

**SCHOOL DISTRICT NO. 1J, MULTNOMAH COUNTY, OREGON  
(PORTLAND PUBLIC SCHOOLS)**

**CONSTRUCTION CONTRACT  
GENERAL CONDITIONS**

**August 2016**

**1. General Provisions.**

- a. Business Days. Business days shall mean every day except Saturday, Sunday, and the eleven legal holidays recognized for employees of Portland Public Schools.
- b. Contract Documents. The "Contract Documents" are enumerated in the Construction Contract between District and Contractor ("Contract") and consist of the Contract, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, additions or deletions to, material changes in, or general interest explanations of a Solicitation Document ("Addenda") (other than Addenda relating to bidding requirements) issued prior to the bid, other documents listed in the Contract, and Modifications issued after execution of the Contract. The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all. Performance by Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.
- c. Contract Schedule. The "Contract Schedule" is the graphical representation of the practical plan for carrying out the Work and completing the Work within the Contract Time as set forth in the Contract Documents. The Contract Schedule provides a list of intended events and times to complete each event as set forth in the Contract Documents.
- d. Days. Days are calendar days, including weekdays, weekends and holidays, unless otherwise specified.
- e. Drawings. The "Drawings" are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules, and diagrams.
- f. Three Week Look Ahead Schedule
  1. Each week the Contractor shall prepare and present an updated schedule showing the planned activities for the next three weeks and one week prior. The schedule shall be coordinated with the master schedule and accurately portray activities completed and activities planned for the upcoming weeks. Unless otherwise directed by the Owner, the Contractor shall present this schedule at a weekly meeting.
  2. Provide copies to the participants at the time of the weekly Progress Meeting. Format shall be 11" by 17" or as necessary to be easily legible.
- g. Modification. A "Modification" is
  1. a written amendment to this Contract signed by both parties;
  2. a Change Order;
  3. a Construction Change Directive; or
- h. Organization of Drawings and Specifications. "Organization of Drawings and Specifications" into divisions, sections, articles, or otherwise arranged will not control Contractor in dividing the Work among subcontractors or in establishing the extent of Work to be performed by any trade subcontractor.
- i. Project. The "Project" is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by District and by separate Contractors.
- j. Project Site. The "Project Site" is the property upon which the Project lies and District's property that surrounds the Project, extending to the District's property boundary.

- k. Specifications. The “Specifications” are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards, and workmanship for the Work and performance of related services.

## **2. District’s Responsibilities.**

- a. Authorized Representative. District shall designate a person in writing to be the authorized representative with express authority to bind and communicate on behalf of District with respect to all matters requiring District’s approval or authorization (“District Representative”). The terms “District” and “Owner” include the District Representative.
- b. Contract Administration. District shall provide contract administrative services for the Project through District’s authorized representative. The District Representative may engage and delegate authority to such additional staff and professional and technical consultants as District deems necessary to assist in perform its administrative tasks. Contractor shall direct all Project communications to District and in accordance with the Contract Documents, or as District directs in writing.
  - 1. District may engage professional architects or engineers to assist District during construction of the Project to interpret technical contract provisions and to determine the amount, quality, acceptability, and fitness of the Work. Such architects or engineers will be authorized to act on behalf of District only to the extent expressly provided in the Contract Documents or as District otherwise directs in writing.
  - 2. District may engage a consulting construction manager to provide Project administrative services on District’s behalf. Such construction manager will be authorized to act on behalf of District to the extent expressly provided in the Contract Documents or as District otherwise directs in writing.
  - 3. District may retain certain project inspectors to monitor compliance with Drawings and Specifications for the Project, as well as applicable codes and ordinances. Such project inspectors will be authorized to act on behalf of District to the extent expressly provided in the Contract Documents or as District otherwise directs.
- c. Access to the Work. District and its designated representatives shall have free access to the Work at all times. Contractor shall not carry on Work except with the knowledge of District and its designated representatives. District may require special inspection or testing of any portion of the Work, whether it has been fabricated, installed, or fully completed. Inspection or observation of Work shall not relieve Contractor from any obligation to fulfill the Contract.
- d. Right to Stop or Reject Work. District may reject Work that fails to conform to the Contract Documents, as determined by District. If Contractor fails to promptly correct such defective Work, District may issue a written order directing Contractor to stop the Work, or designated portion thereof, until the cause for such order is eliminated. The right of District to stop the Work shall not give rise to a duty on the part of District, or any of its representatives, to discover nonconforming Work or to exercise the right to stop the Work for the benefit of Contractor or any other person or entity.
- e. Permits and Access. Except for permits and fees that are Contractor’s responsibility under the Contract Documents, District shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures, or for permanent changes in existing facilities.
- f. Subsurface Surveys. District shall make available to Contractor, and Contractor shall study, the results of such test borings and information that District has concerning subsurface conditions and site geology. Contractor shall inform District of any other site investigation, analysis, study, or test conducted by or for Contractor or its agents and shall make the results available to District upon District’s request.

## **3. Contractor’s Responsibilities.**

- a. General Responsibilities.
  - 1. Authorized Representative. Contractor shall designate a person in writing to be the authorized representative with express authority to bind and communicate on behalf of Contractor with respect to all matters requiring Contractor’s approval or authorization (“Contractor Representative”). The term “Contractor” means the Contractor or the Contractor Representative.

2. Materials, Equipment, and Services. The Contractor will provide all labor, materials, equipment, and services necessary to complete the Work, all of which will be provided in full accord with the Contract Documents.
  3. Supervision and Coordination. Unless otherwise provided in the Contract Documents, the Contractor will be responsible for the supervision and coordination of the Work, including the construction means, methods, techniques, sequences, and procedures utilized.
  4. Project Correspondence. Contractor shall provide District with a copy of all written communications between Contractor and District's consultants at the same time as that communication is made to such consultants, including, without limitation, all requests for information, correspondence, submittals, notices, and change order proposals. Contractor shall confirm oral communications in writing.
  5. Project Boundary. Contractor shall confine operations at the site to areas permitted by law, ordinances, permits, and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.
  6. Taxes. Contractor shall pay all applicable taxes for the Work provided by Contractor that are legally applicable at the time the bid is submitted, whether or not yet effective or merely scheduled to go into effect.
  7. Permits, Fees and Notices. Except as otherwise provided in the Contract Documents, Contractor shall secure and pay for all permits, licenses, and certificates necessary for prosecution of Work before the date of the commencement of the Work or before the permits, licenses, and certificates are legally required to continue the Work without interruption. Contractor shall obtain and pay, when legally required, for all licenses, permits, inspections, and inspection certificates required by any authority having jurisdiction over any part of the Work included in the Contract. Contractor shall deliver all final permits, licenses, and certificates to District before demand is made for final payment.
- b. Worksite Conditions.
1. Benchmarks and Monuments. Contractor shall protect and preserve established benchmarks and monuments and shall not change locations of benchmarks and monuments without District's prior written approval. Contractor shall replace any benchmarks or monuments that are lost or destroyed subsequent to proper notification of District and with District's approval.
  2. Field Verification. Prior to the commencement of the Work, Contractor shall review the Project Site with District in detail and identify the area of the Work, staging areas, connections or interfacing with existing structures and operations, and restrictions on the Work site area. Contractor shall ensure that all forces on the Project Site are instructed about the acceptable working and staging areas and restrictions on use of the site. Contractor, with advance consent of District, shall erect such barriers and devices as are necessary to restrict access within the Work site to authorized areas and to prevent unauthorized access to non-Work areas.
  3. Utility Locates. Contractor will be responsible to locate existing utilities and underground facilities that are indicated in the Contract Documents or that are known or reasonably should be known to exist in proximity to the Work. Contractor shall provide timely notice and locate requests with any affected utility or through contact with appropriate notification centers before commencing excavation or demolition Work that Contractor knows or reasonably should know is in proximity to such utilities or facilities. Contractor assumes the sole risk and will be responsible for all delay and expense arising out of Contractor's failure to do so.
- c. Responsibility for Performance.
1. Before beginning the Work, Contractor shall examine and compare the drawings and specifications with information furnished by District that are Contract Documents, relevant filed measurements made by the Contractor, and any visible conditions at the worksite affecting the Work.
  2. Reporting Inconsistencies. Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, building codes, and rules and regulations, but Contractor shall promptly report any nonconformity it discovers to District. Contractor will be liable to District for damages if it fails, in the exercise of normal diligence, to recognize any error, inconsistency, omission or difference between field conditions and the Contract Documents. Contractor shall promptly report any errors, inconsistencies, or omissions it discovers, as a request for information, in such a form as District or Architect may require. Contractor will not be entitled to any modification in Contract Sum

or Contract Time solely by the request for information. Contractor shall carefully study and compare all Contract Documents, including Drawings, Specifications, and other instructions and shall at once report, in writing to District any error, inconsistency, or omission that Contractor or its employees or subcontractors may discover.

3. Unnecessary Inquiries. Contractor is liable for costs incurred by District for professional services for interpretations or decisions of matters where the information sought is equally available to the party making the request.

d. Construction Materials and Supplies.

1. Quantities of Materials. Contractor shall provide materials in sufficient quantities on hand at such times as to insure uninterrupted progress of Work and shall store materials properly and protect materials as required.
2. Complete Assembly. For all materials and equipment specified or indicated in the Drawings, Contractor shall provide all labor, materials, equipment, and services necessary for complete assemblies and complete working systems, functioning as intended. Contractor shall furnish incidental items not indicated on Drawings, nor mentioned in the Specifications, that can be legitimately and reasonably inferred to belong to the Work described, or necessary in good practice to provide a complete assembly or system, as though itemized here in every detail. In all instances, Contractor shall install material and equipment in strict accordance with each manufacturer's most recent published recommendations and specifications. Contractor shall be responsible for appropriately sequencing the Work and for verification of suitability of prior work before subsequent construction activities.
3. Timely Ordering of Materials. Contractor shall coordinate submittal approvals and place orders for materials and/or equipment so that delivery of same will be made without delays to the Work. Contractor shall show order dates and delivery dates on Three Week Look Ahead Schedule and master schedule. Contractor shall, upon District's reasonable request, provide documentary evidence that orders have been placed.
4. No Right to Lien. Contractor warrants good title to all material, supplies, and equipment installed or incorporated in Work and agrees upon completion of all Work to deliver the site to District, together with all improvements and appurtenances constructed or placed thereon by it, and free from any claims, liens, or charges. Contractor and any person, firm, or corporation furnishing any materials or labor for any Work covered by this Contract, will not have any right to lien any portion of the Project Site or any improvement or appurtenance thereon.
5. Storage. Contractor and its subcontractors shall obtain District approval before delivering or storing materials or tools on District's premises. Upon approval, Contractor shall store materials and tools so that they do not hamper the operation of equipment or persons and do not present a fire or safety hazard.

e. Construction Personnel and Supervision.

