

**Exhibit I GENERAL CONDITIONS FOR PUBLIC IMPROVEMENT CONTRACTS**  
**January 10, 2019**

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**CHEMEKETA COMMUNITY COLLEGE  
GENERAL CONDITIONS FOR PUBLIC IMPROVEMENT CONTRACTS  
SECTION A  
GENERAL PROVISIONS**

**A.1 DEFINITION OF TERMS:**

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

**ADDENDUM (ADDENDA)** means a change, clarification or addition to the Solicitation Documents issued by the Owner to prospective bidders or proposers prior to the time set for the submission of Offers. An Addendum may reset the time for the submission of offers.

**ALLOWANCES** mean the budget amounts designated in the Contract Documents, Contractor's Proposal, Work Order, Guaranteed Maximum Price (GMP), Supporting Documents, Change Order or Amendment reserved for and dedicated to a specific part of the work which is not to be quantified either by price or in the alternative by duration at the time that the Contract is entered into. The Allowance is a limit of price or of time not to be exceeded without the written consent of the Owner and which is subject to adjustment based upon the actual cost incurred or time consumed. If provided by the Contract the Contractor may agree with the Owner to "buy out" the Allowance by agreeing to a price or a duration for the item described prior to performance of the Work.

**ALTERNATES** are distinct packages of Work that form a discrete subpart of the solicitation that are in addition to or in lieu of Work described in the base bid or proposal and which the Owner may, at the Owner's sole discretion, elect to have performed at the price bid or proposed. Alternates may or may not be used to determine the successful bid or proposal. Alternates to be performed may be selected prior to Contract award, at the time of award or after award.

**ARCHITECT/ENGINEER**, also known as Consultant, means the licensed Design Professional appointed by the Owner to act in that capacity (Owner may delegate responsibilities of the Owner's Authorized Representative to the Architect/Engineer).

**BUSINESS DAY(S)** means every day except Saturday, Sunday, and legal holidays recognized by the State of Oregon. Unless otherwise specified, a Business day commences at 08:00 hrs local time and concludes at 17:00 hrs local time. Work done or notice given after 17:00 hrs on a particular day and before 08:00 hrs on the succeeding day shall be attributed as having been occurred on the succeeding day. Notice given or Work performed on a non-business day shall be treated as if performed on the next business day for the purposes of payment or for determining the timeliness of notice.

**CALENDAR DAY** means a period of twenty four hours commencing immediately after 24:00 hours local time (Standard Time or Daylight Savings Time as applicable) at the primary local where the Work is to take place (unless otherwise designated) and extending until 24:00 hours of the same day. No days are excluded. No adjustment is allowed for the length of the day.

**CHANGE ORDER** means a written order issued by the Owner's Authorized Representative to the Contractor requiring a change in the Work within the general scope of the Contract Documents, issued under the changes provisions of Section D.1 in administering the Contract, including Owner's unilateral, written change directives as well as changes reflected in a writing executed by the parties to this Contract and, if applicable, establishing a Contract Price or Contract Time adjustment for the changed Work. Change Order shall be signed by Owner's Agent or Owner, Owner's Authorized Representative, and Contractor.

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

**CONSTRUCTION** means the act of performing the Work on the Site of Work.

**CONSTRUCTION CHANGE DIRECTIVE** means a written order signed by the Owner, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum and Contract Time being adjusted subsequently.

**CONTRACT**, also referred to as Agreement, shall mean collectively the Contract Documents.

**CONTRACT DOCUMENTS** means the Solicitation Document and addenda thereto, the Chemeketa Community College Public Improvement Agreement Form or other form of Agreement as appropriate, General Conditions, Supplemental General Conditions, if

any, the accepted Offer or Proposal, Plans, Specifications, amendments, Change Orders, Non-Conformance Reports, and the Determination and Findings of Liquidated Damages, if applicable and no other documents unless otherwise provided in the Solicitation Document or in writing executed by the parties designating the document as part of the Contract. These may be bound together as a Project Manual.

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

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

**CONTRACT TIME** means the number of Calendar Days, Work Days or Business Days allowed by the Contract for the performance of the Work or some discreet part of it. The time charged against Contract Time does not include periods during which the running of Contract Time is suspended or during which the performance of the Work is excused. Contract Time may be expressed in a number of days of a certain kind or in a period with a commencement date and an ending date. When not otherwise described Contract Time is the number of Calendar Days to elapse between Notice of Award of the Contract and the date set for Final Completion of the Contract.

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

**CRITICAL PATH** means the sequence of tasks needed to complete a project that will take the longest to occur, and which determines the total calendar time required to complete the Work.

**DAY(S)** means unit(s) of measurement of time lasting 24 hours from 00:00 local time until 24:00 local time. In locations that observe Daylight Savings Time one hour is subtracted from the day of the transition from Standard Time to Daylight Savings Time and one hour is added to the day of transition from Daylight Savings Time to Standard Time. Days are calendar days, including weekdays, weekends and holidays, unless otherwise specified. Days are counted at the Site of Work which is in the Pacific Time Zone unless otherwise specified.

**DEFECT OR DEFECTIVE** means not meeting the prescribed professional standard for appearance, quality, function, or performance.

**DELAY** means an occurrence or an obstacle to performance of the Work that impedes the accomplishment of Work that is on the Critical Path properly determined according to the approved schedule at the time that it arises.

**DESIGN DOCUMENTS** means the documents included in the Contract that describe or illustrate the technical requirements for the Work to be done.

**DESIGN PROFESSIONAL** means a licensed professional practicing a recognized technical discipline that applies creative thought, technical training and scientific and mathematical skills to plan, analyze, describe and illustrate an improvement or public work to be constructed, remodeled, renovated, altered, analyzed, evaluated or demolished. The term includes but is not limited to Architects, Engineers, Landscape Architects, Professional Land Surveyors and Geotechnical professionals and licensed consultants providing service to any of them. The Design Professional or the Owner's Design Professional is the person or entity who signs or seals the Design Documents as the design of that person or entity.

**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; workers' compensation insurance; project specific insurance; bond premiums; rental cost of equipment, and machinery required for execution of the work; and the additional costs of field personnel of the grade of superintendent or lower directly attributable to the Work.

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

**FORCE MAJEURE** means fire, riot, war, terrorism, or other catastrophe which is beyond the parties' reasonable control and prevents the performance of the Contract. For the purposes of this clause "catastrophe" means an event that is so uncertain of occurrence that it cannot be reasonably anticipated and is so severe in its effect as to suspend the normal business operations of the College for a prolonged period of time.

**LIQUIDATED DAMAGES** means an amount, stipulated in the Contract, which the parties believe to be a reasonable estimation of the damages which will occur in the event of a breach.

**MARKUP** means an agreed amount, either fixed or a percentage, added to an item of direct cost to arrive at a price to compensate the Contractor the additional direct and indirect cost, overhead, general and administrative expense, profit and fee associated with the item.

**NON-CONFORMANCE REPORT(S)** means a report issued by Owner that determines, through Owner's observation, measurement, or testing, that work or portions of the work do not conform to the requirements of the Contract Documents and may result in the suspension of work and/or additional costs to the project related to remediation or removal.

**NON-CONFORMING WORK** means work, or portions of the work that do not conform to the requirements of the Contract Documents. Non-Conforming Work may result in the suspension of work, with no impact on Contract Time.

**NOTICE** means a formal written document required by law or by Contract to advise the recipient of an occurrence or condition, to claim a right provided by law or by Contract, to waive a right provided by law or by Contract, to start the running of a period of time or to stop the running of a period of time. Notice must be in the form required by law or by Contract and must be delivered to the person or the address specified within the time allowed. The responsibility for the delivery of Notice rests with the party giving notice. The Notice described in this paragraph shall be delivered, in writing, either in person or by mail, at the address provided for the party receiving Notice in the Contract, during Business Hours on a Business Day. Unless otherwise specified, a Notice that is correctly addressed and placed in the US Mail with correct postage shall be deemed to have been "given" when placed in the custody of the US Postal Service as shown by a postmark applied by the Postal Service.

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

**OFFER** means a written response to an invitation to bid and a proposal in response to a request for proposals.

**OFFEROR** means a bidder that responds to an invitation to bid and a proposer that responds to a request for proposals.

**OVERHEAD** means all items of cost and all items of cost that are pooled and apportioned to the Contractor's Work on the basis of a ratio, percentage of direct cost or markup including without limitation: home office overhead; general and administrative expense; bid and proposal costs; general insurance costs; job site overhead; the wages, salary, expenses and per diem of persons above the level of superintendent or any person on the Site of Work who is not included in the requirement to pay PWR; vehicles, equipment and offices provided for persons not paid PWR under the Contract; and, any profit, fee or similar charge. In no case shall any expenses for advertising, entertainment, business promotion or lobbying or the cost of any gift, kickback, bribe or similar payment to any government official be included in any overhead pool or item apportioned to this Contract.

**OWNER** means Chemeketa Community College.

**OWNER'S AGENT** means the individual designated by the Owner to provide project management services

**OWNER'S AUTHORIZED REPRESENTATIVE(S)** 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.

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

**PLANS** means the drawings which show the location, type, dimensions, and details of the Work to be done under the Contract, including any and all Addenda, but do not include shop drawings.

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

**RECORD DOCUMENT(S)** means a document intended to be held for a duration longer than the Contract Period, which pertains to Work done or to things purchased or installed, including the Contract Documents, 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 Subsection B.9.1 of these General Conditions, recording all Services performed.

**SITE OF WORK** means the physical location(s) where the Work takes place as defined by the Contract Documents. It includes designated real property owned or controlled by the Owner where construction takes place together with designated borrowed sources, storage sites, waste areas, fabrication areas and component assembly sites designated by the Owner and/or wholly or substantially dedicated to the production of materials or assemblies to be used in the construction of the Work such that the obligation to pay the prevailing rate wage applies. The SITE OF WORK does not include commercial aggregate sources; commercial sources for soil, sand or minerals; established fabrication yards; established commercial batch plants; established precast yards or facilities; Contractor equipment and materials storage facilities not located on real property owned or controlled by the Owner; manufacturing plants or other facilities generally available for hire, producing standard products for public sale at established prices or not wholly dedicated to the project which are not on real property owned or controlled by the Owner.

**SOLICITATION DOCUMENT** means an Invitation to Bid (ITB), Request for Proposal (RFP), Request for Quotations (RFQ), or, Request for Qualifications (RFQ).

