

Lane Education Service District

Invitation to Bid

P20002-1006-20

<http://orpin.oregon.gov/open.dll/welcome>
<http://www.lesd.k12.or.us/facilities/projects/>

Westmoreland HVAC Upgrades



Closing Date & Time

December 10th, 2020, 12:00 PM (PST)

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SECTION B – PURPOSE, GENERAL INFORMATION & DEFINITIONS

B.1 INTRODUCTION:

B.1.1 OVERVIEW, OBJECTIVES, BACKGROUND:

Lane ESD is seeking a qualified contractor to furnish and install (9) roof top units and install new DDC controls at our Westmoreland Campus in Eugene, Oregon. The full scope of this project can be found in Attachments A through G. Design and engineering has been provided in by R&W Engineering.

B.1.2 CONTRACT TERM: The Contract is anticipated to start as soon as the Contract has been awarded, produced and signed by all parties. The initial Contract term shall be for six (6) months. The parties may agree to extend the term of the Contract up to a maximum of (1) year.

B.1.3 METHOD OF COMPENSATION: The contract payment method for the Westmoreland HVAC Upgrade shall be a one-time fixed price.

B.1.4. PROPOSER QUALIFICATIONS: In order to meet Lane ESD's requirements to complete this project, the contractor must possess proven experience and qualifications with structural modifications like the one outlined in the attached specifications. References provided with the bid documents will be checked before an intent to award is issued.

B.2 SCHEDULE: Please note the following dates and deadlines.

Important Dates		
ITB Release Date		Tuesday, November 10th, 2020
Written Questions/Requests for Clarifications, Substitutions, or Change Due		Tuesday, November 25th, 2020
Answers to Questions/Requests Posted on Lane ESD Website and Orpin		Tuesday, December 1st, 2020
CLOSING: Bid Submittal Due		Thursday, December 10th, 2020 @ 12:00PM PST
Award Notification (approx.)		Thursday, December 10th, 2020
Issuance of Notice of Intent to Award (approx.)		Thursday, December 17th, 2020
Contract Award (approx.)		Monday, December 21st, 2020
Contract Start (approx.)		Monday, December 28th, 2020

B.3 DEFINITIONS: Together with the Definitions found in Section A.1 of the General Conditions, the following definitions apply to this ITB and the resulting Contract.

B.3.1 "Addendum" means an addition or deletion to, a material change in, or a clarification of, the ITB. Each Addendum shall be labeled as such and shall be made available to all interested Offerors in accordance with OAR 125-249-0250(2). The plural form of "Addendum" is "Addenda."

B.3.2 "Agency" means the Lane Education Service District

B.3.3 "Bid" means the Offeror's written offer submitted in response to the ITB, including all necessary attachments and information required to be submitted prior to award. Bid also means "Offer".

B.3.4 "Bidder" means an individual, organization or representative of an organization that submits a Bid in response to an ITB. Bidder also means "Offeror".

B.3.5 "Closing" means the date and time set in the ITB for Bid submission, after which Bids may not be submitted, modified, or withdrawn by Bidder.

B.3.6 "ESD" means Education Service District.

B.3.7 "Invitation to Bid" or "ITB" means all documents, whether attached or incorporated by reference, and any Addenda thereto, used for soliciting Bids.

B.3.8 "Opening" means the date/time set to read the Bid submittals.

B.3.9 "Oregon Procurement Information Network" or "ORPIN" or "ORPIN System" means the on-line electronic Oregon Automated Procurement System administered by DAS. The ORPIN System website is located at: <http://orpin.oregon.gov/open.dll/welcome>

B.3.10 "Plan Center" means organizations and business locations where Bidders may view, download or purchase copies of all documents relating to the ITB.

B.3.11 "State" means the State of Oregon.

B.3.12 "Writing" means letters, characters and symbols inscribed on paper by hand, print, type or other method of impression, intend to represent or convey particular ideas or meanings. "Writing" when required or permitted by law, or required or permitted in a Solicitation Document, also means letters, characters and symbols made in electronic form and intended to represent or convey particular ideas or meanings.

SECTION C - GENERAL BIDDING INFORMATION/INSTRUCTIONS TO OFFERORS

C.1 GENERAL INFORMATION

C.1.0 PRE-BID CONFERENCE:

C.1.0.1 There will be no mandatory pre-bid meeting for this project. Please schedule a site visit with Facilities Manager, Brad Johnston. Phone: 541-520-1747; Email: bjohnston@lesd.k12.or.us

C.1.0.2 Any statements made during a site visit will not change the Plans, Specifications or other Contract Documents unless an Addendum has been issued from Lane ESD and advertised on the ORPIN System.

C.1.0.2/C.1.0.3 SITE ACCESS: Site access will be available by appointment only. Please see project schedule for due dates for questions and substitution requests.

C.1.1 POINT(S) OF CONTACT:

C.1.1.1 The single contact point for questions regarding the ITB, forms, Specifications, Plans, bidding process, change, clarification, the award process, protests and any other issues that may arise, is **Brad Johnston** at 541-520-1747, fax 541-461-8298 and e-mail bjohnston@lesd.k12.or.us.

C.1.1.2 The contact point for requests for brand approval, or substitution requests is **Brad Johnston** at 541-520-1747, fax 541-461-8298 and e-mail bjohnston@lesd.k12.or.us.

C.1.2 ENGINEER AND CONSULTANT INFORMATION:

The following is a list of any engineers and consultants used on this project. This list is for informational purposes only. Offerors are prohibited from contacting these engineers and consultants during the solicitation process, unless otherwise authorized in this ITB.

Mark D. Jones, P.E., LEED AP, CCP
R&W Engineering, Inc.
9615 SW Allen Blvd, Suite 107
Beaverton, OR 97005

<http://rweng.com/>
503-292-6000

C.1.3 INVITATION TO BID DOCUMENT AVAILABILITY:

C.1.3.1 ITBs, ADDENDA AND ATTACHMENTS: ITBs, including all Addenda and most attachments, are posted on ORPIN as part of the solicitation document and will not be mailed to prospective Offerors. The ITB, Addenda, and attachments are also available at the Lane ESD website listed on the cover page of the ITB.

C.1.3.2 ATTACHMENTS: Some exhibits and attachments cannot be viewed or downloaded through ORPIN. In these cases, the solicitation will include instructions on how to obtain these documents.

