



Portland Community College

Invitation to Bid (ITB) For

General Contractor Services Willow Creek Center - Mechatronics Program Remodel

DUE DATE AND TIME:
2:00 P.M., November 27, 2017

A mandatory pre-bid meeting is scheduled for November 9, 2017 starting at 9:00 – 10 A.M. at the Willow Creek Center - Mechatronics Program Remodel, located at Willow Creek Center, 241 SW Edgeway, 3rd floor lobby, Beaverton, OR 97006. The attendance sign-up sheet must contain, at least, a firm representative's signature to participate in the process thereafter and to be considered for award. Following the pre-bid mandatory meeting will be a mandatory tour with a representative from each vendor for the project site.

*Issuing Office: Portland Community College
Capitol Park
9700 SW Capitol Hwy, Suite 260
Portland, OR 97219
<http://www.pcc.edu/bond>*

*Contact Name: Sandy Wanner
Bond Procurement
Phone: 971-722-8411
Fax: 503-459-4701
Email : swanner@pcc.edu*

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Copy of Legal Advertisement

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- Appendix A - Certification and Contract Offer, Bid Form
- Appendix B - Specification and Drawings
- Appendix C - Copy of Anticipated Legal Contract Provisions and Exhibit B (Insurance Requirements)
- Appendix D - First Tier Sub-contractor Disclosure Form
- Exhibit A - General Conditions for Large Construction Contracts

COPY OF LEGAL ADVERTISEMENT:

Notice is hereby given that Portland Community College (“PCC” or “College”) is requesting an Invitation to Bid (ITB) from qualified contractors with the knowledge and expertise to provide General Contractor (GC) services associated with the remodel/renovation of the PCC Willow Creek Center located at 241 SW Edgeway Drive, Beaverton, OR 97006. Services include and are not limited to capital improvements, renovations, and site improvements.

A complete description of the project, requirements, and specific conditions for this ITB is available to download from the PCC Solicitation Opportunities link: <http://www.pcc.edu/purchasing>. Interested proposers who are not equipped to download the document may request a copy of the ITB by contacting Sandy Wanner, Bond Procurement Coordinator, phone: 971-722-8411 or by sending an email request to swanner@pcc.edu.

A mandatory pre-proposal conference will be held on November 9, 2017 starts at 9:00 – 10:00 A.M., PCC Willow Creek Center, 241 SW Edgeway, Beaverton, OR 97006, 3rd floor lobby. The attendance sign-up sheet must contain, at least, a firm representative’s signature to participate and to be considered for award. Following the conference, a tour of the site and existing facility will be held.

Sealed proposals will be received at the issuing office, Bond Procurement Office, Capitol Park Suite #260, 9700 SW Capitol Highway, Portland OR 97219. Deadline for submitting a proposal will be no later than **2:00 P.M., November 27, 2017**. The office is open Monday to Friday from 8:00 A.M., thru 4:30 P.M.

State of Oregon Prevailing Wage Rates for Public Works Contracts in Oregon shall be utilized for all labor involved in this Contract, including Wage Rates and Certification of payroll as required by the Bureau of Labor & Industries.

The Board of Directors reserves the right to reject any and all proposals and to waive irregularities. The College may also reject any proposal not in compliance with the prescribed public procedures and requirements, and may reject for good cause any and all proposals upon finding of the College that it is in the public interest to do so.

Each proposal must contain a statement as to whether the bidder is a resident bidder, as defined in ORS 279.029.

Minority-owned, Women-owned, and Emerging Small Business Enterprises will be afforded full opportunity to submit their proposal in response to this solicitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award of any contract entered into pursuant to this advertisement.

Dated this 30th day of October, 2017

Published in the following publications:

Daily Journal of Commerce State of Oregon ORPIN System
PCC Solicitation website: <http://www.pcc.edu/purchasing>

SECTION I: BIDDER INSTRUCTION

1.1 Project Description

The project consists of the renovation of approximately 9,000 on the 3rd floor of the PCC Willow Creek Center. Majority of the renovation work is designed to create space for a new Mechatronics program. Work includes but isn't limited to building out tool rooms, conference rooms and teaching spaces for the program. This will require new lighting, low voltage, security, acoustical and mechanical upgrades as well as new finishes and furniture. Also included in this project is the expansion of an existing classroom to accommodate a larger class size.

This Invitation to Bid (ITB) consist of the following: project specifications, directions to pick up architect specifications and drawings, appendixes and other related documents that describe the College's needs and requirements for submitting responsive and responsible bid document. Bidders should read the entire ITB document before taking any action; it could be very misleading to review only limited sections of the document. It is important that bidders fully understand the requirements of the College and the manner in which ITB responses should be developed and submitted.

1.2 Pre-bid MANDATORY Meeting

A mandatory pre-bid meeting is scheduled for November 9, 2017 starting at 9:00 – 10 A.M. at the Willow Creek Center - Mechatronics Program Remodel, located at Willow Creek Center, 241 SW Edgeway, 3rd floor lobby, Beaverton, OR 97006. The attendance sign-up sheet must contain, at least, a firm representative's signature to participate in the process thereafter and to be considered for award. Following the pre-bid mandatory meeting will be a mandatory tour with a representative from each vendor for the project site.

1.3 ITB Timetable

Release Invitation to Bid	October 30, 2017
Mandatory pre-bid meeting: Willow Creek Center, 241 SW Edgeway, 3 rd floor lobby Beaverton, OR 97006	November 9, 2017, 9:00 – 10:00 A.M
Contractor's written questions, inquiries deadline	November 14, 2017 at 10:00 A.M.
PCC response to written questions (issued as an addendum and posted on PCC solicitation web page).	As soon as possible.
Deadline for submitting bid	November 27, 2017 at 2:00 P.M.
Deadline for submitting 1 st Tier Sub-contractor Disclosure Form	November 27, 2017 at 4:00 P.M.
PCC Board of Directors contract approval (tentative)	December 14, 2017

1.4 Notice to Bidders

For purposes of these instructions and all other Contract documents, the name Portland Community College may be abbreviated to "College" or "PCC" and both names signify the same municipal corporate body.

1.5 Issuing Office

The PCC Bond Procurement has issued this ITB document, this Department (with details below) shall be the sole point of contact:

Sandy Wanner
Bond Procurement
Portland Community College
9700 SW Capitol Highway, Suite 260
Portland, OR 97219
Phone: 971-722-8411 Fax: 503-459-4701
Email address: swanner@pcc.edu

1.6 Obtaining Bid Documents/ Specifications and Drawings

A complete description of the project, requirements, and specific conditions for this ITB is available to download from the PCC Solicitation Opportunities link: <http://www.pcc.edu/purchasing>. Interested proposers who are not equipped to download the document may request a copy of the ITB by contacting Sandy Wanner, Bond Procurement Coordinator, phone: 971-722-8411 or by sending an email request to swanner@pcc.edu. ITB document will be released by the issuing office.

Specifications and drawings may be acquired by contacting Willamette Print and Blue Print, 3461 NE Yeon Avenue, Portland, OR 97210, 503-223-5011, Project #20097201 – Mechatronics 100% bid set.

1.7 Bid Preparation and Submission

1. The College will require Bid Bond or Bid Security for this ITB. See Section 3, item 3.17 (Bid Security).
2. In order to be considered: Bids must be submitted in a sealed container containing: (1) original bid document with original signature by an authorized signer within the organization and marked 'Original'; one (1) pdf copy of the original bid.
3. The certification and contract offer (Appendix A) must be signed in ink by an authorized person, within the organization, who has the authority to make such commitments.
4. A project schedule must be submitted with the bid documents. The College's desired completion date will be prior to March 9, 2018.
5. Bids will be received in the issuing office on or before 2:00 P.M., November 27, 2017.
6. State of Oregon Prevailing Wage Rates for Public Works in Oregon shall be utilized for all labor involved in this Contract, including Wage Rates and Certification of payroll as required by Bureau of Labor & Industries. See Section 3, item 3.21 for additional information.
7. Within two hours after date and time of the deadline set for bids submission, each bidder shall submit a list of first-tier subcontractor(s), see Section 3, item 3.19 for detail

requirements and Appendix D, Sub-contractor Disclosure Form. Must be received by 4:00 P.M., November 27, 2017.

8. Bidders must also include a list of Good Faith Effort (GFE) Divisions of work, identifying self-performing or sub-contracting, and sub-contractor's name/amounts. See Appendix E for details of GFE requirements.
9. Each bid shall be sealed in an envelope addressed as follows:

Attn: Sandy Wanner
Bond Procurement Coordinator
Portland Community College
9700 SW Capitol Highway, Suite 260
Portland, OR 97219
10. **Facsimile bid responses will not be accepted.**
11. Bidders shall put their name, address, and project title outside of the ITB envelope.
12. The College shall not be responsible for any bid not submitted with the required information and those not clearly marked on the envelope.
13. Any bid received after the due date and time specified in the ITB will not be considered and will be returned unopened.
14. Bid responses must be submitted on the bid form contained in this ITB (Appendix A).
Include
15. Bid response sheets shall be signed in ink, as follows:
 - a) In the case of an individual bidder, by such individual bidder.
 - b) In the case of a partnership, the name of the partnership must appear upon the bid response, and be signed in the name of such partnership by at least one partner. In addition to such signature, the names of all partners shall be stated in the bid response.
 - c) In the case of a corporation, the corporate name shall be subscribed to by the president or other managing officer, and the name of the office held in or the capacity in which he/she acts for such corporation shall be listed under the signature of such officer.
16. The bidder's signature on the Certification and Contract Offer (Appendix A) certifies that the bidder has read and fully understands all bid specifications, terms and conditions. No consideration will be given to any claim resulting from bidding without comprehending all requirements of the bid document.
17. Bidders must initial each any erasures or corrections in the bid response.

- a) Conformance to bid requirements: The bid response must conform to the requirements of the bid. All necessary attachments, as stipulated in the bid document, must be submitted with the bid form and must be in the required format. Bid prices must be for the unit indicated in the bid. Failure to comply with all requirements may result in bid rejection.
- b) Bid Withdrawals: A bid response may be withdrawn by issuing a written request on company letterhead, signed by an authorized representative, and received by the College prior to bid closing. A bid may also be withdrawn in person prior to bid closing upon presentation of appropriate identification.

1.8 Clarification and Addenda

- 1. All requests for clarification related to the ITB specifications, requirements, terms and conditions must be submitted in writing and should be directed to Sandy Wanner on or before 10:00 A.M., November 14, 2017. Written questions and/or requests may be submitted via email to swanner@pcc.edu and/or fax to 503-459-4701, it must reference the project name/title on the ‘subject’ line. It is the vendors responsibility to make sure the document is received by the due date and time.
- 2. Questions as to the meaning of any part of the drawings, specifications, or other Contract Documents shall be submitted in writing or email, by November 14, 2017 by 10:00 A.M., to the Procurement Coordinator. Responses to questions will be made by a formal Addendum on the PCC Solicitation Opportunities link: <http://www.pcc.edu/purchasing>. The College will not be responsible for any other explanations or interpretations of the bid documents.
- 3. All addenda for this project will also be accessible or downloadable from the PCC Purchasing Solicitation website: <http://www.pcc.edu/purchasing>.
- 4. Bidders should regularly check PCC solicitation website until bid closing to assure that they have not missed any Addenda announcements.
- 5. **Bidders shall acknowledge receipt of all addenda in the appropriate area of the Bid Form (Appendix A), which must be returned as part of the bid.**
- 6. All addenda issued during the ITB period shall be incorporated into any resultant Contract.

1.9 Method of Award

- 1. Unless all bids are rejected or this ITB is cancelled, the Contract shall be awarded to the bidder with highest evaluation points, based on the following evaluation criteria:

Criteria	Max. Points
Low bid offer Note: Low bid receives 85 points. Higher bids points are calculated as a percent difference from the low bid.	85
Environmental: Sustainable practices, lean construction, distance of home office from job site, local workforce for this project	5

(Please submit with your bid, the environmental plan you will follow for the Willow Creek Center project)	
MWESB plan for this project (Please submit with your bid the MWESB plan for this project)	10
Possible total awarded points	100

2. PCC reserves the right to hold the bids and accompanying checks or bonds under consideration for a maximum of sixty (60) days until the final award is made and to waive any minor informality or irregularity in a bid.
3. Successful bidder must demonstrate the ability to meet contractual obligations, namely, to delivery on time, and provide parts and technical support.

1.10 Examination of Site, Drawings and Specifications

1. Prior to submitting a bid response, the bidder shall make a careful examination of bid specifications and drawings; shall be fully informed as to the quantity and quality of services, materials and the sources of supply of materials specified. Failure to take these precautions will not release the successful bidder from performing the work in strict accordance with the terms of the contract.
2. The College will not be responsible for any loss or for any unanticipated costs that may be suffered by the successful bidder as a result of the bidder’s failure to fully inform him/her in advance in regard to all conditions pertaining to the work required. No statement made by any officer, agent, or employee of the College in relation to the physical conditions pertaining to the site of the work will be binding on the College.

SECTION 2: SCOPE OF WORK AND SPECIFICATIONS

2.1 Background:

The Willow Creek Center (WCC) in Washington County was opened in 2009 as part of the 2008 PCC bond and special funding from the state.

The 100,000 square-foot educational center serves as a one-stop destination for the unemployed and under-employed, and houses programs from the old Washington County Workforce Training Center and partner agencies.

The Center is located on TriMet's Blue Max Line, and includes, certified nursing & assistant training classes, medical assisting, emergency medical services, Adult Basic Education/GED, Small Business Development, Career Skills, Computer skills & Technology, and many more. At the conclusion of this remodel project, an additional technology class will be taught in Mechatronics.

2.2 Scope of Work:

The project consists of the renovation of approximately 9,000 on the 3rd floor of the PCC Willow Creek Center. Majority of the renovation work is designed to create space for a new Mechatronics program. Work includes but isn't limited to building out tool rooms, conference rooms and teaching spaces for the program. This will require new lighting, low voltage, security, acoustical and mechanical upgrades as well as new finishes and furniture. Also included in this project is the expansion of an existing classroom to accommodate a larger class size.

2.3 Additional Requirements:

1. Bidders Responsibility:

It is the intent of these specifications to provide quality product, and the workmanship must be the best obtainable in the various trades. No advantage will be taken by the bidder or bidders in the omission of any part or detail, which goes to make the work complete and ready for use.

All manner of workmanship and material used in the production of the product and not herein contained or specified shall be of the manufacturer's standard and shall conform in material, design and workmanship to the best practices known in the industry. It is the sole responsibility of the bidder to read the specifications & drawings and understand them.

2. Acceptance:

If the service is not acceptable, the College will furnish a letter of non-acceptable detailing the deficiencies within fifteen (15) days after the delivery. Acceptance of delivery of the product will not release the Successful Bidder from liability for faulty workmanship or materials' appearing even after final payment has been made.