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

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

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

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

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

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

## **A.2 SCOPE OF WORK**

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

## **A.3 INTERPRETATION OF CONTRACT DOCUMENTS**

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

1. Contract Amendments and Change Orders, with those of later date having precedence over those of an earlier date;

2. The Chemeketa Community College Agreement between the Owner and Contractor, or Chemeketa Community College Contract for Public Improvements;
3. The Supplemental General Conditions;
4. The General Conditions;
5. The Specifications;
6. The Plans;
6. The Solicitation Document and any Addenda thereto;
7. The accepted Offer.

**A.3.2** In the case of an inconsistency between Plans and Specifications or within either document not clarified by Addendum, the better quality or greater quantity of Work shall be provided in accordance with the Owner's Agent or Owner's Authorized Representative's interpretation in writing. Large scale drawings shall govern over small scale drawings, and dimension numbers written on drawings shall govern over dimensions scaled from drawings.

**A.3.3** If the Contractor finds, or reasonably should have found, 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's Agent or Owner's Authorized Representative. Matters concerning performance under and interpretation of requirements of, the Contract Documents will be decided by the Owner's Agent, who may delegate that duty in some instances to the Owner's Authorized Representative. Responses to Contractor's requests for interpretation of Contract Documents will be made in writing by Owner's Authorized Representative within any time limits agreed upon or otherwise with reasonable promptness. Interpretations and decisions of the Owner's Authorized Representative 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.

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

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

**A.4.1** The Contractor represents and warrants that, before submitting an Offer, the Contractor has made a careful examination of the Contract Documents; has become fully informed as to the quality and quantity of materials and the character of the Work required; and has made a careful examination of the location and conditions of the Work and the sources of supply for materials. The Owner will in no case be responsible for any loss or for any unanticipated costs that may be suffered by the Contractor as a result of the Contractor's failure to acquire full information in advance in regard to all conditions pertaining to the Work. No oral agreement or conversation with any officer, agent, or personnel of the Owner, or with the Owner's Authorized Representative either before or after the execution of this Contract, shall affect or modify any of the terms or obligations herein contained.

**A.4.2** Should the Plans or Specifications fail to particularly describe the materials, kind of goods, or details of construction of any aspect of the Work, Contractor shall have the duty to make inquiry of the Owner's Agent and Owner's Authorized Representative as to what is required prior to performance of the Work. Absent Specifications to the contrary, the materials or processes that would normally be used to produce first quality finished Work shall be considered a part of the Contract requirements.

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

**A.4.4** If the Contractor believes that additional cost or Contract Time is involved because of clarifications or instructions issued by the Owner's Authorized Representative in response to the Contractor's notices or requests for information, the Contractor must submit a written request to the Owner's Authorized Representative, setting forth the nature and specific extent of the request, including all time and cost impacts against the Contract as soon as possible, but no later than ten (10) Days after receipt by Contractor of the clarifications or instructions issued. If the Owner's Authorized Representative denies Contractor's request for additional compensation, additional Contract Time, or other relief that Contractor believes results from the clarifications or

instructions, the Contractor may proceed to file a Claim under Section D.3, Claims Review Process. If the Contractor fails to perform the obligations of Sections A.4.1 to A.4.3, the Contractor shall pay such costs and damages to the Owner as would have been avoided if the Contractor had performed such obligations.

**A.4.5** Contractor shall maintain and provide a full set of drawings and specifications, incorporating or including all Addenda, and make available within the meeting room used for all regular Owner/Contractor/Design Professional meetings.

#### **A.5 INDEPENDENT CONTRACTOR STATUS**

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

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

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

#### **A.7 GOVERNMENT EMPLOYMENT STATUS**

**A.7.1** If this payment is to be charged against federal funds, Contractor represents and warrants that it is not currently employed by the federal government. This does not preclude the Contractor from holding another contract with the federal government. This provision does not apply to military members of the reserves of the US Armed Forces or military members of the National Guard who are not on active duty or in status in which the member is being paid for the performance of military duty while this Contract is being performed provided that the member does not hold any other state or federal employment.

**A.7.2** Contractor represents and warrants that Contractor is not an employee of Chemeketa Community College, another employer covered by the Oregon Public Employees Retirement System (PERS), or, the State of Oregon for purposes of performing Work under this Contract. This provision does not apply to military members of the reserves of the US Armed Forces or military members of the National Guard who are not on active duty or in status in which the member is being paid for the performance of military duty while this Contract is being performed provided that the member does not hold any other State or Federal employment.



## **SECTION B ADMINISTRATION OF THE CONTRACT**

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

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

**B.1.2** The Owner's Authorized Representative will visit the site at intervals appropriate to the stage of the Contractor's operations (1) to become generally familiar with and to keep the Owner's Agent 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. Owner's Agent or Owner's Authorized Representative will neither have control over or charge of, nor be responsible for the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work.

**B.1.3** Except as otherwise provided in the Contract Documents or when direct communications have been specifically authorized, the Owner's Agent 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 from the Contractor to the Owner's Agent seeking information about the plans and specifications, submittals required by the contract, materials testing, the measurement of Work for payment, schedules, the progress of the Work, correction of Defective Work, Punch Lists or similar technical matters shall be directed to the Owner's Authorized Representative unless otherwise directed. Communications by and with the Owner's Authorized Representative's consultants shall be through the Owner's Authorized Representative. Communications by and with Subcontractors and material suppliers shall be through the Contractor. Communications by and with separate contractors shall be through the Owner's Authorized Representative.

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

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

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

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

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

### **B.3 MATERIALS AND WORKMANSHIP**

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

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

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

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

**B.3.5** The Contractor shall furnish samples of materials for testing by the Owner's Authorized Representative and Owner's Agent and include the cost of the samples in the Contract Price.

#### **B.4 PERMITS**

Owner will pay for any building permits, and Contractor shall obtain and pay for all other necessary permits and licenses, except for those specifically excluded in the Supplemental General Conditions or elsewhere in the Solicitation Document, for the construction of the Work, for temporary obstructions, enclosures, opening of streets for pipes, walls, utilities, environmental Work, etc., as required for the project. Contractor shall be responsible for all violations of the law, in connection with the construction or caused by obstructing streets, sidewalks or otherwise. Contractor shall give all requisite notices to public authorities. The Contractor shall pay all royalties and license fees. The Contractor shall defend all suits or claims for infringement of any patent or other proprietary rights and save harmless and blameless from loss, on account thereof, the College, its board, officers, agents, employees and volunteers.

#### **B.5 COMPLIANCE WITH GOVERNMENT LAWS AND REGULATIONS**

**B.5.1** Contractor shall comply with all federal, state and local laws, codes, regulations and ordinances applicable to the Work and the Contract. Failure to comply with such requirements shall constitute a breach of Contract and shall be grounds for Contract termination. Without limiting the generality of the foregoing, Contractor expressly agrees to comply with the following as applicable: i) Title VI and VII of Civil Rights Act of 1964, as amended; (ii) Section 503 and 504 of the Rehabilitation Act of 1973, as amended; (iii) the Health Insurance Portability and Accountability Act of 1996; (iv) the Americans with Disabilities Act of 1990, as amended; (v) ORS Chapter 659A; as amended (vi) all regulations and administrative rules established pursuant to the foregoing laws; and (vii) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations. Owner's performance under the Contract is conditioned upon Contractor's compliance with the provisions of ORS 279C.505, 279C.510, 279C.515, 279C.520, and 279C.530, which are incorporated by reference herein.

**B.5.1.1** The Owner's Agent shall have the right under this agreement to stop Work or to order the suspension of any activity using College facilities/areas where in its judgment, the Contractor or persons for whom the Contractor is responsible are committing or participating in violations of established written College Policies and Procedures, the terms of this agreement, or conducting themselves in a manner that is deemed by the Owner's Agent to be hazardous to persons or property lawfully occupying College property, College facilities or public or private property immediately adjacent.

##### **B.5.1.2 Conduct of Contractor's Employees/Subcontractors**

Chemeketa Community College is a college campus; however, there are a large number of minors on College property. Contractors are responsible and shall be held liable for any misconduct of their employees or subcontractors on College property. Contractors are encouraged to be mindful of any prior misconduct of its employees and/or subcontractors.

The College retains the right to stop any activity and/or to require dismissal from the job site of any worker whose behavior does not comply, or gives the College reasonable suspicion to believe the worker's behavior does not comply, with pertinent Chemeketa Community College policy(ies), including but not limited to providing a respectful workplace, a harassment free workplace, and a drug and alcohol free workplace, or the activity is deemed hazardous to members of a user group, the public, or College facilities.

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

(a) Contractor shall not discriminate against Disadvantaged, Minority, Women or Emerging Small Business enterprises, as those terms are defined in ORS 200.005, in the awarding of subcontracts (ORS 279A.110).

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

**B.5.3** Unless contrary to federal law, Contractor shall certify that it shall not accept a bid from Subcontractors to perform Work as described in ORS 701.005 under this Contract unless such Subcontractors are registered with the Construction Contractors Board in accordance with ORS 701.035 to 701.055 at the time they submit their bids to the Contractor.

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

**B.5.5** The following notice is applicable to Contractors who perform excavation Work:

**ATTENTION: Oregon law requires you to follow rules adopted by the Oregon Utility Notification Center. Those rules are set forth in OAR 952-001-0010 through OAR 952-001-0090. You may obtain copies of the rules by calling the center at 503.232.1987 or by accessing the website located @ [www.DigSafelyOregon.com](http://www.DigSafelyOregon.com).**

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

## **B.6 SUPERINTENDENCE**

Contractor shall keep on the site at all times Work is being done, even at times the Work is being done solely by Subcontractor(s), a competent superintendent and any necessary assistants who shall be satisfactory to the Owner's Agent and who shall represent the Contractor on the site. Directions given to the superintendent by the Owner's Authorized Representative shall be confirmed in writing to the Contractor.

## **B.7 INSPECTION**

**B.7.1** Owner's Agent and Owner's Authorized Representative shall have access to the Work at all times.

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

**B.7.3** Contractor shall make or obtain at the appropriate time all tests, inspections and approvals of portions of the Work required by the Contract Documents or by laws, codes, ordinances, rules, regulations or orders of public authorities having jurisdiction. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work. The Contractor shall give the Owner's Authorized Representative timely notice of when and where tests and inspections are to be made so that the Owner's Authorized Representative may be present for such procedures. Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Owner's Authorized Representative.