1. Supervision. During progress of the Work, Contractor shall keep on the Project Site, and at all other locations where any Work related to this Contract is being performed, a competent project manager and/or construction superintendent who are employees of Contractor, to whom District does not object and who are fluent in English, written and verbal. Contractor shall provide efficient supervision to the Work, using its best skill and attention. Before commencing the Work, Contractor shall give written notice and provide resumes to District of its project manager and/or construction superintendent. The District shall notify the Contractor acknowledging receipt of resumes and acceptance of proposed project manager and/or construction superintendent. Contractor is bound by all directions given to Contractor's project manager and/or construction superintendent as if such direction was given to Contractor.
2. Replacement of Supervision. Contractor shall not otherwise remove or replace the construction superintendent or project manager for any reason, including their need to work on other projects, or to take extended vacations (over 3 consecutive days), without submitting thirty (30) days' written notice to District. If Contractor's project manager, construction superintendent, or support staff member is no longer employed by Contractor, Contractor shall provide District with notice of the termination of the employment relationship and shall consult with District with respect to replacement personnel.

3. Discipline and Removal. Contractor shall at all times enforce strict discipline and good order among its subcontractors and employees and shall not employ or work any unfit person, or anyone not skilled in work assigned to that person. District may require Contractor to permanently remove unfit persons from Project Site. Contractor shall not employ any person whom District may deem incompetent or unfit on the Project except with the prior written consent of District. District may require removal and replacement of any or all construction superintendents or project managers upon ten (10) days' notice to Contractor.
  4. Acts or Omissions. Contractor is responsible to District for acts and omissions of Contractor's employees, subcontractors and their agents and employees, and other persons or entities performing portions of the Work for or on behalf of Contractor or any of its subcontractors.
  5. Identification Badges. The Contractor and its subcontractors, and the employees and the agents of any of them shall comply with District's policies and requirements to obtain, display, and return identification badges at any time while they are present on District's property.
- f. Contractor's Construction Master Schedule.
1. Schedule Required. Within no more than ten (10) days of being awarded the Contract, and before commencing the Work, Contractor shall prepare and submit to District a construction master schedule for the Work. The construction schedule shall be in a detailed precedence-style critical path method (CPM) type format, which will include any interim dates that are critical in insuring the timely completion of the Work as provided in the Contract Documents. District shall provide approval or comment on the submitted schedule within seven (7) days. Contractor shall be responsible for amending construction schedule in response to District comments within three (3) days.
  2. Logic. Schedule shall use retained logic during the development and updating of the schedule. Any function that would cause the retained logic of the logic network to be overridden is prohibited unless approved, in writing and in advance, by the Architect and Owner.
  3. Schedule shall include date of Notice to Proceed, date of Substantial Completion, and date of Final Completion in accordance with Contract Documents.
    1. Critical path shall be clearly indicated on Schedule.
    2. Not more than twenty (20) percent of the progress activities shall be on the critical path at any one time.
    3. Not more than five (5) percent of the total individual activities may exceed \$25,000 or 14 calendar days (per activity) without prior approval of Architect and Owner.
  4. Schedule Maintenance. The schedule shall not exceed the Contract Time for the Work. Contractor shall revise and update the schedule monthly and submit with application for payment, or as required by District or the conditions of the Work and Project. Should the Contractor fail to meet any scheduled date as shown on the current construction progress schedule, the Contractor shall notify the District, and if requested, at its own expense, submit within three (3) days of the request an updated Construction Progress Schedule. If the Contractor's progress indicates to the Owner that the Work will not be Substantially Completed within the Contract Time, the Architect and Owner may require the Contractor develop a Recovery Schedule that adequately demonstrates how the Contractor will, at its own expense, increase its work force and/or working hours to bring the actual completion dates of the activities into conformance with the Construction Progress Schedule and Substantial Completion within the Contract Time. Neither the Owner nor the Architect will, however, be obligated to review the substance or sequence of the Construction Progress Schedule or otherwise determine whether it is correct, appropriate or attainable.
  5. Submittal Schedule. Contractor shall prepare and keep current, for District's review and acceptance, a schedule of submittals that is coordinated with the construction schedule and allows District and its consultants reasonable time to review submittals and to provide information necessary for procurement and installation of Work for which allowances are provided under the Contract Documents. District may require Contractor to include preparation of Contract submittals as a line item payment in the schedule of values.
  6. Execution of Schedule. Contractor shall perform the Work in general accordance with the most recent schedules submitted to and accepted by District. Contractor shall indicate in the schedule updates any

Work that is not proceeding according to the schedule and shall provide a written plan of action to bring the Work into compliance with the schedule or to otherwise ensure that the Work will be completed within the Contract Time.

g. Documents and Records.

1. Record Documents. Contractor shall update at least weekly, at the Project Site, or at such other location as District may authorize in writing, one legible copy of all Contract Documents annotated with all changes ("Record Documents"), including but not limited to Addenda, RFIs, ASIs, and Change Orders. Contractor shall also maintain on site a complete record and copy of all approved submittals, shop drawings and product samples. Failure to update in a timely manner as required by this section may result in withholding payment by District. Contractor shall keep these documents in good order and available to District's consultants or representatives and all authorities having jurisdiction. Contractor shall coordinate with District's representatives and consultants and shall submit any its verified report(s) according to Oregon law or as required by authorities having jurisdiction. The Contractor shall submit the completed and finalized project record to District in accordance with the contract documents prior to Final Acceptance.
2. Daily Job Reports. Contractor shall maintain at least one (1) set of reports on the Project prepared by Contractor's employee(s) present on site, and which includes (but is not limited to) the following information: a brief description of all Work performed on that day; a summary of all pertinent events and/or occurrences on that day including records of all tests and inspections; a list of all subcontractor(s) working on that day; a list of each Contractor employee working on that day; the total hours worked for each employee; a complete list of all equipment on the Project that day, whether in use or not; the time Work commenced and ended; weather conditions; accidents or injuries; and Work progress made for that day ("Daily Job Reports"). Contractor shall keep the Daily Job Reports current and in good order and shall make current copies available to District upon request. In addition, the Contractor shall submit a digital copy of the report to the District within 48 hours of the day reported. Each report shall have at least two digital photographs imbedded in the report showing job site conditions.
3. Maintenance of Records after Final Payment. Contractor shall make available at its office at all reasonable times the materials described in this paragraph for the examination, audit, or reproduction until six (6) years after final payment under this Contract: (a) all Daily Job Reports or other Project records of Contractor's project manager(s), construction superintendent(s), and/or project foreperson(s); (b) all certified payroll records and/or related documents including, without limitation, payroll, payment, timekeeping and tracking documents; (c) all books, estimates, records, contracts, documents, bid documents, bid cost data, subcontract job cost reports, and other data of Contractor, any subcontractor, and/or supplier, including computations and projections related to bidding, negotiating, pricing, or performing the Work or Contract modification, in order to evaluate the accuracy, completeness, and currency of the cost, manpower, coordination, supervision, or pricing data at no additional cost to District. These documents may be duplicative and/or be in addition to any bid documents held in escrow by District.
4. Submittals. Contractor shall submit shop drawings, product data, samples and mock ups as required by the Contract Documents that have been verified and coordinated with the requirements of the Work and of the Contract Documents. Contractor shall not perform any portion of the Work until the submittals for that portion have been approved by District.
5. Professional Design Services. District will not require Contractor to perform professional services which constitute the practice of architecture, engineering, or surveying unless such services are specifically required by the Contract Documents as a part of the Work or unless Contractor must provide such services in order to carry out Contractor's responsibilities under the Contract. District shall specify performance and design criteria that such professional services must satisfy.
6. Ownership of Documents. All copies of Drawings, Specifications, and copies of other incidental architectural and engineering work, or copies of other Contract Documents furnished by District or generated by Contractor, including those in electronic form, are the property of District.
7. Copyright and License. Neither Contractor nor any subcontractor, or material or equipment supplier, will own or claim a copyright in the documents prepared by the District's consultants. District hereby grants Contractor, subcontractors, sub-subcontractors, and material or equipment suppliers a limited

license to use applicable portions of the Drawings and Specifications prepared for the Project in the execution of their Work under the Contract Documents.

8. Royalties, Licenses and Copyrights. Contractor shall obtain and pay, when required by law, all royalties and license fees necessary for prosecution of Work before the earlier of the date of the commencement of the Work or the date the license is legally required to continue the Work without interruption. Contractor shall defend suits or claims of infringement of patent, copyright, or other rights and shall hold District, District's consultants, and District's representatives harmless and indemnify them from loss on account of claims for infringement to the extent Contractor knew, or with reasonable diligence should have known, that the use of a specified design, process, or product would constitute infringement.
9. Intellectual Property. The review by District or Architect of any method of construction, invention, appliance, process, article, device, or material of any kind is limited to a review for adequacy for the Work and is not approval for use by Contractor in violation of any patent or other rights of any person or entity.

h. Tests and Inspections.

1. Tests, inspections and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of public authorities.
2. Unless otherwise provided, Contractor shall arrange for such tests, inspections, and approvals, and shall bear the associated costs. Contractor shall notify District of scheduled tests and/or inspections and approvals, so that District or its designated representative may be present for such procedures, which presence shall be at District's expense.
3. Contractor shall not incorporate any material into the Work that has not satisfied all testing, inspection, or approval requirements of the Contract Documents.
4. Contractor shall secure and promptly deliver required certificates of testing, inspection or approval to District, unless otherwise provided by the Contract Documents.
5. If testing, inspection, or approval required by the Contract Documents, or otherwise required by District, reveal failure of the Work to comply with requirements of the Contract Documents, all costs made necessary by such failure, including those of repeated procedures and compensation of District's costs, shall be at Contractor's expense.

i. Work Under the Contract.

