. WAGES AND LABOR

3.A. PREVAILING WAGE ON PUBLIC WORKS

See the Supplemental General Conditions for requirements, if any.

3.B. BUSINESS AND WORKFORCE EQUITY POLICY

Through the Business and Workforce Equity Policy, PDC seeks to extend subcontracting opportunities to State of Oregon certified Minority-Owned, Women-Owned and Emerging Small businesses (collectively, “M/W/ESBS”) in order to promote their economic success and growth. Contractor is encouraged to make every effort to utilize M/W/ESB firms for any subcontracting opportunities under this contract and maintain a diverse workforce. See the Supplemental General Conditions for additional requirements, if any.

3.C. PAYROLL CERTIFICATION; SPECIAL RETAINAGE REQUIREMENTS

See the Supplemental General Conditions for requirements, if any.

3.D. PROMPT PAYMENT AND CONTRACT CONDITIONS

3.D.1. Pursuant to ORS 279C.505 the Contractor shall:

3.D.1.a. Promptly pay all of its obligations arising out of or in connection with the Work, including, but not limited to, to all persons supplying to Contractor labor, equipment or materials for the prosecution of the Work provided for in this Contract.

3.D.1.b. Pay all contributions or amounts due the State Industrial Accident Fund from such Contractor or Subcontractor incurred in the performance of the Contract.

3.D.1.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.

3.D.1.d. Pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.

3.D.2. Pursuant to ORS 279C.515 Contractor agrees:

3.D.2.a. If Contractor fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to the Contractor or a Subcontractor by any person in connection with the project as such claim becomes due, the proper officer(s) representing the Owner may pay the claim and charge the amount of the payment against funds due or to become due Contractor under this Contract. Payment of claims in this manner shall not relieve the Contractor or the Contractor's surety from obligation with respect to any unpaid claims.

3.D.2.b. If the Contractor or a first-tier Subcontractor fails, neglects or refuses to make payment to a person furnishing labor or materials in connection with the public contract for a public improvement within thirty (30) days after receipt of payment from Owner or a contractor, the contractor or first-tier Subcontractor shall owe the person the amount due plus interest charges commencing at the end of the 10-day period that payment is due under ORS 279C.580(3) and ending upon final payment, unless payment is subject to a good faith dispute as defined in ORS 279C.580. The rate of interest charged to the Contractor or first-tier Subcontractor on the amount due shall equal three times the discount rate on 90-day commercial paper in effect at the Federal Reserve Bank in the Federal Reserve district that includes Oregon on the date that is thirty (30) days after the date when payment was received from Owner or from the Contractor, but the rate of interest shall not exceed thirty percent (30%). The amount of interest may not be waived.

3.D.2.c. If the Contractor or a Subcontractor fails, neglects or refuses to make payment to a person furnishing labor or materials in connection with the Contract, the person may file a complaint with the Construction Contractors Board, unless payment is subject to a good faith dispute as defined in ORS 279C.580. Every contract related to this Contract shall contain a similar clause.

3.D.3. Pursuant to ORS 279C.580, 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:

3.D.3.a. 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 Owner under the Contract;

3.D.3.b. An interest penalty clause that obligates the Contractor if payment is not made within thirty (30) days after receipt of payment from Owner, to pay to the first-tier Subcontractor an interest penalty on amounts due in the case of each payment not made in accordance with the payment clause included in the subcontract pursuant to paragraph 3.D.3.a of this subsection. Contractor or first-tier Subcontractor shall not be obligated to pay an interest penalty if the only reason that the Contractor or first-tier Subcontractor did not make payment when payment was due is that the Contractor or first-tier Subcontractor did not receive payment from Owner or Contractor when payment was due. The interest penalty shall be for the period beginning on the day after the required payment date and ending on the date on which payment of the amount due is made; and shall be computed at the rate specified in ORS 279C.515(2).

3.D.3.c. A clause which requires each of Contractor's Subcontractors to include, in each of their contracts with lower-tier Subcontractors or suppliers, provisions to the effect that the first-tier Subcontractor shall pay its lower-tier Subcontractors and suppliers in accordance with the provisions of subsections (a) and (b), above and requiring each of their Subcontractors and suppliers to include such clauses in their subcontracts and supply contracts.

3.D.4. All employers, including Contractor, that employ subject workers who work under this contract in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage, unless such employers are exempt under ORS 656.126. Contractor shall ensure that each of its Subcontractors complies with these requirements.

3.E. HOURS OF LABOR

3.E.1. Contractor shall comply with ORS 279C.520, as amended from time to time and incorporated herein by this reference.

3.E.2. Pursuant to ORS 279C.520, no person shall be employed to perform Work under this Contract for more than ten (10) hours in any one day or forty (40) hours in any one week, except in cases of necessity, emergency or where public policy absolutely requires it. In such instances, Contractor shall pay the employee at least time and a half pay:

3.E.2.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

3.E.2.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

3.E.2.c. For all Work performed on Saturday and on any legal holiday specified in ORS 279C.540.

3.E.3. This Section 3.E will not apply to Contractor's Work under this Contract if Contractor is currently a party to a collective bargaining agreement with any labor organization.

3.E.4. This Section 3.E shall not excuse Contractor from completion of the Work within the time required under this Contract.

3.E.5. Contractor shall obtain prior approval from Owner's Authorized Representative prior to the overtime Work being performed. Unless otherwise agreed to in writing by the Owner's Authorized Representative, all premium and overtime costs are the sole responsibility of the Contractor.

3.F. PAYMENT FOR MEDICAL CARE

Pursuant to ORS 279C.530 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.

4. CHANGES IN THE WORK

4.A. CHANGES IN WORK

4.A.1. It is mutually agreed that changes in Plans, Specifications, quantities, or details of construction are inherent in the nature of construction and may be necessary or desirable during the course of construction.

4.A.2. Contractor and Owner further agree that it is inherent in any construction project that minor deviations and conflicts occur between the Plans, Specifications and other design documents and that minor unforeseen issues may be found at the project site. The Owner's Authorized

Representative reserves the right to reasonably determine what are minor deviations, conflicts and/or unforeseen conditions. These minor deviations, conflicts and/or unforeseen conditions are not changes in the Work.

4.A.3. Contractor must have the Owner's Authorized Representative's written authorization prior to proceeding with any changes in the Work. Beginning any changes in the Work without such authorization, unless otherwise provided for in the Contract Documents, will be considered as within the scope of the Work of the Contract with no change to the Contract Price or Contract Time.

4.A.4. All changes to the Contract, including changes to the Work, Contract Price, Contract Time, changes to Plans and Specifications, shall be made by Change Order executed by the parties and shall be signed by a person legally authorized by the Contractor.

4.A.5. The terms of this Contract shall not be waived, altered, modified, supplemented or amended in any manner whatsoever without prior written approval of the Owner's Authorized Representative, and then only in a manner consistent with the Construction Change Field Directive and /or Change Order provisions of this Section 4.A and after any necessary approvals required by public contracting laws have been obtained. Otherwise, a formal contract amendment is required which shall not be effective until its execution by the parties to this Contract and all approvals required by public contracting laws have been obtained.

4.A.6. Within the general scope of this Contract, the Owner's Authorized Representative may at any time, without notice to the sureties and without impairing the Contract, require changes consistent with this Section 4.A. All Change Order Work shall be executed under the conditions of the Contract Documents. Such changes may include, but are not limited to:

- 4.A.6.a. Modification to the Contract agreement.
- 4.A.6.b. Modification to the Supplemental Conditions.
- 4.A.6.c. Modification of Specifications and Plans.
- 4.A.6.d. Increases or decreases in quantities.
- 4.A.6.e. Increases or decreases to the amount of Work.
- 4.A.6.f. Addition or elimination of any Work item.
- 4.A.6.g. Change in the duration of the project.
- 4.A.6.h. Acceleration or delay in performance of Work.
- 4.A.6.i. Additive or deductive changes.
- 4.A.6.j. Unforeseen conditions.
- 4.A.6.k. Equitable Adjustments of any Work.

4.A.7. Deductive changes are those that reduce the scope of the Work, and shall be made by Equitable Adjustment whenever feasible. In cases of suspension or partial termination under Section 10, Owner reserves the right to unilaterally impose a deductive change and to self perform such Work, for which the provisions of Section 2.M shall then apply. Adjustments in compensation shall be made under the provisions of Section 4.A.8.c 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.

4.A.8. The Owner and Contractor agree that Change Order Work shall be administered and compensated according to the following:

4.A.8.a. **Unit pricing.** Unit pricing may be utilized at the Owner's option when unit prices or solicitation alternates were provided or further established by Change Order that established the cost for additional Work, and a binding obligation exists under the Contract on the parties covering the terms and conditions of the additional Work. Unless otherwise set forth in the Contract unit prices are either additive or deductive to be based on actual Work units

performed. The Owner may establish a maximum not to exceed cost which shall not be exceeded without additional authorization by the Owner's Authorized Representative.

4.A.8.b. **Fixed pricing.** If the Owner elects not to utilize unit pricing, or in the event that unit pricing is not available or appropriate as determined by Owner's Authorized Representative, fixed pricing may be used for Change Order Work. In fixed pricing the basis of payments or total price shall be agreed upon in writing between the parties to the Contract, and shall be established before the Work is done whenever feasible. The mark-ups set forth in Section 4.A.8.c shall be utilized by the parties as a guide in establishing fixed pricing, and will not be exceeded without adequate justification. Detailed cost and price data relating to fixed pricing shall be supplied by Contractor to Owner upon request, but Owner shall be under no obligation to make such requests.