C.1.3.3 DOCUMENTS OUTSIDE OF ORPIN: Offerors that are unable to view these documents on ORPIN or the Lane ESD website can pick up a copy of the ITB and attachments at the front office of Lane ESD's main campus:

Lane Education Service District
1200 HWY 99 N
Eugene, OR 97402

C.1.3.4 ADDENDA: Addenda are incorporated with the original solicitation as an attachment and can be viewed and downloaded by registered suppliers. Offerors should consult the ORPIN System regularly and also check the Lane ESD website until closing to avoid missing any Addenda.

C.1.4 SUPPLIERS LIST:

To be listed on the suppliers list, interested parties must be registered on ORPIN. Suppliers can register in ORPIN at: orpin.oregon.gov

Interested parties who download ITB documents from ORPIN will automatically be added to the suppliers list. Interested parties who obtain the ITB documents from other means may add themselves to the suppliers list on ORPIN. Interested parties who have entered their company on ORPIN are responsible for making sure information is correct and accurate. The State of Oregon assumes no responsibility for the content of the interested parties' information shown on ORPIN.

C.1.5 PLAN CENTERS:

The ITB document, Plans, Specifications, and any other solicitation documents may be examined at Lane Education Service District (Main Campus), 1200 HWY 99N, Eugene, Oregon 97402 or at a Plan Center noted below:

NOTE: OFFERORS WHO OBTAIN ITB DOCUMENTS, PLANS AND SPECIFICATIONS FROM PLAN CENTERS WILL NOT APPEAR ON THE SUPPLIERS LIST. See Section C.1.4.

Daily Journal of Commerce Plan Center, 921 SW Washington St., Ste. 210 Portland OR 97205

Eugene Builder's Exchange, 2460 W 11th Street Eugene, OR 97402

McGraw Hill Construction Dodge, 3461 NW Yeon, Portland, OR 97210

OAME, 4134 N. Vancouver Ave Portland, OR 97217

Oregon Contractor Plan Center, 14625 SE 82nd Dr., Clackamas, OR 97015

Salem Contractors Exchange, 2256 Judson Street SE, Salem, OR 97302

Willamette Valley Bid Center 32054 Old Hwy 34, PO Box 440 Tangent, Or. 97389

C.1.6 TRADE SECRETS:

Any information Offeror submits in response to the ITB that Offeror considers a trade secret under ORS 192.501(2) or confidential proprietary information, and that Offeror wishes to protect from public disclosure, must be clearly labeled with the following: "This information constitutes a trade secret under ORS 192.501(2) or confidential proprietary information, and is not to be disclosed except in accordance with the Oregon Public Records Law, ORS Chapter 192." Offerors are cautioned that price information submitted in response to an ITB is generally not considered a trade secret under the Oregon Public Records Law. Further, information submitted by Offerors that is already in the public domain is not protected. The State shall not be liable for disclosure or release of information when authorized or required by law or court order to do so. The State shall also be immune from liability for disclosure or release of information under the circumstances set out in ORS 646.473(3).

C.1.7 SOLICITATION LAW, RULES AND GENERAL CONDITIONS:

This ITB and the resulting Contract are governed by Oregon Law. Specific laws and rules that govern the solicitation process are found in Chapters 279A and 279C of the Oregon Revised Statutes, and Divisions 246 and 249 of the Administrative Rules of the Oregon Department of Administrative Services. The ITB and resulting Contract may be subject to other laws and rules. Offerors should obtain and become acquainted with the applicable provisions of the above laws and rules. Copies may be obtained as follows:

C.1.7.1 OREGON REVISED STATUTES (ORS Chapters 279A and 279C) - Can be obtained from Legislative Counsel Committee, S101 State Capitol, Salem, OR 97310-0630. Phone (503) 378-8146, or on line at: <http://www.leg.state.or.us/ors/home.html>

C.1.7.2 OREGON DEPARTMENT OF ADMINISTRATIVE SERVICES ADMINISTRATIVE RULES - (OAR Chapter 125, Divisions 246 and 249) - Can be obtained from the Department of Administrative Services, 1225 Ferry Street SE U140, Salem, OR 97301-4285. Phone (503) 378-4642 or on line at: <http://arcweb.sos.state.or.us/banners/rules.htm>

C.1.7.3 In addition to the foregoing, this solicitation and the Contract are governed by the STATE OF OREGON GENERAL CONDITIONS FOR PUBLIC IMPROVEMENT CONTRACTS, "General Conditions" dated January 1, 2012, which are incorporated herein by reference. See Exhibit 6.

C.1.8 BRAND NAME USAGE:

C.1.8.1 BRAND NAME: Any brand name listed in the specifications without an "or equal" "or approved equal" shall establish the minimum requirements for quality, utility, durability, function, and purpose. Other brand names may be used in the construction of the project as long as they are equal to or better than the product brand named, and the brand named is not mandated pursuant to a brand name exemption.

C.1.8.2 BRAND NAME "OR EQUAL": Any brand name listed in the specifications with an "or equal" shall establish the minimum requirements for quality, utility, durability, function, and purpose. Other brand names may be used in the construction of the project as long as they are equal to or better than the product brand named, and the proposed product has been approved in writing by the Owner's Authorized Representative prior to installation, and the brand named is not mandated pursuant to a brand name exemption.

The Owner's Authorized Representative shall determine, in its sole discretion, whether a product offered is "or equal".

C.1.8.3 BRAND NAME "OR APPROVED EQUAL": Any brand name listed in the specifications with an "or approved equal" or an "or approved equivalent" shall establish the minimum requirements for quality, utility, durability, function, and purpose. Other brand names may be used in the construction of the project as long as they are equal to or better than the product brand named, and the product has been pre-approved in writing **during the bidding process** detailed in Section C.2, and the brand named is not mandated pursuant to a brand name exemption.

Lane ESD shall determine, in its sole discretion, whether a product offered is "or approved equal".

C.2 SOLICITATION PROTEST; REQUEST FOR CHANGE; REQUEST FOR CLARIFICATION; REQUEST FOR BRAND NAME / PRODUCT SUBSTITUTION

C.2.1 PROCEDURE: The appropriate means of seeking clarifications or modifications to provisions of an ITB are through (a) requests for approval of an "or approved equal" or an "or approved equivalent"; (b) requests for clarification; (c) formal submittal of requests for changes to contractual terms or Specifications or Plans; and (d) formal submittal of protests of contractual terms or Specifications or Plans. Any Bid response that includes non-approved alternate product brands where approval is required, or that takes exception to the Specifications or Plans or contractual terms of the ITB may be deemed non-responsive and may be rejected.