3. Components and Parts (General):

Viewed individually and as a finished product, all material, components and parts installed shall be newly made under standard production by the manufacturer. Under no circumstances, are used, reconditioned or obsolete parts or components to be used. Components or parts damaged

prior to or during delivery will not be acceptable and shall be replaced at Successful Bidder's own expense with a new component or part.

4. Non-Interference with School:

Successful Bidder(s) use of the site shall be limited to the area indicated and as described herein. The entire work shall be executed in a manner, which will not interfere with the continued free and comfortable use of the existing structures, walks and grounds for school purposes.

Existing driveways and entrances shall remain clear and available to College personnel, students, and the general public at all times. These areas shall not be used for parking or storage of materials.

Successful Bidder(s) shall not encumber the site with materials or equipment. Successful Bidder shall confine stockpiling of materials and location of storage sheds to the areas indicated. If additional storage is necessary, Successful Bidder(s) shall obtain and pay for such storage off-site at no additional cost to the College.

5. College Responsibilities:

The College will provide, to the successful bidder(s), reasonable accessibility and timely response. The successful bidder(s) must provide the location, email address, and phone/fax numbers of the main contact, responsible for managing the project.

6. Subcontracting:

All subcontracting shall be subject to the approval of the College. No list of sub-contractors approved by the College may be changed or departed from except as consented to by the College in writing. Whenever the College consents to the substitution of one subcontractor for another, if there is any reduction in cost to the Contractor, the amount thereof shall be passed on to the College as a reduction in the amount to be paid to the Contractor for the performance of the work.

The Contractor shall be wholly responsible for the performance of all subcontractors and for their acts and omissions, and those of persons either directly or indirectly employed by them, to the same extent as for the acts and omissions of persons directly employed by the Contractor, and the fact that subcontractors are subject to the approval of the College shall not affect the Contractor's responsibility in this regard.

The Contractor shall bind every subcontractor to all terms and conditions anywhere contained in the Contract documents as far as applicable to the work of such Contractor so that the subcontractor assumes toward the Contractor and toward the work all the obligations and responsibilities that the Contractor assumes toward the College as to the performance of the subcontractor's portion of the work.

Nothing contained in the Contract documents shall be construed to create any Contract between the College and any subcontractors

Subcontracts must be let pursuant to applicable Oregon statutes and PCC administrative rules.

7. Cleaning During Project:

At end of each day, Contractor shall clean all areas where work is taking place; allow no accumulation of debris, store all debris in approved disposal boxes, and remove from site.

8. Vehicles and Parking:

Parking will be limited to the area designated by the Owner.

Automotive vehicles such as passenger cars and trucks, and other mechanized equipment are to be locked and/or disabled when parked and unattended to prevent unauthorized use. Vehicles or equipment shall not be left unattended with the motor running or the ignition key in place.

9. Reimbursement and Invoice Submission

- a) The successful bidder shall submit to the College with the actual lowest (true) billings, invoices to substantiate costs on materials, equipment rentals, including any and all applicable rebates.
- b) The successful bidder shall provide to the College detail on labor hours for each class of workmen, broken down by the job specified by the College.
- c) Work performed under the contract resulting from this ITB will be invoiced to the College not later than thirty (30) calendar days after the work is performed.

10. Materials:

The successful bidder shall make every reasonable effort to obtain materials at the lowest possible cost commensurate with quality and delivery requirements, and shall follow public contracting laws and regulations applicable to public bodies when subcontracting and purchasing materials.

11. Emergency/Designated Personnel:

After Contract award, the Contractor shall designate one (1) Project Coordinator and one (1) additional person to be contacted in case the project coordinator is not available. The Project Coordinator shall be the sole contact person between College and successful bidder, and will be responsible for communication and coordination of all work assignments, including emergency responses. Contractor shall furnish emergency twenty-four (24) hour telephone numbers for both the Project Coordinator and the additional person if coordinator is not available.

In case of area wide disaster, the College shall have priority for emergency responses required at PCC by the Contractor.

SECTION 3: GENERAL BID TERMS AND CONDITIONS

3.1 Definitions

As used in this bid, unless the context requires otherwise:

1. “**College,**” “**PCC**”, or “**Owner**” means Portland Community College.
2. “**College Representative**” means the Project Manager or his/her designee, acting as the primary PCC contact for the Successful Bidder after the award of the Contract.
3. “**Contract**” or “**Contract Documents**” may include the Purchase Order, if any, the Agreement, if any, the bond, the ITB, the Instructions to Bidders, the General Conditions of the Contract, and general conditions, the Addenda, if any, incorporated in the Documents before their execution, and all agreements of a supplemental nature entered into during the progress of the work whether by change order or otherwise, modifying or supplementing any of the documents.
4. “**Contractor**” means the person or company with whom a Contract is entered into by the College for the performance of work or the providing of goods and/or services.
5. “**ORS**” means Oregon Revised Statutes.
6. “**Performance Bond**” means a bond in form and with corporate surety satisfactory to the College in an amount equal to the full Contract sum, conditioned upon the faithful performance of the Contract and all provisions thereof.
7. “**Specifications**” means the directions, requirements, explanations, terms and provisions pertaining to the various features of the work, the manner and method of proposing for the work, the manner and method of performance of the work, and the manner and method of payment, all as they appear in the Contract documents.

3.2 Ownership

All bid materials received will become the property of the College.

3.3 Duration of Bids

1. Each bid shall be irrevocable for a period of sixty (60) days from date of bid opening.
2. An award of a Contract to any bidder shall not constitute a rejection of any other bid.

3.4 Conflict of Interest

A bidder certifies that no officer, agent or employee of the College who has a pecuniary interest in this bid has participated in the Contract negotiations on the part of the College, that the bid is made in good faith without fraud, collusion or connection of any kind with any other Bidder of the same call for bids, and that the Bidder is competing solely on his own behalf without connection with, or obligation to, any undisclosed person or firm.

3.5 Public Records

1. This bid and each original bid response, together with copies of all documents pertaining to the award of a Contract, shall be kept by the College for a period of ten (10) years and shall be made part of a file or records which shall be open to public inspection (OAR 166-450-0020). If a bid contains proprietary information that the bidder does not want disclosed to the public or used by the College for any purpose other than evaluation of bidder's offer, each sheet of such information must be marked with the following legend:

“This data shall not be disclosed outside the College or be duplicated, used or disclosed in whole or in part for any purpose other than bid evaluation. If a Contract is awarded to the bidder as a result of, or in connection with, the submission of such information, the College shall have the right to duplicate, use or disclose this information to the extent provided in the Contract. This restriction does not limit the College’s right to use information contained herein if it is obtained from another source.”

2. **The above restriction shall not include cost or price; this information must be open to public inspection.**

3.6 Reservations

1. The College reserves the right to obtain bids from other firms for specific jobs and to select any firm for a given job.
2. The College reserves the right to supply or specify materials, equipment and subcontracting.
3. The College also reserves the right to reject any materials it determines are unsatisfactory in quality, texture and/or content.
4. The College reserves the right to reject bids not in compliance with all prescribed public bid procedures and requirements.
5. The College reserves the right to waive any or all irregularities in bids submitted.
6. The College is in the business of education and the first priority is to those who come for educational opportunities. The College may ask the contractor to alter the way it is conducting its work, so that it does not impact the College operations more than anticipated. That may require the contractor to use methods other than those which were originally planned, such as work on off-hour times and/or schedule work at a later time.

3.7 Reciprocal Preference for Oregon goods and services; non-resident bidders:

Pursuant to ORS 279A.120:

1. For the purposes of awarding a public contract, a contracting agency shall:

- a) Give preference to goods or services that have been manufactured or produced in this state if price, fitness, availability and quality are otherwise equal; and
 - b) Add a percent increase to the bid of a nonresident bidder equal to the percent, if any, of the preference given to the bidder in the state in which the bidder resides.
2. “Resident bidder” means a bidder that has paid unemployment taxes or income taxes in this state during the twelve (12) calendar months immediately preceding submission of the bid, has a business address in this state, and has stated in the bid whether the bidder is a “resident bidder” pursuant to this subsection.
 3. “Non-resident bidder” means a bidder who is not a “resident bidder” as defined above.

3.8 Minority, Women-owned, and Emerging Small Business

It is the policy of the College to achieve race and gender equity and to foster small business opportunity in the award and implementation of contracts and subcontracts. The goal is to build a diverse and prosperous group of community contractors and trained employees who can effectively compete in business, while obtaining quality goods and services in a competitive, efficient, and non-discriminatory manner.

Bidder will certify in its offer that Bidder has not and will not discriminate against a subcontractor in awarding a subcontract because the subcontractor is a minority, women, or emerging small business enterprise certified under ORS 200.055.

3.9 Affirmative Action:

1. PCC operates many programs to train women and members of ethnic minority groups in the building construction trades, offers these programs targeted specifically for these populations, and provides the community with qualified craftspeople available for work.
2. The PCC Board of Directors is committed to ensuring that women and members of ethnic minority groups are represented and employed in PCC public works contracts.
3. PCC will ask bidders for such projects to specify to what extent they intend to subcontract with or employ members of ethnic minority groups or women.
4. In addition, PCC pledges to assist all bidders in identifying ethnic minority or women subcontractors or potential employees, and will conduct pre-bid educational conferences to assist ethnic minority-owned and women-owned contractors and subcontractors in qualifying for PCC public works contracts.
5. Any Successful Bidder who is recommended for Contract award must be prepared to demonstrate that a good faith effort has been made to include qualified sub-contractors and members of minority groups in the project team.

3.10 Contract between bidder and PCC

1. This ITB and all subsequent modifications thereto are hereby designated as the sole reference and authority of the preparation of bid and takes precedence over any source, either by verbal or written communications.

2. A sample of the service agreement to be utilized with the successful bidder is included in this ITB, Appendix D. If bidders have any exceptions to the terms and conditions of this ITB, they must be stated in accordance with Section 3, item 3.24.

3.11 Statutory Provisions Concerning Public Contracts

Portland Community College Public Contracting Rules are modeled after the State of Oregon Attorney General's Model Public Contract Rules and Public Contracts ORS 279 (A,B&C).

3.12 Law of State of Oregon

The Contract that results from this bid document will be entered into within the State of Oregon, and the law of Oregon, whether substantive or procedural, shall apply to this Contract, and all statutory, charter and ordinance provisions that are applicable to public contracts in the State of Oregon shall be followed with respect to any resultant Contract.

3.13 Method of Payment

1. Applications for payment shall be made in writing and reference Purchase Order number assigned for this contract.
2. The Project Manager will review and sign-off on all payment request(s) prior to payment process. All payment request(s) shall have detail information on all materials and services provided.

3.14 Departures from Terms of Contract

No direction or approval given by the College or any representative of the College which deviates in any respect from the specifications or other Contract documents shall be valid or recognized unless and until the same is reduced to writing and issued in the form of a written order over the signature of an authorized representative of the College so as to become a Contract document as defined in the bid documents.

3.15 Price Stability

1. Any increase or decrease in labor rates during the term of this Contract must be substantiated by Prevailing Wage Rate amendment(s) as published by the State of Oregon Bureau of Labor and Industries (BOLI). Any changes must be submitted in writing, reviewed and approved by the College before it becomes effective. Copies of such documents shall be submitted to the attention of Sandy Wanner, Bond Procurement.
2. Request for unit price adjustment reflecting increased operating and raw material costs ("Production Costs") may submit a written request to the College, including all appropriate price documentation. If approved, the unit price increase shall be firm for the duration of the extension term. Price increases are limited to increases in manufacturer's published list price.
4. Successful Bidders represents that all prices, terms and benefits offered by Successful Bidder are equal to or better than the equivalent prices, terms and benefits being offered by Successful Bidder to any other state or local government unit or commercial customer.

5. Should Successful Bidders, during the term of the Contract, enter into any contract, agreement or arrangement that provides lower prices, more favorable terms and greater benefits to any other such government unit or commercial customer, the Contract shall thereupon be deemed amended to provide the same price or prices, terms and benefits to the College.

3.16 Bid Security

No bid will be considered unless it is accompanied by a cashier's or certified check payable to PCC by a responsible bank in the United States for ten percent (10%) of the total bid price for this Contract, or by an irrevocable letter of credit issued by an insured institutions, or by a bid bond for that amount payable to PCC and executed by a surety company authorized to transact business in Oregon.

3.17 Performance Bond and Payment Bond

Successful bidder must submit a performance bond and a payment bond in an amount equal to the full contract price conditioned on the faithful performance of the contract in accordance with the plans, specifications and conditions of the contract. The performance bond maybe submitted on a cashier's check or certified check in lieu of all or a portion of the required performance bond.

Each performance bond and each payment bond must be executed solely by a surety company or companies holding a certificate of authority to transact surety business in this state. The bonds may not constitute the surety obligation of an individual or individuals. The performance and payment bonds must be payable to PCC for whose benefit the contract was awarded, as specified in the solicitation documents, and shall be in a form approved by the contracting agency.

3.18 Disclosure of Sub-contractors

Within two working hours after the date and time of the deadline set for submission of bids, each Bidder shall submit to PCC a list of any first-tier subcontractors that:

- a) Will be furnishing labor or labor and materials in connection with the public improvement; and
- b) Will have contract value that is equal to or greater than either five percent (5%) of the total project bid or \$15,000, whichever is greater, or \$350,000 regardless of the percentage of the total project bid.

The disclosure of first-tier subcontractors shall include:

- a) Name of each sub-contractor
- b) Category of work that each subcontractor will be performing, and
- c) Dollar value of each subcontract

The bid of any contractor that does not submit a subcontractor disclosure list as described herein shall be considered non-responsive.

3.19 Codes, Ordinances, Regulations and Permits

1. Successful Bidder shall be licensed by the State of Oregon to do the work required under this Contract.

2. Successful Bidder shall comply with all applicable requirements of county and State of Oregon Departments of Health, and Environmental Quality.
3. All items or services to be furnished hereunder shall meet all applicable State and Federal requirements of the Occupational Safety and Health Standard.
4. Successful Bidder shall obtain and maintain in current status all applicable permits and licenses.

3.20 Wage Rates and Certificate of Payroll (if applicable)

The State of Oregon Prevailing Wage Rates for Public Works Contracts in Oregon, effective of July 1, 2017 (based on ORS279C.830), shall be followed for all labor performed in this Contract, including Wage Rates and Certification of payroll as required by the Bureau of Labor and Industries (**BOLI**). Refer to this link for details and requirements: http://www.oregon.gov/BOLI/WHD/PWR/pwr_book.shtml.