4.A.8.c. **Direct cost reimbursement.** In the event the Owner's Authorized Representative determines that unit pricing and fixed pricing will not be utilized, then Change Order Work shall be performed on a cost reimbursement basis for Direct Costs. Such Work shall be compensated on the basis of the actual, reasonable and allowable cost of labor, equipment, and material furnished on the Work performed. In addition, the following markups shall be added to the Contractor's Direct Costs as full compensation for profit, Overhead and other indirect costs for Work directly performed with the Contractor's own forces:

On Labor	20%
On Equipment	10%
On Materials	15%
On Superintendence	10%
On Special Services	15%

The following markup shall be added to the Subcontractor's Direct Costs as full compensation for Overhead, profit, and all costs that were incurred by the Contractor for Change Order Work:

On Subcontractors	12%

When Change Order Work under Section 4.A.8.c is invoiced by an authorized Subcontractor at any level, each ascending tier Subcontractor will be allowed a supplemental 12% mark-up on each piece of subcontract Work covered by such Change Order. The total aggregate markup (including all Contractor and Subcontractors from all tiers) for any Change Order Work shall not exceed the maximum of forty-five percent (45%) on the direct cost of the work of the Subcontractor(s) who actually performed the work.

Owner may establish a maximum not-to-exceed cost for Change Order Work which shall not be exceeded for reimbursement without additional written authorization from Owner. Contractor shall not be required to complete such Change Order Work without additional authorization.

4.A.8.d. **Determination of Price by Owner**. Upon review and approval of Changes in Work, the Owner's Authorized Representative shall issue a Construction Change Field Directive or Change Order for determining the proposed adjustment in the Contract Price or Contract Time. Upon receipt of a Construction Change Field Directive or Change Order, Contractor shall promptly advise the Owner's Authorized Representative in writing of Contractor's agreement or disagreement with the method. If Contractor does not respond promptly or

disagrees with the method for adjustment, and Owner makes a written request for the work to proceed anyway, the method and the adjustment shall be determined by Owner as set forth in Section 4.A.8.c direct cost reimbursement. In such case, Contractor shall keep and present (and at all times allow Owner to audit as provided in Section 2.I above) an itemized accounting of costs together with appropriate supporting data.

4.A.9. Any necessary adjustment of Contract Time that may be required as a result of a Change Order must be agreed upon by the parties before the start of the Change Order Work unless Owner's Authorized Representative authorizes Contractor to start the Work before agreement on Contract Time adjustment.

4.A.10. Notification

4.A.10.a. Contractor shall submit in writing any request for additional compensation and /or additional Contract Time to Owner's Authorized Representative as soon as possible but no later than ten (10) days after Contractor first knows or reasonably should have known of the event alleged to have given rise to the changed condition. If Contractor's request for additional compensation or adjustment of Contract Time is not made within the ten (10) day time limit, Contractor's requests pertaining to that Change Order are barred. The ten (10) day time limit for making requests shall not be extended for any reason, including without limitation Contractor's claimed inability to determine the amount of additional compensation or adjustment of Contract Time, unless an extension is granted in writing by Owner.

4.A.10.b. The ten (10) day time limit applies to claims of Subcontractors, suppliers, or manufacturers that may be affected by the Change Order and that request additional compensation or an extension of Contract Time to perform.

4.A.10.b.1. Contractor has responsibility for contacting its Subcontractors, suppliers, or manufacturers within the ten (10) day time limit, and including their requests with Contractor's requests.

4.A.10.b.2. If the request involves Work to be completed by Subcontractors, or materials to be furnished by suppliers or manufacturers, such requests shall be submitted to the Contractor in writing with full analysis and justification for the compensation and additional Contract Time requested. The Contractor will analyze and evaluate the merits of the requests submitted by Subcontractors, suppliers, and manufacturers to Contractor prior to including those requests and Contractor's analysis and evaluation of those requests with Contractor's requests for additional compensation or Contract Time that Contractor submits to the Owner's Authorized Representative.

4.A.10.b.3. The Owner will not consider direct requests or claims from Subcontractors, suppliers, manufacturers or others not a party to this Contract.

4.A.10.c. Unforeseen Conditions. The Contractor shall notify in writing the Owner's Authorized Representative immediately but no later than ten (10) days after Contractor first knows or reasonably should have known of differing site conditions. Contractor shall to the extent possible without further disturbance of the specific area, perform other work while the unforeseen conditions are being investigated. The Owner's Authorized Representative will investigate the area and make a determination as to whether or not the conditions differ materially from either the conditions stated in the Contract Documents or those which could reasonably be expected in execution of this particular Contract. If Contractor and the Owner's Authorized Representative agree that a differing site condition exists, any additional compensation or additional Contract Time will be determined based on the process set forth in Section 4.A.8 for Change Order Work. If the Owner's Authorized Representative disagrees that a differing site condition exists and denies Contractor's request for additional

compensation or Contract Time, Contractor may proceed to file a Claim under Section 4.C, Claims Resolution Procedures.

4.A.11. If the Owner's Authorized Representative denies the Contractor's request for additional compensation or an extension of Contract Time, the Contractor may proceed to file a Claim under Section 4.C, Claims Resolution Procedures.

4.A.12. The consideration of such requests and claims under this section does not give any person, not a party to the Contract the right to bring a claim against the Portland Development Commission, whether in this claims process, in litigation, or in any dispute resolution process.

4.B. DELAYS

4.B.1. Delays in construction include "Avoidable Delays", which are defined in Section 4.B.1.a, and "Unavoidable Delays", which are defined in Section 4.B.1.b. The effect of Avoidable Delays is described in Section 4.B.2 and the effect of Unavoidable Delays is described in Section 4.B.3.

4.B.1.a. **Avoidable Delays** include any delays other than Unavoidable Delays, and include delays that otherwise would be considered Unavoidable Delays but that:

4.B.1.a.1. Materially affect or delay the Contractor proceeding with the Work and could have been avoided by the exercise of care, prudence, foresight, and diligence on the part of the Contractor or its Subcontractors.

4.B.1.a.2. Affect only a portion of the Work and do not necessarily prevent or delay the prosecution of other parts of the Work or the completion of the whole Work within the Contract Time.

4.B.1.a.3. Do not impact activities on the Owner approved baseline critical path schedule.

4.B.1.a.4. Caused by Contractor or Subcontractor in sequencing of work, delay in fabrication, obtaining trade permits and any permit inspections, equipment failure, material shipment delay or other related actions not caused by Force Majeure acts, events or occurrences.

4.B.1.a.5. Are associated with the reasonable interference of other contractors employed by the Owner that do not necessarily prevent the completion of the whole Work within the Contract Time.

4.B.1.b. **Unavoidable Delays** include delays other than Avoidable Delays that are:

4.B.1.b.1. Caused by any actions of the Owner, Owner's Authorized Representative, or any other employee or agent of the Owner, or by separate contractor employed by the Owner that materially affect or delay the Contractor proceeding with the Work.

4.B.1.b.2. Caused by or resulting from any Unforeseen Conditions if the Owner's Authorized Representative determines such conditions differ materially from either the conditions stated in the Contract Documents or those which could reasonably be expected in execution of this particular Contract.

4.B.1.b.3. 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.

4.B.1.b.4. 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, snow 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:

4.B.1.b.4.(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.

4.B.1.b.4.(b). Daily rainfall equal to, or greater than, 0.75 inch at any time.

4.B.1.b.5. 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.

4.B.2. Except as otherwise provided in ORS 279C.315, Contractor shall not be entitled to additional compensation or additional Contract Time for Avoidable Delays.

4.B.3. In the event of Unavoidable Delays, based on principles of Equitable Adjustment, Contractor may be entitled to the following:

4.B.3.a. Contractor may be entitled to additional Contract Price or additional Contract Time, or both, for Unavoidable Delays described in Sections 4.B.1.b.1 and 4.B.1.b.2.

4.B.3.b. Contractor may be entitled to additional Contract Time for Unavoidable Delays described in Sections 4.B.1.b.3 and 4.B.1.b.4.

4.B.3.c. In the event of any requests for additional compensation or additional Contract Time, or both, as applicable, arising under this Section 4.B.3 for Unavoidable Delays, other than requests for additional compensation or additional Contract Time for unforeseen site conditions for which a review process is established under Section 4.B.1.b.2, Contractor shall submit a written notification of the delay to the Owner's Authorized Representative within two (2) days of the occurrence of the cause of the delay. This written notification shall state the cause of the potential delay, the project components impacted by the delay, and the anticipated additional Contract Time or the additional compensation, or both, as applicable, resulting from the delay. Within ten (10) days after the cause of the delay has been mitigated, the Contractor shall submit to the Owner's Authorized Representative, a complete and detailed request for additional compensation or additional Contract Time, or both, as applicable, resulting from the delay. If the Owner's Authorized Representative denies Contractor's request for additional compensation or adjustment of Contract Time, the Contractor may proceed to file a Claim under Section 4.C, Claims Resolution Procedures. If Contractor does not timely submit the notices required under this Section 4.B, then unless otherwise prohibited by law, Contractor's Claim shall be barred.

4.C. CLAIMS RESOLUTION PROCEDURES

4.C.1. This section outlines the exclusive procedure to be followed if the Contractor believes that it is entitled to additional compensation, additional Contract Time or both. This section applies to all Claims for additional compensation and all requests for additional Contract Time, regardless of whether the basis for the Claim for additional compensation, or request for additional Contract Time, or both, stems from the performance of extra work, changed work, disputes, excusable delays of any nature, suspension of Contract work, or any other reason whatsoever.