C.2.2 METHOD OF SUBMITTING REQUESTS FOR MODIFICATION OF ITB PROVISIONS: Requests for brand approval, requests for substitution, requests for clarification, requests for change, and Bid protests shall be made in Writing and marked as follows:

Bid Request for:

Brand Approval/Request for Substitution/Request for Clarification/Request Change/Protest

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and must be received by the appropriate point of contact as identified in Section C.1.1 by **5:00 P.M.** (Pacific time) on **November 25th, 2020** Unless this specific deadline is extended by subsequent Addenda, no requests for brand approval, requests for substitution, requests for clarification, requests for change or protests pertaining to provisions contained in the originally-issued ITB will be considered after the date specified herein.

C.2.3 REQUEST FOR APPROVAL OF AN "OR APPROVED EQUAL" OR AN "OR APPROVED EQUIVALENT": Pursuant to Section C.1.8.3, Offerors shall provide that product unless another is approved through a request for approval of an "or approved equal" or an "or approved equivalent, or a product exemption has been issued (ORS 279C.345). Other brands of equal quality, merit and utility will be considered upon proper submittal of the request with appropriate documentation.

Requests shall be made in writing and be submitted to the name of the Point of Contact under C.1.1.2 of the ITB document. To be considered, the request for changes must be received by the deadline specified in C.2.2.

- Requests shall provide all the information necessary Lane ESD to determine product acceptability.

- Failure to provide sufficient information with the request shall be cause for the request not to be considered as equivalent
- Any product subsequently approved for substitution shall be listed on an Addendum issued by Lane ESD and posted on ORPIN and the Lane ESD website.

C.2.4 REQUEST FOR CLARIFICATION: Any Offeror that finds discrepancies in, or omissions from any provision of the ITB, Plans, Specifications, or Contract Documents or has doubt as to the meaning, shall make a request for clarification in writing, to the contact point listed in Section C.1.1.1. To be considered, the request for clarification must be received by Lane ESD by the deadline specified in Section C.2.2.

C.2.5 REQUEST FOR CHANGES TO CONTRACTUAL TERMS OR SPECIFICATIONS OR PLANS: Any Offeror may submit a request for changes to contractual terms, Plans, or Specifications, in writing, to the contact point listed in Section C.1.1.1. To be considered, the request for changes must be received by Lane ESD by the deadline specified in Section C.2.2. The request shall include the reason for requested changes, supported by factual documentation, and any proposed changes.

C.2.6 PROTEST OF CONTRACTUAL TERMS, PLANS, OR SPECIFICATIONS: Any Offeror who believes contractual terms, Plans, or Specifications are unnecessarily restrictive or limit competition may submit a protest, in writing, to the contact point listed in Section C.1.1.1. To be considered, the protest must be received by Lane ESD by the deadline specified in Section C.2.2. The protest shall include the legal and factual grounds for the protest, a description of the resulting prejudice to the Offeror if the protest is not granted, and any proposed changes.

C.2.7 RESPONSE TO REQUESTS FOR CLARIFICATION: Clarifications, whether verbal, in writing, or included in an Addendum as a "clarification," do not change Plans, Specifications, contractual terms, or procurement requirements of an ITB. If a request for clarification raises an issue that Lane ESD determines should be handled by formally amending the ITB, Lane ESD will do so only by announcing such a change in an Addendum, not through information identified as a "clarification."

C.2.8 RESPONSE TO REQUESTS FOR BRAND APPROVAL, REQUESTS FOR SUBSTITUTION, REQUESTS FOR CHANGE AND PROTESTS: Lane ESD shall promptly respond to each properly submitted written request for brand approval, request for substitution, request for change, and protest. Where appropriate, Lane ESD will issue ITB revisions via Addenda posted on the ORPIN System and the Lane ESD website. Lane ESD may also informally respond to Offeror questions.

HOWEVER, INFORMAL RESPONSES DO NOT AFFECT THE PROVISIONS OF THE ITB. PLANS, SPECIFICATIONS, CONTRACTUAL TERMS, AND PROCUREMENT REQUIREMENTS OF THE ITB CAN ONLY BE CHANGED VIA ADDENDA ISSUED BY DAS AND POSTED ON THE ORPIN SYSTEM.

C.3 PROTEST OF ADDENDA

Requests for clarification, requests for change, and protests of Addenda must be received by the time and date specified in the Addendum or they will not be considered. Lane ESD will not consider requests or protests of matters not added or modified by the Addendum.

C.4 OFFER FORMAT

C.4.1 SIGNATURE IN INK REQUIRED: All Offer documents requiring signature must be signed in ink by an authorized representative of the Offeror.

C.4.2 IN WRITING: Offers and pricing information shall be prepared by typewriter, ink or by computer, but must be signed in ink by an authorized representative of the Offeror. No oral, telegraphic, telephone, e-mail or facsimile Bids will be accepted.

C.4.3 FORMS TO BE USED: Required information shall be submitted on the forms specified in the ITB. Any information Offeror submits that is not required to be included on forms prescribed by Lane ESD shall be formatted in the manner called for in the ITB and submitted on Offeror's letterhead.

C.4.4 INFORMATION TO BE SUBMITTED WITH THE OFFER: The items listed below in this section shall be submitted or the Offer shall be found to be non-responsive.

The following shall be submitted prior to Closing:

- Pricing Submittal Form, Exhibit 1;
- Bid Security Requirements as per Section D;
- Construction Contractors Board (CCB) Registration Requirements; Asbestos Abatement Licensing Requirements, & Joint Venture - Partnership Declaration, Section G;
- Addenda Acknowledgement; Section H;
- Responsibility Inquiry & Contractor References; ESB Utilization, Section I;
- Residency Information, Section K;
- Signature of Bidder's Duly Authorized Representative, Section O;
- Addenda (If required)

The following shall be submitted either with the Bid submission or within two (2) working hours after the Closing:

- First Tier Subcontractor Disclosure Form, Section F

C.4.5 BID MODIFICATION PRIOR TO CLOSING: Alterations and erasures made before Offer submission must EACH be INDIVIDUALLY initialed in ink by the person signing the Offer. Offers, once submitted, may be modified in writing before Closing. Modifications made after Offer submission shall be prepared on Offeror's letterhead, be signed by an authorized representative, and state that the modifications amend and supersede the prior Offer. Failure to comply with the provisions of this paragraph of Section C.4.5 will result in Bid rejection.

C.4.5.1 Nothing in Section C.4.5 shall be construed as allowing the Offeror to alter or otherwise change the form of the Bid, the form of the Contract, the conditions of the Bid, or the Specifications or Plans attached to the Bid documents.