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

**B.7.5** If directed to do so any time before the Work is accepted, the Contractor shall uncover portions of the completed Work for inspection. After inspection, the Contractor shall restore such portions of Work to the standard required by the Contract. If the Work uncovered is unacceptable or was done without sufficient notice to the Owner's Authorized Representative, the uncovering and restoration shall be done at the Contractor's expense. If the Work uncovered is acceptable and was done with sufficient notice to the Owner's Agent, the uncovering and restoration will be paid for as a Change Order.

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

**B.7.7** When the United States government participates in the cost of the Work, or the Owner has an agreement with other public or private organizations, or if any portion of the Work is being performed for a third party or in close proximity to third party

facilities, representatives of these organizations have the right to inspect the Work affecting their interests or property. Their right to inspect shall not make them a party to the Contract and shall not interfere with the rights of the parties of the Contract. Instructions or orders of such parties shall be transmitted to the Contractor, through the Owner's Agent.

## **B.8 SEVERABILITY**

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

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

**B.9.1** Contractor shall keep, at all times on the Work site, one record copy of the complete Contract Documents, including the Plans, Specifications, Change Orders 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 Agent and Owner's Authorized Representative access thereto.

**B.9.2** Contractor shall retain and the Owner and its duly authorized representatives shall have access to, for a period not less than ten (10) years, all Record Documents, financial and accounting records, and other books, documents, papers and records of Contractor which are pertinent to the Contract including records pertaining to Overhead and indirect costs, for the purpose of making audit, examination, excerpts and transcripts. If for any reason, any part of the Contract is involved in litigation, Contractor shall retain all such records until all litigation is resolved. The Owner and/or its agents shall continue to be provided full access to the records during litigation.

## **B.10 WAIVER**

Failure of the Owner to enforce any provision of this Contract shall not constitute a waiver or relinquishment by the Owner of the right to such performance in the future nor of the right to enforce any other provision of this Contract. No right of the Owner shall be waived by implication, by the passage of time or by "operation of law." Any waiver of a right by the Owner shall be in a writing that specifically identifies the right being waived and the circumstances of the waiver, and shall be signed by an authorized representative of the Owner.

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

**B.11.1** Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound by the terms and conditions of these General Conditions for Public Improvement Contracts, 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's Agent. Where appropriate, Contractor shall require each Subcontractor at any tier to enter into similar agreements.

**B.11.2** At Owner's Agent'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's Agent disapproves such form, Contractor shall not execute the form until the matters disapproved are resolved to Owner's Agent's satisfaction. Owner's review, comment upon or approval of any such form shall not relieve Contractor of its obligations under this Agreement or be deemed a waiver of such obligations of Contractor.

**B.11.3** Contractor shall not assign, sell, or transfer its rights, or delegate its responsibilities under this Contract, in whole or in part, without the prior written approval of the Owner. No such written approval shall relieve Contractor of any obligations of this Contract, and any transferee shall be considered the agent of the Contractor and bound to perform in accordance with the Contract Documents. Contractor shall remain liable as between the original parties to the Contract as if no assignment had occurred.

**B.11.4** Upon reasonable concern regarding Contractor's payment of Subcontractors or suppliers at any tier, Owner may in its sole discretion make payment to Contractor and the Subcontractor at any tier, supplier by dual payee check payable to Contractor and the unpaid party. Upon Owner's Agent's request, Contractor shall furnish to Owner all information necessary to facilitate such payments, including without limitation, a complete listing of amounts owed to all Subcontractors at any tier.

**B.11.5** Should Contractor fail, neglect or refuse to make prompt payment of any valid claim for labor, services, equipment, or materials furnished to Contractor or any Subcontractor as such claim becomes due for work performed on the Project, Owner may pay such claim directly to the person or entity who furnished such labor, services, equipment or materials, and charge the amount

of the payment against amounts due, or to become due, Contractor. Owner's payment of any such claims shall not relieve Contractor or its surety from any obligation with respect to any claims Contractor fails to pay.

**B.11.6** If the Contractor or a first-tier Subcontractor fails, neglects or refuses to make payment to any person furnishing labor or materials for the Work within 30 days after receipt of payment from the Owner, 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 (4) 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 30 days after the date when payment was received from the Owner or from the Contractor, but the rate of interest may not exceed 30 percent. The amount of interest may not be waived.

**B.11.7** 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. Contractor shall include this clause in all subcontracts and require that Subcontractors include the clause in Work subcontracted to a lower tier. Notice shall be in this form:

Subcontractor is notified that every public improvement contract and every contract related to the public improvement contract shall contain a clause or condition that, if the contractor or a subcontractor fails, neglects or refuses to make payment to a person furnishing labor or materials in connection with the public improvement 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. Subcontractor shall include this clause in any contract related to the Work. Complaints may be addressed to the Board at 700 Summer St. NE, Suite 300, PO Box 14140, Salem, OR 97309.

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

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

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

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

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

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

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

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

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

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

**Note: CONTRACTOR BY EXECUTION OF THIS CONTRACT HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF THE COURTS REFERENCED IN THIS SECTION B.16.**

## **B.17 ALLOWANCES**

**B.17.1** The Contractor shall include in the Contract Price all Allowances necessary to complete the Work. Items covered by Allowances shall be supplied for such amounts and by such persons or entities as the Owner's Agent may direct.

**B.17.2** Unless otherwise provided in the Contract Documents:

- (a) When finally reconciled, Allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- (b) Contractor's costs for unloading and handling at the site, labor, installation costs, Overhead, profit and other expenses contemplated for stated Allowance amounts shall be included in the Contract Price but not in the Allowances;
- (c) Whenever costs are more than or less than Allowances, the Contract Price shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the Allowances under Section B.17.2(a) and (2) changes in Contractor's costs under Section B.17.2(b).
- (d) Unless Owner requests otherwise, Contractor shall provide to Owner a proposed fixed price for any Allowance work prior to its performance.

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

**B.18.1** The Contractor shall prepare and keep current, for the Owner's Authorized Representative's approval, a log which shall contain a schedule for delivery of submittals and shall be coordinated with the Contractor's construction schedule and in such sequence as to cause no delay in the Work or in the activities of the Owner or of separate contractors, and allows reasonable time to review submittals. Owner's Agent reserves the right to approve the log, in Owner-approved format. Log shall be adjusted to reflect changes in the construction schedule or sequence of Work. Submittals include, without limitation, shop drawings, product data, and samples which are described below:

- (a) Shop drawings are drawings, diagrams, schedules and other data specially prepared for the Work by the Contractor or a Subcontractor, manufacturer, supplier or distributor, at any tier, to describe some portion of the Work.
- (b) Product data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to demonstrate materials or equipment for some portion of the Work.
- (c) Samples are physical examples which demonstrate materials, equipment or workmanship and establish standards by which the Work will be judged.

**B.18.2** Shop drawings, product data, samples and similar submittals are not Contract Documents. The purpose of their submittal is to demonstrate for those portions of the Work for which submittals are required by the Contract Documents the way by which the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents. Review of submittals by the Owner's Authorized Representative 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 Owner's Authorized Representative, 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 Owner's Authorized Representative's review of the Contractor's submittals shall not relieve the Contractor of its obligations under the Contract Documents. The Owner's Authorized Representative's approval of a specific item shall not indicate approval of an assembly of which the item is a component. Informational submittals upon which the Owner's Authorized Representative 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 Owner's Authorized Representative without action.

**B.18.3** The Contractor shall review for compliance with the Contract Documents, approve and submit to the Owner's Authorized Representative shop drawings, product data, samples and similar submittals required by the Contract Documents, in accordance

with the approved log, 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 Owner's Authorized Representative without action.

**B.18.4** By approving and submitting shop drawings, product data, samples and similar submittals, the Contractor represents that the Contractor has determined and verified materials, field measurements and field construction criteria related thereto, and has checked and coordinated the information contained within such submittals with the requirements of the Contract Documents and the Work, including that of all Subcontractors.

**B.18.5** The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of shop drawings, product data, samples or similar submittals until the respective submittal has been approved by the Owner's Authorized Representative.

**B.18.6** The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Owner's Authorized Representative's review or approval of shop drawings, product data, samples or similar submittals unless the Contractor has specifically informed the Owner's Authorized Representative, in writing, of such deviation at the time of submittal and: (i) the Owner's Authorized Representative has given written approval to the specific deviation; or (ii) a Change Order has been executed by Owner's Agent 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 Owner's Authorized Representative's review or approval thereof.

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

## **B.19 SUBSTITUTIONS**

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

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

Plans, Specifications and related Contract Documents furnished to Contractor by Owner or Owner's Authorized Representative shall be used solely for the performance of the Work under this Contract. Contractor and its Subcontractors and suppliers are authorized to use and reproduce applicable portions of such documents appropriate to the execution of the Work, but shall not claim any ownership or other interest in them beyond the scope of this Contract, and no such interest shall attach. Unless otherwise indicated, all common law, statutory and other reserved rights, in addition to copyrights, are retained by Owner.

### **B.20.1 Security and Safety of Individuals and Building (ORS 192.501 et al)**

Contractor shall not disclose or permit the disclosure of Plans, shop drawings, or other records or information that would reveal or otherwise identify security measures, or weaknesses or potential weaknesses in security measures, except to the extent certain individuals need such information to properly perform the Work.

Contractor shall not disclose Plans, shop drawings, or other records or information that, if disclosed, would allow a person to: gain unauthorized access to buildings or other property; identify those areas of structural or operational vulnerability that would permit unlawful disruption to, or interference with, services; or disrupt, interfere with or gain unauthorized access to public funds or to information processing, communication or telecommunication systems, including the information contained in the systems, that are used or operated by the Owner, except to the extent certain individuals need such information to properly perform the Work.

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

Owner reasonably believes at the time of entering into this Contract that sufficient funds are available and authorized for expenditure to finance the cost of this Contract within the Owner's budget, appropriation or limitation. Contractor understands and agrees that, to the extent that sufficient funds are not available and authorized for expenditure to finance the cost of this Contract in subsequent budget periods, Owner's payment of amounts under this Contract attributable to Services performed after the last day of the current budget cycle is contingent on Owner's governing body receiving budgeting and appropriating funds or other

expenditure authority sufficient to allow Owner, in the exercise of its reasonable administrative discretion, to continue to make payments under this Contract. If the project is funded from special funds or from funds established from the proceeds of bonds, grants or revenue obligations Contractor understands and agrees that the total funds to be used on all phases of the Project including but not limited to amounts to be paid to Contractor are limited to the special fund or the proceeds of the grant, bond issue or revenue obligation subject to the Owner's reasonable apportionment of the available funds to those persons or entities having a claim upon them.