1. Defective Work. At District's sole option, Contractor shall repair or replace any and all Work, together with any other Work that may be displaced in doing so, that may prove defective in workmanship and/or materials within a one (1) year period from Substantial Completion of the Work without expense whatsoever to District. In the event Contractor fails to commence and diligently pursue such replacements or repairs within ten (10) days after being notified in writing, Contractor hereby acknowledges and agrees that District may correct such defects, without voiding any guarantee or warranty, at Contractor's expense. Payment shall become due upon District's demand, and shall be an obligation secured by Contractor's performance bond.
2. Correction of Work. If, in the opinion of District, defective Work creates an exigent or dangerous condition or requires immediate correction or attention to prevent injury to persons or property or to prevent interruption of District operations, District may, upon making a good faith attempt to notify Contractor, proceed to make some or all replacements or repairs as may be reasonably required in the circumstances. The costs of such work will be charged against Contractor and shall become due upon District's demand.
3. Manufacturer's Warranties. The above provisions do not in any way limit the guarantees on any items for which a longer guarantee is specified or on any items for which a manufacturer gives a guarantee for a longer period. Contractor shall furnish to District all appropriate guarantee or warranty certificates as indicated in the Specifications or upon request by District. Contractor shall obtain and preserve for the benefit of District, manufacturer's warranties on material, fixtures, and equipment incorporated into the Work. Contractor shall furnish District with all guarantee or warranty certificates as indicated in the Specifications or upon District's request.

4. Cutting and Patching. Contractor shall do all cutting, fitting, patching, and preparation of Work as required to make its parts come together properly, to fit it to receive, or be received by work of other Contractors, and to coordinate tolerances to various pieces of work, showing upon, or reasonably implied by, the Drawings and Specifications for the completed structure, and shall conform them as District may direct.
5. Alteration of Work by Contractor or Others. Contractor shall not endanger any Work performed by it or anyone else by cutting, excavating, or otherwise altering Work and shall not cut or alter Work of any other Contractor except with consent of District.
6. Cleaning up. Contractor shall keep the Project Site and surrounding area, including public rights of way, free from dust, mud, dirt, or accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the Work, Contractor shall clean the site, streets, and sidewalks and shall remove from the Project waste materials, rubbish, Contractor's tools, construction equipment, machinery, and surplus materials.
7. Access to Work. Contractor shall provide District and its representatives access to the Work in preparation and progress wherever located.

j. Allowances.

1. Contractor shall include all allowances stated in the Contract Documents in the Contract Sum. Unless the Contract Documents provide otherwise, Contractor shall include in the Contract Sum, separate from allowances, amounts necessary to cover the cost of materials and equipment delivered at the site and all required taxes, less applicable trade discounts, Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit and other expenses contemplated for stated allowance. District shall adjust the Contract Sum through a Change Order whenever costs are more than allowances. District shall provide a Change Order amount that reflects the difference between the actual cost and the allowance.

k. Warranty.

1. Contractor warrants to District and Architect 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 not inherent in the quality required or permitted, and that the Work will conform to the requirements of the Contract Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. Contractor's warranty excludes remedy for damage or defect caused by abuse, modifications not executed by Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by Architect or District, Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.
2. Contractor guarantees all work against defects in material or workmanship for a period of one (1) year from the date of substantial completion.
3. If, after 10 days' notice, Contractor fails to proceed to cure any breach of this warranty, District may have the defects corrected and Contractor and its surety shall be liable for all expenses incurred. In case of an emergency, where, in the opinion of District or Architect, delay would cause serious loss or damage, corrective work may be undertaken without advance notice to Contractor; but Contractor and its surety shall remain liable for all expenses incurred. The remedies stated in this subsection are not exclusive, but are cumulative of any other remedies District may have.
4. Contractor shall assign, and shall obtain from subcontractors and assign, all manufacturers' warranties to District and all guarantees and warranties of goods supplied under this Contract shall be deemed to run to the benefit of District. Contractor shall provide District with all manufacturers' warranty documentation and operations and maintenance manuals not later than the date of Final Acceptance of the Work by the District.

**4. Subcontractors.**

- a. Subcontractor Disclosure. Contractor shall provide District a list of all subcontractors and major suppliers with a name, address, telephone and fax numbers, Oregon license number(s), classification, and monetary value of each subcontract for labor, material, or equipment. If District objects, District shall promptly provide a written notice of objection. Contractor shall not contract with a proposed person or entity to which District reasonably objects or that is ineligible to receive a subcontract under ORS 279C.860, and shall procure a



replacement subcontractor that is acceptable to District. District shall provide a Change Order before commencement of substitute subcontractor's Work for the increase or decrease in the Contract Sum and Contract Time occasioned by such change, unless the subcontractor is ineligible under ORS 279C.860, and Contractor shall be fully responsible for performance of the substituted subcontractor under the Contract Documents. Contractor shall be solely responsible to determine whether any proposed subcontractor is eligible.

- b. Pass-Through. Contractor shall require each subcontractor, by written agreement, to be bound to Contractor by terms of this Contract to the extent it applies to the Work performed by subcontractor. Contractor shall provide copies of subcontract agreements upon District's request.
- c. No Waiver. District's consent or failure to object to any subcontractor does not relieve Contractor of any obligations under this Contract and is not a waiver of any provisions of this Contract.
- d. Substitution and Assignment. Contractor shall not, without District's written consent:
  - 1. Substitute any person as a subcontractor in place of the subcontractor designated in the original bid.
  - 2. Permit any Subcontract to be assigned or transferred, or allow any portion of the Work to be performed by anyone other than the subcontractor listed in the original bid; or
  - 3. Sublet or subcontract any portion of the Work in excess of one-half of one percent (1/2 of 1%) of Contractor's total bid as to which his original bid did not designate a subcontractor.
- e. Coordination of Work. Contractor shall coordinate the trades, subcontractors, sub-subcontractors and material or equipment suppliers working on the Project.
- f. Subcontractor Dispute Resolution. Contractor shall settle any difference between Contractor and its subcontractor(s) or between subcontractors.
- g. Assignment. Contractor shall include assignment provisions in each subcontract as indicated in the termination provisions set forth in these General Conditions.
  - 1. Contingent Assignment of Subcontractors. Contractor shall assign to District each subcontract agreement for a portion of the Work provided that:
    - i. Assignment is effective only after termination of this Contract by District for cause or stoppage of the Work by District, and only for those subcontract agreements which District accepts by notifying the subcontractor and Contractor in writing; and
    - ii. Assignment is subject to the prior rights of the surety, if any, obligated under bond relating to this Contract.
  - 2. Upon such assignment, if the Work has been suspended for more than thirty (30) days, District shall equitably adjust subcontractor's compensation for increases in cost resulting from the suspension.
- h. Prompt Payment of Subcontractors. Contractor shall promptly pay subcontractors as required by the Contract.

## **5. Construction by District.**

- a. Other Contractors. District may let other contractors perform work with its own forces, in connection with the Project. Contractor shall afford other contractors reasonable opportunity for introduction and storage of materials and execution of their work and shall properly coordinate and connect the Work with the work of other contractors. If Contractor claims that delay or additional cost is involved because of such action by District, Contractor shall make such claim in the manner provided in the Contract Documents.
  - 1. Contractor shall protect the work of other contractors that it encounters while working on the Project.
  - 2. If any part of Contractor's Work depends upon completion of the work of District or others for proper execution, Contractor shall inspect and promptly report to District any discrepancy or defective condition in such work. Contractor's failure to inspect and report will be deemed acceptance of all work of others as fit and proper for reception of Contractor's Work. Contractor is liable for damages for work of others that Contractor failed to inspect, except for defects that were not discoverable and may develop in District's or any other contractor's work after execution of Contractor's Work.
- b. Mutual Responsibility. Contractor shall reimburse District for costs incurred by District which are payable to a separate contractor because of delays, improperly timed activities or defective construction of Contractor.

District shall reimburse Contractor for costs incurred by Contractor because of delays, improperly timed activities, and damage to the Work or defective construction of a separate contractor.

- c. District's Right to Clean Up. If a dispute arises among Contractor, separate contractors and District as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, District may clean up and the District shall allocate the cost among those responsible.

## 6. Changes in the Work.

### a. Change Orders.

1. Change Order. A document prepared by the District representative and signed by the District, the District's Representative, the Architect, and the Contractor, and approved by the District's Board of Education or assigned designee, stating their agreement upon all of the following: (1) a change in the Work; (2) the amount of the adjustment in the Contract Sum, including all costs, overhead and profit, if any; and (3) the extent of the adjustment in the Contract Time, if any, issued after the effective date of the Agreement.
2. Change Request (CR). A document prepared by the Contractor to seek additional compensation and/or time from the District. The Contractor shall provide a written CR narrative explaining its reasons for requesting additional compensation or time. The written CR narrative shall reference all related schedule activities and contract specification sections and drawings directly pertaining to the CR, include all costs, overhead and profit.
3. Change Pricing. In the absence of applicable unit prices or other agreement, the changed work will be priced in accordance with the following provisions:
  - i. In no case shall the sum of the individual markups applied to a General Contractor's Modification exceed fifteen percent (15%), regardless of the number of Subcontractor tiers involved in performing the Work.
  - ii. The total combined mark-up for a Subcontractor and his lower-tier Subcontractor shall not exceed ten percent (10%). Costs of tax and insurance shall not be marked up.
  - iii. For work performed by a subcontractor, the subcontractor will receive 10% markup for direct costs. The General Contractor shall receive a five percent (5%) of the subcontractor's direct costs for processing.
  - iv. For self-performed work by the General Contractor, the markup shall equal fifteen percent (15%) of the direct cost as defined herein.
  - v. Bonding may be increased a maximum of one percent (1%) provided the Contractor demonstrates to the District a requirement to increase bonding.
  - vi. If the net value of a change results in a credit from the Contractor or subcontractor, the credit shall be the actual net cost, plus five percent (5%) for overhead and profit. When both additions and credits covering related work or substitutions are involved in any one change, the allowance for overhead and profit shall be figured on the basis of the net increase or decrease, if any, with respect to the change.
4. Equipment Costs:
  - i. The allowance for equipment costs (both rental as well as Contractor-owned equipment) shall be based on actual and verified rental company rates. Hourly, daily, weekly, or monthly rates shall be used, whichever is lower. Hourly rates including operator shall not be used. Unless otherwise specified, manufacturer's ratings and manufacturer approved modifications shall be used to classify equipment for determination of applicable rental rates.
  - ii. The actual time to be paid for equipment shall be the time that the equipment is in productive operation on the Work under Contract Modification. In computing the hourly rental of equipment, any time less than thirty (30) minutes shall be considered one-half (1/2) hour. No payment will be made for time while equipment is inoperative due to breakdown, or for non-workdays. In addition, the rental time shall not include the time required to move the equipment to and from the project site. No mobilization or demobilization will be allowed for equipment already on site. If such

equipment is not moved by its own power, then loading and transportation costs will be paid in lieu of rental time thereof. However, neither moving time nor loading and transportation costs will be paid if the equipment is used on the Project Site in any other way than upon the work directly related to the Contract Modification.