C.4.5.2 Modifications must be submitted in a sealed envelope marked as follows:

Bid Modification
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December 10, 2020
12:00 PM

C.4.5.3 Offerors may not modify Offers after Closing.

C.5 OFFER SUBMISSION

C.5.1 SIGNATURE REQUIRED: OFFER SUBMITTED BY OFFEROR MUST BEAR AN ORIGINAL SIGNATURE. FAILURE TO SUBMIT AN OFFER BEARING AN ORIGINAL SIGNATURE WILL RESULT IN REJECTION OF THE BID.

C.5.2 SEALED ENVELOPE; ADDRESS AND COVER INFORMATION: Offers shall be submitted in sealed packages or envelopes. To ensure proper identification and handling, all packages and envelopes shall be clearly marked as follows:

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December 10, 2020, 12:00 PM

LANE EDUCATION SERVICE DISTRICT
1200 HWY 99 N
EUGENE, OREGON 97402

Lane ESD shall not be responsible for the proper handling of any Offer not properly identified, marked and submitted in a timely manner.

C.6 OFFER WITHDRAWALS PRIOR TO CLOSING

C.6.1 IN WRITING: Offers may be withdrawn in writing when submitted on Offeror's letterhead, signed by an authorized representative, and received by Lane ESD prior to Closing. Offer withdrawals submitted in writing must be labeled as such and contain the ITB number.

Offers will be publicly opened and read at the Opening at the Closing date/time specified on page one (1) of the ITB, at Lane Education Service District, at 1200 Highway 99 N, Eugene, Oregon 97402. Only the name of the Offeror(s) and the total cost will be read at the opening. It is optional for Offerors to attend Opening. Award decisions will not be made at Opening. Bids received after the date/time for Closing will not be considered for award.

C.7.2 FIRST TIER SUBCONTRACTOR DISCLOSURE FORM: First tier subcontractor disclosure forms must be returned and date/time stamped within two working hours after the Closing to 1200 Highway 99 N, Eugene, OR 97402. Failure to comply with this requirement shall result in rejection of the Offer as non-responsive.

C.8 PRELIMINARY BID RESULTS

Prior to the Intent to Award Announcement, Lane ESD may post preliminary bid results on the ORPIN System or Lane ESD website. Such postings may not be correct and are not final.

C.9 TIME FOR OFFER ACCEPTANCE

An Offeror's Offer is a firm Offer, irrevocable, valid and binding on the Offeror for not less than 90 calendar days from the Closing date.

C.10 EXTENSION OF TIME FOR OFFER ACCEPTANCE

Lane ESD may request, orally or in writing, that Offerors extend, in writing, the time during which Lane ESD may consider their Offers. If an Offeror agrees to such extension, the Offer shall continue as a firm Offer, irrevocable, valid and binding on the Offeror for the agreed-upon extension period.

C.11 METHOD OF AWARD

The responsiveness of Bids and responsibility of Offerors and of their proposed subcontractors will be considered in making the award.

C.11.1 METHOD OF BID AWARD: Award will be made to the responsible Bidder submitting the lowest total for a responsive BASE BID. The State reserves the right to reject all Bids.

C.12 SUBSTANTIAL COMPLIANCE REQUIRED

Offers not in substantial compliance with ITB requirements cannot be considered, and cannot be supplemented by submissions delivered after Closing. However, Lane ESD may waive minor informalities and irregularities, and may seek clarification of any response that, in its sole discretion, it deems necessary or advisable.

C.13 OFFER EVALUATION CRITERIA

Offers will be evaluated to identify the lowest responsive Offer submitted by a responsible Offeror and not otherwise disqualified. (Refer to OAR 125-249-0390) Adjustments made to account for reciprocal preferences will be for Offer evaluation purposes only. No such adjustments shall operate to amend Offeror's Offer or any Contract awarded pursuant thereto.

C.13.1 RESPONSIVENESS: For its Bid to be considered responsive, the Offeror must substantially comply in all material respects with applicable solicitation procedures and requirements and the solicitation documents. In making such evaluation, Lane ESD may waive minor informalities and irregularities.

C.13.2 RESPONSIBILITY: Prior to award of a Contract, Lane ESD will evaluate whether the apparent successful Offeror meets the applicable standards of responsibility identified in ORS 279C.375(3) and OAR 125-249-0390. In doing so, Lane ESD may investigate Offeror and request information in addition to that already required in the ITB, when Lane ESD, in its sole discretion, considers it necessary or advisable.

C.13.3 OREGON PREFERENCE: Awards shall be subject to preference for products produced or manufactured in Oregon, if price, fitness and quality are equal; and, solely for the purpose of evaluating Bids, Lane ESD will add a percent increase to the Bid of a non-resident Bidder equal to the percent, if any, of the preference given to the Bidder in the state in which the Bidder resides. For example, if the Offeror is from a state that grants a ten (10) percent preference to local Offerors, Lane ESD will add ten (10) percent to that Offeror's Offer price (OAR 125-246-0300, 125-246-0310, and 125-249-0390).

C.14 PROCESSING OF BIDS

Neither the release of a Bid Security, nor acknowledgment that the selection process is complete (whether by posting of a Bid tabulation sheet, issuance of notice intent to award, or otherwise), shall operate as a representation by Lane ESD that any Offer submitted was complete, sufficient, lawful in any respect, or otherwise in substantial compliance with the ITB requirements.

C.15 WITHDRAWAL BY LANE ESD OF BID ITEMS PRIOR TO AWARD

Lane ESD reserves the right to delete Bid items. The deletion of one or more Bid items will not affect the method of award.

C.16 REJECTION OF OFFERS

C.16.1 REJECTION OF ALL OFFERS: Lane ESD may reject all Offers for good cause upon its finding that it is in the public interest to do so.

C.16.2 REJECTION OF PARTICULAR OFFERS: Lane ESD may reject a particular Offer for any of the reasons listed under OAR 125-249-0440.

C.17 INTENT-TO-AWARD ANNOUNCEMENT

Lane ESD reserves the right to announce its intent to award prior to formal Contract award by posting the tabulation sheet of Bid results on the ORPIN System, or by letter or fax ("Intent-to-Award Announcement"). The Intent-to-Award Announcement shall serve as notice to all Offerors that Lane ESD intends to make an award.