**B.22 NO THIRD PARTY BENEFICIARIES**

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

For the purposes of this provision a court or government appointed receiver, liquidator or trustee shall be considered a "third person."



## **SECTION C WAGES AND LABOR**

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

Contractor shall comply fully with the provisions of ORS 279C.800 through 279C.870, or Davis-Bacon-Act (40 U.S.C. 3141 to 3148), or both if the public works project is subject to state and federal prevailing wage laws, and shall pay the higher of the applicable state or federal prevailing rate of wage to workers on public works projects subject to both state and federal prevailing wage laws. Documents establishing those conditions, as determined by the Commissioner of the Bureau of Labor and Industries (BOLI), are included as attachments to or are incorporated by reference in the Contract Documents. Contractor shall pay workers at not less than the specified minimum hourly rate of wage, and shall include that requirement in all subcontracts at any tier.

### **C.2 PAYROLL CERTIFICATION; ADDITIONAL RETAINAGE; FEE REQUIREMENTS**

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

The Contractor and Subcontractors shall preserve the certified statements for a period of ten (10) years from the date of completion of the Contract.

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

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

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

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

**C.3.1** Pursuant to ORS 279C.505 and as a condition to Owner's performance hereunder, the Contractor shall:

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

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

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

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

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

(a) Contractor represents and warrants that Contractor has in place at the time of the execution of this Contract, and shall maintain during the term of this Contract, a Qualifying Employee Drug Testing Program for its employees that includes, at a minimum, the following:

- (1) A written employee drug testing policy,
- (2) Required drug testing for all new Subject Employees or, alternatively, required testing of all Subject Employees every 12 months on a random selection basis, and
- (3) Required testing of a Subject Employee when the Contractor has reasonable cause to believe the Subject Employee is under the influence of drugs.

(b) Contractor shall require each Subcontractor providing labor for the project to:

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

A drug testing program that meets the above requirements will be deemed a "Qualifying Employee Drug Testing Program." For the purposes of this section, an employee is a "Subject Employee" only if that employee will be working on the project job site.

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

**C.3.2.1** If Contractor fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to 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.

**C.3.2.2** 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 (30) percent. The amount of interest may not be waived.

**C.3.2.3** 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.

**C.3.3.1** Pursuant to ORS 279C.580, Contractor shall provide first-tier Subcontractors with a standard form that the first-tier Subcontractors may use as an application for payment or as another method by which the Subcontractors may claim a payment due from Contractor. Contractor may change the form or the regular administrative procedures the Contractor uses for processing payments, if the Contractor: (A) Notifies the Subcontractor, in writing, at least 45 days before the date on which the Contractor makes the change; and (B) Includes with the written notice a copy of the new or changed form or a description of the new or changed procedure.

**C.3.3.2** 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:

- (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;
- (b) An interest penalty clause that obligates the Contractor if the Contractor does not pay the first-tier Subcontractor within thirty (30) Days after receiving payment from Owner, to pay to the first-tier Subcontractor an interest penalty on amounts due in each payment the Contractor does not make in accordance with the payment clause included in the subcontract under paragraph (a) of this subsection. Contractor or first-tier Subcontractor is not 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 applies to the period that begins on the day after the required payment date and that ends on the date on which the amount due is paid, and shall be computed at the rate specified in ORS 279C.515(2).
- (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.

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

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

Pursuant to ORS 279C.530, and as a condition to Owner's performance hereunder, Contractor shall promptly, as due, make payment to any person, partnership, association or corporation furnishing medical, surgical, and hospital care or other needed care and attention, incident to sickness or injury, to the employees of such Contractor, all sums of which the Contractor agrees to pay for such services and all moneys and sums which the Contractor has collected or deducted from the wages of personnel pursuant to any law, contract or agreement for the purpose of providing or paying for such services.

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

As a condition to Owner's performance hereunder, Contractor shall comply with ORS 279C.520, as amended from time to time and incorporated herein by this reference:

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

- (a) For all overtime in excess of eight (8) hours a day or forty (40) hours in any one week when the work week is five consecutive Days, Monday through Friday; or
- (b) For all overtime in excess of ten (10) hours a day or forty (40) hours in any one week when the work week is four consecutive Days, Monday through Friday; and
- (c) For all Work performed on Saturday and on any legal holiday specified in ORS 279C.540. This Section C.5 shall not excuse Contractor from completion of the Work within the time required under this Contract.

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

## SECTION D CHANGES IN THE WORK

### D.1 CHANGES IN WORK

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

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

- (a) Modification of Specifications and design.
- (b) Increases or decreases in quantities.
- (c) Increases or decreases to the amount of Work.
- (d) Addition or elimination of any Work item.
- (e) Change in the duration of the project.
- (f) Acceleration or delay in performance of Work.
- (g) Deductive changes.  
Deductive changes are those that reduce the scope of the Work, and shall be made by mutual agreement whenever feasible.

In cases of suspension or partial termination under Section J, Owner reserves the right to unilaterally impose a deductive change and to self-perform such Work, for which the provisions of B.13 (Owner's Right to Do Work) shall then apply.

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

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

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

On Labor.....12%  
On Equipment..... 8%  
On Materials..... 8%

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

\$0.00 - \$2,000.00 10%, and then  
Over \$2,000.00 5%

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

**D.1.4** Any necessary adjustment of Contract Time that may be required as a result of a Change Order must be agreed upon by the parties before the start of the Change Order Work unless Owner's Authorized Representative and Owner's Agent authorizes Contractor to start the Work before agreement on Contract Time adjustment.

Contractor shall submit any request for additional compensation (and additional Contract Time if Contractor was authorized to start Work before an adjustment of Contract Time was approved) as soon as possible but no later than thirty (30) Days after receipt of the Change Order.

If Contractor's request for additional compensation or adjustment of Contract Time is not made within the thirty (30) day time limit, Contractor's requests pertaining to that Change Order are barred, unless otherwise prohibited by law.

The thirty (30) day time limit for making requests shall not be extended for any reason, including without limitation Contractor's claimed inability to determine the amount of additional compensation or adjustment of Contract Time, unless an extension is granted in writing by Owner's Agent.

If the Owner's Agent denies Contractor's request for additional compensation or adjustment of Contract Time, Contractor may proceed to file a Claim under Section D.3, Claims Review Process. No other reimbursement, compensation, or payment will be made, except as provided in Section D.1.5 for impact claims.

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

The thirty (30) day time limit applies to claims of Subcontractors, suppliers, or manufacturers that may be affected by the Change Order and that request additional compensation or an extension of Contract Time to perform; Contractor has responsibility for contacting its Subcontractors, suppliers, or manufacturers within the thirty (30) day time limit, and including their requests with Contractor's requests.

If the request involves Work to be completed by Subcontractors, or materials to be furnished by suppliers or manufacturers, such requests shall be submitted to the Contractor in writing with full analysis and justification for the compensation and additional Contract Time requested.

The Contractor will analyze and evaluate the merits of the requests submitted by Subcontractors, suppliers, and manufacturers to Contractor prior to including those requests and Contractor's analysis and evaluation of those requests with Contractor's requests for additional compensation or Contract Time that Contractor submits to the Owner's Agent.

Failure of Subcontractors, suppliers, manufacturers or others to submit their requests to Contractor for inclusion with Contractor's requests submitted to Owner's Agent within the time period and by the means described in this section shall constitute a waiver of these Subcontractor claims, unless otherwise prohibited by law.

The Owner's Authorized Representative and the Owner's Agent will not consider direct requests or claims from Subcontractors, suppliers, manufacturers or others not a party to this Contract. The consideration of such requests and claims under this section

does not give any person, not a party to the Contract the right to bring a claim against the Owner, whether in this claims process, in litigation, or in any dispute resolution process.

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

**D.1.6** No request or Claim by the Contractor for additional costs or an extension of Contract Time shall be allowed if made after receipt of final payment application under this Contract. Contractor agrees to submit its final payment application within ninety (90) days after Substantial Completion, unless written extension is granted by Owner. Contractor shall not delay final payment application for any reason, including without limitation nonpayment of Subcontractors, suppliers, manufacturers or others not a party to this Contract, or lack of resolution of a dispute with Owner or any other person of matters arising out of or relating to the Contract. If Contractor fails to submit its final payment application within ninety (90) days after Substantial Completion, and Contractor has not obtained written extension by Owner, all requests or Claims for additional costs or an extension of Contract Time shall be waived.

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

## **D.2 DELAYS**

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

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

- (a) Could have been avoided by the exercise of care, prudence, foresight, and diligence on the part of the Contractor or its Subcontractors.
- (b) Affect only a portion of the Work and do not necessarily prevent or delay the execution of other parts of the Work nor the completion of the whole Work within the Contract Time.
- (c) Do not impact activities on the accepted Critical Path schedule.
- (d) Are associated with the reasonable interference of other contractors employed by the Owner that do not necessarily prevent the completion of the whole Work within the Contract Time.

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

- (a) Caused by any actions of the Owner, Owner's Authorized Representative, Owner's Agent, or any other employee or agent of the Owner, or by separate contractor employed by the Owner.
- (b) Caused by any site conditions which differ materially from what was represented in the Contract Documents or from conditions that would normally be expected to exist and be inherent to the construction activities defined in the Contract Documents.

The Contractor shall notify the Owner's Authorized Representative immediately of differing site conditions before the area has been disturbed.

The Owner's Authorized Representative will investigate the area and make a determination as to whether or not the conditions differ materially from either the conditions stated in the Contract Documents or those which could reasonably be expected to exist and be inherent in this particular Contract.

If Contractor and the Owner's Authorized Representative agree that a differing site condition exists, any additional compensation or additional Contract Time will be determined based on the process set forth in Section D.1.5 for Change Order Work.