4.C.2. When the Contractor believes it is entitled to be paid more than the Contract Amount, the Contractor shall notify the Owner's Authorized Representative in writing before beginning any work for which additional ***c***ompensation is sought. The written Notice shall include:

4.C.2.a. A description of the event that requires additional compensation;

4.C.2.b. The estimated amount of the additional cost to the Owner; and

4.C.2.c. Any Contract provision(s) that support the Claim.

4.C.3. When an event occurs that the Contractor believes entitles it to more time to complete the Work than Contract Time permits, the Contractor shall notify the Owner's Authorized Representative in writing when the event occurs. The written Notice shall include:

4.C.3.a. A description of the event that permits additional Contract Time;

4.C.3.b. An estimate of the delay that the event will cause; and

4.C.3.c. Any Contract provision(s) that support the request for additional Contract Time.

4.C.4. If the Contractor does not provide written Notice of a Claim for additional compensation or additional Contract Time in the time required, the Claim for additional compensation, additional Contract Time, or both, is waived.

4.C.5. If the Owner agrees with the Contractor's request for additional compensation or Contract Time the parties shall negotiate a Change Order setting forth their agreement. If the Owner disagrees, the Contractor shall do the following:

4.C.5.a. Continue promptly with the work, including any extra work required by the Owner so the Project is not delayed;

4.C.5.b. Keep complete records of its costs in the manner set forth under Section 4.A.8.c direct cost reimbursement provisions. The Owner also may elect to keep such records to eliminate later confusion. The keeping of such records by either Contractor or Owner does not mean that any Claim is valid; and

4.C.5.c. Submit documentation supporting the request for additional compensation, additional time or both.

4.C.6. The Contractor's request for additional compensation shall be supported all documentation substantiating the amount of additional compensation to which it is entitled. The documentation shall include all information required under Section 4.A.8.c direct cost reimbursement and other relevant documentation, such as payroll records, purchase orders, quotations, invoices, estimates, profit and loss statements, daily logs, ledgers and journals.

4.C.6.a. The documentation shall be submitted within thirty (30) days following completion of any work for which a Claim of additional compensation has been made.

4.C.6.b. If the Contractor contends that it will incur costs beyond the thirty (30) day time period that should be included in the Claim, the Contractor shall notify the Owner's Authorized Representative of this fact in writing and provide an estimate of that cost. Thereafter the Contractor shall provide the Owner with additional documentation when the remainder of its additional costs is known.

4.C.6.c. The Owner will rely on the accuracy of the Claim to make decisions regarding future expenditures. Failure to submit the Claim for Contract Price within thirty (30) days is a conclusive waiver of the Contractor's right to additional compensation.

4.C.6.d. The Owner may request additional documentation from the Contractor at any time regarding a Claim. Failure to provide additional documentation when requested and when such documentation exists constitutes a waiver of that portion of the Contractor's Claim to which the additional documentation relates.

4.C.7. Any request for additional Contract Time shall be supported by documentation that includes a) a description of the event on which the request is based, and b) all information, including a schedule analysis, that shows that the event delayed completion of the Project as a whole.

4.C.7.a. The Contractor shall submit the documentation within thirty (30) days following the completion of the event that caused the delay and for which additional Contract Time is sought.

4.C.7.b. The Owner will rely on the accuracy of the Claim to make decisions regarding future expenditures. Failure to submit the Claim for Contract Time within 30 (thirty) days is a conclusive waiver of the Contractor's right to additional compensation.

4.C.7.c. The Owner may request additional documentation from the Contractor at any time regarding a Claim. Failure to provide additional documentation when requested and when such documentation exists constitutes a waiver of that portion of the Contractor's Claim to which the additional documentation relates.

4.C.8. Following receipt of all required documentation, and after the Owner's Authorized Representative has had sufficient period of time to review it in light of work responsibilities, the Owner's Authorized Representative and the Contractor's Superintendent or project manager shall meet to attempt to resolve the matter if either party requests it. The parties mutually agree to share all relevant information, clearly define issues and exchange proposed methods of resolution in efforts to reasonably resolve and settle the matter. It is the expressed desire of both parties to attempt to reasonably and equitably resolve any and all issues at this step. The parties may agree to convene follow-up discussions as may be reasonable and necessary to reach a proposed solution or range of solutions. If Owner determines that the Contractor has not provided required documentation, the Owner may still meet with Contractor to discuss any claim without waiver of the Owner's right to later assert that the Contractor's claim has been waived for failure to submit documentation.

4.C.9. If the Claim cannot be resolved, it shall be referred to persons with higher authority on the part of the Contractor and the Owner, who also shall have the authority to resolve the Claim. Those persons shall meet for negotiations at a mutually agreed upon time and place after having had a sufficient time to review the Claim. The PDC Executive Director's or designee's decision shall be final and shall exhaust the Contractor's administrative remedies for resolution of any and all Claims (LCRB Part 1 VI. B. 1.).

4.C.9.a. If the Claim is not resolved after this meeting, the Contractor and Owner agree that the matter will be submitted to mediation. The mediator shall be chosen by mutual agreement. If a mediator cannot be agreed upon the Contractor and Owner agree to present the Claim to a mediator selected by the Presiding Judge of Multnomah County, Oregon. The mediation fee shall be borne equally by the Owner and Contractor.

4.C.10. If the matter is not resolved by mediation, the Owner and Contractor may mutually agree to resolve the dispute by arbitration. The Owner and Contractor may mutually agree to any arbitration method. In the event that no agreement is reached as to the method of arbitration, the arbitration shall be as set forth in accordance with the Large, Complex Construction Cases procedures of the American Arbitration Association's panels of arbitrators for Large, Complex Construction Cases. The Contractor shall pay the arbitration fee required to initiate the arbitration.

4.C.10.a. The Contractor and Owner shall agree upon the appointment of an arbitrator. In the event of disagreement, each party shall appoint one arbitrator within 30 Calendar days of the disagreement. Those two arbitrators will appoint a third arbitrator to act as the presiding arbitrator

4.C.10.b. The decision of the arbitration panel shall be final, binding and conclusive upon the parties and subject to appeal only on those grounds for which arbitrations in Oregon are subject to appeal and may be confirmed or embodied in an order or judgment of any court having jurisdiction. The arbitrators appointed pursuant to this Contract shall not have the power to award punitive damages or attorney fees and shall not have the power to rescind this agreement. If the matter is not arbitrated and the dispute remains unresolved, either party may pursue resolution through litigation in accordance with the requirements of Section 4.C.

4.C.11. The procedures specified in this Section shall be the sole and exclusive procedures for the resolution for disputes between the Owner and Contractor arising out of or relating to this agreement, except that either may seek preliminary judicial relief or an injunction to avoid

irreparable damage. Despite any injunctive relief, the procedures specified in this Contract for the resolution of Claims shall remain applicable.

4.C.12. The Owner is not obligated under the Contract to provide additional Contract Time or additional compensation unless documentation submitted by the Contractor establishes its entitlement to additional compensation, additional Contract Time, or both. The parties agree that it is not a breach of contract to deny a request for additional compensation or request for additional Contract Time if the Contractor fails to submit adequate documentation substantiating its Claim or request for time.

4.C.13. The Owner will not consider and shall reject any and all Claims to include cost, schedule and/or Work submitted from subcontractors, suppliers, manufacturers or others not a party to the contract. All Claims shall be submitted by the General Contractor or entity named on the Contract documents.

4.C.14. Completion of Work During Claims Review

4.C.14.a. Unless otherwise directed by Owner's Authorized Representative, Contractor shall proceed with the work while any dispute or Claim of Contractor is pending. Regardless of the review period or the final decision of Owner, the Contractor shall continue to diligently pursue the work as identified in the contract documents or otherwise as directed by the Owner's Authorized Representative. In no case is the Contractor justified or allowed to slow, stop or otherwise impede progress of work without a written "Stop Work Order" by the Owner's Authorized Representative.

4.C.14.b. Contractor shall not delay any request for interim or final payment application for any reason, including without limitation payment of subcontractors, suppliers, manufacturers or others not a party to this contract, due to lack of resolution of a dispute or Claim with Owner or any other person of matters arising out of or relating to the contract. If Contractor fails to submit its final payment application within ninety (90) days after Substantial Completion, and Contractor has not obtained written extension by Owner, all requests or Claims for additional Contract Price or an extension of Contract Time shall be waived.

4.C.14.c. The Owner may, at its sole discretion, pending resolution of any Claim or dispute, may authorize a unilateral Construction Change Field Directive or Change Order to direct the Contractor to perform work; authorize any estimates amounts for such directed work; authorize any extension to contract performance time; place in retainage or establish within retainage account any sum for outstanding Claims or take any other actions necessary in order to complete the project as set forth under the Contract.

4.C.14.d. The Owner may, at its sole discretion, provide notice to the Contractor's sureties of any pending claim, mediation, arbitration or other legal action.

5. PAYMENTS

5.A. SCHEDULE OF VALUES

5.A.1. The Contractor shall submit to the Owner's Authorized Representative for approval, at the preconstruction meeting and at least ten (10) days prior to submission of its first application for progress payment, a Schedule of Values for the contracted Work. This schedule will provide a breakdown of values for the contracted Work and will be the basis for progress payments. The breakdown will demonstrate reasonable, identifiable, and measurable components of the Work.

5.A.2. Unless objected to by the Owner's Authorized Representative, this schedule shall be used as the basis for reviewing Contractor's applications for payment. If objected to by Owner's Authorized

Representative, Contractor shall revise the schedule of values and resubmit the same for approval of Owner's Authorized Representative.

5.B. APPLICATIONS FOR PAYMENT

5.B.1. Owner shall make progress payments on the Contract monthly as Work progresses. Payments shall be based upon estimates of Work completed and the Schedule of Values. All payments shall be approved by the Owner's Authorized Representative or Architect/Engineer. A progress payment shall not be considered acceptance or approval of any Work or waiver of any defects therein.