C.18 PROTEST OF INTENT TO AWARD

Adversely-affected or aggrieved Offerors shall have 30 calendar days from the date of the Intent-to-Award Announcement within which to file a written protest. Protests submitted after that date will not be considered. Protests must specify the grounds upon which the protest is based.

C.18.1 In order to be an adversely affected or aggrieved Offeror, the Offeror must claim to be eligible for award of the Contract as the responsible Offeror submitting the lowest responsive Offeror and that any and all lower Offerors are ineligible to receive Contract award.

C.18.2 An actual Offeror who is adversely affected or aggrieved by the award of the Contract to another Offeror may protest award, in writing, within the timeline established. The written protest shall state the grounds upon which the protest is based. No protest of award shall be considered after the deadline.

C.19 RESPONSE TO INTENT-TO-AWARD PROTESTS

Lane ESD will respond in writing to intent-to-award protests submitted by adversely-affected or aggrieved Offerors. Lane ESD may also respond to intent-to-award protests submitted by other Offerors for purposes of clarification. However, any response provided by Lane ESD is not intended to, and shall not in and of itself constitute, confirmation that the Offeror is, in fact, adversely affected or aggrieved, and therefore entitled to protest an intent to award, or that the protest was timely filed.

C.20 AWARD

After expiration of the 30-day intent-to-award protest period, and resolution of all protests, Lane ESD will proceed with final award. (If Lane ESD receives only one Bid, Lane ESD may dispense with the intent-to-award protest period and proceed with award of a Contract.)

C.21 COMMENCEMENT OF WORK

Contractor shall not commence Work under the Contract until the Notice to Proceed has been issued.

C.22 REVIEW OF AWARDED BID FILES

Awarded Bid files are public records and available for review at Lane ESD by appointment during regular business hours (Monday through Friday).

C.23 INFORMATION TO BE SUBMITTED BY THE APPARENT SUCCESSFUL OFFEROR

C.23.1 INSURANCE: The apparent successful Offeror shall provide all required proofs of insurance to Lane ESD within 7 calendar days of notification of intent to award. Failure to present the required documents within the 7 calendar-day period may result in Offer rejection. Offerors are encouraged to consult their insurance agent(s) about the insurance requirements as identified in Section G.3 of the General Conditions and the Supplemental General Conditions in Exhibit 6 prior to Offer submission.

Offerors must satisfy these insurance requirements by obtaining insurance coverage from insurance companies or entities acceptable to State that are allowed to provide such insurance under Oregon law. Eligible insurers include admitted insurers that have been issued a certificate of authority from the Oregon Department of Consumer and Business Services authorizing them to do an insurance business in the state of Oregon, and certain nonadmitted surplus lines insurers that satisfy the requirements of applicable Oregon law and are approved by Lane ESD. Lane ESD's approval will be based on its assessment of the nonadmitted surplus lines insurer and the suitability of surplus lines insurance for this particular procurement.

C.23.2 PERFORMANCE BOND and PAYMENT BOND: The successful Offeror shall be required to furnish a Performance Bond and a Payment Bond each in the total amount (100%) of the awarded Contract, executed in favor of the Lane Education Service District, to ensure faithful performance of the Contract and payment for services and goods.

NOTE: THE LANE EDUCATION SERVICE DISTRICT PROVIDED PERFORMANCE AND PAYMENT BONDS ARE THE FORMS APPROVED AND REQUIRED TO BE USED FOR THIS ITB.

The Lane Education Service District Performance Bond and Payment Bond form are Exhibits 3 & 4, respectively.

The apparent successful Offeror shall provide all required bonding to the Lane Education Service District within 30 calendar days of notification of award. Failure to present the required documents within 30 calendar days may be grounds for award disqualification.

C.23.3 JOINT VENTURE/PARTNERSHIP INFORMATION: The apparent successful Offeror, if a Joint Venture/Partnership shall provide a copy of the joint venture agreement or partnership agreement evidencing authority to Offer and to enter into the resulting Contract that may be awarded, together with corporate resolutions (if applicable) evidencing corporate authority to participate as a joint venturer or partner. A contact person must also be designated for purposes of receiving all notices and communications under the Contract. All partners and joint venturers will be required to sign the Contract awarded.

SECTION D - BID SECURITY REQUIREMENTS

D.1 Each Offer shall be accompanied by a certified or cashier's check, irrevocable letter of credit issued by an insured institution as defined in ORS 706.008, or Bid Bond payable to the Lane Education Service District in an amount equal to ten percent (10%) of the total amount of the Offer.

D.2 Bid security shall be furnished to Lane Education Service District as security against the failure of the Bidder to comply with all requirements within the time frames established subsequent to notification of intent to award.

D.3 If the Bidder fails to (1) execute the Contract, (2) furnish a Performance Bond and a Payment Bond, or (3) furnish certificates of insurance within the time specified in the written notification of intent to award a Contract, then Lane Education Service District may cash the check, draw under the letter of credit, or otherwise collect under the Bid security.

D.4 If Bid security is furnished by means of a Bid Bond, the Lane Education Service District Bid Bond form, provided as **Exhibit 2**, is the form approved and required to be used for this ITB.

SECTION E - PREVAILING WAGE RATES (BOLI REQUIREMENTS)

E.1 The Contractor and all subcontractors shall comply with the provisions of ORS 279C.800 through 279C.870, relative to Prevailing Wage Rates, as outlined in Sections C.1, C.2 and G.2.3 of the General Conditions.

Before starting Work the Contractor shall file with the Construction Contractors Board, and maintain in full force and effect, the separate public works bond required by ORS 279C.836 and OAR 839-025-0015, unless otherwise exempt under those provisions. The Contractor shall also include in every subcontract a provision requiring the Subcontractor to have a public works bond filed with the Construction Contractors Board before starting Work, unless otherwise exempt, and shall verify that the Subcontractor has filed a public works bond before permitting the Subcontractor to start Work.

E.2 This ITB and the resulting Contract are subject to the following Bureau of Labor and Industries (BOLI) wage requirements and the prevailing wages rates set forth in the following booklet, as amended, which is incorporated herein by reference with the same force and effect as though fully set forth herein, and is available at the following web link:

Prevailing Wage Rates for Public Works Contracts in Oregon issued July 1, 2017 as amended October 1, 2017.

Prevailing Wage Rates Apprenticeship Rates issued July 1, 2020

These BOLI wage rates are available on line at:

<https://www.oregon.gov/boli/employers/Pages/prevailing-wage-rates.aspx>

E.3 The Work will take place in **Lane County, Region 2**.