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

- (c) Caused by Force Majeure acts, events or occurrences that could not have been avoided by the exercise of care, prudence, foresight, and diligence on the part of the Contractor or its Subcontractors.
- (d) If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated and had an adverse effect, and cost impact, if any, on the scheduled construction. For the purposes of this provision, weather that is not usual but is within historic climatic norms for the site of Work shall not be a basis for the adjustment of Contract Time. Weather that is either an extreme or a prolonged deviation from historic climatic norms that actually prevents or severely retards discrete Work that is on the Critical Path may support a Claim. Climatic norms will be determined from the records of the official government weather observation station that is closest to the site. In the case of extremely localized weather phenomena such as micro-bursts, tornados, lightning strikes and hail data and observations from conditions at the site of Work and information inferred from the damage to the Work and nearby structures shall be presented and may be considered. Localized events that actually occur at the site of Work shall not be considered to be with climatic norms. Data to support claims based on more general phenomena shall be substantiated with the observations of the nearest government weather observation station. An event or phenomena is considered within climatic norms if the same event, pattern or phenomena has occurred within the county in which the Work is located twice within the period of time during which reliable weather observations have been recorded or twice within the 100 years preceding the event, pattern or phenomena. For the purposes of this provision, flooding due to the overflow of a river or a fish bearing stream is not considered a weather event.

**D.2.2** Except as otherwise provided in ORS 279C.315, Contractor shall not be entitled to additional compensation or additional Contract Time for Avoidable Delays.

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

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

In the event of any requests for additional compensation or additional Contract Time, or both, as applicable, arising under this Section D.2.3 for Unavoidable Delays, other than requests for additional compensation or additional Contract Time for differing site conditions for which a review process is established under Section D.2.1.2 (b), Contractor shall submit a written notification of the delay to the Owner's Agent within two (2) Business 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 seven (7) Days after the cause of the delay has been mitigated, or in no case more than thirty (30) Days after the initial written notification, the Contractor shall submit to the Owner's Agent, a complete and detailed request for additional compensation or additional Contract Time, or both, as applicable, resulting from the delay. If the Owner's Agent denies Contractor's request for additional compensation or adjustment of Contract Time, the Contractor may proceed to file a Claim under Section D.3, Claims Review Process.

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

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

**D.3.1** All Contractor Claims shall be referred to the Owner's Authorized Representative and Owner's Agent for review.

Contractor's Claims, including Claims for additional compensation or additional Contract Time, shall be submitted in writing by Contractor to the Owner's Authorized Representative and Owner's Agent within five (5) Days after a denial of Contractor's initial request for an adjustment of Contract terms, payment of money, extension of Contract Time or other relief, provided that such

initial request has been submitted in accordance with the requirements and within the time limits established in these General Conditions. Within thirty (30) Days after the initial Claim, Contractor shall submit to the Owner's Authorized Representative and Owner's Agent, a complete and detailed description of the Claim (the "Detailed Notice") that includes all information required by Section D.3.2.

Unless the Claim is made in accordance with these time requirements, it shall be waived.

**D.3.2** The Detailed Notice of the Claim shall be submitted in writing by Contractor and shall include a detailed, factual statement of the basis of the Claim, pertinent dates, Contract provisions which support or allow the Claim, reference to or copies of any documents which support the Claim, the dollar value of the Claim, and the Contract Time extension requested for the Claim.

If the Claim involves Work to be completed by Subcontractors, the Contractor will analyze and evaluate the merits of the Subcontractor claim prior to forwarding it and that analysis and evaluation to the Owner's Authorized Representative.

The Owner's Authorized Representative and Owner's Agent will not consider direct claims from Subcontractors, suppliers, manufacturers, or others not a party to this Contract. Contractor agrees that it will make no agreement, covenant, or assignment, nor will it commit any other act that will permit or assist any Subcontractor, supplier, manufacturer, or other to directly or indirectly make a claim against Owner.

**D.3.3** The Owner's Authorized Representative and Owner's Agent will review all Claims and take one or more of the following preliminary actions within ten (10) Days of receipt of the Detailed Notice of a Claim: (1) request additional supporting information from the Contractor; (2) inform the Contractor and Owner in writing of the time required for adequate review and response; (3) reject the Claim in whole or in part and identify the reasons for rejection; (4) based on principles of equitable adjustment, recommend approval of all or part of the Claim; or (5) propose an alternate resolution.

**D.3.4** The Owner's Authorized Representative's and Owner's Agent's decision shall be final and binding on the Contractor unless appealed by written notice to the Owner, through the Owner's Procurement Services office, within fifteen (15) Days of receipt of the decision.

The Contractor must present written documentation supporting the Claim within fifteen (15) Days of the notice of appeal.

After receiving the appeal documentation, the Owner shall review the materials and render a decision within thirty (30) Days after receiving the appeal documents.

**D.3.5** The decision of the Owner shall be final and binding unless the Contractor delivers to the Owner its request for mediation, which shall be a non-binding process, within fifteen (15) Days of the date of the Owner's decision.

The mediation process will be considered to have commenced as of the date the Contractor delivers the request. Both parties acknowledge and agree that participation in mediation is a prerequisite to commencement of litigation of any disputes relating to the Contract.

Both parties further agree to exercise their best efforts in good faith to resolve all disputes within sixty (60) Days of the commencement of the mediation through the mediation process set forth herein.

In the event that a lawsuit must be filed within this sixty (60) day period in order to preserve a cause of action, the parties agree that notwithstanding the filing, they shall proceed diligently with the mediation to its conclusion prior to actively prosecuting the lawsuit, and shall seek from the Court in which the lawsuit is pending such stays or extensions, including the filing of an answer, as may be necessary to facilitate the mediation process.

Further, in the event settlements are reached on any issues through mediation, the parties agree to promptly submit the appropriate motions and orders documenting the settlement to the Court for its signature and filing.

**D.3.6** The mediator shall be an individual mutually acceptable to both parties, but in the absence of agreement each party shall select a temporary mediator and the temporary mediators shall jointly select the permanent mediator. Each party shall pay its own costs for the time and effort involved in mediation. The cost of the mediator shall be split equally between the two parties. Both parties agree to exercise their best effort in good faith to resolve all disputes in mediation.

Participation in mediation is a mandatory requirement of both the Owner and the Contractor. The schedule, time and place for mediation will be mutually acceptable, or, failing mutual agreement, shall be as established by the mediator.



The parties agree to comply with Owner's administrative rules governing the confidentiality of mediation, if any, and shall execute all necessary documents to give effect to such confidentiality rules.

In any event, the parties shall not subpoena the mediator or otherwise require the mediator to produce records, notes or work product, or to testify in any future proceedings as to information disclosed or representations made in the course of mediation, except to the extent disclosure is required by law.

**D.3.7** Unless otherwise directed by Owner's Agent, Contractor shall proceed with the Work while any Claim of Contractor is pending, including a Claim for additional compensation or additional Contract Time resulting from Change Order Work.

Regardless of the review period or the final decision of the Owner's Agent, the Contractor shall continue to diligently pursue the Work as identified in the Contract Documents.

**In no case is the Contractor justified or allowed to cease Work without a written stop work order from the Owner's Agent or Owner's Authorized Representative.**

## **SECTION E PAYMENTS**

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

The Contractor shall submit, at least ten (10) Days prior to submission of its first application for progress payment, a schedule of values 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 shall be in Construction Specifications Institute (CSI), format and shall be by Subcontractor or supplier and by value of each subcontract. Unless objected to by the Owner's Agent, this schedule shall be used as the basis for reviewing Contractor's applications for payment.

If objected to by Owner's Agent, Contractor shall revise the schedule of values and resubmit the same for approval of Owner's Agent.

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

**E.2.1** Owner shall make progress payments on the Contract monthly as Work progresses. Payments shall be based upon estimates of Work completed and the Schedule of Values.

All payments shall be approved by the Owner's Agent.

A progress payment shall not be considered acceptance or approval of any Work or waiver of any Defects therein.

Owner shall pay to Contractor interest 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.

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 (30) percent.

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.

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

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

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

**E.2.3** Generally, Applications for Payment will be accepted only for materials that have been installed.

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

- (a) The request for stored material shall be submitted at least thirty (30) Days in advance of the application for payment on which it appears. Applications for Payment shall be entertained for major equipment, components or expenditures only.

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

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

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

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

- (a) Take that portion of the Contract Price properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the total Contract Price allocated to that portion of the Work in the Schedule of Values, less retainage as provided in Section E.5... Pending final determination of cost to the Owner of changes in the Work, amounts not in the dispute may be included even though the Contract Price has not yet been adjusted by Change Order;
- (b) Add that portion of the Contract Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction (or, if approved in advance by the Owner pursuant to Section E.2.3, suitably stored off the site at a location agreed upon in writing), less retainage as provided in Section E.5;
- (c) Subtract the aggregate of previous payments made by the Owner; and

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

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

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

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

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

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

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

Contractor shall not be compensated for Work performed under this Contract from any source other than the College.

### **E.5 RETAINAGE**

**E.5.1** Retainage shall be withheld and released in accordance with ORS 279C.550 to 279C.570:

**E.5.1.1** Owner may reserve as retainage from any progress payment an amount not to exceed five percent of the payment. A progress payment shall not be considered acceptance or approval of any work or waiver of any Defects therein.

As Work progresses, Owner may reduce the amount of the retainage and may eliminate retainage on any remaining monthly Contract payments after 50 percent of the Work under the Contract is completed if, in the Owner's Agent's opinion, such Work is progressing satisfactorily.

Elimination or reduction of retainage shall be allowed only upon written application by the Contractor, which application shall include written approval of Contractor's surety; except that when the Work is 97-1/2 percent completed the Owner may, at its discretion and without application by the Contractor, reduce the retained amount to 100 percent of the value of the Work remaining to be done.

Upon receipt of written application by the Contractor, Owner shall respond in writing within a reasonable time.

**E.5.1.2** In accordance with the provisions of ORS 279C.560 and any applicable administrative rules, unless the Owner finds in writing that accepting a bond, security or other instrument described in options (a) or (c) 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:

- (a) To be paid amounts which would otherwise have been retained from progress payments where Contractor has deposited acceptable bonds and securities of equal value with Owner or in a custodial account or other mutually-agreed account satisfactory to Owner, with an approved bank or trust company to be held in lieu of the cash retainage for the benefit of Owner;
- (b) That retainage be deposited in an interest bearing account, established through the State Treasurer for state agencies, in a bank, savings bank, trust company or savings association for the benefit of Owner, with earnings from such account accruing to the Contractor; or
- (c) That the Owner allow Contractor to deposit a surety bond for the benefit of Owner, in a form acceptable to Owner, in lieu of all or a portion of funds retained, or to be retained. Such bond and any proceeds therefrom shall be made subject to all claims 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 option (a) or (b), Owner may recover from Contractor any additional costs incurred through such election by reducing Contractor's final payment. Where the Owner has agreed to Contractor's request for option (c), Contractor shall accept like bonds from Subcontractors and suppliers on the project from which Contractor has required retainages.