5.B.1.a. Owner shall pay to Contractor interest on the progress payment, not including retainage, due the Contractor. The interest shall commence thirty (30) days after the receipt of invoice ("application for payment") from the Contractor or fifteen (15) days after the payment is approved by the Owner's Authorized Representative, whichever is the earlier date.

5.B.1.b. The rate of interest shall equal three times the discount rate on 90 day commercial paper in effect at the Federal Reserve Bank in the Federal Reserve district that includes Oregon on the date that is thirty (30) days after receipt of the application for payment from the Contract or fifteen (15) days after the payment is approved by the Owner, whichever is the earlier date, but the rate of interest shall not exceed thirty percent (30%).

5.B.1.c. Notwithstanding the foregoing, in instances when an application for payment is filled out incorrectly, or when there is any defect or impropriety in any submitted application or when there is a good faith dispute, Owner shall so notify the Contractor within fifteen (15) days stating the reason or reasons the application for payment is defective or improper or the reasons for the dispute. A defective or improper application for payment, if corrected by the Contractor within seven (7) days of being notified by the Owner, shall not cause a payment to be made later than specified in this section unless interest is also paid. Accrual of interest will be postponed when payment on the principal is delayed because of disagreement between the Owner and the Contractor.

5.B.1.d. Owner reserves the right, instead of requiring the Contractor to correct or resubmit a defective or improper application for payment, to reject the defective or improper portion of the application for payment and pay the remainder of the application for payment that is correct and proper.

5.B.2. Contractor shall submit to the Owner's Authorized Representative an application for each payment on a form as provided or approved by Owner.

5.B.2.a. If required by Owner's Authorized Representative, Contractor shall submit receipts or other vouchers showing payments for materials and labor, including payments to Subcontractors.

5.B.2.b. Contractor shall include in its application for payment a schedule of the percentages of the various parts of the Work completed, based on the Schedule of Values, which shall aggregate to the payment application total, and shall include, on the face of each copy thereof, a certificate in substantially the following form:

> "The undersigned Contractor certifies that to the best of the Contractor's Knowledge, information and belief the Work covered by this Application for Payment has been completed in accordance with the Contract Documents, that all amounts have been paid by the Contractor for Work for which previous Certificates for Payment were issued and payments received from the Owner, and that current payment shown herein is now due.

Signed: _____”

5.B.2.c. Each application for payment shall be signed by a person legally authorized by the Contractor.

5.B.3. Generally, applications for payment will be accepted only for Work performed on and materials delivered to the site. Under special conditions, at Owner's Authorized Representative sole discretion, applications for payment for stored materials or materials fabricated offsite may be accepted. Such a payment, if made, will be subject to the following conditions:

5.B.3.a. The request for stored or fabricated offsite material shall be submitted at least fifteen (15) 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.

5.B.3.b. The Contractor shall submit applications for payment showing the quantity and cost of the material stored. Contractor will provide invoices or other verification of cost of the stored material in a form acceptable to the Owner, if requested.

5.B.3.c. The material shall be stored in a bonded warehouse and identified for use only on this Work. Owner's Authorized Representative shall be granted the right to access the material for the purpose of removal or inspection at any time during the Contract Time.

5.B.3.d. The Contractor shall name the Owner as coinsured on the insurance policy or builders risk policy covering the full value of the property while in the care and custody of the Contractor until it is installed. A certificate noting this coverage shall be issued to the Owner.

5.B.3.e. Payments shall be made for stored materials or materials fabricated offsite only. The submitted amount of the application for payment shall be reduced by the cost of transportation and for the cost of an inspector to check the delivery at out of town storage sites. The cost of said inspection shall be borne solely by the Contractor.

5.B.3.f. Upon payment by Owner, title and ownership of all stored materials or materials fabricated offsite will transfer to Owner.

5.B.3.g. Payment for stored materials shall in no way indicate acceptance of the materials or waive any rights under this Contract for the rejection of the Work or materials not in conformance with the Contract Documents.

5.B.3.h. All required documentation must be submitted with the respective application for payment.

5.B.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, including withholding from a progress payment or final payment up to two hundred percent (200%) of the potential or actual costs, because of:

5.B.4.a. Work that is defective and not remedied, or that has been demonstrated or identified as failing to conform with the Contract Documents,

5.B.4.b. Work has not been approved by special inspections, permit inspections or by field observation by Owner's Authorized Representative or Architect/Engineer,

5.B.4.c. 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;

5.B.4.d. Failure of the Contractor to:

5.B.4.d.1. submit certified payroll reports, in increments, as required,

5.B.4.d.2. submit claim waivers and releases,

5.B.4.d.3. make payments properly to Subcontractors or suppliers 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 3.D.2;

5.B.4.e. Reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Price;

5.B.4.f. Damage to the Owner or another party;

5.B.4.g. Reasonable evidence that the Work will not be completed within the Contract Time required by the Contract, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;

5.B.4.h. Failure to carry out the Work in accordance with the Contract Documents; or

5.B.4.i. Assessment of liquidated damages, when withholding is made for offset purposes.

5.B.5. Subject to the provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

5.B.5.a. Take that portion of the Contract Price properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the total Contract Price allocated to that portion of the Work in the Schedule of Values, less retainage as provided in Section 5.E.

5.B.5.b. Include that portion of work completed under an approved Change Order ; less retainage as provided in Section 5.E

5.B.5.c. Add that portion of the Contract Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction (or, if approved in advance by the Owner pursuant to Section 5.B.3, suitably stored off the site at a location agreed upon in writing), less retainage as provided in Section 5.E;

5.B.5.d. Subtract the aggregate of previous payments made by the Owner; and

5.B.5.e. Subtract any amounts for which the Owner's Authorized Representative has withheld or nullified payment as provided in the Contract Documents.

5.B.6. Contractor's applications for payment may not include requests for payment for portions of the Work for which the Contractor does not intend to pay to a Subcontractor or material supplier.

5.B.7. The Contractor shall provide in each progress application for payment a 'conditional release' that warrants that upon submittal of an application for payment all Work for which payments are received from the Owner shall be free and clear of liens, claims, security interests or encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

5.B.8. If Contractor disputes any determination by Owner's Authorized Representative with regard to any application for payment, Contractor nevertheless shall continue to prosecute expeditiously the Work. No payment made hereunder shall be or be construed to be final acceptance or approval of that portion of the Work to which such partial payment relates or shall relieve Contractor of any of its obligations hereunder.

5.C. PAYROLL CERTIFICATION REQUIREMENT

See the Supplemental General Conditions for requirements, if any.

5.D. DUAL PAYMENT SOURCES

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

5.E. RETAINAGE

5.E.1. Retainage shall be withheld and released in accordance with ORS 279C.550 to 279C.580:

5.E.1.a. Owner may reserve as retainage from any progress payment an amount not to exceed five percent (5%) of the payment. As Work progresses, Owner may reduce the amount of the retainage and may eliminate retainage on any remaining monthly Contract payments after fifty percent (50%) of the Work under the Contract is completed if, in the Owner's opinion, such Work is progressing satisfactorily. Elimination or reduction of retainage shall be allowed only upon written application by the Contractor, which application shall include written approval of Contractor's surety; except that when the Work is ninety seven and one half percent (97.5%) completed the Owner may, at its discretion and without application by the Contractor, reduce the retained amount to one hundred percent (100%) of the value of the Work remaining to be done. Upon receipt of written application by the Contractor, Owner shall respond in writing within a reasonable time.

5.E.1.b. In accordance with the provisions of ORS 279C.560 and further set forth under PDC LCRB Rules, unless the Owner finds in writing that accepting a bond, security or other instrument described in options 5.E.1.b.1 or 5.E.1.b.3 below poses an extraordinary risk that is not typically associated with the bond, security or instrument, the Owner will approve the Contractor’s written request:

5.E.1.b.1. To be paid amounts which would otherwise have been retained from progress payments where Contractor has deposited acceptable bonds, securities or other instruments of equal value with Owner or in a custodial account or other mutually-agreed account satisfactory to Owner, with an approved bank or trust company to be held in lieu of the cash retainage for the benefit of Owner. Interest or earnings on the bonds, securities or other instruments shall accrue to the Contractor. The Contractor shall execute and provide such documentation and instructions respecting the bonds, securities and other instruments as the Owner may require to protect its interests. To be permissible the bonds, securities and other instruments must be of a character approved by the Purchasing Manager of the Portland Development Commission, including but not limited to:

5.E.1.b.1.(a). Bills, certificates, notes or bonds of the United States.

5.E.1.b.1.(b). Other obligations of the United States or agencies of the United States.

5.E.1.b.1.(c). Obligations of a corporation wholly owned by the federal government.

5.E.1.b.1.(d). Indebtedness of the Federal National Mortgage Association.

5.E.1.b.1.(e). General obligation bonds of the State of Oregon or a political subdivision of the State of Oregon.

5.E.1.b.1.(f). Irrevocable letters of credit issued by an insured institution, as defined in ORS 706.008.

5.E.1.b.2. That retainage be deposited in an interest bearing account, in a form acceptable to Owner, in a bank, savings bank, trust company or savings association for the benefit of Owner, with interest from such account accruing to the Contractor; or

5.E.1.b.3. That the Contractor be allowed, with the approval of the Owner, to deposit a surety bond for the benefit of Owner, in a form acceptable to Owner, in lieu of all or a portion of funds retained, or to be retained. Such bond and any proceeds there from shall be made subject to all claims and liens in the manner and priority as set forth for retainage under ORS 279C.550 to ORS 279C.625.