3.21 Fee to Be Paid By the Successful Bidder

Section 5.(1) The Commissioner of the Bureau of Labor and Industries, by rule, shall establish a fee to be paid by the Contractor to whom the Contract for a public work subject to ORS 279C.825 has been awarded. The fee shall be used to pay the costs of surveys to determine the prevailing wage and for administering and providing educational programs and investigations under and enforcement of ORS 279C.800 to 279C.870. The fee is one-tenth of one percent of the price of this Contract, but not less than \$250 or more than \$7,500, regardless of the Contract amount.

The fee to be paid pursuant to this section shall be paid at the time of the first progress payment or sixty (60) days after work on the Contract has begun, whichever date is earlier.

3.22 Brand Name or Equal Specification:

Bidders must include catalog information, specifications, etc., on each item bid unless the College has specified a brand name and model for reference and the item being bid is that exact brand and model.

Brand names and or model numbers, where used in this bid, are generally for reference purposes only. Products of like quality meeting College specifications will be equally considered. Where there can be no substitution due to a requirement for copyrighted materials, compatible materials or equipment, or product pre-qualification, the specification for the item(s) will so state.

Bidders are encouraged to bid various alternates, if such alternates essentially meet specifications. Bidders may describe such alternates on other than the bid forms provided, but are cautioned to make submittals complete and self-explanatory. The College is not required to seek details or information not initially included with bid responses.

3.23 Protest or Clarification of Bid Specifications or Contract Terms

In compliance with the College Procurement Rules and Public Contracting - Oregon Attorney General's Model Public Contract Rules (Oregon Administrative Rules):

1. Protests and Judicial Review of Solicitations (OAR 137-047-0730):

- a) A prospective bidder, proposer or bidder for a public contract solicited under ORS 279B.055, 279B.060 or 279B.085 may file a protest with the contracting agency if the prospective bidder, proposer or bidder believes that the procurement process is contrary to law or that a solicitation document is unnecessarily restrictive, is legally flawed or improperly specifies a brand name. If a prospective bidder, proposer or bidder fails to timely file such a protest, the prospective bidder, proposer or bidder may not challenge the contract on grounds under this subsection in any future legal or administrative proceeding.
- b) Delivery: Unless otherwise specified in the Solicitation Document, a prospective bidder must deliver a written protest to the contracting agency not less than ten (10) days prior to closing.
- c) Content of Protest: In addition to the information required by ORS 279B.405, a prospective bidder's written protest shall include a statement of the desired changes to the procurement process or the solicitation document that the prospective bidder believes will remedy the conditions upon which the prospective bidder based its protest.
- d) Contracting Agency Response: The contracting agency shall not consider a prospective bidder's solicitation protest submitted after the timeline established for submitting such protest under this rule, or such different time period as maybe provided in the solicitation document. The contracting agency shall consider the protest if it is timely filed and meets the conditions set forth in ORS 279B.405. The contracting agency shall issue a written disposition of the protest in accordance with the timeline set forth in ORS 279B.405 (6). If the contracting agency upholds the protest, in whole or in part, the contracting agency may in its sole discretion either issue an addendum reflecting its disposition under OAR 137-047-0430 or cancel the procurement or solicitation under OAR 137-047-0660.
- e) Extension of Closing: If the contracting agency receives a protest from a prospective bidder in accordance with this rule, the contracting agency may extend closing if the contracting agency determines an extension is necessary to consider and respond to the protest.
- f) Clarification: Prior to the deadline for submitting a protest, a prospective proposer or bidder may request that the contracting agency clarify any provision of the solicitation document. The contracting agency's clarification to a proposer or bidder, whether orally or in writing, does not change the solicitation document and is not binding on the contracting agency unless the contracting agency amends the solicitation document by addendum.

2. Notice of Intent to Award

The College will provide written notice of its Intent to Award to all bidders at least seven (7) days before the Award of a Contract. The College's Award will not be final until the later of either: 1) the expiration of the Award Protest period provided for this ITB; or 2) the College provides written decisions to all timely-filed protests denying the protests and affirming the Award.

The apparent Successful bidder will be notified in writing of its apparent winning bid, and a contract will be drawn that will include reference to this It, its attachments and addenda, the successful bidder's bid, and any additional contract language that may be required by College or by law. All other bidders will be notified that the apparent winning bid has been selected.

3. Award Protest

An adversely affected Bidder may protest the Notice of Intent to Award the Contract for any and all contracts solicited under ORS 279B.055, 279B.060, and 279B.085 if the Bidder can demonstrate that it would be eligible to be awarded the public contract in the event the protest were successful. Before seeking judicial review of an Award of the Contract, an adversely affected Bidder must file a written protest with the College and exhaust all administrative remedies.

a. Right to Protest Award

In order to be an adversely affected Bidder with a right to submit a written protest, a Bidder must itself claim to be eligible for Award of the Contract in the event the Protest were successful and must be next in line for the Award. In addition, the adversely affected Bidder must demonstrate that the reason for the Protest is that : (a) all higher-ranked Bidders are ineligible for Award of the Contract because their bids were non-responsive; or (b) the College has failed to conduct the evaluation of bids in accordance with the criteria or processes described in this ITB; (c) the College has abused its discretion in rejecting the Protesting Bidder's bid as nonresponsive; or (d) the College's evaluation of the bids or its subsequent determination of award it otherwise in violation of ORS Chapter 279A or 279B. In addition, the written protest shall specify the grounds upon which the protest is based and suggested changes that may remedy the defects.

b. Award Protest Submission Requirements.

To be considered, Bidder's written Award Protest must be submitted to the Issuing office in an envelope marked as follows:

ITB Award Protest
ITB Title
Notice of Intent to Award Date

c. All Award Protests must be in writing. Award Protests may be submitted via facsimile.

- Time Limitation on Protest: To be considered by the College, a written protest must be received by the College within seven (7) days after issuance of the Notice of Intent to Award Contract.
- Authority to Resolve Protests: The President of the College, or such person's designee, shall have the authority to settle or resolve a written protest submitted in accordance with the requirements of this Section 4.5.

- Decision: If the protest is not settled or resolved by mutual agreement, the President of the College, or such person's designee, shall issue a written decision on the protest in a timely manner.
- After the College has issued its response, Bidder may seek judicial review in the manner provided in ORS 279B.415.
- The College reserves the right to cancel the ITB in conformance with OAR 137-047-0060.

**APPENDIX A
CERTIFICATION AND CONTRACT OFFER
(BID FORM)
FOR
GENERAL CONTRACTOR SERVICES
WILLOW CREEK CENTER - MECHATRONICS PROGRAM REMODEL**

Bid Due Date: 2:00 P.M., November 27, 2017

**1st Tier Sub-contractor
Disclosure form**

4:00 P.M., November 27, 2017

The bidder agrees to perform all labor and/or labor and materials for the renovation and construction at the Willow Creek Center - Mechatronics Program Remodel, as specified and in strict accordance with the terms, conditions and requirements in this ITB. The bid amount will be inclusive of all cost to fully complete this project.

The bidder agrees to honor the bid for sixty (60) days from date of signature below.

1. Bid amount:

To include all work shown on Drawings, Specifications, and any issued Addenda.

(Please break your bid up into the following phases)

All work associated with the Construction of:

General Conditions: \$ _____

Demolition & disposal/salvage: \$ _____

Concrete/Polishing: \$ _____

Exterior & roof scope: \$ _____

Interior carpentry: \$ _____

Finishes: \$ _____

Doors/Frames/Hardware: \$ _____

HVAC & plumbing: \$ _____

Electrical: \$ _____

Low Voltage/Security \$ _____

TOTAL BASE BID AMOUNT: \$ _____

(Only the Total Base Bid amount will be used to calculate ITB bid price scores.)

ADDENDA:

Addenda ___ through ___ received. (If Addenda were issued, completion of this line is REQUIRED.)

CONTRACT EXECUTION

Required Not Required

The contents of the 1st step-ITB, proposals, this ITB and of the successful bidder's bid will become contractual obligations, if the acquisition ensues. Failure of the successful vendor to accept these obligations in a purchase agreement, purchase order, delivery order, or similar acquisition, may result in cancellation of the award.

PERFORMANCE BOND and PAYMENT BOND

Required Not Required

The undersigned agrees, if awarded a Contract, to execute and deliver to the College, within ten (10) days after the receipt of Notice of Intent to Award the Contract, a satisfactory performance and payment bond in an amount equal to one hundred percent (100%) of the Contract Amount. In addition, Certificates of Insurance for the coverage specified in the contract document must be submitted at the same time.

BID BOND

Required Not Required

No bid will be considered unless it is accompanied by a cashier's or certified check payable to PCC by a responsible bank in the United States for ten percent (10%) of the total bid price for this Contract, or by an irrevocable letter of credit issued by an insured institutions, or by a bid bond for that amount payable to PCC and executed by a surety company authorized to transact business in Oregon.

PREVAILING WAGES

Required Not Required

The State of Oregon Prevailing Wage Rates for Public Works Contracts in Oregon, based on ORS279C.830, effective date of July 1, 2017, shall be followed for all labor performed in this contract, including Wage Rates and Certification of payroll as required by the Bureau of Labor and Industries (**BOLI**). Refer to this link for details and requirements:

http://www.oregon.gov/BOLI/WHD/PWR/pwr_book.shtml.

MINORITY AND WOMEN-OWNED SUB-CONTRACTOR PARTICIPATION

Required Not Required

The undersigned agrees that if he/she is selected to perform the Work, he/she shall, by the close of the next working day following such notification, submit to the College a listing of names of minority-owned and women-owned subcontractors who will be used and the nature and dollar amounts of their participation.

CONSTRUCTION CONTRACTORS BOARD REGISTRATION

Required Not Required

Vendors must be registered with the Construction Contractors Board or licensed by the State Landscape Contractors Board prior to submitting quotes for emergency work, minor alterations, ordinary repair, or maintenance projects.

Construction Contractors Board Number _____ Expiration Date _____

STATE OF OREGON OFFICE OF MINORITY, WOMEN & EMERGING SMALL BUSINESS (OMWESB) CERTIFICATION:

If your firm is currently certified by OMWESB in any of these categories, please indicate that certification.

- Minority Business Enterprise (MBE)
- Women Business Enterprise (WBE)
- Emerging Small Business (ESB)

BIDDER'S SIGNATURE AND IDENTIFICATION:

I hereby certify that this bid is genuine and that I have not entered into collusion with any other vendor(s) or any other person(s).

Please print or type all information requested below (except where signature is required) and attach all other required documents to this form:

Name of Proprietor, Partnership, or Corporation	Signature of Proprietor, Partner, or Corporate Officer:
Company name:	Signature:
Mailing Address:	
Phone/Fax numbers:	
Date:	

APPENDIX B

CONSTRUCTION REQUIREMENTS AND DRAWINGS

Specifications and drawings may be acquired by contacting Willamette Print and Blue Print, 3461 NE Yeon Avenue, Portland, OR 97210, 503-223-5011, Project #20097201 – Mechatronics 100% bid set.

APPENDIX C

**COPY OF LEGAL ANTICIPATED
CONTRACT PROVISIONS, and**

EXHIBIT B

INSURANCE REQUIREMENTS

(Please note: This is the anticipated Contract Provisions, and Insurance Requirements document. Revisions to these documents will be distributed at the Mandatory Pre-bid meeting?)

CONTRACT FOR CONSTRUCTION

between

PORTLAND COMMUNITY COLLEGE

and

[**CONTRACTOR NAME**]

CONTRACT TRACKING NO. _____

**THIS CONTRACT SHALL BE BINDING ON COLLEGE ONLY IF IT IS
SIGNED BY THE AUTHORIZED DESIGNEE**

This Construction contract ("Contract") is between Portland Community College ("Owner") and [**Name**] ("Contractor") to construct the Work on the following Project;

[Insert Brief Description of the Project]

The parties agree as follows:

CONTRACTOR DATA

Contractor attests that it is an independent contractor solely responsible for the work performed under this Contract. Contractor, its Subcontractors, employees, and agents shall not be deemed employees of Owner. Contractor shall be responsible for all federal, state, and local taxes and any and all fees applicable to payments for Work under this Contract.

Full Business Name:

Address:

City, State, Zip:

Business Telephone:

Facsimile:

Email:

Federal Tax Identification Number ("TIN") or Social Security Number ("SSN"):

Oregon Construction Contractors Board License Number:

Workers' Compensation Carrier:

Workers' Compensation Policy:

Expiration Date:

Payment information will be reported to the Internal Revenue Service under the name and TIN or SSN, whichever is applicable, provided above by Contractor.

Contractor certifies under penalty of perjury that Contractor is a:

- Sole Proprietor Corporation Limited Liability Company
 Partnership Nonprofit Corporation Government Agency
 Other [describe: _____]

1.1 Work. Contractor shall fully execute the Work described by the Contract Documents, unless specifically indicated in the Contract Documents to be the responsibility of others. The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes, except as otherwise specifically stated in this Contract, all other labor, materials, equipment, tools, permits, fees, licenses, facilities, taxes, transportation, supervision, temporary constructions of every nature, and all other services, management, and facilities of every nature whatsoever necessary to fulfill Contractor's obligations by executing and completing this Contract within the Contract Time. The Work may constitute the whole or a part of the Project.

1.2 Enumeration of Contract Documents. The "Contract Documents" are enumerated as follows:

- 1.2.1. This Contract.
- 1.2.2. The Owner's General Conditions of the Contract, attached as Exhibit A.
- 1.2.3. Insurance Requirements, attached as Exhibit B.
- 1.2.4. Supplementary Conditions of the Contract, if Any. [List or refer to Exhibit.]
- 1.2.5. The Specifications. [List or refer to Exhibit.]
- 1.2.6. The Drawings. [List or refer to Exhibit.]
- 1.2.7. The Addenda, if Any. [List or refer to Exhibit.]
- 1.2.8. Additional Documents. [List any other documents that should be part of the contract, or refer to Exhibits.]
- 1.2.9. Any Modifications to the Contract executed after the effective date of the Contract, including change orders and contract amendments.

1.3 The Contract. This Contract, together with the other Contract Documents, forms the entire and integrated agreement between the Parties. Unless the context requires otherwise, any reference to the "Contract" includes the Contract Documents.

1.4 The Contract Time.

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

1.4.2. Liquidated Damages: The Contractor acknowledges that the Owner will sustain damages as a result of the Contractor's failure to substantially complete the Project in accordance with the Contract Documents. These damages may include, but are not limited to, delays in completion and use of the Project, and costs associated with Contract administration, additional

Project Team costs, and use of temporary facilities. The Contractor and the Owner acknowledge that the actual amount of damages would be difficult to determine accurately and agree that the following liquidated damages figure represents a reasonable estimate of such damages and is not a penalty. Liquidated damages will be \$_____ for each day that Substantial Completion exceeds the required date of Substantial Completion. The Contractor agrees to pay to the Owner the liquidated damage sums set forth above for each day of delay or any fraction thereof, and further agrees that the Owner may deduct such sums from payments the Owner otherwise owes to the Contractor under the Contract. If such deduction does not result in payment to the Owner of the assessed liquidated damages in full, the Contractor will promptly pay any and all remaining sums due to the Owner upon demand.