**E.5.1.3** The retainage held by Owner shall be included in and paid to the Contractor as part of the final payment of the Contract Price.

The Owner shall pay to Contractor interest at the rate specified by the version of ORS 279C.570 that is in effect on the date the application for final payment is submitted.

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 15-Day period, provided that, no interest shall be due upon any payment application which contains any false, fraudulent or materially misleading claim for payment or a claim for payment supported by any false, fraudulent or materially misleading data.

In addition to any other remedy under this agreement or a law, the Contractor shall pay to the Owner as liquidated damages and not as a penalty an amount that is three times the total amount of the payment claimed on any application for final payment containing any false, fraudulent or materially misleading claim for payment or a claim for payment supported by any false, fraudulent or materially misleading data. Damages shall be due regardless of whether the Owner, the Owner's Authorized Representative, the Architect or an auditor detected the false, fraudulent or materially misleading claim or data and refused or reclaimed the payment for the affected item.

**E.5.1.4** In accordance with the provisions of ORS 279C.560, Owner shall reduce the amount of the retainage if the Contractor notifies the controller of the Owner that the Contractor has deposited in an escrow account with a bank or trust company, in a manner authorized by the Owner, bonds and securities of equal value of a kind approved by the Owner's Agent.

**E.5.1.5** Contractor agrees that if Contractor elects to reserve a retainage from any progress payment due to any Subcontractor or supplier, such retainage shall not exceed five percent of the payment, and such retainage withheld from Subcontractors and suppliers shall be subject to the same terms and conditions stated in Subsection E.5 as apply to Owner's retainage from any progress payment due to Contractor.

**E.5.2** As provided in subsections C.2.2 and C.2.3, additional retainage in the amount of 25% of amounts earned shall be withheld and released in accordance with ORS 279C.845(7) when the Contractor fails to file certified statements as required by section C.2.1.

## **E.6 FINAL PAYMENT**

**E.6.1** Upon completion of all the Work under this Contract, the Contractor shall notify the Owner's Authorized Representative and Owner's Agent, in writing, that Contractor has completed Contractor's part of the Contract and shall request final payment. Upon receipt of such notice the Owner's Authorized Representative and Owner's Agent 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. Upon approval of this final estimate by the Owner and compliance by the Contractor with provisions in Section K. 3 AFFIDAVIT/RELEASE OF LIENS AND CLAIMS, and other provisions as may be applicable, the Owner shall pay to the Contractor all monies due under the provisions of these Contract Documents.

**E.6.2** Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Owner's Authorized Representative and Owner's Agent (1) a notarized affidavit/release of liens and claims in a form satisfactory to Owner that states that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least thirty (30) Days' prior written notice has been given to the Owner, (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment and (5), if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of

liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner.

If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien or claim. If such lien or claim 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 or claim, including all costs and reasonable attorneys' fees.

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

## **SECTION F JOB SITE CONDITIONS**

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

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

Contractor shall use due diligence to work with the Owner's Agent to access any and all potentials for hazardous materials at the Site of Work prior to commencement of Work.

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

**F.2.1** Contractor shall maintain continuous and adequate protection of all of the Work from damage, and shall protect the Owner's Authorized Representative and others, Owner's Agent, Owner's agents, Owner's invitees, Owner's workers, Owner's volunteers, Owner's students and property from injury or loss arising in connection with this Contract.

Contractor shall remedy acceptably to the Owner, any damage, injury, or loss, except such as may be directly due to errors in the Contract Documents or caused by authorized representatives or personnel of the Owner.

Contractor shall adequately protect adjacent property as provided by law and the Contract Documents.

**F.2.2** Contractor shall take all necessary precautions for the safety of all personnel on the job site, and shall comply with the Contract Documents and all applicable provisions of federal, state and municipal safety laws and building codes to prevent accidents or injury to persons on, about or adjacent to the premises where the Work is being performed. Contractor shall erect and properly maintain at all times, as required by the conditions and progress of the Work, all necessary safeguards for protection of persons lawfully on the Site of Work, 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 and to the Architect/Engineer. The Owner's Authorized Representative has no responsibility for Work site safety. Work site safety is the responsibility of the Contractor.

**F.2.3** Contractor shall not enter upon private property without first obtaining permission from the property owner or its duly authorized representative. Contractor shall be responsible for the preservation of all public and private property along and adjacent to the Work contemplated under the Contract and shall use every precaution necessary to prevent damage thereto.

In the event the Contractor damages any property, the Contractor shall at once notify the property owner and make, or arrange to make, full restitution. Contractor shall report, immediately in writing, to the Owner's Authorized Representative and Owner's Agent, all pertinent facts relating to such property damage and the ultimate disposition of the claim for damage.

**F.2.4** Contractor is responsible for protection of adjacent work areas including, but not limited to, impacts brought about by activities, equipment, labor, utilities, and materials on the site. Contractor shall save, defend, indemnify and hold Owner harmless from any claim for damages, suit, action, judgment or award the cause of which is the interruption of utility service caused by Contractor or a Subcontractor if the Contractor did not attempt to locate utilities through the Oregon Utility Notification Center, if the utility was shown in the Contract Documents, if the utility was known to be in the general area or if the utility was evident either by direct observation or by the observation of markers, supports, bedding or conduit prior to being encountered.

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

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

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

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

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

**F.3.3** Contractor shall as part of the Work and at no additional cost to the Owner supply and install all pipe, cable, conduit, sleeves, casings, hangers, valves, fittings, conductors, fasteners, anchors, mastics, adhesives, screws, nails and the like needed to construct the finished improvement whether specifically called for in the Contract Documents or not. When not specifically called for in the Contract Documents such materials shall be new and of good quality and suited to the application in which they are used. All installations shall comply with the applicable codes.

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

The Contractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove from and about the project waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus materials. Contractor shall remove from the site any hazardous waste or other deleterious material caused by or resulting from the Work.

**F.4.1** Removal and disposal shall be in compliance with all applicable laws and regulations.

**F.4.2** Contractor shall remove any staging area used during construction, grade such area to a level condition, and seed it with stabilizing vegetation acceptable to the Owner, unless otherwise specified on drawings or technical specifications. Contractor shall comply with local ordinances and regulations concerning the recycling of materials and segregation of waste and rubbish by type. In addition, Contractor shall comply with College policies concerning the reduction of waste and recycling of waste materials and packaging.

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

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

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

**F.5.1.2** Contractor shall obtain the Owner's written consent prior to bringing onto the Work site any (i) environmental pollutants or (ii) hazardous substances or materials, as the same or reasonably similar terms are used in any applicable federal, state, and local laws and regulations. Notwithstanding such written consent from the Owner, the Contractor, at all times, shall:

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

**F.5.2** Contractor shall report all reportable quantity releases to applicable federal, state, and local regulatory and emergency response agencies. Reportable quantities are found in 40 CFR Part 302, Table 302.4 for hazardous substances and in OAR Chapter 340 Division 109 for all products addressed therein. Upon discovery, regardless of quantity, Contractor must telephonically report all releases to the Owner. A written follow-up report shall be submitted to Owner within 48 hours of the telephonic report. Such written report shall contain, as a minimum:



- (a) Description of items released (identity, quantity, manifest number, and all other documentation required by law.)
- (b) Whether amount of items released is EPA/DEQ reportable, and, if so, when it was reported.
- (c) Exact time and location of release, including a description of the area involved.
- (d) Containment procedures initiated.
- (e) Summary of communications about the release Contractor has had with members of the press or State and/or Federal officials.
- (f) Description of cleanup procedures employed or to be employed at the site, including disposal location of spill residue.
- (g) Personnel injuries, if any, resulting from, or aggravated by, the release.

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

**F.6.1** Unless disposition of environmental pollution is specifically a part of this Contract, or was caused by the Contractor (reference F.5 Environmental Contamination), Contractor shall immediately notify Owner of any hazardous substance(s) which Contractor discovers or encounters during performance of the Work required by this Contract. "Hazardous substance(s)" means any hazardous, toxic and radioactive materials and those substances defined as "hazardous substances," "hazardous materials," "hazardous wastes," "toxic substances," and/or other similar designations in any federal, state, and local laws and regulations, including without limitation asbestos, polychlorinated biphenyl (PCB), or petroleum, and any substances, materials or wastes regulated in and defined as hazardous in 40 CFR, Part 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 construction workers, Owner's employees, students, or passersby.

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

## **F.7 FORCE MAJEURE**

Neither party shall be held responsible for delay or default caused by fire, riot, war or other catastrophe, which is beyond such party's reasonable control. Each party shall, however, make all reasonable efforts to remove or eliminate such a cause of delay or default and shall, upon the cessation of the cause, diligently pursue performance of its obligations under the Contract. For the purposes of this clause "catastrophe" means an event that is so uncertain of occurrence that it cannot be reasonably anticipated, and so severe in its effect as to suspend the normal operation of civil government in the affected area for a prolonged period of time.

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

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

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

**G.1.2** To the fullest extent permitted by law, Contractor shall indemnify, defend (with counsel approved by Owner, but Owner's approval of counsel will not be unreasonably withheld), and hold harmless the Owner, Owner's Authorized Representative, board members, officers, agents, employees, and volunteers, (collectively "Indemnitees") from and against all liabilities, damages, losses, claims, expenses (including reasonable attorney fees), demands and actions of any nature whatsoever which arise out of, result from or are related to,

- (a) Any damage, injury, loss, expense, inconvenience or delay described in this Section G.1.2,
- (b) Any accident or occurrence which happens or is alleged to have happened in or about the project site or any place where the Work is being performed, or in the vicinity of either, at any time prior to the time the Work is fully completed in all respects,
- (c) Any failure of the Contractor to observe or perform any duty or obligation under the Contract Documents which is to be observed or performed by the Contractor, or any breach of any agreement, representation or warranty of the Contractor contained in the Contract Documents or in any subcontract,
- (d) The negligent acts or omissions of the Contractor, a Subcontractor or anyone directly or indirectly employed by them or any one of them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder (except to the extent otherwise void under ORS 30.140), and
- (e) Any lien filed upon the project or bond claim in connection with the Work.

Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Section G.1.2.

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

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

**G.2.1** When the Contract Price is \$75,000 or more, the Contractor shall furnish and maintain in effect at all times during the Contract Period, a performance bond in a sum equal to the Contract Price, and a separate payment bond also in a sum equal to the Contract Price.

The bonds may be required if the Contract Price is less than the above thresholds, if required by the Contract Documents.