5. Small Tools. Individual pieces of equipment having a replacement value of one thousand dollars (\$1,000) or less shall be considered to be small tools or small equipment, and no payment will be made since the costs of these tools and equipment is included as part of the markup for overhead and profit defined herein.
  6. Labor rates will not be recognized when in excess of the applicable prevailing wage rate pursuant to ORS 279C.800 to 279C.870 or wage established in any applicable collective bargaining agreement, whichever is higher. The costs for all supervision, including general superintendents and managing foreman, shall be included in the markup defined herein. Working foreman will be considered a direct cost if the individual is on the project site only installing Work under Contract Modification with no other work being performed at the time. A breakdown of the payroll rates for each trade used for Contract Modifications shall be furnished to the District within thirty (30) calendar days of the Contract Notice to Proceed.
  7. Premium Time Rate. Shall be the difference between the Overtime Hourly Rate and Straight Time Rate per specific trade and classification as more fully defined herein. District will pay taxes on the Premium Time Rate only. The Premium Time Rate shall be paid without overhead and profit calculated against the differential.
  8. Material costs directly required for the performance of the Contract Modification. Such costs may include the cost of transportation, taxes, and verifiable consumables (e.g., saw blades, drill bits, etc.). If a trade reduction by an actual supplier is available to the Contractor, it shall be credited to the District. If the materials are obtained from a supplier or source owned wholly by or in part by the Contractor, payment thereof will not exceed the current wholesale price for the materials. The term trade reduction includes the concept of cash discounting.
  9. Agreement on Change Order. Agreement on any Change Order is a final settlement of all matters relating to the change in the Work that is the subject of the Change Order, including, but not limited to, all direct and indirect costs associated with such change and any and all adjustments to the Contract Sum and the construction schedule.
  10. Additional Credits. Contractor shall credit all trade discounts, rebates, refunds, and returns from the sale of surplus material to District
  11. Cost Accounting Records. Contractor shall provide all cost accounting records to District upon District's request.
- b. Construction Change Directives. A Construction Change Directive is a written order signed by District, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. District may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract, the Contract Sum and Contract Time being adjusted accordingly. District and Contractor may use a Construction Change Directive in the absence of total agreement on the terms of a Change Order. Upon receipt of a Construction Change Directive, Contractor shall promptly proceed with the change in Work directed and shall advise District of Contractor's agreement or disagreement with the proposed method, if any, provided in the Construction Change Directive for adjustment in the Contract Sum or Contract Time.
1. Force Account. When a definite price has not been agreed upon in advance and it is to be paid on a force account basis, District may establish a not-to-exceed budget. Contractor shall submit daily all direct costs necessarily incurred and paid for labor, material, equipment, permit fees, taxes, and increased costs of bonds and insurance related to the Work for approval by District. Contractor shall not exceed the budget unless District specifically authorizes the overrun in writing. District shall pay only for actual costs verified in the field by District on a daily basis. When District and Contractor reach agreement upon the adjustment for price and time, Contractor and District shall prepare and execute an appropriate Change Order.
  2. Negotiating Changes. If District and Contractor are unable to agree upon change order terms, or if in the opinion of District the Work must proceed before an agreement can be negotiated, District may order Contractor to proceed with the changes, and Contractor shall comply. In such event, Contractor

shall keep daily records as to all labor employed in connection with the changes. Contractor's records will itemize costs for labor, materials, equipment rental, and transportation. Contractor shall submit the records for approval to the District. If Contractor fails to keep such records, all such Work will be deemed to have been performed at Contractor's own expense. District and Contractor shall attempt to negotiate fair and reasonable adjustments to the Contract for changes in the Work. Contractor shall submit to District all evidence in support of Contractor's proposals.

3. Markup. No fee or other markup of any kind will be applicable to any premium portion of wages, taxes, or related benefits. In the event of addition or deletion of like items in a change order or change directive, the like item quantity will be summed and the unit prices or the percentage fee will be applied to the total.
4. Written Authorization Required. In no event shall Contractor proceed with changes in the Work without a written order from District to so proceed. District will be under no obligation to pay for unauthorized extra, additional, or changed Work performed by Contractor without a written Change Order, Construction Change Directive, or other written order to proceed duly authorized and executed by District.
5. Minor Changes. Contractor shall promptly carry out minor changes in the Work issued through written order of District's representative, through the authority granted to it by District, not involving adjustment in the Contract Sum or extension of the Contract Time, and not inconsistent with the intent of the Contract Documents.

## 7. Time.

- a. Time is of the Essence. Time limits stated in the Contract Documents are of the essence of the Contract. Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.
- b. No Work Without Insurance. Contractor shall not, except by written direction by District, prematurely commence operations on the site or elsewhere prior to the effective date of insurance to be furnished by District and Contractor. The date of commencement of the Work is not changed by the effective date of insurance.
- c. Notice to Proceed. District shall issue a Notice to Proceed within a reasonable time following the date of execution of this Contract. Contractor is not entitled to any claim of additional compensation as a result of postponement of the issuance of Notice to Proceed, but if postponement will cause a hardship to Contractor, Contractor may terminate this Contract by written notice. District may then award this Contract to the next lowest responsive and responsible bidder.
- d. Working Hours. Contractor shall perform Work during regular working hours as permitted by District. Contractor shall, when required to achieve Substantial Completion within the Contract Time, Work outside of regular working hours such as evenings and/or weekends at no additional cost to District. Contractor shall perform all evening and/or weekend work only upon District's advance approval and in compliance with all applicable rules, regulations, laws, and local ordinances including, without limitation, all noise and light limitations.
- e. Delays and Extensions of Time.
  1. Float and Slack. Float or slack is the amount of time between the early start date and the late start date, or the early finish date and the late finish date, of any activity in the schedule. Any float time to activities not on the critical path shall belong to the Project, and may be used by the Project to optimize its construction process. Any float time between the end of the final construction activity and the final completion date shall belong to the Owner, and may be used by the Owner in determining if additional contract days are to be awarded for changes in the contract or for delays to the contract caused by the Owner. The Contractor will not be entitled to any adjustment in the Contract Time, the Construction Schedule, or the Contract Sum, or to any additional payment of any sort by reason of the Owner's use of float time between the end of the final construction activity and the final completion date or by reason of the loss or use of any float time, including time between the Contractor's anticipated completion date and end of the Contract Time, whether or not the float time is described as such on the Construction Progress Schedule.
  2. Adverse Weather. Contract Time is determined with consideration given to the average climate weather conditions prevailing in the County in which the Project is located during any given month as published

by the National Oceanic and Atmospheric Administration (NOAA) and averaged over the past 10 years. Contractor is allowed a time extension for adverse weather if it causes delays that unreasonably increase the labor required to complete the scheduled tasks on the day affected by adverse weather not reasonably anticipated. Contractor shall not be allowed an increase in Contract Sum for the delay. Contractor shall work additional days if necessary at no cost to District, irrespective of adverse weather, to maintain access and the Contract Schedule, and to protect the Work from the effects of Adverse Weather.

3. Extensions of Time. District shall grant Contractor an extension of Contract Time upon Contractor's written request demonstrating that circumstances beyond the control and without the fault or negligence of Contractor or its subcontractors justify delay. Such occurrences may include industry-wide labor dispute, fire, unavoidable casualties, adverse weather conditions not reasonably anticipated, or other occurrences that District determines may justify delay. District shall grant the extension net of any delays caused by or due to the fault or negligence of Contractor, and net of any contingency or "float" allowance included in the Progress Schedule. Contractor will not be allowed an increase in Contract Sum for an extension of Contract Time. The Contractor shall be deemed to have control over the supply of labor, materials, equipment, methods, techniques and over the Contractor's subcontractors and suppliers.
4. Requests for Extension. Contractor shall submit requests for extension of time in writing and shall include (a) the duration of the activity relating to changes in the Work and the resources, including manpower, equipment, and material, required to perform the activities within the stated duration; (b) specific logical ties to the Contract Schedule for the proposed change showing the activities that are affected by the change and/or delay; and (c) recovery schedule.

## **8. Protection of Persons, Property, and the Environment**

- a. Safety Program. Contractor shall initiate, maintain, and supervise all safety precautions and programs in connection with performance of the Contract. Contractor acknowledges the unique safety risks associated with construction of school facilities in the presence of faculty, students, staff, and visitors. Contractor is solely and completely responsible for conditions of the Work site, including safety of all persons and property during performance of the Work. This requirement will apply continuously and is not limited to normal working hours.
- b. District's Policies. This Contract and all individual contracts and purchase orders incorporate by this reference District's safety policies current as of the date of commencement of Work, which have been or will be made available to Contractor. Contractor shall schedule and attend a preconstruction meeting with District to review compliance with District's Contractor Safety and Hazard Notification Policy and District's Risk Management and Environmental Safety and Pollution Policy. Contractor, as a condition to commencement of the Work, shall instruct all personnel of Contractor and its subcontractors, prior to their performing any of the Work, of the elements of these policies with which the personnel will be required to comply.
- c. Subcontractor Safety. In addition to the policies identified above, Contractor shall review with all subcontractors the methods, materials, tools, and equipment to be used to verify their compliance with all safety standards and laws and Contractor shall comply with them, to ensure safe, hazard-free conditions for all persons visiting or working on the entire Project Site and District's adjoining facilities. Contractor shall implement and maintain a safety program that is specifically adapted for the Project and complies with all applicable requirements of Oregon OSHA. Contractor shall furnish a copy of the safety program to District before commencing Work.
- d. MSDS Sheets. Contractor shall provide Material Safety Data Sheets to District for all chemicals used on the Project Site as required by law.
- e. Safety Coordinator. Contractor shall designate a responsible member of its organization on the Project, whose duty is to post information regarding protection and obligations of workers and other notices required under occupational safety and health laws, to comply with reporting and other occupational safety requirements, and to protect the life, safety, and health of workers. Contractor shall report the name and position of person so designated to District.
- f. Correction of Unsafe Conditions. Contractor shall correct any violations of safety laws, rules, orders, standards, or regulations. Contractor shall correct violations promptly upon the issuance of a citation or notice of violation by the Division of Occupational Safety and Health.