1.5 The Contract Sum.

1.5.1. The Contract Sum is \$_____. The Contract Sum is the total amount payable by Owner to Contractor for performance of Work under the Contract Documents.

1.5.2. The following alternates are included in the Contract Sum: [List or Reference Alternates.]

1.5.3. Unit prices if any: [List or Reference to Exhibit.]

1.5.4. Allowances included in the Contract Sum, if any: [List or Reference to Exhibit.]

1.5.5. Notwithstanding any other provision of this Contract or the Contract Documents, the Contract Sum includes all construction contingencies for existing site conditions other than for pre-existing Hazardous Materials. Contractor is thoroughly acquainted with and has inspected the Project site without restriction, understands the potential risks in this construction Work, and accepts the full risk of construction contingencies to complete the Work within the Contract Time and Contract Sum set out in this Contract.

1.6 Progress Payments.

1.6.1. The Contractor will submit an application for payment to the Owner Representative as provided in the General Conditions. The Owner Representative may require the Contractor to simultaneously submit an application for payment to the Design Professional working on the Project.

1.6.2. Each application for payment shall be for one calendar month ending on the last day of the month.

1.6.3. Payments are due and payable thirty (30) days following receipt of the Contractor's complete Application for Payment or fifteen (15) days from the date after payment is approved by the Owner Representative, whichever is earlier. Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate set forth in ORS 279C.570(2).

1.6.4. The amount of each progress payment shall be determined as provided in the General Conditions, less retainage of five percent (5%) pursuant to ORS 279C.550 to 279C.565, ORS 701.420 and 701.430, and less liquidated damages, if any.

1.7 Designation of Representatives.

- 1.7.1. The Owner's Representative is: [Name and Contact Information.]
- 1.7.2. The Contractor's Representative is: [Name and Contact Information.]
- 1.7.3. A party may change its designated representative upon thirty (30) days written notice to the other party.

1.8 Notice and Communications.

1.8.1. Notices and communications between the parties to this Contract may be sent to the following addresses:

Owner:

Contractor:

1.8.2. The party giving notice will provide notice in writing, dated and signed by the party giving notice or by a duly authorized representative of that party. Notice is not effective for any purpose whatsoever unless served in one of the following manners:

1.8.3. If notice is given by personal delivery, it is deemed delivered on the day of delivery.

1.8.4. If notice is given by overnight delivery service, it is deemed delivered one (1) day after date deposited, as indicated by the delivery service.

1.8.5. If notice is given by depositing same in United States mail, enclosed in a sealed envelope, it is deemed delivered three (3) days after date deposited, as indicated by the postmarked date.

1.8.6. If notice is given by registered or certified mail with postage prepaid, return receipt requested, it is deemed delivered on the day the notice is signed for.

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

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

1.9.2. ORS 279C.380 (Performance and Payment Bonds): Unless exempted by the Owner in writing pursuant to the Owner's local public contracting rules, prior to starting work under this Contract, Contractor or its Subcontractor shall execute and deliver to Owner a good and sufficient performance bond, in a form acceptable to Owner, in a sum equal to one hundred percent (100%) of the construction portion of the Contract Price, and Contractor or its Subcontractor shall execute and deliver to Owner a good and sufficient payment bond, in a form acceptable to Owner, in a sum equal to one hundred percent (100%) of the construction portion of the Contract Price, solely for the protection of claimants under ORS 279C.600.

1.9.3. ORS 279C.505 (Prompt Pay Requirement, Liens, Taxes, and Drug Testing): Contractor shall make payment promptly, as due, to all persons supplying to such Contractor labor or material for the performance of the Work provided for in such Contract; pay all contributions or

amounts due the Industrial Accident Fund from such Contractor or Subcontractor incurred in the performance of the Contract; not permit any lien or claim to be filed or prosecuted against the state or a county, school district, municipality, municipal corporation, or subdivision thereof, on account of any labor or material furnished; and pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167. Contractor shall further demonstrate that an employee drug testing program is in place.

1.9.4. ORS 279C.510 (Recycling/Composting): If this Contract includes demolition work, the Contractor shall salvage or recycle construction and demolition debris, if feasible and cost-effective. If this Contract includes lawn or landscape maintenance, the Contractor shall compost or mulch yard waste material at an approved site, if feasible and cost-effective.

1.9.5. ORS 279C.515 (Failure to Make Prompt Payment): If Contractor fails, neglects, or refuses to make prompt payment of any Claim for labor or services furnished to the Contractor or a Subcontractor by any person in connection with this Contract as such Claim becomes due, the Owner may pay such Claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due the Contractor by reason of this Contract. The payment of a Claim in the manner authorized in this section shall not relieve the Contractor or the Contractor's surety from any obligation with respect to any unpaid Claims. Unless the payment is subject to a good-faith dispute as defined in ORS 279C.580, if Contractor or any first-tier Subcontractor fails to pay any Claim for materials or labor furnished under this Contract within 30 days after being paid by Owner, interest shall be due on such claim as specified in ORS 279C.515(2) at the end of the 10-day period that payment is due under ORS 279C.580(4). A person with any such unpaid Claim may file a complaint with the Construction Contractor's Board unless the complaint is subject to a good-faith dispute as defined in ORS 279C.580.

1.9.6. ORS 279C.520 and 279C.540 (Hours of Labor, Holidays, Overtime, Pay Equity, and Discussion of Rates of Pay):

.1 Contractor shall not employ and shall require that its Subcontractors not employ any person to perform construction work for more than ten (10) hours in any one (1) day, or forty (40) hours in any one (1) week, except in cases of necessity, emergency, or where the public policy absolutely requires it, and in such cases, except in cases of Contracts for personal services as defined in ORS 279A.055, the laborer shall be paid at least time and a half pay:

.1.1 For all overtime in excess of eight (8) hours a day or forty (40) hours in any one (1) week when the work week is five (5) consecutive days, Monday through Friday; and

.1.2 For all overtime in excess of ten (10) hours a day or forty (40) hours in any one (1) week when the work week is four (4) consecutive days, Monday through Friday; and

.1.3 For work performed on Saturday and on any legal holiday specified in any applicable collective bargaining agreement or ORS 279C.540(1)(b).

.2 The requirement to pay at least time and a half for all overtime worked in excess of forty (40) hours in any one (1) week shall not apply to individuals who are excluded under ORS 653.010 to 653.261 or under 29 U.S.C. Section 201 to 209 from receiving overtime. Contractor shall and shall require its Subcontractors to give notice in writing to their employees who work under this Contract, either at the time of hire or before commencement of Work on the Contract, or by posting a notice in a location frequented by employees, of the number of hours per day and days per week that the employees may be required to work.

.3 Contractor shall comply with ORS 652.220 (Prohibition of discriminatory wage rates based on sex; employer not to discriminate against employee who is a complainant). Compliance is a material element of the Contract. Failure to comply is a breach that entitles the Owner to terminate the contact for cause.

.4 The Contractor may not prohibit any of the Contractor's employees from discussing the employee's rate of wage, salary, benefits, or other compensation with another employee or another person, and may not retaliate against an employee who does so.

1.9.7. ORS 279C.525 (Notice of Environmental Regulations): State law requires that solicitation documents for a public improvement contract that make specific reference to federal, state, and local agencies that have enacted ordinances, rules, or regulations dealing with the prevention of environmental pollution or the preservation of natural resources that may affect the performance of this Contract. These agencies include, but are not limited to:

.1 Federal Agencies: Department of Agriculture, Forest Service, Soil and Water Conservation Service, Coast Guard, Department of Defense, Army Corps of Engineers, Department of Emergency, Federal Energy Regulatory Commission, Environmental Protection Agency, Department of Health and Human Services, Department of Housing and Urban Development, Solar Energy and Energy Conservation Bank, Department of Interior, Bureau of Land Management, Bureau of Indian Affairs, Bureau of Mines, Bureau of Reclamation, Geological Survey, Minerals Management Service, U.S. Fish and Wildlife Service, Department of Labor, Mine Safety and Health Administration, Occupational Safety and Health Administration, Department of Transportation, Federal Highway Administration, and Water Resources Council.

.2 State Agencies: Department of Administrative Services, Department of Agriculture, Soil and Water Conservation Commission, Columbia River Gorge Commission, Department of Energy, Department of Environmental Quality, Department of Fish and Wildlife, Department of Forestry, Department of Geology and Mineral Industries, Department of Human Resources, Department of Consumer and Business Services, Land Conservation and Development Commission, Department of Parks and Recreation, Division of State Lands, and Department of Water Resources.

.3 Local Agencies: City councils, county courts, county boards of commissioners, metropolitan service district councils, design commissions, historic preservation commissions, planning commissions, development review commissions, special district boards of directors, and other special districts and special governmental agencies such as Tri-Met, urban renewal agencies, and Port Districts.

.4 Compact Agencies: The Columbia River Gorge Commission.

.5 Tribal Governments.

1.9.8. ORS 279C.530 (Payment for Medical Care and Workers' Compensation): Contractor shall promptly, as due, make payments to any person, co-partnership, association, or corporation furnishing medical, surgical, and hospital care or other needed care and attention, incident to sickness or injury, to the employees of such Contractor, of all sums which the Contractor agrees to pay for such services and all moneys and sums which the Contractor collected or deducted from the wages of employees pursuant to any law, contract, or agreement for the purpose of providing or paying for such service. All employers, including the Contractor, that employ subject workers who work under this Contract in the State of Oregon shall comply with ORS 656.017, and provide

the required workers' compensation coverage, unless such employers are exempt under ORS 656.126. Contractor shall ensure that each of its Subcontractors complies with these requirements.

1.9.9. ORS 279C.545 (Time Limitations on Claims for Overtime): Construction workers employed by the Contractor or its Subcontractor shall be foreclosed from the right to collect for any overtime under this Contract unless a claim for payment is filed with the Contractor or Subcontractor within ninety (90) days from the completion of the Contract, providing the Contractor or Subcontractor has:

- .1 Caused a circular clearly printed in blackface pica type and containing a copy of this section to be posted in a prominent place alongside the door of the timekeeper's office or in a similar place which is readily available and freely visible to any and all workers employed on the Work; and
- .2 Maintained such circular continuously posted from the inception to the completion of the Contract on which workers are or have been employed.

1.9.10. ORS 279C.580(3) (Prompt Payment of First-Tier Subcontractors): Contractor shall include in each subcontract for property or services with a first-tier Subcontractor a clause that obligates the Contractor to pay the first-tier Subcontractor for satisfactory performance under its subcontract within ten (10) days out of such amounts as are paid to the Contractor by the Owner. Contractor shall also include in each subcontract a clause that states that if the Contractor fails to pay any claim for materials or labor furnished under this Contract within thirty (30) days after being paid by Owner, interest shall be due on such claim as specified in ORS 279C.515(2) at the end of the 10-day period that payment is due under ORS 279C.580(3). Contractor shall require each first-tier Subcontractor to include a payment clause and interest clause conforming to the requirements of ORS 279C.580 in each of its subcontracts, and to require each of its Subcontractors to include a similar clause in each Contract with a lower-tiered Subcontractor or supplier.

1.9.11. ORS 279C.605 (Notice of Claim on Bond): Any person claiming a right of action under ORS 279C.600 must file a notice of claim as provided in ORS 279C.605.

1.9.12. ORS 279C.800 to 279C.870:

.1 This Contract is subject to payment of prevailing wages under ORS 279C.800 to 279C.870. Each worker, the Contractor, Subcontractor, or other person who is party to the Contract used in performing all or part of the Contract, shall be paid not less than the applicable prevailing rate of wage for each trade or occupation as defined by the Director of the State of Oregon Bureau of Labor and Industries ("BOLI") in the applicable publication entitled Definitions of Covered Occupations for Public Works Contracts in Oregon. The prevailing wage rates for public works contracts in Oregon are contained in the following publications: The [date of most current publication] Prevailing Wage Rates for Public Works Projects in Oregon, the [date of most current publication] PWR Apprenticeship Rates, and [date of any amendments to the PWR rates or Apprenticeship rates since the most current publication of those rates]. Such publications can be reviewed electronically at http://www.boli.state.or.us/BOLI/WHD/PWR/pwr_state.shtml and are hereby incorporated by reference as part of the Contract Documents.

.2 This Contract is /is not also subject to payment of prevailing wages under the federal Davis-Bacon Act (40 U.S.C. 3141 et seq.). Notwithstanding subsection 1.9.12 of

this Section, if this Contract is subject to payment of prevailing wages under the Davis-Bacon Act, Contractor and any Subcontractors must pay the higher of the federal prevailing wage or the state prevailing wage. The latest state prevailing wages can be reviewed as set forth in subsection 1.9.12.1 of this Section. The latest federal prevailing wage rates can be reviewed electronically at <http://www.wdol.gov/Index.aspx> (Search for Oregon, [insert name of county where project is located], Building Construction Type) and are hereby incorporated by reference as part of the Contract Documents. Contractors shall follow all prevailing wage rules including posting the Davis-Bacon poster at the worksite and submitting certified payroll records. The poster is available at <http://www.dol.gov/whd/regs/compliance/posters/fedprojc.pdf>. The payroll form is at <http://www.dol.gov/whd/forms/wh347instr.htm>.

.3 Owner shall pay a fee to the Commissioner of the Oregon Bureau of Labor and Industries as provided in ORS 279C.825. The fee shall be paid to the Commissioner under the administrative rule of the Commissioner.

.4 Contractor and any Subcontractors shall post the prevailing wage rates in a conspicuous and accessible place in or about the Project.

1.9.13. ORS 279C.836: Contractor shall:

.1 File a public works bond with the Construction Contractors Board pursuant to ORS 279C.836 before starting Work on the Project, unless the Contractor is exempt under ORS 279C.836(2), (7), or (8).

.2 Include in every subcontract a provision requiring the Subcontractor to file a public works bond with the Construction Contractors Board pursuant to ORS 279C.836 before starting work on the project, unless a Subcontractor is exempt under ORS 279C.836(2), (7), or (8).

1.9.14. ORS 279C.845:

.1 Contractor or Contractor's surety and every Subcontractor or Subcontractor's surety shall file with Owner a certified statement on a form provided by BOLI certifying the hourly rate of wage paid each worker employed by Contractor or Subcontractor on the Work and that no such worker has been paid less than the prevailing rate of wage or wage specified under the Contract.