SECTION F - FIRST-TIER SUBCONTRACTOR DISCLOSURE INSTRUCTIONS AND FORM

(1) Pursuant to ORS 279C.370 and OAR 125-249-0360, Offerors are required to disclose information about certain first-tier subcontractors when Lane ESD estimates the Contract value for a Public Improvement to be greater than \$100,000. Specifically, when the Contract amount of a first-tier subcontractor furnishing labor, or labor and materials, would be greater than or equal to: (i) 5% of the project Bid, but at least \$15,000, or (ii) \$350,000 regardless of the percentage, the Bidder must disclose the following information about that subcontract in its Bid submission or within two (2) working hours after Closing:

- (a) The subcontractor's name,
- (b) Dollar value and,
- (c) The category of work that the subcontractor would be performing.

If the Offeror will not be using any subcontractors that are subject to the above disclosure requirements, the Offeror is required to indicate "NONE" on the Disclosure Form.

LANE ESD MUST REJECT AN OFFER IF THE OFFEROR FAILS TO SUBMIT THE DISCLOSURE FORM WITH THIS INFORMATION BY THE STATED DEADLINE.

(2) An Offeror shall submit the disclosure form required by OAR 125-249-0360 either in its Offer submission or within two (2) working hours after Closing.

Compliance with the disclosure and submittal requirements is a matter of responsiveness. Offers which are submitted by Closing, but for which the disclosure submittal has not been made by the specified deadline, are not responsive and shall not be considered for Contract award.

(3) Lane ESD shall obtain, and make available for public inspection, the disclosure forms required by OAR 125-249-0360. Lane ESD shall also provide copies of disclosure forms to the Bureau of Labor and Industries as required by ORS 279C.835. Lane ESD is not required to determine the accuracy or completeness of the information submitted. Substitution of affected first-tier subcontractors shall be made only in accordance with ORS 279C.585.

FIRST-TIER SUBCONTRACTOR DISCLOSURE FORM

PROJECT NAME: Westmoreland HVAC Upgrade

BID #: _____ CLOSING: Date: _____ Time: _____

This form must be submitted at the location specified in the Invitation to Bid on the advertised Closing date or within two working hours after the advertised Closing time.

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

SUBCONTRACTOR NAME	CATEGORY OF WORK	DOLLAR VALUE
_____	_____	\$ _____
_____	_____	\$ _____
_____	_____	\$ _____
_____	_____	\$ _____
_____	_____	\$ _____

Failure to submit this form by the disclosure deadline will result in a nonresponsive bid. A nonresponsive bid will not be considered for award.

Form submitted by (bidder name): _____

Contact name: _____ Phone no.: _____

SECTION G - CONSTRUCTION CONTRACTORS BOARD (CCB) REGISTRATION REQUIREMENTS / ASBESTOS ABATEMENT LICENSING REQUIREMENTS / JOINT VENTURE - PARTNERSHIP DISCLOSURE

G.1 CCB REQUIREMENTS

(1) Offerors shall be licensed with the State of Oregon Construction Contractors Board (CCB) prior to bidding on Public Improvement Contracts. FAILURE TO COMPLY WITH THIS REQUIREMENT SHALL RESULT IN BID REJECTION.

(2) All subcontractors participating in the project shall be similarly registered with the Construction Contractors Board at the time they propose to engage in subcontract work. The CCB registration requirements apply to all public works contracts unless superseded by federal law.

Offerors SHALL provide their Construction Contractors Board (ORS 701.055) registration number below:

CONSTRUCTION CONTRACTORS BOARD REGISTRATION NO.: _____

EXPIRATION DATE OF CCB NO.: _____

G.2 ASBESTOS ABATEMENT LICENSING REQUIREMENTS

An asbestos abatement license under ORS 468A.720 will not be required of the Contractor or its subcontractors.

G.3 JOINT VENTURE/PARTNERSHIP DISCLOSURE

The Offeror shall disclose whether the Offer is submitted by either a partnership or joint venture.

NO: _____ **YES:** _____

If yes, the Offeror shall provide the name of the contact person for the partnership or joint venturer.

Name: _____

SECTION H - ADDENDA ACKNOWLEDGEMENT

(1) Lane ESD reserves the right to make changes to the Invitation to Bid and the resulting Contract, by written Addenda, prior to the Closing time and date. Addenda will be advertised on the ORPIN System. Lane ESD is not responsible for an Offerors failure to receive notice of Addenda if such are advertised in the foregoing manner. Addenda shall only be issued by Lane ESD and upon issuance are incorporated into the Invitation to Bid or the resulting Contract.

(2) By Offeror's signature in Section O it ACKNOWLEDGES, AGREES and CERTIFIES TO THE FOLLOWING:

If any Addenda are issued in connection with this ITB, Offeror has received and duly considered such Addenda, and has completed the blanks below identifying all Addenda issued, and acknowledging and agreeing to the terms of all such Addenda as those terms revise the terms, conditions, Plans and Specifications of this ITB.

ADDENDA: No. ____ to No. ____ inclusive.

SECTION I - RESPONSIBILITY INQUIRY/CONTRACTOR REFERENCES & ESB UTILIZATION

Lane ESD reserves the right, pursuant to ORS 279C.375(3) and OAR 125-249-0390 to investigate and evaluate, at any time prior to award and execution of the Contract, the apparent successful Offeror's responsibility to perform the Contract. Submission of a signed Offer shall constitute approval for the Lane Education Service District to obtain any information Lane ESD deems necessary to conduct the evaluation. Lane ESD shall notify the apparent successful Offeror, in writing, of any other documentation required, which may include, but is not limited to, recent profit-and-loss history; current balance statements; assets-to-liabilities ratio, including number and amount of secured versus unsecured creditor claims; availability of short and long-term financing; bonding capacity; credit information; material; equipment; facility and personnel information; performance record of Contract performance; etc. Failure to promptly provide this information shall result in Offer rejection. Lane ESD may postpone the award of the Contract after announcement of the apparent successful Offeror in order to complete its investigation and evaluation. Failure of the apparent successful Offeror to demonstrate responsibility, as required under ORS 279C.375(3) and OAR 125-249-0390, shall render the Offeror non-responsible and shall constitute grounds for Offer rejection, as required under ORS 279C.375(3) and OAR 125-249-0440.