- g. Personal Protection Equipment. Contractor's personnel and all workers shall wear personal protective equipment at all times. Contractor shall maintain supplies of protective equipment sufficient to properly equip all employees and visitors.
- h. Safety Devices. Contractor shall take, and require subcontractors to take, all reasonably necessary precautions for safety of workers on the Project. Contractor shall furnish, erect, and properly maintain at all times, all necessary safety devices, safeguards, construction canopies, signs, nets, barriers, lights, and watchmen for protection of workers and the public and shall post danger signs warning against hazards created by such features in the course of the Work.
- i. Temporary Structures. Contractor shall be required, at the Contractor's expense, to create plan submittals for temporary structures including but not limited to: scaffolding, work platforms, structurally supporting temporary walls, etc. Plans shall be prepared by a professional engineer and installed by a qualified firm. In addition to the above, structures shall conform with current OSHA-OR requirements. When the work includes scaffolding or supporting temporary structures/shoring, the Contractor shall obtain approval from the District, Authorities Having Jurisdiction (as necessary), and Architect/Engineer. Weather protection of work in progress adjacent to temporary structures and wind load requirements will meet minimum requirements based on project location.
- j. Barricades and Signage. Contractor shall post necessary warning signs and barricades to ensure the safety of all school occupants. Contractor shall not display any signs not required by law or the Contract Documents without District's prior written approval.
- k. Labeling of Containers. Contractor shall ensure proper labeling of substances on the Project Site.
- l. Storage. Contractor shall confine apparatus, the storage of materials, and the operations of workers to limits indicated by law, ordinances, permits, or directions of District, and shall not interfere with the Work or unreasonably encumber the Project Site or overload any structure with materials. Contractor shall enforce all instructions of District regarding signs, advertising, fires, and smoking, and require that all workers comply with all regulations while on Project Site
- m. Protection of Work. Contractor shall protect the Work, including stored materials and equipment, from all damage or harm, including damage from heat, cold, rain, snow, wind, flooding, and dampness. Contractor shall provide and maintain temporary roofs, window and door coverings, enclosures, or other construction reasonably required to protect the Work at all times during the course of construction. Contractor shall take all additional steps reasonably necessary, or as directed by District, to protect the Project, the Site, and the Work from damage associated with anticipated extreme weather events. Contractor shall not be entitled to additional payment or time to the extent its costs or delays would have been avoided if Contractor had complied.
- n. Protection of Existing Structures. Contractor shall protect existing structures, walks, curbs, pavements, roads, trees, landscaping, survey markers, monuments, or other devices marking property boundaries or corners, and/or improvements in working areas, utilities, and adjoining property (including, without limitation, protection from settlement or loss of lateral support). Contractor shall replace same at his expense with same kind, quality, and size of Work or item if temporary removal is necessary, or damage occurs due to the Work.
- o. Water Quality. Contractor shall comply with all applicable water quality laws and regulations, including permitting, monitoring, and reporting of storm water discharge applicable to the Work, at no additional cost to District. Contractor shall indemnify and hold district harmless from loss, cost, or liability arising out of Contractor's violation of such laws or regulations.
- p. Neighborhood Impacts. Contractor shall take all reasonable precautions to protect neighborhood property from damage or nuisance associated with the Work. Contractor shall promptly respond to complaints by neighbors or authorities concerning impacts to neighboring properties and public facilities and shall be solely responsible for cleaning, repair, or replacement of property soiled or damaged by Contractor's operations and settlement of claims or demands of neighbors associated with conduct of its personnel.
- q. Housekeeping. Contractor shall maintain good housekeeping practices to reduce the risk of fire damage and shall make a fire extinguisher, fire blanket, and/or fire watch, as applicable, available at each location where cutting, braising, soldering, and/or welding is being performed or where there is an increased risk of fire.

- r. Appropriate Behavior. Contractor's conduct will be appropriate for a school site and in accordance with District policies. Contractor shall not engage in profanity or verbal or physical contact with neighbors, students, or faculty.
- s. Security and Site Access. Contractor shall ensure that all existing or operating systems, utilities, existing on-site services and access avenues are on and in operating condition before leaving the Project Site each day. If any system, utility, or access avenue is not operable, Contractor shall notify District before Contractor leaves the Project Site that day.

## **9. Hazardous Materials.**

- a. With respect to Hazardous Materials to be used during the course of the Work, the Contractor will implement and enforce a program to inventory and properly store and secure all Hazardous Materials that may be used or present on the Project site, maintain available for inspection at the Project site all material safety data sheets, and comply with all regulations required by law for the storage, use, and disposal of Hazardous Materials. The program must provide for notification of all personnel of potential chemical hazards. Review of these hazards must be included in the Contractor's safety training program. The Contractor shall submit to the District a list of all Hazardous Materials to be brought by the Contractor or its Subcontractors onto the District's property, including the purpose for their use on the Project.
- b. In the event of a release or discovery of a preexisting release of Hazardous Materials, or if it is foreseeable that injury or death to persons may occur because of any material or substance (including without limitation Hazardous Materials) encountered on the Project site, the Contractor shall immediately (a) stop the Work or the portion of the Work affected; (b) notify the District orally and in writing; and (c) protect against exposure of persons to the Hazardous Materials. The Contractor shall provide all written warnings, notices, reports, or postings required at law or by contract for the existence, use, release, or discovery of Hazardous Materials.
- c. With respect to any Hazardous Materials or other material or substance reported to the District under the above that was not introduced to the Project site by the Contractor or its Subcontractors of any tier, the District shall obtain the services of a qualified environmental consultant to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to verify it to be rendered harmless. Unless otherwise required by the Contract Documents, the District shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. The Contractor and the Architect will promptly reply to the District in writing stating whether or not either has reasonable objection to the persons or entities proposed by the District. If either the Contractor or Architect has an objection to a person or entity proposed by the District, the District shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the District and Contractor. By Change Order, the Contract Time may, subject to agreement by the District and the Contractor, be extended appropriately and the Contract Sum shall be increased in the amount of the Contractor's reasonable additional costs of shut-down, delay and start-up, which adjustments shall be accomplished as provided in the Contract.
- d. With respect to any Hazardous Materials or other material or substance reported to the District under the above that was introduced to the Project site by the Contractor or its Subcontractors of any tier, the Contractor shall be responsible to carry out the duties of (a) proposing to the District and the Architect a qualified environmental consultant; (b) obtaining and paying for the services of the environmental consultant; and (c) verifying that the material is rendered harmless, as otherwise set forth in the above. The Contractor will not be entitled to an increase in the Contract Sum as stated in the last sentence of if the Contractor or its Subcontractors of any tier are responsible for the condition requiring the testing of the material and the stoppage of the Work. Remediation work must be conducted by properly qualified contractors approved in advance by the District. Generally, the District may at its option contract directly with environmental consultants, and remediation contractors, regardless of whether the work will be performed at the Contractor's expense.

- e. To the fullest extent permitted by law, the District shall indemnify and hold harmless the Contractor, Subcontractors, Architect, Architect's consultants and agents and employees of any of them from and against claims, damages, losses and expenses, including without limitation attorney fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance was not introduced to the Project site by the Contractor or its Subcontractors of any tier, presents the risk of bodily injury or death, and has not been rendered harmless. No indemnification provided by the District under this Section will be required to indemnify the Contractor, Subcontractors, or their employees or agents to the extent of liability for death or bodily injury to persons or damage to property caused in whole or in part by the Contractor's own negligence, but will require indemnity to the extent of the fault of the District or its agents or representatives.
- f. To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the District, the District's Representatives, and employees of any of them from and against claims, damages, losses, and expenses, including without limitation attorney fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance was introduced to the Project site by the Contractor or its Subcontractors of any tier, presents the risk of bodily injury or death, and has not been rendered harmless. No indemnification provided by the Contractor under this Section will be required to indemnify the District or its agents or representatives to the extent of liability for death or bodily injury to persons or damage to property caused in whole or in part by the District's own negligence, but will require indemnity to the extent of the fault of the District or its agents or representatives.
- g. Hazardous Materials are any substance defined or designated as being radioactive, infectious, hazardous, dangerous, or toxic by any federal, state, or local statute, regulation, or ordinance presently in effect or subsequently enacted. For purposes of Article 9, the term "introduce" means the physical placement or transportation of Hazardous Materials in or on the Project site regardless of whether the Hazardous Material was specified, required, or otherwise addressed in the Contract Documents.

#### **10. Insurance and Bonds.**

- a. Contractor's Insurance. Contractor shall procure, prior to commencement of Work, and maintain for the duration of this Contract, or such longer time as may be provided, insurance against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the Work by Contractor, its agents, representatives, employees and subcontractors as set forth in the Contract Documents. Contractor's liabilities, including but not limited to Contractor's indemnity obligations, under this Contract, will not be deemed limited in any way to the insurance coverage required herein. Maintenance of insurance coverage is a material requirement of this Contract and Contractor's failure to maintain or renew coverage or to provide evidence of renewal during the term of this Contract, as required or when requested, may be treated as a material breach.
- b. Performance Bond and Payment Bond. Contractor shall provide a performance bond and a payment bond as required by the Contract prior to start of Work.
- c. Form of Retainage. In accordance with the provisions of PPS-49-0140(3) (reference ORS 279C.560) and any applicable administrative rules, Contractor may request in writing:
  - 1. to be paid amounts which would otherwise have been retained from progress payments where Contractor has deposited acceptable bonds and securities of equal value with District or in a custodial account or other mutually-agreed account satisfactory to District, with an approved bank or trust company to be held in lieu of the cash retainage for the benefit of District;
  - 2. 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 District, with earnings from such account accruing to the Contractor; or
  - 3. that the District allow Contractor to deposit a surety bond for the benefit of District, in a form acceptable to District, 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 PPS-49-0140(3) (reference ORS 279C.550 to ORS 279C.625).
  - 4. Where the District has accepted the Contractor's election of option 1. or 2., District may recover from Contractor any additional costs incurred through such election by reducing Contractor's final payment. Where the District has agreed to Contractor's request for option 3., Contractor shall accept like bonds from subcontractors and suppliers on the project from which Contractor has required retainages.



## 11. Uncovering and Correction of Work.

- a. Uncovering of Work. If a portion of the Work is covered without Project Inspector and/or Architect approval or not in compliance with the Contract Documents, Contractor shall, if required in writing by District, Project Inspector, or Architect, uncover the Work for observation and replace it at Contractor's expense without change in Contract Sum or Contract Time.
- b. Correction of Work. Contractor shall, at its own expense, promptly correct Work that is rejected by District, Architect, or any governmental authority or otherwise fails to conform to the requirements of the Contract Documents, regardless of when it is discovered and regardless of whether the Work is fabricated, installed or completed. Contractor shall pay for all additional testing, inspection, or other compensation including District and Architect's additional services required for the correction of Work.
- c. Correction of Work after Substantial Completion. If, after Substantial Completion, any Work is not in accordance with the requirements of the Contract Documents, District shall provide Contractor with written notice to correct the Work promptly after discovery of the condition. Contractor shall correct the nonconforming Work within a reasonable time after receipt of notice.