.2 Notwithstanding ORS 279C.555 or 279C.570(7), Owner shall retain twenty-five percent (25%) of all amounts earned by Contractor until Contractor has filed the certified statements as required by ORS 279C.845. In addition, Contractor shall retain twenty-five percent (25%) of any amount earned by a first-tier Subcontractor until such Subcontractor has filed the certified statements with Owner. Owner and/or Contractor shall pay any such retained amounts within fourteen (14) days after such certified statements are filed.

1.9.15. ORS 468A.710: If this Contract requires asbestos abatement, Contractor or Subcontractor must possess an asbestos abatement license as required by ORS 468A.700 et seq.

1.9.16. ORS 671.560, 701.026 (Landscape/Construction Contractors License Required): If Contractor is performing work as a landscape contractor as defined in ORS 671.520(2), Contractor must have a current, valid landscape contractor's license issued under ORS 671.560. If Contractor is performing work as a Contractor as defined in ORS 701.005(2), Contractor must have a current, valid construction contractor's license, issued under ORS 701.026. Contractor shall

further certify that all Subcontractors performing Work described in ORS 701.005(2) are registered with the Construction Contractors Board or licensed by the State Landscaping Contractor's Board as required by the above-noted statutes before they commence Work under this Contract. Contractor shall maintain in effect all licenses, permits, and certifications required for the performance of the Work. Contractor shall notify Owner immediately if any license, permit, or certification required for performance of this Contract shall cease to be in effect for any reason.

1.10 When Work Is Performed on Owner Property Contractor Shall Comply With the Following:

1.10.1. Identification. Contractor performing work on Owner Property or for Owner shall carry photo identification and will present such, to anyone on request. Contractors that do not have specific uniforms for employees, shall provide identification tags as described above, and or any other mechanism, the Owner in its sole discretion determines is required to easily identify Contractors.

1.10.2. Sign-in Required. As required by schools and other Owner locations, each day of work Contractor's employees shall sign into the Main Office to receive an in-school identification/visitors tag to be displayed on the person at all times they are in the school or other location.

1.10.3. No Smoking. Smoking or other use of tobacco is prohibited on the Owner property..

1.10.4. No Weapons or Firearms. Except as provided by Oregon Statutes and Owner policy, weapons and firearms are prohibited on Owner property.

1.11 Confidentiality. As required by the Family Educational Rights and Privacy Act, 20 USC 1232(g) ("FERPA") and ORS 326.565, Contractor shall not disclose any information or records regarding students or their families that Contractor may learn or obtain in the course and scope of its performance of this Contract. The parties recognize that FERPA imposes strict penalties for improper disclosure or re-disclosure of confidential student information, including but not limited to denial of access to personally identifiable information from education records, for at least five (5) years (34 CFR 99.33(e)). Therefore, consistent with FERPA's requirements, personally identifiable information obtained by Contractor in the performance of this may not be re-disclosed to third parties without the written consent of the student's Contract parent/guardian and must be used only for the purposes identified in this Contract.

1.12 Time is of the Essence. Time is of the essence in the performance of this Contract.

1.13 Assignment. This Contract is not assignable by Contractor, either whole or in part, unless Contractor has obtained the prior written consent of Owner.

1.14 Other Contractors. Owner may undertake or award other contracts for additional or related work, and Contractor shall fully cooperate with such other contractors and with any Owner employees concerned with such additional or related work, and shall coordinate its performance under this Contract with such additional or related work. Contractor shall not commit or permit any act that will interfere with the performance of work by any other contractor or by Owner employees.

1.15 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 or provides any benefit or right, whether directly, indirectly, or otherwise, to third persons unless such third persons are individually identified by name in this Contract and expressly described as intended beneficiaries of this Contract.

1.16 Successors in Interest. The provisions of this Contract shall be binding upon and inure to the benefit of the parties and their successors and approved assigns, if any.

1.17 Waiver. Waiver of any default under this Contract by Owner shall not be deemed to be a waiver of any subsequent default or a modification of the provisions of this Contract.

1.18 Governing Law; Venue. The provisions of this Contract shall be construed in accordance with the laws of the State of Oregon and the rules of Owner as they exist at the time of execution of this Contract or any subsequent amendment. Any legal action involving this Contract not must be brought in Multnomah County Circuit Court. If the Claim must be brought in a federal forum, then it shall be brought and conducted in the United States District Court for the State of Oregon. Nothing in this section will be construed as prohibiting the parties from voluntarily agreeing to enter into mediation to attempt to resolve any dispute.

1.19 Arbitration. Any Claim arising out of or related to the Contract, except those waived or settled as provided for in Section C.3 of the General Conditions, shall be subject to arbitration. At any time, party(ies) may endeavor to resolve disputes by mediation as provided in Section C.3 of the General Conditions. Claims decided by arbitration, unless the parties mutually agree otherwise, shall be in accordance with the rules of the Arbitration Service of Portland, Inc. The demand for arbitration shall be filed in writing with the other party to the Contract and with the Arbitration Service of Portland, Inc., and a copy shall be filed with the Architect/Engineer. Exclusive venue for arbitration shall be in Portland, Oregon. A demand for arbitration shall be made within a reasonable time after the Claim has arisen, and in no event shall it be made after the date when institution of legal or equitable proceedings based on such Claim would be barred by the applicable statute of limitations.

1.20 Severability. If any term or provision of this Contract is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions 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 term or provision held invalid.

1.21 Merger Clause. This Contract and the attached exhibits constitute the entire agreement between the parties. All understandings and agreements between the parties and representations by either party concerning this Contract are contained in this Contract. No waiver, consent, modification, or change in the terms of this Contract shall bind either party unless in writing signed by both parties. Any written waiver, consent, modification, or change shall be effective only in the specific instance and for the specific purpose given.

1.22 Anti-discrimination Clause. Contractor must comply with all applicable requirements of federal and state civil rights law and rehabilitation statutes and shall not discriminate based on race, religion, color, sex, marital status, familial status, national origin, age, mental or physical disability, sexual orientation, source of income, or political affiliation in programs, activities, services, benefits, or employment. Contractor shall not discriminate against minority-owned, women-owned, or emerging small businesses.

1.23 Attorney Fees. If a suit or action is filed to enforce any of the terms of this Contract, including a request for arbitration under this Contract, the prevailing party shall be entitled to recover from the other party, in addition to costs and disbursements provided by statute, any sum that a court, including any appellate court, or arbitrator may adjudge reasonable as attorney fees. In the event the prevailing party is represented by "in-house" counsel, the prevailing party shall nevertheless be entitled to recover reasonable attorney fees based on the reasonable time incurred and the attorney fee rates and charges reasonably and generally accepted in the metropolitan Portland, Oregon, area for the type of legal services performed.

1.24 Rule of Construction. The rule of construction that a Contract is construed against the drafter shall not apply to any dispute over the interpretation of application of the Contract.

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

CONTRACTOR

OWNER

Contractor Firm Name

Portland Community College

Signature

Signature

Printed Name and Title

Printed Name and Title

Date

Date

EXHIBIT B

PORTLAND COMMUNITY COLLEGE

INSURANCE REQUIREMENTS

Contractor shall at all times during the term of this Contract maintain in force at Contractor's expense, each insurance noted below:

Workers Compensation insurance in compliance with ORS 656.017, which requires subject employers to provide workers' compensation coverage in accordance with ORS Chapter 656 for all subject workers. Contractor and all Subcontractors of Contractor with one or more employees must have this insurance unless exempt under ORS 656.027 (See Exhibit 4).
THIS COVERAGE IS REQUIRED. Attach Certificate of Insurance.

Professional Liability / Errors & Omissions (E&O) insurance with a combined single limit of not less than:
 \$500,000, \$1,000,000, \$2,000,000 each claim, incident, or occurrence, with an annual aggregate limit of
 \$500,000, \$1,000,000, \$2,000,000. This is to cover damages caused by error, omission, or negligent acts related to professional services provided under this Contract. The policy must provide extended reporting period coverage for claims made within two years after this Contract is completed.
 Required by Owner Not required by Owner

Commercial General Liability insurance, on an occurrence basis, with a combined single limit of not less than:
 \$500,000, \$1,000,000, \$2,000,000 each occurrence for Bodily/Personal Injury and Property Damage, with an annual aggregate limit of \$500,000, \$1,000,000, \$2,000,000. This insurance must include contractual liability coverage.
 Required by Owner Not required by Owner

Commercial Automobile Liability insurance with a combined single limit, or the equivalent of not less than:
 \$500,000, \$1,000,000, \$2,000,000 each occurrence for Bodily/ Personal Injury, and Property Damage, including coverage for owned, hired or non-owned vehicles.
 Required by Owner Not required by Owner

Excess Umbrella Liability insurance, on an occurrence basis, issued as broad form excess to all other Professional Liability, Errors and Omissions, Commercial General Liability, and Commercial Auto Liability coverage's not less than:
 \$2,000,000, \$5,000,000, each occurrence with an annual aggregate limit of \$5,000,000, \$10,000,000,
 Required by Owner Not required by Owner

Builders All-Risk or Installation Floater insurance policy to cover the course of construction and all materials or equipment furnished or incorporated into the Work. The policy shall be equal to one hundred percent (100%) of the contracted value of the Work, and cover all property of an insurable nature, which is either in place or intended to be used as part of the permanent structure. This insurance shall include the interest of Owner in the Work and shall insure against the perils of fire and extended coverage and shall include "all risk" insurance for physical loss or damage, including without limitation and without duplication of coverage, for theft, vandalism, and malicious mischief. Losses up to the deductible amount shall be the responsibility of the Contractor.

This insurance shall be primary and not contributory to any Owner provided insurance. No Work shall be performed, nor shall Contractor's equipment or materials be stored on Owner's premises until a certificate evidencing such insurance has been delivered to and approved by Owner.

Required by Owner Not required by Owner

Additional Requirements. Coverage must be provided by an insurance company admitted to do business in Oregon or rated A- or better by Best's Insurance Rating. Contractor shall pay all deductibles and retentions. A cross-liability clause or separation of insured's condition must be included in all commercial general liability policies required by this Contract. Contractor's coverage shall be primary in the event of loss.

Certificate(s) of Insurance Required. Contractor shall furnish a current Certificate(s) of Insurance to the Owner prior to contract execution. The Certificate(s) shall provide that there shall be no cancellation, termination, material change, or reduction of limits of the insurance coverage without 30 days written notice from the Contractor's insurer to the Owner. The Certificate(s) shall also state the deductible or retention level. For commercial general liability the Certificate shall also provide that the Owner, its agents, officers, and employees are Additional Insured's with respect to Contractor's services to be provided under this Contract. If requested, complete copies of insurance policies shall be provided to the Owner.

Reviewed by: _____ Date: _____

APPENDIX D

First Tier Sub-contractor Disclosure Form

FIRST-TIER SUBCONTRACTOR DISCLOSURE



PROJECT NAME: _____

BID #: _____

BID CLOSING: Date: _____ Time: _____

This form must be submitted at the location specified in the Invitation to Bid on the advertised bid closing date and within the closing time.

List below the name of each subcontractor that will be furnishing labor or will be furnishing labor and materials and that is doing work that the subcontractor will be performing and the dollar value of the subcontract. Enter "NONE" if there are no subcontractors. (ATTACH ADDITIONAL SHEETS IF NEEDED.)

NAME	DOLLAR VALUE	CATEGORY
(1)	\$	
(2)	\$	
(3)	\$	
(4)	\$	
(5)	\$	
(6)	\$	
(7)	\$	
(8)	\$	
(9)	\$	

Failure to submit this form by the disclosure deadline will result in a non-responsive bid. A non-responsive bid will be rejected.

Form submitted by (bidder name): _____

Contact name: _____ Phone no.: () _____

ORS 279C.370 First-tier subcontractor disclosure. (1)(a) Within two working hours after the date and time of the deadline when bids are due to a contractor, a bidder shall submit to the contracting agency a disclosure of the first-tier subcontractors that:

- (A) Will be furnishing labor or will be furnishing labor and materials in connection with the public improvement contract; and
- (B) Will have a contract value that is equal to or greater than five percent of the total project bid or \$15,000, whichever is greater, or \$350,000 regardless of the contract value.
- (b) For each contract to which this subsection applies, the contracting agency shall designate a deadline for submission of bids that has a date between 2 p.m. and 5 p.m., except that this paragraph does not apply to public contracts for maintenance or construction of highways, bridges, or other transportation facilities.
- (c) This subsection applies only to public improvement contracts ("**projects**") with a value, estimated by the contracting agency, of more than \$100,000.
- (d) This subsection does not apply to public improvement contracts that have been exempted from competitive bidding requirements under ORS 279C.585.
- (2) The disclosure of first-tier subcontractors under subsection (1) of this section must include the name of each subcontractor, the category of work to be performed by each subcontractor, and the dollar value of each subcontract. The information shall be disclosed in substantially the following [above] form:
- (3) A contracting agency shall accept the subcontractor disclosure. The contracting agency shall consider the bid of any contractor that does not submit a subcontractor disclosure to be a non-responsive bid and may not award the contract to the contractor. A contracting agency is not required to determine the accuracy of the subcontractor disclosure.
- (4) After the bids are opened, the subcontractor disclosures must be made available for public inspection.
- (5) A contractor may substitute a first-tier subcontractor under the provisions of ORS 279C.585.
- (6) A subcontractor may file a complaint under ORS 279C.590 based on the disclosure requirements of subsection (1) of this section.

EXHIBIT A

General Conditions for Large Construction Contracts

**EXHIBIT A
PORTLAND COMMUNITY COLLEGE
GENERAL CONDITIONS FOR LARGE CONSTRUCTION CONTRACTS**

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**PORTLAND 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:

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

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

CLAIM, means a demand by Contractor pursuant to Section C.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.

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

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

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

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

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

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

DIRECT COSTS, means, unless otherwise provided in the Contract Documents, the cost of materials, including sales tax; cost of delivery; cost of labor, including Social Security, old age and unemployment insurance, and fringe benefits required by agreement or custom; 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 directly attributable to the Work.

FINAL COMPLETION, means the final completion of all requirements under the Contract, including Contract Close-Out as described in Section J but excluding Warranty Work as described in Section H.2, and the final payment and release of all retainage, if any, released.

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

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

OFFER, means a bid in connection with an invitation to bid and a proposal in connection with a request for proposals.

OFFEROR, means a bidder in connection with an invitation to bid and a proposer in connection with a request for proposals.

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

OWNER, means Portland Community College, a public community college district of the State of Oregon organized under ORS Chapter 341.

OWNER'S AUTHORIZED REPRESENTATIVE, means those individuals identified in writing by Owner to act on behalf of Owner for this project. Owner may elect, by written notice to Contractor, to delegate certain duties of 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 an entity doing business as a sole proprietorship, a partnership, a joint venture, a corporation, a limited liability company or partnership, or any other entity possessing the legal capacity to contract.