1. OFFEROR INFORMATION

Business Name: _____

Owner(s) Name: _____

Business Address: _____

Telephone Number: _____ Fax No.: _____

Email Address: _____

Name of Public Works Bonding Company: _____

Address of Public Works Bonding Company: _____

(street)

(city, state, zip)

Agent Name/Phone: _____

Public Works Bond Number: _____

2. OFFEROR REFERENCES FOR COMPARABLE PROJECTS IN SIZE AND SCOPE

Offeror shall provide a list of three different project references with the Offer that can be contacted regarding the quality of workmanship and service that the Offeror provided on projects of comparable size and scope. Offeror shall submit this information using the form provided in this section or may use the Offeror's form. The list of three different project references shall include the following information.

Project Reference #1

Name of Project: _____

Project Location: _____

Project Date: _____

Firm Name for Contact Person #1: _____

Name of Contact Person #1: _____

Telephone Number for Contact Person #1: _____

Fax number for Contact Person #1: _____

Firm Name for Contact Person #2: _____

Name of Contact Person #2: _____

Telephone Number for Contact Person #2: _____

Fax number for Contact Person #2: _____

Project Reference #2

Name of Project: _____

Project Location: _____

Project Date: _____

Firm Name for Contact Person #1: _____

Name of Contact Person #1: _____

Telephone Number for Contact Person #1: _____

Fax number for Contact Person #1: _____

Firm Name for Contact Person #2: _____

Name of Contact Person #2: _____

Telephone Number for Contact Person #2: _____

Fax number for Contact Person #2: _____

Project Reference #3

Name of Project: _____

Project Location: _____

Project Date: _____

Firm Name for Contact Person #1: _____

Name of Contact Person #1: _____

Telephone Number for Contact Person #1: _____

Fax number for Contact Person #1: _____

Firm Name for Contact Person #2: _____

Name of Contact Person #2: _____

Telephone Number for Contact Person #2: _____

Fax number for Contact Person #2: _____

The references will be checked to determine if they are supportive of the Offeror's ability to meet the requirements of this ITB.

Offeror must provide references that can be contacted regarding the quality of workmanship and service provided to current and past customers.

Lane ESD reserves the right to choose and investigate any reference whether or not furnished by the Offeror, and to investigate past performance of any Offeror with respect to its successful performance of similar projects, compliance with specifications and contractual obligations, its completion or delivery of service on schedule, and its lawful payment of suppliers, subcontractors, and employees.

Lane ESD may postpone the award or execution of the Contract after the announcement of the apparent successful Offeror in order to complete its investigation. Lane ESD may reject a bid if, the opinion of Lane ESD, overall reference responses indicate inadequate performance.

Lane ESD will make three attempts to contact the references from the list provided by the Contractor.

Each reference contacted will be asked the same questions, including but not limited to the above factors, including: (1) quality of service; (2) delivery; (3) responsiveness to reported problems, including orders and billing; (4) how well Contractor met the terms of the contract; and (5) whether the reference would choose to hire the Contractor again.

Contractor's supervisor who is overseeing the work shall have experience on projects similar in both size and complexity and submit with the bid, references for three projects that were performed within the last three (3) years.

References provided for the Contractor's supervisor may be the same three (3) references that are provided for the Contractor.

The list of references will include the following information:

Name of Project
Project Location
Project Date
Firm Name for Contact Person #1
Name of Contact Person #1
Telephone Number for Contact Person #1
Fax number for Contact Person #1
Firm Name for Contact Person #2
Name of Contact Person #2
Telephone Number for Contact Person #2
Fax number for Contact Person #2

Offeror must provide references with the bid that can be contacted regarding the quality of workmanship and service that the Contractor's supervisor provided on current and past projects of similar size and complexity.

3. SUBCONTRACTORS CERTIFIED UNDER ORS 200.055

Offeror will provide the company name(s) of any subcontractor that is certified under ORS 200.055 as a disadvantaged business enterprise, a minority-owned business, a woman-owned business, an emerging small business, or a business that a service-disabled veteran owns, that Offeror intends to utilize in the performance of this Contract.

Name: _____

Name: _____

Name: _____

Name: _____

Name: _____

SECTION J - RECYCLED PRODUCTS; DEMOLITION WORK

Vendors shall use recyclable materials to the maximum extent economically feasible in the performance of the Contract Work set forth in this document. ORS 279A.010(ii) provides as follows: "'Recycled product' means all materials, goods and supplies, not less than 50 percent of the total weight of which consists of secondary and post-consumer waste with not less than 10 percent of total weight consisting of post-consumer waste. 'Recycled product' also includes any product that could have been disposed of as a solid waste, having completed its life cycle as a consumer item, but otherwise is refurbished for reuse without substantial alteration of the product's form."

ORS 279A.010(u) provides as follows: "'Post-consumer waste' means a finished material which would normally be disposed of as solid waste, having completed its life cycle as a consumer item. 'Post-consumer waste' does not include manufacturing waste."

ORS 279A.010(jj) provides as follows: "'Secondary waste materials' means fragments of products of finished products of a manufacturing process which has converted a virgin resource into a commodity of real economic value, and includes post-consumer waste, but does not include excess virgin resources of the manufacturing process. For paper, 'secondary waste materials' does not include fibrous waste generated during the manufacturing process such as fibers recovered from waste water or trimmings of paper machine rolls, mill broke, wood slabs, chips, sawdust, or other wood residue from a manufacturing process."

ORS 279A.010(hh) provides as follows: "'Recycled PETE" means post-consumer polyethylene terephthalate material."

Because this Contract includes demolition work, as required by ORS 279C.510(1), the Contractor shall salvage or recycle construction and demolition debris, if feasible and cost-effective.

By my signature in Section O, I, the undersigned duly authorized representative of the Offeror, hereby affirm that Offeror will comply with the above recycled products provisions and demolition work provisions.

SECTION K - RESIDENCY INFORMATION

OAR 125-249-0390 states "In determining the lowest responsive Bid, the Lane Education Service District must add a percentage increase to the Bid of a nonresident Bidder equal to the percentage, if any, of the preference given to that Bidder in the state in which the Bidder resides."

"Resident Bidder" means a Bidder that has paid unemployment taxes or income taxes in this state during the 12 calendar months immediately preceding submission of the Bid, has a business address in this State, and has stated in the Bid whether the Bidder is a "resident Bidder".(OAR 125-246-0110)

"Non-resident Bidder" means a Bidder who is not a "resident Bidder" as defined above. (OAR 125-246-0110)

a. Check one: Bidder is a () Resident Bidder
() Non-resident Bidder

b. If a Resident Bidder, enter your Oregon business address: _____

c. If a Non-resident Bidder, enter state of residency: _____

FOREIGN CONTRACTOR: If the amount of the Contract exceeds ten thousand dollars (\$10,000), and if Contractor is not domiciled in or registered to do business in the State, Contractor shall promptly provide to the Oregon Department of Revenue all information required by that Department relative to the Contract. Lane ESD shall be entitled to withhold final payment under the Contract until Contractor has met this requirement.