## 12. Rights and Remedies.

- a. No Waiver. The duties and obligations imposed by the Contract Documents and rights and remedies available are in addition to and not a limitation of duties, obligations, rights, and remedies otherwise imposed or available by law. No action or failure to act by any party shall constitute a waiver of a right or duty afforded the party under this Contract, nor does any act or omission constitute approval of or acquiescence in a breach, except as may be specifically agreed in writing.
- b. Independent Contractor.
  1. Contractor is engaged as an independent Contractor. Although District reserves the right: (a) to determine (and modify) the delivery schedule for the Work; and (b) to evaluate the quality of the completed performance, District cannot and will not control the means or manner of Contractor's performance, nor provide any tools or equipment for the performance of the Work, except as provided elsewhere in this Contract. Contractor shall determine the appropriate means and manner of performing the Work.
  2. Contractor is wholly responsible for the manner in which it and its subcontractors perform the Work required of it by the Contract Documents. District may monitor Contractor's activities to determine compliance with the terms of this Contract.
  3. Contractor shall pay all federal, state and local taxes applicable to compensation or payments paid to Contractor under this Contract and, unless Contractor is subject to backup withholding, District shall not withhold from such compensation or payments any amount(s) to cover Contractor's tax obligations.
  4. Contractor is not an employee of the federal government or the State of Oregon.
  5. Contractor is not a contributing member of the Public Employees Retirement System.
  6. Neither Contractor, nor any of Contractor's subcontractors, agents or employees its "officers," "employees," or "agents" of District or any of District's employees or agents, as those terms are used in ORS 30.265. Contractor bears exclusive responsibility for the acts of its employees as they relate to the services to be provided during the course and scope of their employment. Contractor, its subcontractors, agents, and its employees are not entitled to any rights or privileges of District employees.

## 13. Compliance With Laws.

- a. Contractor shall comply with all laws, codes, regulations, and applicable requirements imposed by governmental authorities having jurisdiction over the Work, including but not limited to, environmental, zoning, building code, public contracting, and other related laws.
- b. Environmental Mitigation. Contractor shall comply with all applicable mitigation measures, if any, adopted by any public agency with respect to this Project pursuant to the environmental protections laws of the State of Oregon.
- c. Work Performed Illegally. Contractor will bear all costs arising from Work performed that it knew, or through exercise of reasonable care should have known, was contrary to any applicable laws, ordinance, rules, or regulations.

- d. Prior Approvals. Contractor shall obtain approval of material, processes, or procedures by the Oregon state agencies or other body or agency where required by the Specifications or Drawings.

#### 14. Claims and Disputes.

- a. Claim. A Claim is a demand or assertion by a party seeking, as a matter of right, adjustment or interpretation of Contract terms, payment of money, extension of time, or other relief with respect to the terms of the Contract. Claim includes other disputes and matters in question between District and Contractor arising out of or relating to the Contract. Parties will initiate Claims only by written notice. The party making the Claim is responsible for substantiating the Claim.
- b. Time to Initiate Claim. The party making a Claim shall initiate the Claim within seven (7) days after the occurrence of the event giving rise to such Claim or within seven (7) days after the claimant first recognizes the condition giving rise to the Claim, whichever is later. The party making the Claim shall submit written notice to the other party that identifies the known bases for each Claim and the nature and amount of relief sought.
- c. Written Notice of Claim. If Contractor claims that any instructions issued after the effective date of this Contract, by Drawings or otherwise, involve extra costs, Contractor will be entitled to reimbursement for such extra costs only to the extent Contractor so notifies District in writing before proceeding to execute the affected Work and within five (5) days after receipt of such instructions. Claims and demands for any other cause, whatsoever, by Contractor against District must be served in writing upon District within five (5) days from the occurrence of the cause giving rise to the claim. Timely compliance with the written claim requirements of this Contract is a condition precedent to Contractor's right to payment on account of any claim and failure to provide such written claim or demand or notice will constitute a waiver of such claim.
- d. No Work Stoppage. Contractor shall proceed diligently with performance of this Contract and District shall continue to make payments in accordance with the Contract Documents pending final resolution of a Claim, except as otherwise agreed in writing or provided for in this Contract.
- e. Differing Site Conditions. A party shall give notice to the other party promptly, and in no event later than five (5) days after first observation, before conditions encountered at the site are disturbed that are: (a) subsurface or otherwise concealed physical conditions that differ materially from those indicated on the Contract Documents; or (b) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents. The parties shall promptly investigate such conditions, and if they differ materially and cause an increase or decrease in the cost of or time required for performance of any part of the Work, District will propose an equitable adjustment in the Contract Sum, Contract Time, or both. If District does not find that the conditions differ materially and cause an increase or decrease in the cost of or time required for performance of any part of the Work, District will notify Contractor in writing. If Contractor disputes District's determination, Contractor shall proceed with the Work and may initiate a Claim no later than twenty one (21) days after receiving notice of the decision.
- f. Claim for Additional Cost. Contractor shall file a Claim for additional cost under this section if Contractor believes additional cost is involved for reasons including: (a) District's written interpretation of the Contract Documents; (b) District's order to stop Work where Contractor is not at fault; (c) written order for a minor change in Work issued by District's consultant or representative; (d) failure of payment by District; (e) termination of Contract by District; (f) District's suspension; or (g) other reasonable grounds.
- g. Claim for Delay. If Contractor wishes to make a Claim for a delay, written notice shall be given within seven (7) calendar days of the occurrence of the event giving rise to the delay. Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary. Contractor will not be entitled to additional Contract Time for delays that do not affect the critical path of the Work.
- h. Claim for Additional Time (Adverse Weather). If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated, and had an adverse effect on the scheduled construction. Contractor shall not be entitled to additional compensation for delays caused by adverse weather conditions or any causes beyond District's control. If the Oregon Office of Emergency Management orders Contractor to halt the Work for reasons beyond Contractor's control and that were not reasonably anticipated, the Contract Time shall be equitably extended by Change Order, but only on

condition that Contractor provides District with written notice of the delay in accordance with the notice requirements of this Contract.

- i. Claim for Injury or Damage to Person or Property. If any person suffers physical injury or property damage arising from the Work, regardless of the cause, the party shall immediately (within 24 hrs) give notice of such injury or damage, whether or not insured, to District and Contractor with sufficient detail to enable District and any other party affected to investigate the matter.
- j. Acceptance of Claim. Upon timely receipt of a properly completed Claim and all documentation and/or evidence necessary to substantiate the Claim, District shall evaluate the Claim and provide Contractor with its written decision either accepting the Claim (in whole or in part) or rejecting the Claim (in whole or in part) within twenty (20) days. Should District reject the Claim in whole or in part, District shall generally explain the reasons for such rejection.
- k. Mediation. Contractor and District agree that any dispute that may arise under the Contract will be submitted to a mediator agreed to by both parties as soon as such dispute arises, but in any event prior to commencement of arbitration or litigation. This provision shall be specifically enforceable in any arbitral or judicial proceeding through stay or abatement of the proceeding upon petition of a party. Mediation shall be conducted in Portland, Oregon, and the mediation fee and expenses shall be shared equally by the parties who agree to exercise their best efforts in good faith to resolve all disputes in mediation.

#### **15. Termination or Suspension by Contractor.**

- a. Termination by Contractor for Work Stoppage. Contractor may terminate this Contract if the Work is stopped for a period of thirty (30) consecutive days through no act or fault of Contractor, subcontractor, or sub subcontractor, or their agents or employees, or any other persons or entities performing portions of the Work under direct or indirect contract with Contractor, for any of the following reasons: (a) issuance of an order of a court or other public authority having jurisdiction which requires all Work to be stopped; (b) an act of government, such as a declaration of a national emergency which requires all Work to be stopped; (c) because the Architect has not issued a Certificate of Payment and has not notified Contractor of the reason for withholding certification, or because District has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or (d) District failed to furnish to Contractor reasonable evidence that financial arrangements have been made to fulfill District's obligations under this Contract.
- b. Termination by Contractor for Work Interruption. Contractor may terminate this Contract if, through no act or fault of Contractor, subcontractor, or sub subcontractor, or their agents or employees, or any other persons or entities performing portions of the Work under direct or indirect contract with Contractor, repeated suspensions, delays or interruptions of the entire Work by District constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365 day period, whichever is less, or if Work is stopped for a period of sixty (60) consecutive days.
- c. Compensation. Contractor may recover from District payment for Work executed and for proven loss with respect to materials, equipment, tools, and construction equipment and machinery including reasonable profit and overhead if it provides seven (7) days' written notice to Architect and District prior to termination for the reasons set forth above.

#### **16. Termination or Suspension by District.**

- a. Termination by District for Cause. District may terminate Contract and/or terminate Contractor's right to perform the Work of this Contract without prejudice to any other rights or remedies by providing seven (7) days' written notice to Contractor and Contractor's surety if Contractor:
  - 1. refuses or fails to execute the Work or any separable part with sufficient diligence to ensure its completion within the time specified or any extension;
  - 2. persistently or repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
  - 3. fails to make payment to subcontractors in accordance with respective agreements;
  - 4. persistently disregards laws, ordinances, or rules, regulations or orders of a public authority having jurisdiction;
  - 5. files a petition for relief as a debtor, or a petition is filed against Contractor without its consent, and the petition is not dismissed within sixty (60) days;

6. makes a general assignment for the benefit of its creditors, or a receiver is appointed on account of its insolvency; or
  7. is otherwise guilty of a substantial breach of a provision of the Contract Documents or fails to observe the training, safety, and other precautions including District's policies and Contractor's own safety policies for the Project.
- b. District's Right to Take Possession. Upon termination for cause, District may take possession of the site and of all materials, equipment, tools, and construction equipment and machinery on the site owned by Contractor, accept assignment of subcontracts, and finish the Work by whatever reasonable method District may deem expedient. Upon request, District shall provide Contractor a detailed accounting of the costs incurred in finishing the Work.
  - c. Compensation. Contractor will not be entitled to receive further payment until the Work is finished. If the unpaid balance of the Contract Sum exceeds District's costs to finishing the Work, including compensation for District's consultants and representatives for services made necessary by Contractor's default, and other damages incurred by District which have not been expressly waived, District shall pay the excess to Contractor. If District's costs and damages exceed the unpaid balance, Contractor shall pay the difference to District.
  - d. Suspension for Convenience. District may, without cause, order Contractor in writing to suspend, delay, or interrupt the Work in whole or in part for such period of time as District may determine. District shall adjust Contract Sum and Contract Time for increases in the cost (including profit) and time caused by the suspension, delay, or interruption referenced in Section 16.3.1, so long as the performance would not have been suspended, delayed, or interrupted by another cause for which Contractor is responsible and District has not already made or denied another equitable adjustment under another provision of this Contract for the suspension, delay, or interruption.
  - e. Termination for Convenience. District may terminate all or part of this Contract for District's convenience at any time and without cause. Contractor shall, upon written notice of such termination, cease operations as directed by District, take actions necessary to protect and preserve the Work, and terminate all existing subcontracts and purchase orders that are not required to perform the Work up to the effective date of termination and the portion of Work not terminated, and enter into no further subcontracts or purchase orders for the portion of this Contract that was terminated. District shall pay Contractor for Work executed and costs reasonably incurred by reason of such termination, along with reasonable overhead and profit on the Work completed. District will not pay profit or overhead allocable to Work which is not performed at the time of termination.