Where the Owner has accepted the Contractor's election of any of the options above, 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 to deposit a surety bond, Contractor shall accept like bonds from Subcontractors and suppliers on the project from which Contractor has required retainage.

5.E.1.c. Contractor shall notify the Owner's Authorized Representative at least ten (10) days prior to the first application for payment if retainage is to be held in an interest-bearing account. The retainage held by Owner and any accrued interest shall be included in and paid to the Contractor as part of the final payment of the Contract Price. The Owner shall pay to Contractor interest at the rate of one and one-half percent (1.5%) per month on the final payment due Contractor, interest to commence thirty (30) days after the Work under the Contract has been completed and accepted and to run until the date Contractor shall notify Owner in writing when the Contractor considers the Work complete and Owner shall, within fifteen (15) days after receiving the written notice, either accept the Work or notify the Contractor of Work yet to be performed on the Contract. If Owner does not within the time allowed notify the Contractor of Work yet to be performed to fulfill contractual obligations, the interest provided by this subsection shall commence to run thirty (30) days after the end of the fifteen (15) day period.

5.E.1.d. In accordance with the provisions of ORS 279C.560, if the Owner accepts bonds, securities or other instruments deposited as provided in Sections 5.E.1.b.1 and 5.E.1.b.3 the Owner shall reduce the moneys held as retainage in an amount equal to the value of the bonds, securities and other instruments and pay the amount of the reduction to the Contractor in accordance with ORS 279C.570.

5.E.1.e. 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 (5%) of the payment, and such retainage withheld from Subcontractors and suppliers shall be subject to the same terms and conditions stated in Section 5.E as apply to Owner's retainage from any progress payment due to Contractor. Provided, however, if in accordance with the provisions of ORS 279C.560 the Contractor has deposited bonds, securities or other instruments or has elected to have the Owner deposit accumulated retainage in an interest-bearing account, the Contractor shall comply with the provisions of ORS 701.435 respecting the deposit of bonds, securities or other instruments by Subcontractors and suppliers and the sharing of interest earnings with Subcontractors and suppliers.

5.E.2. The Owner reserves the right to deduct from the final release of retainage all costs for outstanding defective work and/or failure to comply with Contract and permit requirements.

5.F. FINAL PAYMENT

5.F.1. Upon reaching Substantial Completion and approval of the Owner's Authorized Representative that all punchlist work and all field work is complete, the Contractor shall make written request for final payment.

5.F.1.a. Upon receipt of such notice the Owner's Authorized Representative will inspect the Work, and if acceptable, submit to the Owner a recommendation as to acceptance of the completed Work and as to the final estimate of the amount due the Contractor. If the Work is not acceptable, Owner will notify Contractor within fifteen (15) days of Contractor's request for final payment.

5.F.1.b. Upon approval by the Owner of this final estimate of the amount due the Contractor and compliance by the Contractor with provisions in Section 11.C, and other provisions as may be applicable, the Owner shall release all retainage and any accrued interest if

applicable and pay to the Contractor all monies due under the provisions of these Contract Documents.

5.F.1.c. The Owner's Authorized Representative will issue an acceptance letter to Contractor indicating all obligations of the Contract (except warranty provisions) have been completed.

5.F.2. Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Owner's Authorized Representative:

5.F.2.a. A notarized affidavit/release of liens and claims in a form satisfactory to Owner that states that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied;

5.F.2.b. A certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least thirty (30) days' prior written notice has been given to the Owner;

5.F.2.c. Consent of surety, if any, to final payment; and

5.F.2.d. If required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner.

5.F.3. No request or Claim by the Contractor for additional costs or an extension of Contract Time shall be allowed if made after receipt of final payment application under this Contract.

5.F.4. Contractor shall not delay final payment application for any reason, including without limitation nonpayment of Subcontractors, suppliers, manufacturers or others not a party to this Contract, or lack of resolution of a dispute with Owner or any other person of matters arising out of or relating to the Contract. If Contractor fails to submit its final payment application within thirty (30) days after Final Completion, and Contractor has not obtained written extension by Owner, all requests or Claims for additional costs or an extension of Contract Time shall be waived.

5.F.5. If the Contractor or any 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.

5.F.6. Waiver of Claims by Contractor. 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.

5.F.7. Waiver of Claims by Owner. The making of final payment shall constitute a waiver of claims by Owner except (1) those claims expressly reserved by Owner at the time of final payment; (2) those arising from claims, bond claims, security interests or encumbrances arising out of the Contract and unsettled; (3) failure of the Work to comply with the requirements of the Contract Documents or industry standards; (4) terms of any warranties required by the Contract Documents; and (5) claims for unknown or latent defects or deficiencies in the Work or for unknown damages or expenses caused by the Work.

5.G. TAXES

Contractor shall pay and remit to the applicable governmental agencies sales and use taxes, if any, on labor, supplies, and materials included in the Work. When requested by the Contractor or a subcontractor, and to the extent applicable, the Owner will comply with such regulations as the

Secretary of the Treasury or his delegate shall prescribe to obtain exemption from the application of federal excise tax.

5.H. SAVINGS AND DISCOUNTS ACCRURE TO OWNER

Cash discounts obtained on payments made by Contractor or Subcontractors shall accrue to Owner if, before making the payment, Contractor included them in an application for payment and received payment for them from Owner. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to Owner, and Contractor shall make provisions so that they can be secured. Amounts which accrue to Owner in accordance with this provision shall be credited to Owner as a deduction from the Contract Price. It is the responsibility of the Contractor to promptly notify the Owner of any savings and discounts that are realized, including any through Subcontractors.

6. JOB SITE CONDITIONS

6.A. USE OF PREMISES

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

6.B. PROTECTION OF WORKERS, PROPERTY, AND THE PUBLIC

6.B.1. Contractor shall maintain continuous and adequate protection of all of the Work from damage, and shall protect the public, Owner's Authorized Representative, Owner's workers and property from injury or loss arising in connection with this Contract. Contractor shall remedy acceptably to the Owner, any damage, injury, or loss, except such as may be directly due to errors in the Contract Documents or caused by authorized representatives or personnel of the Owner. Contractor shall adequately protect adjacent property as provided by law and the Contract Documents.

6.B.2. Contractor shall take all necessary precautions for the safety of the public and all personnel on the job site, and shall comply with the Contract Documents and all applicable provisions of federal, state and municipal safety laws and building codes to prevent accidents or injury to persons on, about or adjacent to the premises where the Work is being performed. Contractor shall erect and properly maintain at all times, as required by the conditions and progress of the Work, all necessary safeguards for protection of workers and the public against any hazards created by construction. Contractor shall designate a responsible employee or associate on the Work site, whose duty shall be the prevention of accidents. The name and position of the person designated shall be reported to the Owner's Authorized Representative. The Owner's Authorized Representative has no responsibility for Work site safety. Work site safety is the sole responsibility of the Contractor.

6.B.3. Contractor shall not enter upon private property without first obtaining permission from the property owner or its duly authorized representative. Contractor shall be responsible for the preservation of all public and private property along and adjacent to the Work contemplated under the Contract and shall use every precaution necessary to prevent damage thereto. In the event the Contractor damages any property, the Contractor shall at once notify the property owner and make, or arrange to make, full restitution. Contractor shall report, immediately in

writing, to the Owner's Authorized Representative, all pertinent facts relating to such property damage and the ultimate disposition of the claim for damage.

6.B.4. Contractor is responsible for protection of adjacent work areas including impacts brought about by activities, equipment, labor, utilities, and materials on the site.

6.B.5. Contractor shall at all times direct its activities in such a manner as to minimize adverse effects on the environment. Handling of all materials will be conducted so no release will occur that may pollute or become hazardous.

6.B.6. In an emergency affecting the safety of life or of the Work or of adjoining property, the Contractor, without special instruction or authorization from the Owner's Authorized Representative, shall act reasonably to prevent threatened loss or injury, and shall so act, without appeal, if instructed by the Owner's Authorized Representative. Any compensation claimed by the Contractor on account of emergency work shall be determined in accordance with Section 4.

6.B.7. Explosives are not permitted without specific written approval from the Owner.

6.C. CUTTING AND PATCHING

6.C.1. Contractor shall be responsible for coordinating all cutting, fitting, or patching of the Work to make its several parts come together properly and fit to receive or be received by work of other contractors or Subcontractors shown upon, or reasonably implied by, the Contract Documents.

6.C.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. Reference specific project requirements in the Plans and Specifications.

6.D. SHORING, SLOUGHING AND SCAFFOLDING

6.D.1. Contractor shall be responsible as part of the Contract Price for any and all shoring, cribbing, scaffolding and staging as may be necessary and/or required for excavation trenching or other means to perform the Work. Unless determined to be an Unforeseen Condition, Contractor is further responsible as part of the Contract Price for all open cut trenching or excavation sidewall sloughing including replacement with specified backfill. Reference specific project requirements in the Plans and Specifications.

6.E. CLEANING UP

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

6.F. ENVIRONMENTAL CONTAMINATION

6.F.1. Contractor will be held responsible for and shall indemnify, defend (with counsel of Owner’s choice) and hold harmless Owner from and against any costs, expenses, damages, claims, and causes of action, (including attorney fees), or any of them, resulting from all spills, releases, discharges, leaks and disposal of environmental pollution, including storage, transportation, and handling during the performance of the Contract which occur as a result of, or are contributed by, the negligence or actions of Contractor or its personnel, agents, or Subcontractors or any failure to perform in accordance with the Contract Documents (except to the extent otherwise void under ORS 30.140). Nothing in this Section 6.F.1 shall limit Contractor's responsibility for obtaining insurance coverages required under Section 7.C of these General Conditions, and Contractor shall take no action that would void or impair such coverages

6.F.2. Contractor agrees to promptly dispose of such spills, releases, discharge or leaks to the satisfaction of Owner and proper regulatory agencies in a manner that complies with applicable federal, state, and local laws and regulations. Cleanup shall be at no cost to the Owner and be performed by properly qualified personnel.