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

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

RECORD DOCUMENT, means the as-built Plans, Specifications, testing and inspection records, product data, samples, manufacturer and distributor/supplier warranties evidencing transfer to Owner, operational and maintenance manuals, shop drawings, Change Orders, correspondence, certificate(s) of occupancy, and other documents listed in Subsection B.8.1 of these General Conditions, recording all Services performed.

SOLICITATION DOCUMENT, means an invitation to bid or request for proposal or request for quotes.

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

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

SUBSTANTIAL COMPLETION, means the date when 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 J.4.2.

SUBSTITUTIONS, means items that in function, performance, reliability, quality, and general configuration are the same or better than the product(s) specified. Approval of any substitute item shall be solely determined by Owner's Authorized Representative. The decision of 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. 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 that 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 Supplemental General Conditions;
 3. The Portland Community College Contract for Construction;
 4. These General Conditions;
 5. The Plans and Specifications;
 6. The Solicitation Document and any addenda thereto; and
 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 Owner or Owner's Authorized Representative's interpretation in writing.
- A.3.3 If Contractor finds discrepancies in, or omissions from, the Contract Documents, or if Contractor is in doubt as to their meaning, Contractor shall at once notify Owner or Owner's Authorized Representative. Matters concerning performance under, and interpretation of requirements of, the Contract Documents will be decided by Owner's Authorized Representative, who may delegate that duty in some instances to the Architect/Engineer. Responses to Contractor's requests for interpretation of Contract Documents will be made in writing by Owner's Authorized Representative (or the Architect/Engineer) within any time limits agreed to or otherwise with reasonable promptness. Interpretations and decisions of Owner's Authorized Representative (or Architect/Engineer) will be consistent with the intent of and reasonably inferable from the Contract Documents. Contractor shall not proceed without direction in writing from Owner's Authorized Representative (or Architect/Engineer).
- A.3.4 References to standard specifications, manuals, or codes of any technical society, organization, or association, or to the laws or regulations of any governmental authority, whether such reference be specific or by implication, shall mean the latest standard specification, manual, code, laws, or regulations in effect in the jurisdiction where the project is occurring on the first published date of the Solicitation Document, except as may be otherwise specifically stated.

A.4 EXAMINATION OF PLANS, SPECIFICATIONS, AND SITE

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

A.5 INDEPENDENT CONTRACTOR STATUS

The service or services to be performed under this Contract are those of an independent contractor as defined in ORS 670.600. Contractor represents and warrants that it is not an officer, employee, or agent of 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 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 Contractor from holding another contract with the Federal Government.
- A.7.2 Contractor represents and warrants that Contractor is not an employee of Owner for purposes of performing Work under this Contract.

SECTION B ADMINISTRATION OF THE CONTRACT

B.1 OWNER'S ADMINISTRATION OF THE CONTRACT

- B.1.1 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. Owner's Authorized Representative will act on behalf of 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, Owner's Authorized Representative may rely on the Architect/Engineer or other consultants to perform some or all of these tasks.
- B.1.2 Owner's Authorized Representative will visit the site at intervals appropriate to the stage of Contractor's operations (1) to become generally familiar with and to keep Owner informed about the progress and quality of the portion of the Work completed, (2) to endeavor to guard Owner against defects and deficiencies in the Work, and (3) to determine in general if the Work is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. Owner's Authorized Representative will not make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. 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, Owner and Contractor shall endeavor to communicate with each other through Owner's Authorized Representative or designee about matters arising out of or relating to the Contract. Communications by and with the Architect/Engineer's consultants shall be through the Architect/Engineer. Communications by and with Subcontractors and materials suppliers shall be through Contractor. Communications by and with

separate contractors shall be through Owner's Authorized Representative.

also provide proper facilities and access to their facilities.

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

- B.3.5 Contractor shall furnish Samples of materials for testing by Owner's Authorized Representative and include the cost of the Samples in the Contract Price.

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

B.4 PERMITS

- B.2.1 Contractor shall supervise and direct the Work, using Contractor's best skill and attention. 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, Contractor shall evaluate the job site safety thereof and, except as stated below, shall be fully and solely responsible for the job site safety of such means, methods, techniques, sequences, or procedures.

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

- B.2.2 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.5 COMPLIANCE WITH GOVERNMENT LAWS AND REGULATIONS

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

- 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) Sections 503 and 504 of the Rehabilitation Act of 1973, as amended; (iii) the Health Insurance Portability and Accountability Act of 1996; (iv) the Americans with Disabilities Act of 1990, as amended; (v) ORS Chapter 659A, as amended (vi) all regulations and administrative rules established pursuant to the foregoing laws; and (vii) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules, and regulations.

B.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.5.2 Contractor shall comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules, and regulations, and Contractor shall maintain, in current and valid form, all licenses and certificates required by law, regulation, or this Contract when performing the Work.

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

- B.5.3 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 Oregon Utility Notification Center at (503) 232-1987.

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

- B.5.4 Failure to comply with any or all of the requirements of B.5.1 through B.5.4 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.3.4 Contractor shall furnish adequate facilities, as required, for 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

B.6 SUPERINTENDENCE

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

B.7 INSPECTION

- B.7.1 Owner's Authorized Representative shall have access to the Work at all times.
- B.7.2 Inspection of the Work will be made by Owner's Authorized Representative at its discretion. 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 Owner's Authorized Representative, shall be removed and replaced at Contractor's expense.
- B.7.3 Contractor shall make or obtain at the appropriate time all tests, inspections, and approvals of portions of the Work required by the Contract Documents or by laws, ordinances, rules, regulations, or orders of public authorities having jurisdiction. Unless otherwise provided, Contractor shall make arrangements for such tests, inspections, and approvals with an independent testing laboratory or entity acceptable to 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. Contractor shall give Owner's Authorized Representative timely notice of when and where tests and inspections are to be made so that 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 Contractor and promptly delivered to Owner's Authorized Representative.
- B.7.4 As required by the Contract Documents, Work done or material used without inspection or testing by Owner's Authorized Representative may be ordered removed at Contractor's expense.
- B.7.5 If directed to do so any time before the Work is accepted, Contractor shall uncover portions of the completed Work for inspection. After inspection, 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 Owner's Authorized Representative, the uncovering and restoration shall be done at Contractor's expense. If the Work uncovered is acceptable and was done with sufficient notice to Owner's Authorized Representative, the uncovering and restoration will be paid for as a Change Order.
- B.7.6 If any testing or inspection reveals failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure, including those of repeated procedures and compensation for Owner's Authorized Representative's and

Architect/Engineer's services and expenses, shall be at Contractor's expense.

- B.7.7 When the United States government participates in the cost of the Work, or 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 Contractor through Owner's Authorized Representative.

B.8 ACCESS TO RECORDS

- B.8.1 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 Owner's Authorized Representative access thereto.
- B.8.2 Contractor shall retain and Owner and its duly authorized representatives shall have access to, for a period not less than six (6) years, all Record Documents, financial and accounting records, and other books, documents, papers, and records of Contractor that 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. Owner and/or its agents shall continue to be provided full access to the records during litigation.

B.9 SUBCONTRACTS AND ASSIGNMENT

- B.9.1 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 and the Contract, and to assume toward Contractor all of the obligations and responsibilities that Contractor assumes toward Owner thereunder, unless (1) the same are clearly inapplicable to the subcontract at issue because of legal requirements or industry practices, or (2) specific exceptions are requested by Contractor and approved in writing by Owner. Where appropriate, Contractor shall require each Subcontractor to enter into similar agreements with sub-subcontractors at any level.
- B.9.2 At Owner's request, Contractor shall submit to Owner prior to their execution either Contractor's form of subcontract, or the subcontract to be executed with any particular Subcontractor. If Owner disapproves such form, Contractor shall not execute the form until the matters disapproved are resolved to Owner's satisfaction. Owner's review, comment upon, or approval of any such form shall not relieve Contractor of its obligations under this Agreement or be deemed a waiver of such obligations of Contractor.

B.9.3 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 Owner. No such written approval shall relieve Contractor of any obligations of this Contract, and any transferee shall be considered the agent of 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.10 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 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. 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, Owner's Authorized Representative will establish work priority (including the Work) which generally will be in the sequence that the contracts were awarded.

B.11 OTHER CONTRACTS

In all cases and at any time, Owner has the right to execute other contracts related to or unrelated to the Work of this Contract. Contractor of this Contract will fully cooperate with any and all other contractors without additional cost to Owner in the manner described in section B.10.

B.12 ALLOWANCES

B.12.1 Contractor shall include in the Contract Price all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as Owner may direct.

B.12.2 Unless otherwise provided in the Contract Documents:

- (a) when finally reconciled, allowances shall cover the cost to Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- (b) Contractor's costs for unloading and handling at the site, labor, installation costs, Overhead, profit, and other expenses contemplated for stated allowance amounts shall be included in the Contract Price but not in the allowances;
- (c) whenever costs are more than or less than allowances, the Contract Price shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (i) the difference between actual costs and the allowances under Section B.12.2(a) and (ii) changes in Contractor's costs under Section B.12.2(b);
- (d) Unless Owner requests otherwise, Contractor shall provide to Owner a proposed fixed price for any allowance work prior to its performance.

B.13 SUBMITTALS, SHOP DRAWINGS, PRODUCT DATA, AND SAMPLES

B.13.1 Contractor shall prepare and keep current, for the Architect/Engineer's approval (or for the approval of Owner's Authorized Representative if approval authority has not been delegated to the Architect/Engineer), a schedule and list of submittals which are coordinated with Contractor's construction schedule and allows the Architect/Engineer reasonable time to review submittals. Owner reserves the right to finally approve the schedule and list of submittals. Submittals include, without limitation, Shop Drawings, Product Data, and Samples which are described below:

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

B.13.2 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 Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents. Review of submittals by the Architect/Engineer is not conducted for the purpose of determining the accuracy and completeness of other details, such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, or for approval of safety precautions or, unless otherwise specifically stated by the Architect/Engineer, of any construction means, methods, techniques, sequences, or procedures, all of which remain the responsibility of Contractor as required by the Contract Documents. The Architect/Engineer's review of Contractor's submittals shall not relieve Contractor of its obligations under the Contract Documents. The Architect/Engineer's approval of a specific item shall not indicate approval of an assembly of which the item is a component. Informational submittals upon which the Architect/Engineer is not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Architect/Engineer without action.

B.13.3 Contractor shall review for compliance with the Contract Documents, approve and submit to the Architect/Engineer Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of Owner or of separate

contractors. Submittals that are not marked as reviewed for compliance with the Contract Documents and approved by Contractor may be returned by the Architect/Engineer without action.

- B.13.4 By approving and submitting Shop Drawings, Product Data, Samples, and similar submittals, Contractor represents that Contractor has determined and verified materials, field measurements, and field construction criteria related thereto, or will do so, and has checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.
- B.13.5 Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples, or similar submittals until the respective submittal has been approved by the Architect/Engineer.
- B.13.6 The Work shall be in accordance with approved submittals except that Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Architect/Engineer's review or approval of Shop Drawings, Product Data, Samples, or similar submittals unless Contractor has specifically informed the Architect/Engineer in writing of such deviation at the time of submittal and (i) the Architect/Engineer has given written approval to the specific deviation as a minor change in the Work, or (ii) a Change Order has been executed by Owner authorizing the deviation. Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples, or similar submittals by the Architect/Engineer's review or approval thereof.
- B.13.7 In the event that Owner elects not to have the obligations and duties described under this Section B.13 performed by the Architect/Engineer, or in the event no Architect/Engineer is employed by Owner on the project, all obligations and duties assigned to the Architect/Engineer hereunder shall be performed by Owner's Authorized Representative.

B.14 SUBSTITUTIONS

Contractor may make Substitutions only with the consent of Owner, after evaluation by Owner's Authorized Representative and only in accordance with a Change Order. Substitutions shall be subject to the requirements of the bid documents. By making requests for Substitutions, Contractor represents that Contractor has personally investigated the proposed substitute product; represents that Contractor will provide the same warranty for the Substitution that 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.15 USE OF PLANS AND SPECIFICATIONS

Plans, Specifications, and related Contract Documents furnished to Contractor by Owner or Owner's Architect/Engineer shall be used solely for the performance of the Work under this Contract. Contractor and its Subcontractors and suppliers are authorized to use and

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

B.16 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 Owner's appropriation or limitation. Contractor understands and agrees that, to the extent that sufficient funds are not available and authorized for expenditure to finance the cost of this Contract, Owner's payment of amounts under this Contract attributable to Services performed after the last day of the current biennium is contingent on Owner receiving from Owner's Board of Directors appropriations, limitations, or other expenditure authority sufficient to allow Owner, in the exercise of its reasonable administrative discretion, to continue to make payments under this Contract.

SECTION C CHANGES IN THE WORK

C.1 CHANGES IN WORK

- C.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 Owner's Authorized Representative, and then only in a manner consistent with the Change Order provisions of this Section C.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.
- C.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, Owner's Authorized Representative may at any time, without notice to the sureties and without impairing the Contract, require changes consistent with this Section C.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; and
 - (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 I, Owner reserves the right to unilaterally impose a deductive change and to self-perform such Work, for which the provisions of B.10 (Owner's Right to Do Work) shall then apply.

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

- C.1.3 Owner and Contractor agree that Change Order Work shall be administered and compensated according to the following:
- (a) *Unit pricing* may be utilized at 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 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 to in writing between the parties to the Contract, and shall be established before the Work is done whenever feasible. The markups set forth in C.1.3(c) shall be utilized by the parties as a guide in establishing fixed pricing, and will not be exceeded by Owner without adequate justification. Cost and price data relating to Change Orders shall be supplied by Contractor to Owner upon request, but Owner shall be under no obligation to make such requests.
 - (c) In the event that unit pricing and fixed pricing are not utilized, then Change Order Work shall be performed on a *cost reimbursement* basis for Direct Costs. Such Work shall be compensated on the basis of the actual, reasonable, and allowable cost of labor, equipment, and material furnished on the Work performed. In addition, the following markups shall be added to Contractor's or Subcontractor's Direct Costs as full compensation for profit, Overhead, and other indirect costs for Work directly performed with Contractor's or Subcontractor's own forces:

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

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

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

Payments made to Contractor shall be complete compensation for Overhead, profit, and all costs incurred by Contractor or by other forces furnished by Contractor, including Subcontractors, for Change Order Work. Owner may establish a maximum cost for Change Order Work under this Section C.1.3(c), which shall not be exceeded for reimbursement

without additional written authorization from Owner. Contractor shall not be required to complete such Change Order Work without additional authorization.