## 17. Payments and Completion

- a. Contract Sum. The Contract Sum is stated in the Contract, and including authorized adjustments, is the total amount payable by District to Contractor for performance of Work under the Contract Documents.
- b. Schedule of Values. Prior to submission of the first Application for Payment, Contractor shall submit a preliminary schedule of values for all of the Work, including quantities and prices of items aggregating the Contract Sum and subdividing the Work into component parts in sufficient detail to serve as the basis for progress payments during construction. Contractor shall include, at a minimum: (a) overhead and profit; (b) supervision; (c) general conditions; (d) layout; (e) mobilization; (f) scheduling; (g) submittals; (h) bonds and insurance; (i) close-out documentation; (j) demolition; (k) installation; (l) rough-in; (m) finishes; (n) testing; and (o) punch list and acceptance ("Schedule of Values"); or, at the District's discretion, Contractor shall follow requirements of schedule of values as described in Division 01. The schedule of values will also be separated by phase for each major component of work and shall follow the table of contents of the specifications.
- c. Applications for Payment. Contractor shall submit an itemized and notarized application for payment for operations completed in accordance with the Schedule of Values and reflecting applicable retainage ("Application for Payment"). Applications for Payment shall be prepared using forms provided by the District. Contractor shall submit data substantiating Contractor's right to payment where required, such as copies of requisitions from subcontractors and material suppliers, Construction Change Directives, Change Orders, and/or force account information, and MWESB utilization data. Contractor shall provide:
  1. The amount paid to the date of the Application for Payment to Contractor, all its subcontractors, and all others furnishing labor, material, or equipment for this Contract;

2. The amount being requested by Contractor on its own behalf and separately stating the amount requested on behalf of each of the subcontractors and all others furnishing labor, material, or equipment for this Contract;
  3. The balance that is due to each of such entities after payment is made;
  4. Certification that the Record Documents are current;
  5. Itemized breakdown of Work done for the purpose of requesting partial payment;
  6. Updated construction schedule;
  7. Additions and subtractions from the Contract Sum and Contract Time;
  8. Total of retainage held;
  9. Material invoices, evidence of equipment purchases, rentals, and other support District may request;
  10. Percentage complete of Contractor's Work by line item;
  11. A Schedule of Values updated from the preceding Application for Payment; and
  12. Contractors' Certified Payroll.
- d. Waivers and Releases. Contractor shall submit conditional waivers and releases upon progress payment from Contractor and each subcontractor of any tier and supplier to be paid from current progress payment along with an unconditional waiver and release upon progress payment from Contractor and each subcontractor of any tier that received payment from the previous progress payment. Contractor shall certify as follows: "Contractor warrants title to all Work performed and materials purchased as of the date of the payment application; and Contractor warrants that all Work performed and materials purchased as of the date of the payment application are free and clear of liens, claims, security interests, or encumbrances in favor of any persons or entities making a claim by reason of having provided labor, materials, or equipment relating to the Work, except those of which District has been informed."
- e. False Claims. Contractor is subject to the False Claims Act set forth under ORS Chapter 180 for information provided with any Application for Payment.
- f. Certificates for Payment.
1. District shall review the Contractor's Application for Payment within a reasonable time after receipt not to exceed seven (7) days for the purpose of determining that it is properly submitted. District shall either return the Application for Payment to Contractor with a document setting forth the reasons why the Application for Payment is not proper, or shall issue a Certificate for Payment for the amounts properly due.
  2. District's issuance of a Certificate for Payment is a representation by District, based upon District's evaluation of the Work and the data comprising the Application for Payment, that Contractor is entitled to payment in the amount certified because the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. District's approval of the certified Application for Payment is based on Contractor complying with all requirements for a fully complete and valid certified Application for Payment.
- g. Decisions to Withhold Certification.
1. District shall notify Contractor in writing if any amounts are not due, and the reasons for withholding certification in whole or in part. If Contractor and District cannot agree on a revised amount, District shall promptly issue a Certificate for Payment for the amount for which District determines that Contractor is entitled to payment. District may withhold Certificate for Payment or nullify the whole or part of a Certificate for Payment previously issued, to such extent as may be reasonably necessary to protect District from loss for which Contractor is responsible, including loss resulting from acts and omissions because of defective Work not remedied, third party claims filed or reasonable evidence indicating probable filing of such claim unless security acceptable to District is provided by Contractor, failure of Contractor to make payments properly to subcontractors or for labor, materials, or equipment, reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum, damage to District or another contractor, reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or

liquidated damages for the anticipated delay, persistent failure to carry out the Work in accordance with the Contract Documents, or failure to maintain Record Documents.

2. Contractor shall not receive any interest on any retainage or amounts withheld due to the failure of Contractor to perform in accordance with the Contract Documents.
3. District may apply any withheld amount to pay outstanding claims or obligations on behalf of Contractor, without prior judicial determination of the claim or obligation. If any payment is made by District, that amount is deemed a payment made under this Contract by District to Contractor.
4. District shall promptly issue a Certificate for Payment for amounts previously withheld when the reasons for withholding certification are removed.

h. Progress Payments.

1. District shall make payment in the manner and within the time provided in the Contract Documents. District may withhold the portion of any progress payment for which certified payroll statements have not been received until such certified statements are submitted.
2. Contractor shall promptly pay each subcontractor, upon receipt of payment from District, out of the amount District paid to Contractor on account of each subcontractor's portion of the Work. Contractor shall, by written agreement, require each subcontractor to make payments to sub-subcontractors in a similar manner.
3. District may issue joint checks made payable to Contractor, subcontractor(s) and material or equipment suppliers. Joint check payees are responsible for the allocation and disbursement of funds included as part of any such joint check payment. Joint check payment does not create a contract, rights, or obligations between District and any subcontractor or material or equipment supplier.
4. Certificate for Payment, progress payment, or partial or entire use or occupancy of the Project does not constitute acceptance of Work not in accordance with the Contract Documents.

i. Substantial Completion.

1. Substantial Completion. Substantial completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that District can occupy or utilize the Work for its intended purpose.
2. Punch List. When Contractor considers the Work or a designated portion of the Work to be substantially complete, Contractor shall prepare and submit to District a comprehensive list of items to be completed or corrected prior to final payment ("Punch List"). The Punch List does not alter Contractor's responsibility to complete the Work in accordance with the Contract Documents.
3. Certificate of Substantial Completion. Upon receipt of Contractor's Punch List, District shall make an inspection to determine whether the Work or designated portion thereof is substantially complete. If District determines that the Work is not substantially complete, District shall notify Contractor of any Work to be completed in accordance with the Contract Documents before the Work or designated portion can be certified as such, and Contractor shall complete all such items. Upon determining that the Work or designated portion thereof is substantially complete, District and Contractor shall execute a Certificate of Substantial Completion.
4. Commencement of Warranty. Contractor's general and special warranties shall be effective as of the date that the Work is deemed finally complete.
5. Close-Out Documentation. Contractor shall assemble for District's approval within thirty (30) days of Substantial Completion all close-out documentation as required by the Contract Documents, including the required number of copies of operating, maintenance, and warranty data from all manufacturers whose equipment is installed in the Work, and Record Documents of the Work.

j. Final Completion.

1. The Work will be deemed finally complete when all conditions set out in the Contract Documents are satisfied and District accepts such Work. Final completion is achieved when all punchlist work is complete, all close-out documentation has been received, all final testing, equipment calibration and training have been completed, and the Contractor is entitled to Final Payment. Unless special circumstances exist that are defined at the time of Punch List creation, Contractor shall achieve Final Completion within 30 days of Substantial Completion.

2. Final Inspection. When Contractor considers all of the Punch List Work to be complete, Contractor shall notify District which shall inspect such Work.
3. Final Application for Payment. If District finds the Punch List Work complete and acceptable under the Contract Documents, District shall notify Contractor, who shall then submit its Final Application for Payment.
4. Partial Payment of Retainage. District may reduce or eliminate the amount of the retainage on any remaining monthly contract payments after 50 percent of the work under the Contract is completed if, in District's opinion, such work is progressing satisfactorily. Elimination or reduction of retainage shall be allowed only upon written application by the Contractor, and the application shall include written approval of the Contractor's surety. However, when the contract work is 97.5 percent completed District may, at District's discretion and without application by the Contractor, reduce the retained amount to 100 percent of the value of the contract work remaining to be done. Upon receipt of a written application by the Contractor, District shall respond in writing within a reasonable time.
5. Payment of Retainage. District shall make payment of retainage applying to such Work or designated portion thereof after receiving all Close Out Documentation, an affidavit that bills for indebtedness connected with the Work for which District's property might be encumbered have been satisfied; a certificate to indicate that insurance required by the Contract Documents shall remain in force after final payment is in effect and will not be cancelled or expire until thirty (30) days' prior written notice is given to District and that Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents; the consent of surety to final payment; and valid waivers of all construction lien claims, bond claims, and other claims by Contractor and each subcontractor in a form acceptable to District.
6. Bond in Lieu of Waiver. If a subcontractor refuses to furnish a release or waiver required by District, Contractor may furnish a bond satisfactory to District to indemnify District against such lien. If such lien remains unsatisfied after payments are made, Contractor shall refund to District all money that District may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.
7. Delay in Final Completion. District shall make payment of the balance due for any portion of the Work fully completed and accepted if final completion is materially delayed through no fault of Contractor or by issuance of Change Orders affecting final completion. In the event that final completion is not accomplished within thirty (30) days after the date of Substantial Completion due to any fault of Contractor, District may withhold from the final payment 150 percent of the reasonable cost to complete the unfinished Work and to attain final completion. In the event Contractor fails to complete the Work necessary to attain final completion after forty five (45) days from Substantial Completion, District may, without waiving other remedies it may have, complete the Work and deduct the actual cost thereof from the funds withheld.
8. District's Waiver of Claims. District's issuance of Final Payment constitutes a waiver of Claims by District except those from liens, claims, security interests or encumbrances arising out of this Contract and unsettled, failure of the Work to comply with the requirements of the Contract Documents, terms of warranties required by or included in the Contract Documents, or corrective Work.
9. Contractor's Waiver of Claims. Contractor's acceptance of final payment constitutes a waiver of claims except those previously made in writing and identified by Contractor as unsettled at the time of final Application for Payment.