6.F.3. Contractor shall obtain the Owner's written consent prior to bringing onto the Work site any (i) environmental pollutants or (ii) hazardous substances or materials, as the same or reasonably similar terms are used in any applicable federal, state, or local statutes, rules or ordinances. Notwithstanding such written consent from the Owner, the Contractor, at all times, shall:

6.F.3.a. Properly handle, use and dispose of all environmental pollutants and hazardous substances or materials brought onto the Work site, in accordance with all applicable federal, state, or local statutes, rules, or ordinances;

6.F.3.b. Maintain copies of all 'Material Safety Data Sheets' at the Work site at all times along with a 'Health and Safety Plan' in conformance with OR-OSHA requirements;

6.F.3.c. Be responsible for any and all spills, releases, discharges, or leaks of (or from) environmental pollutants or hazardous substances or materials which Contractor has brought onto the Work site; and

6.F.3.d. Promptly clean up, without cost to the Owner, such spills, releases, discharges, or leaks to the Owner's satisfaction and in compliance with all applicable federal, state, or local statutes, rules or ordinances.

6.F.4. Contractor shall report all reportable quantity releases to applicable federal, state, and local regulatory and emergency response agencies. Reportable quantities are found in 40 CFR Part 302, Table 302.4 for hazardous substances and in OAR 340-142-0050 for all products addressed therein. Upon discovery, regardless of quantity, Contractor must telephonically report all releases to the Owner. A written follow-up report shall be submitted to Owner within 48 hours of the telephonic report. Such written report shall contain, as a minimum:

6.F.4.a. Description of items released (identity, quantity, manifest no., and all other documentation required by law.)

6.F.4.b. Whether amount of items released is EPA/DEQ reportable, and, if so, when it was reported.

6.F.4.c. Exact time and location of release, including a description of the area involved.

6.F.4.d. Containment procedures initiated.

6.F.4.e. Summary of communications about the release Contractor has had with members of the press or State officials other than Owner.

6.F.4.f. Description of cleanup procedures employed or to be employed at the site, including disposal location of spill residue.

6.F.4.g. Personnel injuries, if any, resulting from, or aggravated by, the release.

6.G. ENVIRONMENTAL CLEAN-UP

6.G.1. Unless cleanup of environmental contamination is specifically a part of this Contract, or was caused by the Contractor (reference Section 6.F Environmental Contamination), Contractor shall immediately notify Owner of any hazardous substance(s) which Contractor discovers or encounters as Unforeseen Conditions during performance of the Work required by this Contract. "Hazardous substance(s)" means any hazardous, toxic and radioactive materials and those substances defined as “hazardous substances,” “hazardous materials,” “hazardous wastes,” “toxic substances,” or other similar designations in any federal, state, or local law, regulation, or ordinance, including without limitation asbestos, polychlorinated biphenyl (PCB), or petroleum, and any substances, materials or wastes regulated in 40 CFR, Part 261 and defined as hazardous in 40 CFR S 261.3. In addition to notifying Owner of any hazardous substance(s) discovered or

encountered, Contractor shall immediately cease working in any particular area of the project where a hazardous substance(s) has been discovered or encountered if continued work in such area would present a risk or danger to the health or well being of Contractor's or any Subcontractor's work force.

6.G.2. Upon being notified by Contractor of the presence of any unforeseen hazardous substance(s) on the project site, Owner shall arrange for the proper investigation, handling and disposition of such hazardous substance(s).

6.H. FORCE MAJEURE

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

7. INDEMNITY AND INSURANCE

7.A. RESPONSIBILITY FOR DAMAGES / INDEMNITY

7.A.1. Contractor shall be responsible for all damage to property, injury to persons, and loss, expense, inconvenience, and delay that may be caused by, or result from, the carrying out of the Work to be done under this Contract, or from any act, omission or neglect of the Contractor, its Subcontractors, personnel, or agents.

7.A.2. The Contractor shall indemnify, hold harmless, and defend the Owner, it’s officers, employees and agents from any and all claims, losses, damages, attorney fees, costs and liabilities arising out of accidents, unforeseen difficulties, or intentional, reckless or negligent acts or omissions of the Contractor, its Subcontractors, suppliers, employees, or agents in performance of the Work. Claims include any assertion of a right to monetary damages or equitable relief or any combination thereof.

7.A.3. Owner shall notify Contractor of any claim of which it is aware that requires Contractor to defend, indemnify and hold Owner harmless. Thereafter, Contractor shall notify Owner in writing within 30 days that it will defend, indemnify and hold Owner harmless. Contractor’s failure to provide such notification is a breach of Contract. In the event the Contractor fails to give notice within 30 days, Owner may defend the claim and change Contractor with any costs associated with that effort.

7.A.4. Owner reserves the right to participate in any claim irrespective of the Contractor’s obligations to indemnify, hold harmless, defend or notify. However, if Owner elects to participate in an claim after receiving notification from Contractor, Contractor is not obligated to indemnify Owner for the costs associated with that participation, although it s other obligations to indemnify , hold harmless and defend remain intact.

7.B. PERFORMANCE AND PAYMENT BONDS; PUBLIC WORKS BOND

7.B.1. When the Contract Price is in excess of $50,000 the Contractor shall furnish and maintain in effect at all times during the Contract Time, a performance bond in a sum equal to the Contract Price, and a separate payment bond also in a sum equal to the Contract Price. The bonds may be required if the Contract Price is less than the above thresholds see Supplemental General Conditions.

7.B.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 approved by the Owner.

7.B.3. Public Works Bond. A Public Works Bond is required when the Contract Price is $50,000 or more. See the Supplemental General Conditions for requirements.

7.B.4. Other bonds may be required to include Maintenance Bond, Public Streets Bond etc. See the Supplemental Conditions for requirements.

7.C. INSURANCE

7.C.1. **Primary Coverage**: Insurance carried by Contractor under this Contract shall be the primary coverage, and the Owner's insurance is excess and solely for damages or losses for which the Owner is responsible. The coverages indicated in Section 7.C are minimums unless otherwise specified in the Supplemental General Conditions.

7.C.2. **Workers' Compensation and Employer's Liability Insurance**: All employers, including Contractor, that employ subject workers who work under this contract in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage, unless such employers are exempt under ORS 656.126. This shall include Employer's Liability Insurance with coverage limits of not less than those provided below. Contractors who perform the Work without the assistance or labor of any employee need not obtain such coverage if the Contractor certifies so in writing. Contractor shall ensure that each of its Subcontractors complies with these requirements. The Contractor shall require proof of such Workers' Compensation by receiving and keeping on file a certificate of insurance from each Subcontractor or anyone else directly employed by either the Contractor or its Subcontractors.

$ 500,000	Each Accident	Bodily Injury By Accident
$ 500,000	Policy Limit	Bodily Injury By Disease
$ 500,000	Each Employee	Bodily Injury By Disease

7.C.2.a. Those Contractors who are self-insured and are not required to carry Worker's Compensation per ORS 656.027 must indicate so and certify they are exempt on the agreement.

7.C.3. **Liability Insurance:**

7.C.3.a. **Commercial General Liability**: Contractor will at all times carry Commercial General Liability Insurance written on an occurrence basis with limits of not less than $1,000,000 per occurrence and $2,000,000 in the annual aggregate for bodily injury, property damage and personal injury, with the general aggregate limit applying on a per project basis. Such insurance shall cover both ongoing operations and completed operations and shall name Portland Development Commission, the City of Portland, and each of their employees, officers, and agents as an additional insured for claims arising out of Contractor's ongoing activities under this Contract as well as completed operations for a period of ten (10) years following the end of the contract term.

7.C.3.b. **Automobile Liability:** Contractor shall obtain, at Contractor's expense, and keep in effect during the term of this Contract, Automobile Liability Insurance covering owned, non-owned and/or hired vehicles, as applicable. The coverage may be written in combination with the Commercial General Liability Insurance. Contractor shall provide proof of insurance of not less than the following amounts:

$ 1,000,000	Each Accident	Bodily Injury and Property Damage (Combined Single Limit)

7.C.4. Additional Insured: The liability insurance coverage required for performance of this Contract shall include the Portland Development Commission and its officers, agents and employees, as Additional Insureds but only with respect to the Contractor's activities to be performed under this Contract.

7.C.5. Notice of Cancellation or Change: There shall be no cancellation, material change, potential exhaustion of aggregate limits or intent not to renew insurance coverages without thirty (30) days written notice from the Contractor or its insurer(s) to the Owner. Any failure to comply with the reporting provisions of this insurance, except for the potential exhaustion of aggregate limits, shall not affect the coverages provided to the Portland Development Commission and its officers, agents and employees.

7.C.6. Certificate(s) of Insurance: As evidence of the insurance coverage required by this Contract, the Contractor shall furnish certificate(s) of insurance to the Owner prior to its issuance of a Notice to Proceed. The certificate(s) will specify all of the parties who are Additional Insureds or Loss Payees.

7.C.6.a. Insurance coverage required under this Contract shall be obtained from insurance companies or entities acceptable to the Owner that are allowed to provide such insurance under Oregon law. Eligible insurers include admitted insurers that have been issued a certificate of authority from the Oregon Department of Consumer and Business Services authorizing them to do an insurance business in the state of Oregon, and certain non-admitted surplus lines insurers that satisfy the requirements of applicable Oregon law and are approved by the Owner.