- C.1.4 Any necessary adjustment of Contract Time that may be required as a result of a Change Order must be agreed to by the parties before the start of the Change Order Work unless Owner's Authorized Representative authorizes Contractor to start the Work before agreement on Contract Time adjustment. Contractor shall submit any request for additional compensation (and additional Contract Time if Contractor was authorized to start work before an adjustment of Contract Time was approved) as soon as possible but no later than thirty (30) Days after receipt of the Change Order. If Contractor's request for additional compensation or adjustment of Contract Time is not made within the thirty (30) Day time limit, Contractor's requests pertaining to that Change Order are barred. The thirty (30) Day time limit for making requests shall not be extended for any reason, including without limitation Contractor's claimed inability to determine the amount of additional compensation or adjustment of Contract Time, unless an extension is granted in writing by Owner. If Owner's Authorized Representative denies Contractor's request for additional compensation or adjustment of Contract Time, Contractor may proceed to file a Claim under Section C.3, Claims Review Process. No other reimbursement, compensation, or payment will be made, except as provided in Section C.1.5 for impact claims.
- C.1.5 If any Change Order Work under Section C.1.3 causes an increase or decrease in Contractor's cost of, or the Contract Time required for the performance of, any other part of the Work under this Contract, Contractor must submit a written request to Owner's Authorized Representative, setting forth the nature and specific extent of the request, including all time and cost impacts against the Contract as soon as possible, but no later than thirty (30) Days after receipt of the Change Order by Contractor.

The thirty (30) Day time limit applies to claims of Subcontractors, suppliers, or manufacturers 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 Contractor in writing with full analysis and justification for the compensation and additional Contract Time requested. Contractor will analyze and evaluate the merits of the requests submitted by Subcontractors, suppliers, and manufacturers to Contractor before 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 Owner's Authorized Representative. Failure of Subcontractors, suppliers, manufacturers, or others to submit their requests to Contractor for inclusion with Contractor's requests submitted to Owner's Authorized Representative within the time period and by the means described in this section shall constitute a waiver of these Subcontractor claims. Owner's Authorized Representative and Owner will not consider direct

requests or claims from Subcontractors, suppliers, manufacturers, or others not a party to this Contract. The consideration of such requests and claims under this section does not give any person who is not a party to the Contract the right to bring a claim against Owner, whether in this claims process, in litigation, or in any dispute resolution process.

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

- C.1.6 No request or Claim by 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.
- C.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. Contractor is notified that numerous changes may be required and that there will be no compensation made to 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.

C.2 DELAYS

- C.2.1 Delays in construction include "Avoidable Delays," which are defined in Section C.2.1.1, and "Unavoidable Delays," which are defined in Section C.2.1.2. The effect of Avoidable Delays is described in Section C.2.2 and the effect of Unavoidable Delays is described in Section C.2.3.
- C.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 Contractor or its Subcontractors.
 - (b) Affect only a portion of the Work and do not necessarily prevent or delay the prosecution 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 Owner that do

not necessarily prevent the completion of the whole Work within the Contract Time.

- C.2.1.2 Unavoidable Delays include delays other than Avoidable Delays that are:
- (a) Caused by any actions of Owner, Owner's Authorized Representative, or any other employee or agent of Owner, or by separate contractor employed by Owner.
 - (b) Caused by any site conditions that differ materially from what was represented in the Contract Documents or from conditions that would normally be expected to exist and be inherent to the construction activities defined in the Contract Documents. Contractor shall notify Owner's Authorized Representative immediately of differing site conditions before the area has been disturbed. 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 that could reasonably be expected in execution of this particular Contract. If Contractor and 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 C.1.5 for Change Order Work. If 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 C.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 Contractor or its Subcontractors.
 - (d) Caused by adverse weather conditions. Any adverse weather conditions must be substantiated by documentary evidence that weather conditions were abnormal for the specific time period claimed, could not have been anticipated by Contractor, and adversely impacted the project in a manner that could not be avoided by rescheduling the Work or by implementing measures to protect against the weather so that the Work could proceed. A rain, windstorm, high water, or other natural phenomenon for the specific locality of the Work, which might reasonably have been anticipated from the previous 10-year historical records of the general locality of the Work, shall not be construed as abnormal. The parties agree that rainfall greater than the following levels cannot be reasonably anticipated:
 - (i) Daily rainfall equal to, or greater than, 0.50 inch during a month when the monthly rainfall exceeds the normal monthly average by twenty-five percent (25%) or more.
 - (ii) daily rainfall equal to, or greater than, 0.75 inch at any time.

The Office of the Environmental Data Service of the National Oceanic and Atmospheric Administration of the U.S. Department of Commerce nearest the

project site shall be considered the official agency of record for weather information.

- C.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.
- C.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 C.2.1.2 (a) and (b).
 - (b) Contractor may be entitled to additional Contract Time for Unavoidable Delays described in Section C.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 C.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 C.2.1.2 (b), Contractor shall submit a written notification of the delay to Owner's Authorized Representative within two (2) Days of the occurrence of the cause of the delay. This written notification shall state the cause of the potential delay, the project components impacted by the delay, and the anticipated additional Contract Time or the additional compensation, or both, as applicable, resulting from the delay. Within 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, Contractor shall submit to Owner's Authorized Representative a complete and detailed request for additional compensation or additional Contract Time, or both, as applicable, resulting from the delay. If Contractor does not concur with the decision of Owner's Authorized Representative and/or believes that it is entitled to additional compensation, or additional Contract Time, or both, as applicable, Contractor may proceed to file a Claim under Section C.3, Claims Review Process. If Contractor does not timely submit the notices required under this Section C.2.3, then unless otherwise prohibited by law, Contractor's Claim shall be barred.

C.3 CLAIMS REVIEW PROCESS

- C.3.1 All Contractor Claims shall be referred to Owner's Authorized Representative for review. Contractor's Claims, including Claims for additional compensation or additional Contract Time, shall be submitted in writing by Contractor to Owner's Authorized Representative within five (5) Days after a denial of Contractor's initial request for an adjustment of Contract terms, payment of money, extension of Contract Time, or other relief, provided that such initial request has been submitted in accordance with the requirements and within the time limits established in these General Conditions. Within thirty (30) Days after the initial Claim, Contractor shall submit to Owner's Authorized Representative a complete and detailed description of the Claim (the "Detailed Notice") that includes all information required by Section C.3.2. Unless the Claim is made in accordance with these time requirements, it shall be waived.

- C.3.2 The Detailed Notice of a 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 that support or allow the Claim, reference to or copies of any documents that 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, Contractor will analyze and evaluate the merits of the Subcontractor claim prior to forwarding it and that analysis and evaluation to Owner's Authorized Representative. Owner's Authorized Representative and Owner will not consider direct claims from Subcontractors, suppliers, manufacturers, or others not a party to this Contract. Contractor agrees that it will make no agreement, covenant, or assignment, nor will it commit any other act that will permit or assist any Subcontractor, supplier, manufacturer, or other party to directly or indirectly make a claim against Owner.

- C.3.3 Owner's Authorized Representative will review all Claims and take one or more of the following preliminary actions within ten (10) Days of receipt of the Detailed Notice of a Claim: (1) request additional supporting information from Contractor; (2) inform 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.

- C.3.4 Owner's Authorized Representative's decision shall be final and binding on Contractor unless appealed by written notice to Owner within fifteen (15) Days of receipt of the decision. Contractor must present written documentation supporting the Claim within fifteen (15) Days of the notice of appeal. After receiving the appeal documentation, Owner shall review the materials and render a decision within thirty (30) Days after receiving the appeal documents.

- C.3.5 The decision of Owner shall be final and binding unless Contractor delivers to Owner its requests for mediation, which shall be a nonbinding process, within fifteen (15) Days of the date of Owner's decision. The mediation process will be considered to have commenced as of the date 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 request for arbitration must be filed within this sixty (60) Day period in order to preserve a claim, the parties agree that notwithstanding the filing, they shall proceed diligently with the mediation to its conclusion before actively prosecuting the arbitration.

- C.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 Owner and 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.

C.3.7 Unless otherwise directed by Owner's Authorized Representative, 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 Owner's Authorized Representative, Contractor shall continue to diligently pursue the Work as identified in the Contract Documents. In no case is Contractor justified or allowed to cease Work without a written stop-work order from Owner or Owner's Authorized Representative.

SECTION D PAYMENTS

D.1 SCHEDULE OF VALUES

Contractor shall submit, at least ten (10) Days prior to submission of its first application for progress payment, a schedule of values ("Schedule of Values") for the contracted Work. This Schedule of Values will provide a breakdown of values for the contracted Work and will be the basis for progress payments. The breakdown will demonstrate reasonable, identifiable, and measurable components of the Work. Unless objected to by Owner's Authorized Representative, this Schedule of Values shall be used as the basis for reviewing Contractor's applications for payment. If objected to by Owner's Authorized Representative, Contractor shall revise the Schedule of Values and resubmit the same for approval of Owner's Authorized Representative.

D.2 APPLICATIONS FOR PAYMENT

D.2.1 Owner shall make monthly progress payments on the Contract as Work progresses. Payments shall be based on estimates of Work completed and the Schedule of Values. All payments shall be approved by Owner's Authorized Representative. A progress payment shall not be considered acceptance or approval of any Work or waiver of any defects therein. Owner shall pay to Contractor interest on the progress payment, not including retainage, due Contractor. The interest shall commence thirty (30) Days after the receipt of invoice ("application for payment") from Contractor or fifteen (15) Days after the payment is approved by Owner's Authorized Representative, whichever is earlier. 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 Owner, whichever is earlier, 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 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 Contractor within seven (7) Days of being notified by 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 Owner and Contractor.

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

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

Signed: _____

D.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) Contractor shall submit applications for payment showing the quantity and cost of the material stored.
- (c) The material shall be stored in a bonded warehouse, and Owner's Authorized Representative shall be granted the right to access the material for the purpose of removal or inspection at any time during the Contract Period.
- (d) Contractor shall name Owner as co-insured on the insurance policy covering the full value of the property while in the care and custody of Contractor until it is installed. A certificate noting this coverage shall be issued to 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 Contractor.

- (f) Within sixty (60) Days of the application for payment, 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.
- D.2.4 Owner reserves the right to withhold all or part of a payment, or may nullify in whole or in part any payment previously made, to such extent as may be necessary in Owner's opinion to protect 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 Owner is provided by Contractor;
 - (c) failure of 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;
 - (d) reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Price;
 - (e) damage to 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.
- D.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 D.4. Pending final determination of cost to 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 Owner pursuant to Section D.2.3, suitably stored off the site at a location agreed on in writing), less retainage as provided in Section D.4;

- (c) Subtract the aggregate of previous payments made by Owner; and
- (d) Subtract any amounts for which Owner's Authorized Representative has withheld or nullified payment as provided in the Contract Documents.

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

D.2.7 Contractor warrants to Owner that title to all Work covered by an application for payment will pass to Owner no later than the time of payment. Contractor further warrants that upon submittal of an application for payment all Work for which payments are received from Owner shall be free and clear of liens, claims, security interests, or encumbrances in favor of 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.

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

D.3 DUAL PAYMENT SOURCES

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

D.4 RETAINAGE

D.4.1 Retainage shall be withheld and released in accordance with ORS 279C.550 to 279C.580:

D.4.1.1 Owner may reserve as retainage from any progress payment an amount not to exceed five percent (5%) of the payment. As Work progresses, Owner may reduce the amount of the retainage and may eliminate retainage on any remaining monthly Contract payments after 50 percent (50%) of the Work under the Contract is completed if, in Owner's opinion, such Work is progressing satisfactorily. Elimination or reduction of retainage shall be allowed only upon written application by Contractor, which application shall include written approval of Contractor's surety; except that when the Work is ninety-seven and one-half percent (97.5%) completed, Owner may, at its discretion and without application by Contractor, reduce the retained amount to one hundred percent (100%) of the value of the remaining Work. Upon receipt of written application by Contractor, Owner shall respond in writing within a reasonable time.

- D.4.1.2 In accordance with the provisions of ORS 279C.560 and any applicable administrative rules, Contractor may request in writing:
- (a) to be paid amounts that 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 Contractor; or
 - (c) that 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 Owner has accepted 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 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.

D.4.1.3 The retainage held by Owner shall be included in and paid to Contractor as part of the final payment of the Contract Price. Owner shall pay to Contractor interest at the rate of one and one-half percent (1.5%) per month on the final payment due Contractor, interest to commence thirty (30) Days after the Work under the Contract has been completed and accepted and to run until the date Contractor shall notify Owner in writing when the Contractor considers the Work complete and Owner shall, within fifteen (15) Days after receiving the written notice, either accept the Work or notify Contractor of Work yet to be performed on the Contract. If Owner does not within the time allowed notify 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.

D.4.1.5 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 (5%) of the payment, and such retainage withheld from Subcontractors and suppliers shall be subject to the same terms and conditions stated in Subsection D.4 as apply to Owner's retainage from any progress payment due to Contractor.

D.5.1 Upon completion of all the Work under this Contract, Contractor shall notify Owner's Authorized Representative, in writing, that Contractor has completed Contractor's part of the Contract and shall request final payment. Upon receipt of such notice, Owner's Authorized Representative will inspect the Work, and if acceptable, submit to Owner a recommendation as to acceptance of the completed Work and as to the final estimate of the amount due 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 Owner and compliance by Contractor with provisions in Section J.3, Affidavit/Release of Liens and Claims, and other provisions as may be applicable, Owner shall pay to Contractor all monies due under the provisions of these Contract Documents.

D.5.2 Neither final payment nor any remaining retained percentage shall become due until Contractor submits to Owner's Authorized Representative (1) a notarized affidavit/release of liens and claims in a form satisfactory to Owner that states that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which Owner or 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 Owner, (3) a written statement that 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 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 Owner. If a Subcontractor refuses to furnish a release or waiver required by Owner, Contractor may furnish a bond satisfactory to Owner to indemnify Owner against such lien. If such lien remains unsatisfied after payments are made, Contractor shall refund to Owner all money that Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorney fees.