## **18. Indemnity and Liability.**

- a. To the fullest extent permitted by Oregon law, Contractor shall indemnify and defend with legal counsel reasonably acceptable to District and its consultants and separate contractors, and their respective board members, officers, representatives, agents, trustees, volunteers, and employees, in both individual and official capacities ("Indemnities"), against all suits, claims, damages, losses, and expenses, including but not limited to attorney's fees, caused by, arising out of, resulting from, or incidental to, the performance of the Work under this Contract by Contractor, its subcontractors, vendors, or suppliers, including, without limitation, any such suit, claim, damage, loss, or expense attributable to, without limitation, bodily injury, sickness, disease, death, alleged patent violation or copyright infringement, or to injury to or destruction of tangible property (including damage to the Work itself) including the loss of use resulting therefrom, except to the extent caused by the sole negligence, active negligence, or willful misconduct of the Indemnities, and/or to any extent that would render these provisions void or unenforceable. This agreement and

obligation of Contractor will not be construed to negate, abridge, or otherwise reduce any right or obligation of indemnity that would otherwise exist as to any party or person described herein. This indemnification and defense obligation includes any failure or alleged failure by Contractor to comply with any provision of law, any failure or alleged failure to timely and properly fulfill all of its obligations under the Contract Documents in strict accordance with their terms.

- b. Contractor shall fully indemnify and defend District, and each person, entity, firm, or agency that owns or has any interest in adjacent property in any action arising out of any agreement between Contractor and adjacent property owners that is made for the purpose of entering upon the adjacent property to perform the Work. Contractor shall obtain District's approval of the form and content of the agreement prior to the commencement of any Work on or about the adjacent property.
- c. Severability of Indemnity Provisions. Contractor shall give prompt notice to District in the event of any injury (including death), loss, or damage included herein. Without limitation of the provisions herein, if Contractor's agreement to indemnify and defend the Indemnities as provided herein against liability for damage arising out of bodily injury to persons or damage to property caused by or resulting from the negligence of any of the Indemnities will to any extent be or be determined to be void or unenforceable, it is the intention of the parties that these circumstances will not otherwise affect the validity or enforceability of Contractor's agreement to indemnify and defend the rest of the Indemnities, as provided herein, and in the case of any such suits, claims, damages, losses, or expenses caused in part by the default, negligence, or act or omission of Contractor, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, and in part by any of the Indemnities, Contractor shall be and remain fully liable on its agreements and obligations herein to the full extent permitted by law.
- d. In any and all claims against any of the Indemnities by any employee of Contractor, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, Contractor's indemnification obligation herein shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Contractor or any subcontractor under workers' compensation acts, disability benefit acts, or other employee benefit acts, unless it is limited by ORS 30.140.
- e. Contractor's defense and indemnification obligations survive the completion of Work, including any warranty period and/or termination of this Contract.
- f. Nothing in Article 18 above requires Contractor or Contractor's surety or insurers to indemnify District, its officers, agents, and employees against liability for damages for death or bodily injury to persons or damage to property caused in whole or in part by the negligence of District, its officers, agents, and employees. Nothing in the foregoing sentence limits or otherwise affects any requirement in Article 18 above that requires Contractor to indemnify District, its officers, agents, and employees against liability for damages for death or bodily injury to persons or damage to property arising from the fault of Contractor or Contractor's agents, representatives, employees, or subcontractors.

#### **19. Special Provisions Relating to Construction on School District Property.**

- a. Work Performed on District Property. Contractor performing Work on District property or for District shall comply with District policies at all times. In all cases personnel on school property shall carry photo identification, acceptable to District, and shall present such identification to anyone on request. Contractor shall ensure that all Project personnel are in compliance with applicable identification, uniform, and badge requirements for all Project personnel at no cost to District.
  - 1. As required by schools and other District locations, District may require personnel to sign in before entering District properties.
  - 2. No Smoking. Smoking or other use of tobacco is prohibited on all District property.
  - 3. No Drugs. District's property sites are all designated drug-free zones, which designation is enforced by the Portland Police Bureau.
  - 4. No Weapons or Firearms. Except as provided by Oregon statutes and District policy, weapons and firearms are prohibited on District's property.
- b. Confidentiality. **Family Education Rights and Privacy Act ("FERPA") prohibits the re-disclosure of confidential student information.** Except in very specific circumstances, Contractor shall not disclose to any other party without prior consent of the parent/guardian 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. Any re-disclosure of confidential student information must be in compliance with the re-disclosure laws of FERPA. Contractor is not to re-disclose information without prior written notification to and written permission of Portland Public Schools. If Portland Public Schools grants permission, Contractor is solely responsible for compliance with the re-disclosure under §99.32(b). Consistent with FERPA's requirements, personally identifiable information obtained by Contractor in the performance of this Contract must be used only for the purposes identified in this Contract.

- c. Security. Contractor shall not use or disturb District's property, materials or documents except for the purpose of responding to District's request for proposal or invitation to bid or pursuant to completion of the Work under this Contract. Contractor shall treat all documents as confidential and shall not disclose such documents without approval from District. Any unauthorized disclosure of documents or removal of District property will be deemed a substantial breach of this Contract. Contractor shall bear sole responsibility for any liability including, but not limited to, attorneys' fees, resulting from any action or suit brought against District as a result of Contractor's willful or negligent release of information, documents, or property contained in or on District property. District hereby deems all information, documents, and property contained in or on District property privileged and confidential.
- d. Child Abuse Reporting Act. Contractor shall comply with the child abuse reporting law (ORS 419B.005 through 419B.050) as if Contractor were a mandatory abuse reporter. Contractor shall immediately report to the proper state or law enforcement agency circumstances supporting reasonable cause to believe that any child has been abused. Contractor shall report to the Principal or designated school authority the circumstances supporting reasonable cause to believe that any child has been abused.
- e. Employee Removal. At District's request, Contractor shall immediately remove any employee from all District properties in cases where District determines in its sole discretion that removal of that employee is in District's best interests.

## **20. Miscellaneous Provisions.**

- a. Non-Appropriation; Adequate Funding. District shall, at Contractor's written request, prior to commencement of Work, provide Contractor with reasonable evidence that financial arrangements have been made to fulfill District's obligations under the Contract. If payment for Work under this Contract extends into District's next fiscal year, District's obligation to pay for such Work is subject to approval of future School Board appropriations to fund this Contract. Continuation of this Contract at specified levels is specifically conditioned on adequate funding under District's budget adopted in June of each year. District may adjust the Work provided for in this Contract in accordance with funding levels adopted by the School Board.
- b. Law and Venue. Any dispute under this Contract or related to this Contract is governed by all provisions of the Oregon Constitution and laws of Oregon governing, controlling, or affecting District, or the property, funds, operations, or powers of District, which are incorporated herein by reference. This Contract is deemed to include any provision that the law requires to be included. Any litigation arising out of this Contract shall be conducted in courts located in Multnomah County, Oregon.
- c. 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 are not affected, and the rights and obligations of the parties are construed and enforced as if this Contract did not contain the particular term or provision held to be invalid.
- d. No Waiver. The failure of District in any one or more instances to insist upon strict performance of any of the terms of this Contract or to exercise any option herein conferred is not a waiver or relinquishment to any extent of the right to assert or rely upon any such terms or option on any future occasion. No action or failure to act by District, Architect, or Construction Manager waives any right or duty afforded District under this Contract, nor does action or failure to act constitute an approval of or acquiescence in any breach, except as specifically agreed in writing.
- e. Non-discrimination Clause. Both parties agree that no person shall be subject to unlawful discrimination based on race; national or ethnic origin; color; sex; religion; age; sexual orientation; gender expression or identity; pregnancy; marital status; familial status; economic status or source of income; mental or physical disability or perceived disability; or military service in programs, activities, services, benefits, or employment in connection with this contract. The parties further agree not to discriminate in their employment or personnel policies.

- f. No Third Party Beneficiaries. District and Contractor are the only parties to this Contract and are the only parties entitled to enforce its terms. Nothing in this Contract provides any benefit or right, directly or indirectly, to third persons unless they are individually identified by name in this Contract and expressly described as intended beneficiaries of this Contract. The Contract Documents shall not be construed to create a contractual relationship of any kind: (a) between Contractor and District's representatives or consultants, (b) between District and a subcontractor or a sub-subcontractor, (c) between District and a supplier; or (d) between any persons or entities other than District and Contractor.
- g. Media Contacts. Contractor shall issue no news release, press release, or other statement to members of the news media or any other publication regarding this Agreement or the Project within one (1) year of Project completion without District's prior written authorization. Contractor shall not post or publish any textual or visual representations of the Project without approval of District.
- h. Successors in Interest. This Contract will bind, and inure to the benefit of, the parties, their successors, and approved assigns, if any.
  - 1. Contractor shall not assign all or any part of this Contract including, without limitation, any services or money to become due under this Contract without the prior written consent of District. Assignment without District's prior written consent is null and void. Any assignment of money due or to become due under this Contract is subject to a prior lien for services rendered or material supplied for performance of Work called for under this Contract in favor of all persons, firms, or corporations rendering services or supplying material to the extent that claims are filed pursuant to Oregon law, and is also subject to deductions for liquidated damages or withholding of payments as determined by District in accordance with this Contract. Contractor shall not assign or transfer in any manner to a subcontractor or supplier the right to prosecute or maintain an action against District.
  - 2. Contractor shall first notify District prior to any change in the name or legal nature of Contractor's entity. District shall determine if Contractor's intended change is permissible while performing this Contract.