7.C.6.b. To the extent Certificates of Insurance contain words to the effect that Contractor shall "endeavor to send notice of cancellation" or similar language, Contractor shall require its insurer to send such notice by making sure that the words “endeavor to” or similar words are removed from the Certificate.

7.C.6.c. The Contractor shall be financially responsible for all deductibles, self-insured retentions and/or self-insurance included hereunder. Any deductible, self-insured retention and/or self-insurance in excess of $50,000 shall be approved by the Owner in writing prior to issuance of a Notice to Proceed and is subject to Owner's approval.

7.D. WAIVER OF SUBROGATION

To the extent permitted by law, it is agreed that Contractor’s insurance company waives any right of subrogation against Portland Development Commission which may arise by any reason under this Contract.

8. SCHEDULE OF WORK

8.A. CONTRACT TIME

8.A.1. Time is of the essence on this Contract. The Contractor shall at all times carry on the Work diligently, without delay and punctually fulfill all requirements herein. Contractor shall commence work upon written issuance of 'Notice to Proceed' by the Owner which will commence the Contract Time.

8.A.2. Dates of Substantial and Final Completion. Contractor shall achieve Substantial Completion of the entire Work not later than the date shown on the Contract agreement, subject to adjustments of the Contract Time as provided in any Change Orders or Amendments to the Contract. Contractor shall achieve Final Completion of the entire Work not later than the date shown on the Contract, subject to adjustments of this Contract Time as provided in the Contract Documents.

8.A.3. The Owner shall have the right to accelerate the completion date of the Work, which may require the use of overtime. Such accelerated Work schedule shall be an acceleration in performance of Work under Section 4.A.6.h and shall be subject to the Change Order process of Section 4.A.

8.A.4. Failure to complete the Work within the stipulated Contract Time may result in delay damages and Owner assessment of liquidated damages or other remedies as set forth in the Contract. See the Supplemental General Conditions for liquidated damages, if any.

8.A.5. The Owner shall not waive any rights under the Contract by permitting the Contractor to continue or complete the Work or any part of it after the date described in Section 8.A.2above.

8.B. SCHEDULE

8.B.1. Contractor shall provide, at the pre-construction conference, a detailed baseline schedule for review and acceptance by the Owner. The submitted schedule must illustrate Work by significant project components, significant labor trades, materials with long procurement lead times, broken down by project area, building and/or floor where applicable. The baseline schedule must indicate the date of Notice to Proceed, Substantial Completion and Final Completion.

8.B.2. Unless otherwise approved by the Owner's Authorized Representative, each schedule item shall account for no greater than the proportion of the monetary value of the project or of the available Contract Time as provided in the table below.

If Contract Price is:	
$0 – $100,000	20%
$100,000 - $500,000	15%
$500,000 - $1,000,000	10%
Over $1,000,000	5%

Schedules with activities of less than one day or valued at less than 1% of the Contract will be considered too detailed and will not be accepted. Schedules lacking adequate detail, or unreasonably detailed, will be rejected. Schedules must be updated at least monthly, or more frequently if required in the Specifications.

8.B.3. When requested by Owner's Authorized Representative Contractor shall update the schedule to account for any approved changes in the Work and/or changed conditions.

8.B.4. Acceptance of the Schedule by the Owner does not constitute agreement by the Owner, as to the Contractor's sequencing, means, methods, or allocated Contract Time. Any positive difference between the Contractor's scheduled completion and the Contract completion date is float owned by the Owner. Owner reserves the right to negotiate the float if it is deemed to be in Owner's best interest to do so. In no case shall the Contractor make a request for additional compensation for delays if the Work is completed within the Contract Time but after Contractor's scheduled completion.

8.C. PARTIAL OCCUPANCY OR USE

8.C.1. The Owner may occupy or use any completed or partially completed portion of the Work at any stage, provided such occupancy or use is consented to by public authorities having jurisdiction over the Work. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have reasonably accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, insurance or self-insurance, maintenance, heat, utilities, and damage to the Work, and have agreed in writing

concerning the period for correction of the Work and commencement of warranties required by the Contract Documents with respect to such portion of the Work.

8.C.2. Approval by the Contractor to partial Owner 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 Owner occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

9. CORRECTION OF WORK

9.A. CORRECTION OF WORK BEFORE FINAL PAYMENT

The Contractor warrants to the Owner that materials and equipment furnished under the Contract will be of good quality and new unless otherwise required or permitted by the Contract Documents, that the Work will be free from defects, and that the Work will conform to the requirements of the Contract Documents. Work failing to conform to these requirements shall be deemed defective. Contractor shall promptly remove from the premises and replace all defective materials and equipment as determined by the Owner's Authorized Representative, whether incorporated in the Work or not. Removal and replacement shall be without loss or expense to the Owner, and Contractor shall bear the cost of repairing all Work destroyed or damaged by such removal or replacement. The Contract shall stipulate the allowed period for defective corrective (punch list) work. At the end of that period, or earlier if requested by the Contractor, Owner shall arrange for inspection of the Work by the Owner's Authorized Representative and Architect/Engineer. 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 stipulated period, without affecting Contractor’s obligations Owner may perform such work and Contractor shall reimburse Owner for all costs by a reduction in Contract Price and/or withholding of release of retainage.

9.B. WARRANTY WORK

9.B.1. Contractor shall perform the Work in a workmanlike manner and in strict accordance with the Contract Documents and industry standards. The following are the minimum warranty requirements. Reference Supplemental General Conditions for any other stipulated warranty periods or special requirements.

9.B.2. Contractor shall promptly correct, at no cost to Owner, all Work rejected by Owner and all Work rejected by such government representatives. Contractor warrants to Owner that the materials and equipment furnished under this Contract will be of good quality and new, unless otherwise required by the Contract Documents, that the Work will be free of defects, and that the Work will strictly conform to the Contract Documents and industry standards.

9.B.3. 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 (1) year from the date of issuance of the written notice of Substantial Completion by the Owner except for latent defects which will be remedied by the Contractor at any time they become apparent.

The Owner shall give Contractor notice of defects with reasonable promptness. Contractor shall perform such warranty work within a reasonable time after Owner’s demand. Contractor shall

perform warranty work with least impact to Owner use / operations. Contractor shall obtain and pay for any and all permits required for warranty work. If Contractor fails to complete the warranty work within such period as Owner determines reasonable, or at any time in the event of warranty work consisting of emergency repairs, without affecting Contractor's obligations, Owner may perform such work and Contractor shall reimburse Owner all costs of the same within thirty (30) days after demand.

9.B.4. This provision does not negate guarantees or warranties for periods longer than one year including without limitation such guarantees or warranties required by other sections of the Contract Documents for specific installations, materials, processes, equipment or fixtures.

9.B.5. In addition to Contractor's warranty, manufacturer's warranties shall pass to the Owner and shall not take effect until affected Work has been accepted in writing by the Owner's Authorized Representative. Contractor shall collect and submit to Owner, as a condition to Final Payment, all standard and special warranties from Subcontractors, distributors, and manufacturers, and assign to Owner all rights under such warranties. All of the warranties above are in addition to, and not in lieu of, other remedies Owner may have, all of which are fully reserved by Owner.

9.B.6. The one-(1) 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.

9.B.7. Nothing contained in this Section 9.B 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 9.B 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.

9.B.8. If the Owner prefers to accept Work which is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Price will be reduced as appropriate and equitable as set forth by Change Order Section 4.

10. SUSPENSION AND/OR TERMINATION OF THE WORK

10.A. OWNER'S RIGHT TO SUSPEND OR STOP THE WORK

10.A.1. The Owner and/or the Owner's Authorized Representative have the authority to suspend portions or stop all of the Work due to any of the following causes:

10.A.1.a. Failure of the Contractor to correct unsafe conditions;

10.A.1.b. Failure of the Contractor to carry out any provision of the Contract;

10.A.1.c. Failure of the Contractor to carry out orders;

10.A.1.d. Failure to comply with permit requirements and inspections;

10.A.1.e. Conditions, in the opinion of the Owner's Authorized Representative, which are unsuitable for performing the Work;

10.A.1.f. Time required to investigate differing site conditions, perform any environmental investigation or work; or

10.A.1.g. Any reason considered to be in the public interest.

10.A.2. The Owner shall notify Contractor and the Contractor's surety in writing of the effective date and time of the suspension or stop work and shall notify Contractor and its surety in writing to resume Work.

10.B. CONTRACTOR'S RESPONSIBILITIES

10.B.1. During the period of the suspension or stop work, Contractor is responsible to continue maintenance at the project just as if the Work were in progress. This includes, but is not limited to, protection of completed Work, maintenance of access, protection of stored materials, temporary facilities, and clean-up.

10.B.2. When the Work is recommenced after the suspension or stop work, 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.

10.C. COMPENSATION FOR SUSPENSION OR STOP WORK

Depending on the reason for suspension or stop Work, the Contractor or the Owner may be due compensation by the other party. If the suspension or stop work was required due to acts or omissions of Contractor, the Owner may assess the Contractor actual costs of the suspension or stop work in terms of administration, remedial work by the Owner's forces or another contractor to correct the problem associated with the suspension or stop work. If the suspension or stop work was caused by acts or omissions of the Owner, the Contractor shall be due compensation as set forth in Section 4.A.6.c. direct cost reimbursement. If the suspension or stop work was required through no fault of the Contractor or the Owner, neither party owes the other for the impact.