D.5.3 Acceptance of final payment by Contractor, a Subcontractor, or materials 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 E JOB SITE CONDITIONS

E.1 USE OF PREMISES

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

D.5 FINAL PAYMENT

E.2 PROTECTION OF WORKERS, PROPERTY, AND THE PUBLIC

- E.2.1 Contractor shall maintain continuous and adequate protection of all the Work from damage, and shall protect Owner's Authorized Representative and Owner's workers and property from injury or loss arising in connection with this Contract. Contractor shall remedy acceptably to 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 Owner. Contractor shall adequately protect adjacent property as provided by law and the Contract Documents.
- E.2.2 Contractor shall take all necessary precautions for the safety of all personnel on the job site, and shall comply with the Contract Documents and all applicable provisions of federal, state, and municipal safety laws and building codes to prevent accidents or injury to persons on, about, or adjacent to the premises where the Work is being performed. Contractor shall erect and properly maintain at all times, as required by the conditions and progress of the Work, all necessary safeguards for protection of workers and the public against any hazards created by construction. Contractor shall designate a responsible employee or associate on the Work site, whose duty shall be the prevention of accidents. The name and position of the person designated shall be reported to Owner's Authorized Representative. Owner's Authorized Representative has no responsibility for Work site safety. Work site safety is the responsibility of Contractor.
- E.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 Contractor damages any property, Contractor shall at once notify the property owner and make, or arrange to make, full restitution. Contractor shall report, immediately in writing, to Owner's Authorized Representative all pertinent facts relating to such property damage and the ultimate disposition of the claim for damage.
- E.2.4 Contractor is responsible for protection of adjacent work areas, including impacts brought about by activities, equipment, labor, utilities, and materials on the site.
- E.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.
- E.2.6 In an emergency affecting the safety of life or of the Work or of adjoining property, Contractor, without special instruction or authorization from Owner's Authorized Representative, shall act reasonably to prevent threatened loss or injury, and shall so act, without appeal, if instructed by Owner's Authorized Representative. Any compensation claimed by Contractor on account of emergency work shall be determined in accordance with Section D.

E.3 CUTTING AND PATCHING

- E.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.
- E.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.

E.4 CLEANING UP

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

E.5 ENVIRONMENTAL CONTAMINATION

- E.5.1 Contractor will be held responsible for and shall indemnify, defend (with counsel of Owner's choice), and hold harmless Owner from and against any costs, expenses, damages, claims, and causes of action (including attorney fees), or any of them, resulting from all spills, releases, discharges, leaks, and disposal of environmental pollution, including storage, transportation, and handling during the performance of the Contract that 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 E.5.1 shall limit Contractor's responsibility for obtaining insurance coverages required under the Contract, and Contractor shall take no action that would void or impair such coverages.
- E.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 Owner and be performed by properly qualified personnel.
- E.5.1.2 Contractor shall obtain Owner's written consent before bringing onto the Work site any (i) environmental pollutants, or (ii) hazardous substances or materials, as the same or reasonably similar terms are used in any applicable federal, state, or local statutes, rules, or ordinances. Notwithstanding such written consent from Owner, Contractor, at all times, shall:
- (a) properly handle, use, and dispose of all environmental pollutants and hazardous substances or materials brought onto the Work site in accordance with all applicable federal, state, or local statutes, rules, or ordinances;
 - (b) be responsible for any and all spills, releases, discharges, or leaks of (or from) environmental

pollutants or hazardous substances or materials that Contractor has brought onto the Work site; and

- (c) promptly clean up, without cost to Owner, such spills, releases, discharges, or leaks to Owner's satisfaction and in compliance with all applicable federal, state, or local statutes, rules or ordinances.

E.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 108 for all products addressed therein. Upon discovery, regardless of quantity, Contractor must telephonically report all releases to Owner. A written follow-up report shall be submitted to Owner within 48 hours of the telephonic report. Such written report shall contain, at 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 officials other than Owner;
- (f) Description of cleanup procedures employed or to be employed at the site, including disposal location of spill residue; and
- (g) Personnel injuries, if any, resulting from, or aggravated by, the release.

E.6 ENVIRONMENTAL CLEANUP

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

E.6.2 Upon notification 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).

E.7 FORCE MAJEURE

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

SECTION F INDEMNITY

F.1 RESPONSIBILITY FOR DAMAGES/INDEMNITY

F.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.

F.1.2 To the fullest extent permitted by law, Contractor shall indemnify, defend (with counsel approved by Owner) and hold harmless Owner, Owner's Authorized Representative, Architect/Engineer, Architect/Engineer's consultants, and their respective officers, directors, agents, employees, partners, members, stockholders, and affiliated companies (collectively "Indemnitees") from and against all liabilities, damages, losses, claims, expenses (including reasonable attorney fees), demands, and actions of any nature whatsoever that arise out of, result from, or are related to (a) any damage, injury, loss, expense, inconvenience, or delay, (b) any accident or occurrence that 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 before the time the Work is fully completed in all respects, (c) any failure of Contractor to observe or perform any duty or obligation under the Contract Documents that is to be observed or performed by Contractor, or any breach of any agreement, representation, or warranty of Contractor contained in the Contract Documents or in any subcontract, (d) the negligent acts or omissions of 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 that would otherwise exist as to a party or person described in this Section F.1.2.

F.1.3 In claims against any person or entity indemnified under this Section F.1.2 by an employee of Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under Section F.1.2 shall not be limited by a limitation on amount or

type of damages, compensation, or benefits payable by or for Contractor or a Subcontractor under Workers' Compensation acts, disability benefit acts, or other employee benefit acts.

SECTION G SCHEDULE OF WORK

G.1 CONTRACT PERIOD

- G.1.1 **Time is of the essence on this Contract.**
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.
- G.1.2 Unless specifically extended by Change Order, all Work shall be complete by the date contained in the Contract Documents. Owner shall have the right to accelerate the completion date of the Work, which may require the use of overtime. Such accelerated Work schedule shall be an acceleration in performance of Work under Section C.1.2 (f) and shall be subject to the Change Order process of Section C.1.
- G.1.3 Owner shall not waive any rights under the Contract by permitting Contractor to continue or complete the Work or any part of the Work after the date described in Section G.1.2 above.

G.2 SCHEDULE

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

G.3 PARTIAL OCCUPANCY OR USE

- G.3.1 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

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 Contractor to partial occupancy or use shall not be unreasonably withheld. Immediately before such partial occupancy or use, 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 H CORRECTION OF WORK

H.1 CORRECTION OF WORK BEFORE FINAL PAYMENT

Contractor warrants to Owner that materials and equipment furnished under the Contract will be of good quality and new unless otherwise required or permitted by the Contract Documents, that the Work will be free from defects, and that the Work will conform to the requirements of the Contract Documents. Work failing to conform to these requirements shall be deemed defective. Contractor shall promptly remove from the premises and replace all defective materials and equipment as determined by Owner's Authorized Representative, whether incorporated in the Work or not. Removal and replacement shall be without loss or expense to Owner, and Contractor shall bear the cost of repairing all Work destroyed or damaged by such removal or replacement. Contractor shall be allowed a period of no longer than sixty (60) Days for completion of defective (Punchlist) work, unless otherwise agreed. At the end of that period, or earlier if requested by Contractor, Owner shall arrange for inspection of the Work by the Architect/Engineer. Should the Work not be complete, and all corrections made, the costs for all subsequent re-inspections shall be borne by Contractor. If Contractor fails to complete the Punchlist work within the above time period, 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.

H.2 WARRANTY WORK

- H.2.1 Neither the final certificate of payment nor any provision of the Contract Documents shall relieve Contractor from responsibility for defective Work and, unless a longer period is specified, Contractor shall correct all defects that appear in the Work within a period of one year from the date of issuance of the written notice of substantial completion by Owner except for latent defects, which will be remedied by Contractor at any time they become apparent.

Owner shall give Contractor notice of defects with reasonable promptness. Contractor shall perform such warranty work within a reasonable time after Owner's demand. If Contractor fails to complete the warranty work within such period as Owner determines reasonable, or at any time in the event of warranty work consisting of emergency repairs, 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.

- H.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.
- H.2.3 In addition to Contractor's warranty, manufacturer's warranties shall pass to Owner and shall not take effect until affected Work has been accepted in writing by Owner's Authorized Representative.
- H.2.4 The one-year period for correction of Work shall be extended with respect to portions of Work performed after Substantial Completion by the period of time between Substantial Completion and the actual performance of the Work, and shall be extended by corrective Work performed by Contractor pursuant to this Section H.2, as to the Work corrected. Contractor shall remove from the site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by Contractor nor accepted by Owner.
- H.2.5 Nothing contained in this Section H.2 shall be construed to establish a period of limitation with respect to other obligations that Contractor might have under the Contract Documents. Establishment of the period for correction of Work as described in this Section H.2 relates only to the specific obligation of 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 Contractor's liability with respect to Contractor's obligations other than specifically to correct the Work.
- H.2.6 If Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, 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 I

SUSPENSION AND/OR TERMINATION OF THE WORK

I.1 OWNER'S RIGHT TO SUSPEND THE WORK

- I.1.1 Owner and/or Owner's Authorized Representative has the authority to suspend portions or all of the Work due to the following causes:
- (a) Failure of Contractor to correct unsafe conditions;
 - (b) Failure of Contractor to carry out any provision of the Contract;
 - (c) Failure of Contractor to carry out orders;
 - (d) Conditions, in the opinion of Owner's Authorized Representative, that are unsuitable for performing the Work;
 - (e) Time required to investigate differing site conditions;

- (f) Any reason considered to be in the public interest.

- I.1.2 Owner shall notify Contractor and its surety in writing of the effective date and time of the suspension and shall notify Contractor and its surety in writing to resume Work.

I.2 CONTRACTOR'S RESPONSIBILITIES

- I.2.1 During the period of the suspension, Contractor is responsible to continue maintenance at the project just as if the Work were in progress. This includes, but is not limited to, protection of completed Work, maintenance of access, protection of stored materials, temporary facilities, and cleanup.
- I.2.2 When the Work is recommenced after the suspension, Contractor shall replace or renew any Work damaged during the suspension, remove any materials or facilities used as part of temporary maintenance, and complete the project in every respect as though its prosecution had been continuous and without suspension.

I.3 COMPENSATION FOR SUSPENSION

- I.3.1 Depending on the reason for suspension of the Work, Contractor or Owner may be due compensation by the other party. If the suspension was required due to acts or omissions of Contractor, Owner may assess Contractor actual costs of the suspension in terms of administration, remedial work by 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 Owner, Contractor shall be due compensation which shall be defined using Section C, Changes in Work. If the suspension was required through no fault of Contractor or Owner, neither party owes the other for the impact.

I.4 OWNER'S RIGHT TO TERMINATE CONTRACT

- I.4.1 Owner may, without prejudice to any other right or remedy, and after giving Contractor seven (7) Days' written notice and an opportunity to cure, terminate the Contract in whole or in part under the following conditions:
- (a) If Contractor should voluntarily or involuntarily, seek protection under the United States Bankruptcy Code and Contractor as debtor-in-possession or the Trustee for the estate fails to assume the Contract within a reasonable time;
 - (b) If Contractor should make a general assignment for the benefit of Contractor's creditors;
 - (c) If a receiver should be appointed on account of Contractor's insolvency;
 - (d) If Contractor should repeatedly refuse or fail to supply an adequate number of skilled workers or proper materials to carry on the Work as required by the Contract Documents, or otherwise fail to perform the Work in a timely manner;
 - (e) If Contractor should repeatedly fail to make prompt payment to Subcontractors or for material or labor, or should disregard laws, ordinances, or the instructions of Owner or its Authorized Representative; or

- (f) If Contractor is otherwise in material breach of any part of the Contract.

- I.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, Contractor shall not be entitled to receive further payment until the Work is completed. If Owner's cost of finishing the Work exceeds the unpaid balance of the Contract Price, Contractor shall pay the difference to Owner.

I.5 TERMINATION FOR CONVENIENCE

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

I.6 ACTION UPON TERMINATION

- I.6.1 Upon receiving a notice of termination, and except as directed otherwise by 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 Owner, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts and orders.
- I.6.2 As directed by Owner, Contractor shall upon termination transfer title and deliver to Owner all Record Documents, information, and other property that, if the Contract had been completed, would have been required to be furnished to Owner.

SECTION J CONTRACT CLOSE-OUT

J.1 RECORD DOCUMENTS

As a condition of final payment (refer also to Section D.5), Contractor shall comply with the following: Contractor shall provide Record Documents of the entire project to Owner's Authorized Representative. Record Documents shall depict the project as constructed and shall reflect each and every change, modification, and deletion made during the construction. Record Documents are part of the Work and shall be provided before Owner's issuance of final payment. Record Documents include all modifications to the Contract Documents unless otherwise directed.

J.2 OPERATION AND MAINTENANCE MANUALS

As part of the Work, Contractor shall submit two completed operation and maintenance manuals ("O & M Manuals") for review by Owner's Authorized Representative

before submission of any pay request for more than seventy-five percent (75%) of the Work. No payments beyond seventy-five percent (75%) will be made by 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, installers, and suppliers; manufacturer's printed data; record and shop drawings; schematic diagrams of systems; and appropriate equipment indices, warranties, and bonds. Owner's Authorized Representative shall review and return one O & M Manual for any modifications or additions required. Before submission of its final pay request, Contractor shall deliver three (3) complete and approved sets of O & M Manuals to Owner's Authorized Representative.

J.3 AFFIDAVIT/RELEASE OF LIENS AND CLAIMS

As a condition of final payment, Contractor shall submit to Owner's Authorized Representative a notarized affidavit/release of liens and claims form, in a form satisfactory to Owner, stating 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 Contractor's knowledge, there are no claims of any kind outstanding against the project. Contractor shall indemnify, defend (with counsel of Owner's choice), and hold harmless Owner from all claims for labor and materials furnished under this Contract. Contractor shall furnish complete and valid releases or waivers, satisfactory to Owner, of all liens arising out of or filed in connection with the Work.

J.4 COMPLETION NOTICES

- J.4.1 Contractor shall provide Owner notice of both Substantial and Final Completion. The notice of Substantial Completion shall state the date of Substantial Completion, the responsibilities of Owner and Contractor for security, maintenance, heat, utilities, damage to the Work, and insurance, and the time within which Contractor shall finish all items on the Punchlist accompanying the notice. Both completion notices must be signed by Contractor and Owner to be valid. Owner shall provide the final signature on the notices. The notices shall take effect on the date they are signed by Owner.
- J.4.2 Substantial Completion of a facility with operating systems (e.g., mechanical, electrical, and 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 Owner's Authorized Representative. All equipment contained in the Work, plus all other components necessary to enable Owner to operate the facility in the manner that was intended, shall be complete on the Substantial Completion date. Contractor may request that a Punchlist be prepared by Owner's Authorized Representative with submission of the request for the Substantial Completion notice.

J.5 TRAINING

As part of the Work, and before submission of the request for final payment, Contractor shall schedule with Owner's Authorized Representative training sessions for all equipment and systems, as required in the individual specifications sections. Contractor shall schedule training sessions at least two weeks in advance of the date of training to allow Owner's personnel adequate notice.

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

J.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 Owner's Authorized Representative.

J.7 ENVIRONMENTAL CLEANUP

As part of the Final Completion notice, or as a separate written notice submitted with or before the notice of Final Completion, Contractor shall notify Owner that all environmental pollution cleanup that 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 Final Completion notice shall reaffirm the indemnification given under Section F.1 above.

J.8 CERTIFICATE OF OCCUPANCY

Contractor shall not be granted Final Completion or receive final payment if 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.

J.9 OTHER CONTRACTOR RESPONSIBILITIES

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

J.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.