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

**G.2.3** Before starting Work the Contractor shall file with the Construction Contractors Board, and maintain in full force and effect, the separate public works bond required by Oregon Laws 2005, Chapters 670 and 701 et al, and OAR 839-025-0015, unless otherwise exempt under those provisions. The Contractor shall also include in every subcontract a provision requiring the Subcontractor to have a public works bond filed with the Construction Contractors Board before starting Work, unless otherwise exempt, and shall verify that the Subcontractor has filed a public works bond, is properly licensed or registered with the Oregon

Construction Contractors' Board (CCB) unless exempt, and is not a person or entity that is debarred or suspended from contracting for public work in any state of the United States before permitting the Subcontractor to start Work.

### **G.3 INSURANCE**

**G.3.1 Primary Coverage:** Insurance carried by Contractor under this Contract shall be the primary coverage, and the Owner's insurance is excess and solely for damages or losses for which the Owner is responsible. The coverages indicated are minimums unless otherwise specified in the Contract Documents. Nothing contained in these insurance requirements shall be construed as limiting the extent of the Contractor's responsibility or liability for payment of damages resulting from Contractor's operations under this Contract.

**G.3.2 Workers' Compensation:** All employers, including Contractor, that employ subject workers who work under this Contract in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage, unless such employers are exempt under ORS 656.126. This shall include Employer's Liability Insurance with coverage limits of not less than \$500,000 for each accident. Contractors who perform the Work without the assistance or labor of any employee need not obtain such coverage if the Contractor certifies so in writing. Contractor shall ensure that each of its Subcontractors complies with these requirements. The Contractor shall require proof of such Workers' Compensation by receiving and keeping on file a certificate of insurance from each Subcontractor or anyone else directly employed by either the Contractor or its Subcontractors.

#### **G.3.3 Builder's Risk Insurance**

**G.3.3.1 Builder's Risk:** During the term of this Contract, for new construction the Contractor shall maintain in force, at its own expense, Builder's Risk insurance on an all risk form, including earthquake and flood, for an amount equal to the full amount of the Contract.

**G.3.3.2 Builder's Risk Installation Floater:** Not used.

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

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

**G.3.3.5** The Property Insurance deductibles will be \$5000 per occurrence. The Contractor shall pay costs not covered because of such deductibles.

**G.3.3.6** Coverage required for performance of this Contract shall include Chemeketa Community College, its board, officers, agents, employees and volunteers as a named insured. The Owner and Contractors of all tiers agree to mutual waiver of subrogation rights for any loss that is covered by the Builder's Risk policy.

#### **G.3.4 Liability Insurance:**

**G.3.4.1 Commercial General Liability:** Contractor shall obtain, at Contractor's expense, and keep in effect during the term of this Contract, Commercial General Liability Insurance covering bodily injury and property damage in a form and with coverages that are satisfactory to the Owner. This insurance shall include personal injury liability, products and completed operations, and contractual liability coverage for the indemnity provided under this Contract (to the extent contractual liability coverage for the indemnity is available in the marketplace), and shall be issued with limits not less than \$5,000,000 General Aggregate; \$5,000,000 products/completed operations aggregate; \$5,000,000 personal and advertising injury; and \$5,000,000 per occurrence. The General Liability policy shall be endorsed with a per project aggregate with the endorsement attached to the insurance certificate. Coverage shall be written on an occurrence basis. Claims-Made policies are not acceptable without prior approval.

**G.3.4.2 Automobile Liability:** Contractor shall obtain, at Contractor's expense, and keep in effect during the term of this Contract, Automobile Liability Insurance covering owned, non-owned and/or hired vehicles, as applicable. The coverage may be written in combination with the Commercial General Liability Insurance. Combined single limit per occurrence shall not be less than \$1,000,000.00, or the equivalent.

**G.3.4.3 Pollution Liability:** Contractor shall obtain, at the Contractor's expense, and keep in effect during the term of this Contract, Pollution Liability if Contractor's work involves hazardous materials, substances, wastes, or pollutants. The coverage must

be maintained throughout all applicable statute of limitation and statute of repose periods. The minimum limit of liability required is \$1,000,000.

**G.3.4.4 "Tail" Coverage:** If any of the required liability insurance is arranged on a "claims made" basis, "tail" coverage will be required at the completion of this Contract for a duration as follows: three (3) years for projects valued \$1 million or less; and five (5) years for projects valued over \$1 million. This will be a condition of the final acceptance of Work or services and related warranty (if any).

**G.3.5 Additional Insured:** All liability insurance coverages required for performance of this Contract shall include the Chemeketa Community College, its board, officers, agents, employees and volunteers as Additional Insureds. The Additional Insured status must extend to both ongoing and completed operations performed by the Contractor(s). The Additional Insured endorsements must be attached to the insurance certificate. If Contractor cannot obtain an insurer to name Chemeketa Community College, its departments, divisions, officers and employees as Additional Insureds, Contractor shall obtain at Contractor's expense, and keep in effect during the term of this Contract, Owners and Contractors Protective Liability Insurance, naming the Chemeketa Community College, its, board, officers, agents, employees and volunteers as Named Insureds with not less than a \$1,000,000.00 limit per occurrence. This policy must be kept in effect for 12 months following Final Completion. As evidence of coverage, Contractor shall furnish the actual policy to Owner prior to its issuance of a Notice to Proceed.

**G.3.6 Waiver of Subrogation:** All Commercial General Liability, Automobile Liability, Pollution Liability, and Workers' Compensation and Employer's Liability policies must provide a waiver of subrogation to Chemeketa Community College, its board, officers, agents, employees, and volunteers. This must be noted on the insurance certificate with the appropriate endorsement(s) attached.

**G.3.7 Notice of Cancellation or Change:** There shall be no cancellation, material change, potential exhaustion 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 Chemeketa Community College, its board, officers, agents, employees and volunteers.

**G.3.8 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 and Loss Payees with the appropriate endorsements attached to the insurance certificate.

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

The certificates will also specify that there shall be no cancellation, material change, potential exhaustion of aggregate limits or intent not to renew insurance coverages without thirty (30) Days' written notice from the insurer(s) to the Owner.

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.

## SECTION H SCHEDULE OF WORK

### H.1 CONTRACT PERIOD

#### H.1.1 TIME IS OF THE ESSENCE ON THIS CONTRACT

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

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

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

### H.2 SCHEDULE

**H.2.1** Contractor shall provide, by or before the pre-construction conference, a detailed schedule for review and acceptance by the Owner. The submitted schedule must illustrate Work by significant project components, significant labor trades, long lead items (including, but not limited to, components, machinery and permits), broken down by building and/or floor where applicable.

Each schedule item shall account for no greater than 5% of the monetary value of the project or 5% of the available Contract Time. Schedules with activities of less than one day or valued at less than 1% of the Contract, will be considered too detailed and will not be accepted. Schedules lacking adequate detail, and/or are unreasonably detailed, will be rejected.

Included within the schedule are the following: Notice to Proceed, Substantial Completion, and Final Completion.

Acceptance of the schedule by the Owner does not constitute agreement by the Owner, as to the Contractor's sequencing, means, methods, controls, or allocated Contract Time.

The primary purposes of the schedule are: to demonstrate to the Owner that the Contractor has a reasonably achievable plan to complete the Work within the time allowed by the Contract; to allow the Owner to budget and schedule funds to be available for payment based upon the forecast completion of the Work; to permit the Owner to schedule its resources to carry out its obligations under the Contract; to permit the Owner to schedule other contracts and the purchase of materials to occupy the building or improvement upon completion; and, to permit the Owner to timely schedule testing, observation and the review of shop drawings, submittals. Failure of the Work to progress as scheduled in the approved original schedule or accepted revisions of it may be a material breach of the Contract.

**H.2.2** Contractor shall prepare its schedule using the critical path method (CPM), and shall present schedule information to the Owner in such other forms as the Owner may require. Contractor shall submit a monthly update of the overall critical path schedule as part of each Application and Certificate for Payment. Contractor shall also submit weekly a three-week look-ahead schedule for work items to be performed during the period.

**H.2.3** ~~NOT USED The Contractor's bid, budget and schedule shall include an impact time allowance, which shall be under the control of the Owner. At the Owner's sole discretion, Owner may release some or all of this impact time allowance to address the time impact of matters affecting the critical path which are beyond the contractor's control and which might otherwise entitle the Contractor to a time extension. Such matters include, without limitation, time required on the critical path to incorporate Changes or to address alleged errors or omissions in the Contract Documents, site conditions or other "changed conditions" or delays due to weather. Contractor shall not be entitled to any extension of the date for Substantial Completion or the date for Final Completion of the Project or for any additional compensation for delays addressed by the Owner's application of the "impact time allowance." Thirty days before the date originally specified for Substantial Completion, the Owner may release any unused part of the "impact time allowance" to be applied by the Contractor for the benefit of the Project.~~

**H.2.4** Contractor shall have no right to claim for delay or impact or to claim additional compensation for extended overhead, unabsorbed overhead or general and administrative expense either due to finishing the Work before the completion dates contained in the Contract, or, by reason of an assertion that it might have finished the Work before the specified completion dates but for some cause attributable to the Owner it being understood that the Contractor's bid or proposal is priced based upon the

Contractor incurring both home office and job site overhead and general and administrative expense for the entire period of performance allowed in the Contract and not otherwise. Should the Contractor finish the Work "early", Contractor shall be entitled to retain any savings in overhead or general and administrative expenses realized due the early finish. Should this provision be determined to be invalid, Contractor shall be required to remit to the Owner any and all amounts that it would have realized as savings due to an "early finish" or an "early finish" that may have been realized but for delays caused in whole or in part by the Contractor.

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

**H.3.1** The Owner may occupy or use any completed or partially completed portion of the Work at any stage, provided such occupancy or use is consented to by public authorities having jurisdiction over the Work. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have reasonably accepted, in writing, the responsibilities assigned to each of them for payments, retainage, if any, security, insurance or self-insurance, maintenance, heat, utilities, and damage to the Work, and have agreed, in writing, concerning the period for correction of the Work and commencement of warranties required by the Contract Documents with respect to such portion of the Work.