10.D. OWNER'S RIGHT TO TERMINATE CONTRACT

10.D.1. The Owner may, without prejudice to any other right or remedy, and after giving Contractor seven (7) days written notice and an opportunity to cure, terminate the Contract in whole or in part under the following conditions:

10.D.1.a. If Contractor should, voluntarily or involuntarily, seek protection under the United States Bankruptcy Code and Contractor as debtor-in- possession or the Trustee for the estate fails to assume the Contract within a reasonable time;

10.D.1.b. If Contractor should make a general assignment for the benefit of Contractor's creditors;

10.D.1.c. If a receiver should be appointed on account of Contractor's insolvency;

10.D.1.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;

10.D.1.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 the Owner's Authorized Representative; or

10.D.1.f. If Contractor is otherwise in material breach of any part of the Contract.

10.D.2. At any time that any of the above occurs, Owner may exercise all rights and remedies available to Owner at law or in equity, and in addition, Owner may take possession of the premises and of all materials and appliances and finish the Work by whatever method it may deem expedient. In such case, the Contractor shall not be entitled to receive further payment until the Work is

completed. If the Owner's cost of finishing the Work exceeds the unpaid balance of the Contract Price, Contractor or surety shall pay the difference to the Owner.

10.E. TERMINATION FOR CONVENIENCE

10.E.1. Owner may terminate the Contract in whole or in part whenever Owner determines that termination of the Contract is in the best interest of the public.

10.E.2. The Owner will provide the Contractor with seven (7) days prior written notice of a termination for public convenience. After such notice, the Contractor shall provide the Owner with immediate and peaceful possession of the premises and materials located on and off the premises for which the Contractor received progress payment under Section 5. Compensation for Work terminated by the Owner under this provision will be according to Section 5. In no circumstance shall Contractor be entitled to lost profits, administration costs, general conditions costs or other Work not performed due to termination of convenience.

10.F. ACTION UPON TERMINATION

10.F.1. Upon receiving a notice of termination, and except as directed otherwise by the Owner, Contractor shall immediately cease placing further subcontracts or orders for materials, services, or facilities. In addition, Contractor shall terminate all subcontracts or orders to the extent they relate to the Work terminated and, with the prior written approval of the Owner, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts and orders.

10.F.2. As directed by the Owner, Contractor shall upon termination transfer title and deliver to the Owner all Record Documents, information, and other property that, if the Contract had been completed, would have been required to be furnished to the Owner.

10.F.3. Contractor and all Subcontractors shall promptly quit all Work, demobilize and vacate the project site.

10.F.4. The Contractor shall reach binding agreement with the Subcontractor’s, before the Contractor can submit to the Owner final pay application along with supporting detail per Section 5.

10.F.5. The Owner is only liable for reasonable settlement costs between Contractor and Subcontractors. Reasonable settlement costs do not include the Subcontractor’s anticipated profits on unperformed work, any loss of work or consequential damages or other similar costs.

10.F.6. Contractor shall abide with all other instructions by Owner.

11. CONTRACT CLOSE OUT

As a condition of final payment and final release of retainage (refer to Section 5.F), Contractor shall comply with the minimum requirements as set forth below. See Technical Specifications for additional details and requirements.

11.A. RECORD DOCUMENTS

Contractor shall maintain during the progress of the Work record drawings indicating the current status of the Work as performed. Upon Substantial Completion of the Work, Contractor shall prepare a final version of such record drawings and submit them to Owner's Authorized Representative. Record Documents shall depict the project as constructed and shall reflect each and every change, modification, and deletion made during the construction. Record Documents are part of the Work and shall be provided prior to the Owner's issuance of final payment. Record Documents include all modifications to the Contract Documents unless otherwise directed. See Technical Specifications for additional details.

11.B. OPERATION AND MAINTENANCE MANUALS

11.B.1. As part of the Work for any operating systems, Contractor shall submit two completed operation and maintenance manuals ("O&M Manuals") for review by the Owner's Authorized Representative and Architect Engineer as part of project closeout. The O&M Manuals shall contain a complete set of all Submittals, all product data as required by the specifications, training information, phone list of consultants, manufacturers, installer and suppliers, manufacturer's printed data, record and shop drawings, schematic diagrams of systems, appropriate equipment indices, warranties etc . See Technical Specifications for additional details.

11.B.2. The Owner's Authorized Representative and Architect Engineer shall review and return one O&M Manual for any modifications or additions required. Prior to submission of its final pay request and release of retainage, Contractor shall deliver three (3) complete and approved sets of O&M Manuals to the Owner's Authorized Representative.

11.C. AFFIDAVIT/RELEASE OF LIENS AND CLAIMS

11.C.1. As a condition of final payment, the Contractor shall submit to the Owner's Authorized Representative a notarized affidavit/release of liens and claims form, in a form satisfactory to Owner, which states that all Subcontractors and suppliers have been paid in full, all disputes with property owners have been resolved, all obligations on the project have been satisfied, all monetary claims and indebtedness have been paid, and that, to the best of the Contractor's knowledge, there are no claims of any kind outstanding against the project. The Contractor shall indemnify, defend (with counsel of Owner's choice) and hold harmless the Owner from all claims for labor and materials finished under this Contract. The Contractor shall furnish complete and valid releases or waivers, satisfactory to the Owner, of all liens arising out of or filed in connection with the Work.

11.D. COMPLETION NOTICES

11.D.1. Contractor shall provide written request to Owner to issue notice of both Substantial Completion and Final Completion of Field Work. Both completion notices must be signed by the Contractor and the Owner to be valid. The Owner shall provide the final signature on the notices. The notices shall take effect on the date set forth on the notices.

11.D.2. Substantial Completion

11.D.2.a. The certificate of Substantial Completion shall state the date of Substantial Completion, list of defective punchlist items, the responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and the time within which the Contractor shall finish all items on the punchlist accompanying the Certificate will be prepared by the Owner and signed by the Contractor and Owner.

11.D.2.b. Reference Technical Specifications for Substantial Completion of a facility with operating systems (e.g., mechanical, electrical, HVAC) or other special Substantial Completion requirements.

11.D.2.c. The certification of Substantial Completion shall not amount to a waiver of any claims by Owner.

11.D.3. Final Field Work Completion. Contractor will provide written notice to Owner's Authorized Representative that all punchlist items have been corrected and are ready for final inspection. Upon inspection and determination of satisfactory completion of all Work the Owner will issue a Certificate of Final Field Work Completion.

11.D.4. Final Acceptance. Upon approval of all closeout requirements, final payment for the Work and release of retainage, the Owner will issue a Certificate of Final Acceptance.

11.E. TRAINING

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

11.F. EXTRA MATERIALS

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

11.G. ENVIRONMENTAL CLEAN-UP

As part of the Final Field Work Completion the Contractor shall notify the Owner that all environmental pollution clean-up which was performed as a part of this Contract has been disposed of in accordance with all applicable rules, regulations, laws, and statutes of all agencies having jurisdiction over such environmental pollution. The notice shall reaffirm the indemnification given under Section 6.F.1 above.

11.H. APPROVAL OF ALL PERMITS/CERTIFICATE OF OCCUPANCY

The Contractor shall not be granted Final Field Work Completion, receive final payment or release of retainage if the Owner has not received evidence that all permits have been satisfactorily completed and if required, either a temporary or certificate of occupancy is issued from the appropriate state and/or local building officials.

11.I. OTHER CONTRACTOR RESPONSIBILITIES

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

11.J. SURVIVAL

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

12. LEGAL RELATIONS & RESPONSIBILITIES

12.A. LAWS TO BE OBSERVED

In compliance with ORS 279C.525, Sections 12.B through 12.D contain lists of federal, state and local agencies of which the Owner has knowledge that have enacted ordinances or regulations relating to environmental pollution and the preservation of natural resources that may affect the performance of the Contract:

12.B. FEDERAL AGENCIES

12.B.1. Agriculture, Department of

12.B.2. Forest Service Soil Conservation Service

12.B.3. Coast Guard
12.B.4. Defense, Department of
12.B.5. Army Corps of Engineers
12.B.6. Energy, Department of
12.B.7. Federal Energy Regulatory Commission
12.B.8. Environmental Protection Agency
12.B.9. Health and Human Services
12.B.10. Department of Housing and Urban Development
12.B.11. Department of Solar Energy and Energy Conservation Bank
12.B.12. Interior, Department of
12.B.13. Bureau of Land Management
12.B.14. Bureau of Indian Affairs
12.B.15. Bureau of Mines
12.B.16. Bureau of Reclamation
12.B.17. Geological Survey Minerals Management Service
12.B.18. U.S. Fish and Wildlife Service
12.B.19. Labor, Department of
12.B.20. Mine Safety and Health Administration
12.B.21. Occupation Safety and Health Administration
12.B.22. Transportation, Department of
12.B.23. Federal Highway Administration
12.B.24. Water Resources Council

12.C. STATE AGENCIES

12.C.1. Administrative Services, Department of
12.C.2. Agriculture, Department of
12.C.3. Soil and Water Conservation Commission
12.C.4. Columbia River Gorge Commission
12.C.5. Energy, Department of
12.C.6. Environmental Quality, Department of
12.C.7. Fish and Wildlife, Department of
12.C.8. Forestry, Department of
12.C.9. Geology and Mineral Industries, Department of
12.C.10. Human Resources, Department of
12.C.11. Consumer and Business Services, Department of
12.C.12. Land Conservation and Development Commission
12.C.13. Parks and Recreation, Department of
12.C.14. State Lands, Division of
12.C.15. Water Resources Department of

12.D. LOCAL AGENCIES

12.D.1. City Councils
12.D.2. County Courts
12.D.3. County Commissioner, Board of
12.D.4. Design Commissions
12.D.5. Historical Preservation Commission
12.D.6. Planning Commissions

End of
GENERAL CONDITIONS
FOR CONSTRUCTION CONTRACTS