Approval by the Contractor to partial occupancy or use shall not be unreasonably withheld. Immediately prior to such partial occupancy or use, the Owner and Contractor shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

Partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

## **SECTION I CORRECTION OF WORK**

### **I.1 CORRECTION OF WORK PRIOR TO WARRANTY**

**I.1.1** The Contractor promises 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.

#### **I.1.2 WORK IN PROGRESS:**

Owner's Authorized Representative and/or the Owner's Agent may determine through observation, measurement, testing, or other means that Work or portions thereof, performed by or on behalf of the Contractor, do not conform to the requirements of the Contract Documents. Owner's Authorized Representative and/or the Owner's Agent may determine that continuing the Work, or performing subsequent work founded on the Non-Conforming Work, could negatively impact the project due to remediation or removal. Under such circumstances, Owner's Authorized Representative and/or the Owner's Agent may provide to the Contractor written notification in the form of a Non-Conformance Report, which directs that related Work be suspended as described in Section J.1.1 of the General Conditions. Contractor shall propose, within five (5) working Days, corrective work and obtain written approval from Owner's Agent before resuming work. Remedial work shall be completed within thirty (30) Days of notification unless otherwise agreed between Owner's Agent and Contractor.

#### **I.1.3 COMPLETED WORK**

Completed Work which fails to conform to the requirements of the Contract Documents shall be deemed Non-Conforming by the Owner's Authorized Representative and/or the Owner's Agent. Written notification, which describes the Non-Conforming Work, may be provided to the Contractor by the Owner's Authorized Representative and/or the Owner's Agent. Contractor shall remove, replace, or repair all Non-Conforming Work and any Work damaged during the performance of such remedial Work, within thirty (30) Days of notification, unless otherwise agreed between Owner's Agent and Contractor.

#### **I.1.4 NO COST TO OWNER**

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. Upon notification from the Contractor that the Work is complete, Owner's Agent shall arrange for inspection of the Work. All costs for testing and inspection of remedial work shall be borne by the Contractor.

#### **I.1.5 FAILURE TO CORRECT**

If Contractor fails to complete the work within the above time period, Owner may perform such work and Contractor shall reimburse Owner all costs of the same within thirty (30) days after demand, without affecting Contractor's obligations.

Any salvageable materials and/or assemblies of the Work that must be removed to correct the Non-Conforming Work may be removed and stored by Owner at the Contractor's expense. If the Contractor does not pay costs of such removal and storage within ten (10) days after written notice, the Owner may upon ten (10) additional days' written notice sell such materials and equipment at auction or at private sale and shall account for the proceeds thereof, after deducting costs and damages that should have been borne by the Contractor, including compensation for the Owner's Authorized Agent's services and expenses made necessary thereby. If such proceeds of sale do not cover costs, which the Contractor should have borne, the Contract Price shall be reduced by the deficiency. If payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to the Owner.

### **I.2 WARRANTY WORK**

**I.2.1** Neither the final certificate of payment nor any provision of the Contract Documents shall relieve the Contractor from responsibility for Defective Work and, unless a longer period is specified in the Contract Documents or law, Contractor shall correct all Defects that appear in the Work within a period of one year from the date of issuance of the written notice of Substantial Completion by the Owner except for latent Defects, which will be remedied by the Contractor at any time they become apparent.

The Owner shall give Contractor notice of Defects with reasonable promptness. Contractor shall perform such warranty work within a reasonable time after Owner's demand, and in no case longer than seven (7) working Days.

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.

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

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

**1.2.4** The one-year period for correction of Work shall be extended with respect to portions of Work performed after Substantial Completion by the period of time between Substantial Completion and the actual performance of the Work. Such period shall be extended by corrective Work performed by the Contractor pursuant to this Section. 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.

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

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



## **SECTION J**

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

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

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

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

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

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

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

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

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

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

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

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

- (a) If Contractor should voluntarily or involuntarily, seek protection under the United States Bankruptcy Code and Contractor as debtor-in-possession or the Trustee for the estate fails to assume the Contract within a reasonable time;
- (b) If Contractor should make a general assignment for the benefit of Contractor's creditors;
- (c) If a receiver should be appointed on account of Contractor's insolvency;
- (d) If Contractor should refuse or fail to supply an adequate number of skilled workers or proper materials to carry on the Work as required by the Contract Documents, or otherwise fail to perform the Work in a timely manner;

- (e) If Contractor should fail to make prompt payment to Subcontractors or for material or labor, or should disregard laws, ordinances, College policies or the instructions of the Owner's Agent or Owner's Authorized Representative;
- (f) If funding from federal, state, or other sources is not obtained or continued at levels sufficient to allow for the purchase of the indicated quantity of Work, this Contract may be modified to accommodate a reduction in funds; or
- (g) If Contractor is otherwise in material breach of any part of the Contract.

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

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

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

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

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

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

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

# **SECTION K CONTRACT CLOSE OUT**

## **K.1 RECORD DOCUMENTS**

As a condition of final payment (refer also to section E.6), Contractor shall comply with the following:

Contractor shall provide to Owner's Agent, Record Documents of the entire project. Record Documents shall depict the project as constructed and shall reflect each and every change, modification, and deletion made during the construction. Record Documents are part of the Work and shall be provided prior to the Owner's issuance of final payment. Record Documents include all modifications to the Contract Documents unless otherwise directed.

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

Prior to submission of any pay request for more than 75% of the Work and as part of the Work to be done, Contractor shall submit two (2) completed operation and maintenance manuals ("O & M Manuals") for review by the Owner's Authorized Representative (unless another person is designated to receive them by Owner's Agent). This requirement shall be shown in the schedule submitted under Section H.2.2. No payments beyond 75% will be due from the Owner until the O & M Manuals have been received. The O & M Manuals shall contain a complete set of all submittals, all product data as required by the Specifications, training information, phone list of consultants, manufacturers, installer and suppliers, manufacturer's printed data, record and shop drawings, schematic diagrams of systems, appropriate equipment indices, warranties and bonds. The Owner's Authorized Representative and Owner's Agent shall review and return to Contractor one O & M Manual for any modifications or additions required. Prior to submission of its final pay request, Contractor shall deliver three (3) complete and approved sets of O & M Manuals to the Owner's Agent.

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

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

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

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

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

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

As part of the Work, and prior to submission of the request for final payment, the Contractor shall schedule and perform with the Owner's Agent, training sessions for all equipment and systems, as required in the individual Specifications sections. Contractor shall schedule training sessions at least two weeks in advance of the date of training to allow Owner's personnel adequate notice. This requirement shall be included in the Schedule submitted under Section H.2.2 and in the "look ahead" schedules for the appropriate period.

The O & M Manual shall be used as a basis for training. Training shall be a formal session, held after the equipment and/or system is completely installed and operational in its normal operating environment.

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

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

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

As part of the Final Completion notice, or as a separate written notice submitted with or before the notice of Final Completion, the Contractor shall notify the Owner's Agent 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 F.5.1 above.

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

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

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

The Contractor shall be responsible for returning to the Owner's Agent all items issued during construction such as keys, security passes, site admittance badges, and all other pertinent items. The Contractor shall be responsible for notifying the appropriate utility companies to transfer utility charges from the Contractor to the Owner. The utility transfer date shall not be before

Substantial Completion and may not be until Final Completion, if the Owner does not take beneficial use of the facility and the Contractor's forces continue with the Work.

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

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

### **SECTION L LEGAL RELATIONS & RESPONSIBILITIES**

#### **L.1 LAWS TO BE OBSERVED**

In compliance with ORS 279C.525, Sections L.2 through L.4 contain lists of federal, state and local agencies of which 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:

#### **L.2 FEDERAL AGENCIES**

Agriculture, Department of

Forest Service

Soil Conservation Service

Coast Guard

Defense, Department of

Army Corps of Engineers

Energy, Department of

Federal Energy Regulatory Commission

Environmental Protection Agency

Health and Human Services, Department of

Housing and Urban Development, Department of

Solar Energy and Energy Conservation Bank

Interior, Department of

Bureau of Land Management

Bureau of Indian Affairs

Bureau of Mines

Bureau of Reclamation

Geological Survey

Minerals Management Service

U.S. Fish and Wildlife Service

Labor, Department of

Mine Safety and Health Administration

Occupation Safety and Health Administration

Transportation, Department of

Federal Highway Administration

Water Resources Council

### **L.3 STATE AGENCIES**

Administrative Services, Department of

Agriculture, Department of

Columbia River Gorge Commission

Consumer and Business Services, Department of

Energy, Department of

Environmental Quality, Department of

Fish and Wildlife, Department of

Forestry Department of

Geology and Mineral Industries, Department of

Human Resources, Department of

Land Conservation and Development Commission

Parks and Recreation, Department of

Soil and Water Conservation Commission

State Lands, Division of

Water Resources Department of

### **L.4 LOCAL AGENCIES**

City Councils

County Courts

County Commissioner, Board of

Design Commissions

Historical Preservation Commissions

Planning Commissions

Chemeketa Community College

### **L.5. CHEMEKETA COMMUNITY COLLEGE POLICIES AND PROCEDURES**

Contractor and Contractor's Employees and/or subcontractors at any tier, shall abide by all Chemeketa Community College policies and procedures. All College policies/procedures, which are posted and may be obtained electronically on the College's Website at: <https://www.chemeketa.edu/faculty-staff/policies-procedures-guidelines/>, are incorporated into these General Conditions for Public Improvements herein by this reference.

Chemeketa Community College prohibits unlawful discrimination based on race, color, religion, national origin, sex, marital status, disability, protected veteran status, age, gender, gender identity, sexual orientation, pregnancy, whistleblowing, genetic information, domestic abuse victim, or any other status protected by federal, state, or local law in any area, activity or operation of the College. The College also prohibits retaliation against an individual for engaging in activity protected under this policy, and interfering with rights or privileges granted under federal, state or local laws.

Under College policies, equal opportunity for employment, admission, and participation in the College's programs, services, and activities will be extended to all persons, and the College will promote equal opportunity and treatment through application of its policies and other College efforts designed for that purpose.

Persons having questions or concerns about Title IX, which includes gender based discrimination, sexual harassment, sexual violence, interpersonal violence, and stalking, contact the Title IX coordinator at 503.365.4723, 4000 Lancaster Dr. NE, Salem, OR 97305, or <http://go.chemeketa.edu/titleix>. Individuals may also contact the U.S. Department of Education, Office for Civil Rights (OCR), 810 3rd Avenue #750, Seattle, WA 98104, 206.607.1600.

Equal Employment Opportunity or Affirmative Action should contact the Affirmative Action Officer at 503.399.2537, 4000 Lancaster Dr NE, Salem OR 97305.

To request this publication in an alternative format, please call 503.399.5192.