SECTION L - CERTIFICATION OF COMPLIANCE WITH TAX LAWS

By my signature in Section O of this Contract, I, hereby attest or affirm under penalty of perjury: That I am authorized to act on behalf of the Contractor in this matter, that I have authority and knowledge regarding the payment of taxes, and that Contractor is, to the best of my knowledge, not in violation of any Oregon Tax Laws. For purposes of this certification, "Oregon tax laws" are those tax laws imposed by ORS 320.005 to 320.150 and ORS 403.200 to 403.250 and ORS Chapters 118, 314, 316, 317, 318, 321 and 323; the elderly rental assistance program under ORS 310.630 to 310.706; and any local tax laws administered by the Oregon Department of Revenue under ORS 305.620.

SECTION M - CERTIFICATION OF DRUG-TESTING LAW REQUIREMENTS

(1) Pursuant to OAR 125-249-0200, the Offeror certifies by its signature on these solicitation document forms that it has a Qualifying Drug Testing Program in place for its employees that includes, at a minimum, the following:

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

(2) A drug testing program that meets the above requirements will be deemed a "Qualifying Employee Drug Testing Program." An employee is a "Subject Employee" only if that employee will be working on the Project job site.

(3) If awarded a Public Improvement Contract as a result of this solicitation, Offeror agrees that at the time of Contract execution it shall represent and warrant to the Agency that its Qualifying Employee Drug Testing Program is in place and will continue in full force and effect for the duration of the Public Improvement Contract. The Agency's performance obligation (which includes, without limitation, the Agency's obligation to make payment) shall be contingent on Contractor's compliance with this representation and warranty.

(4) If awarded a Public Improvement Contract as a result of this solicitation, Offeror also agrees that at the time of Contract execution, and as a condition to Agency's performance obligation (which includes, without limitation, the Agency's obligation to make payment), it shall require each subcontractor providing labor for the Project to:

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

SECTION N - CERTIFICATION OF COMPLIANCE WITH NON-DISCRIMINATION LAWS

By my signature in Section O, I certify that I am authorized to act on behalf of Bidder in this matter and that Bidder has not discriminated and will not discriminate against any disadvantaged business enterprise, minority-owned business, women-owned business, emerging small business, or business that a service-disabled veteran owns, in obtaining any required subcontracts. Failure to do so shall be grounds for disqualification.

SECTION O - SIGNATURE OF BIDDER'S DULY AUTHORIZED REPRESENTATIVE

THIS BID MUST BE SIGNED IN INK BY AN AUTHORIZED REPRESENTATIVE OF THE BIDDER; ANY ALTERATIONS OR ERASURES TO THE BID MUST BE INITIALED IN INK BY THE UNDERSIGNED AUTHORIZED REPRESENTATIVE.

The undersigned acknowledges, attests and certifies individually and on behalf of the Bidder that:

- (1) He/she is a duly authorized representative of the Bidder, has been authorized by Bidder to make all representations, attestations, and certifications contained in this Bid and all Addenda, if any, issued.
- (2) Bidder, acting through its authorized representatives, has read and understands all Bid instructions, Specifications, Plans, terms and conditions contained in this Bid document (including all listed attachments and Addenda, if any, issued);
- (3) The Bid submitted is in response to the specific language contained in the ITB, and Bidder has made no assumptions based upon either (a) verbal or written statements not contained in the ITB, or (b) any previously-issued ITB, if any.
- (4) Lane ESD shall not be liable for any claims or be subject to any defenses asserted by Bidder based upon, resulting from, or related to, Bidder's failure to comprehend all requirements of the ITB.
- (5) Lane ESD shall not be liable for any expenses incurred by Bidder in preparing and submitting its Offer or in participating in the Offer evaluation/selection process.
- (6) The Bidder agrees to be bound by and comply with all applicable requirements of ORS 279C.800 through ORS 279C.870 and the administrative rules of the Bureau of Labor and Industries (BOLI) regarding prevailing wage rates.
- (7) The Offer was prepared independently from all other Bidders, and without collusion, fraud, or other dishonesty.
- (8) Bidder is bound by and will comply with all requirements, Specifications, Plans, terms and conditions contained in this Bid (including all listed attachments and Addenda, if any, issued);
- (9) Bidder will furnish the designated item(s) or service(s) in accordance with the Specifications, Plans and requirements, and will comply in all respects with the terms of the resulting Contract upon award;
- (10) Bidder represents and warrants that Bidder has the power and authority to enter into and perform the Contract and that the Contract, when executed and delivered, shall be a valid and binding obligation of Contractor enforceable in accordance with its terms; and
- (11) All affirmations and certifications contained in Sections J, K, L, M and N are true and correct.

Authorized Signature: _____ Title: _____

Contact Person (Type or Print): _____

Telephone Number: (____) _____ Fax Number: (____) _____

EXHIBIT 1

P20002-1006-20 Westmoreland HVAC Upgrades

PRICING SUBMITTAL FORM

PRICING SUBMITTAL INSTRUCTIONS:

Offerors shall enter pricing and other required information for all Bid Items listed in this Pricing Submittal Form. If this Pricing Submittal Form is replaced by Addendum, Offerors shall use the Addendum form to provide pricing and other required information. If the Pricing Submittal Form is only modified by Addendum, Offerors shall follow the instructions in the Addendum for making modifications to the Pricing Submittal Form. Failure to supply the required information in the Pricing Submittal Form or subsequent Addenda may result in Bid rejection as non-responsive.

BASE BID: To include all work described in the ITB, Plans, Specifications (Attachments A-G)

TOTAL BASE BID: \$ _____

BIDDER NAME: _____

EXHIBIT 2

Lane Education Service District Bid Security Form

STATE OF OREGON STANDARD PUBLIC IMPROVEMENT CONTRACT

BID BOND

We, _____, as "Principal,"
(Name of Principal)

and _____, an _____ Corporation,
(Name of Surety)

authorized to transact Surety business in Oregon, as "Surety," hereby jointly and severally bind ourselves, our respective heirs, executors, administrators, successors and assigns to pay unto the Lane Education Service District ("Obligee") the sum of (\$_____)

_____ dollars.

WHEREAS, the condition of the obligation of this bond is that Principal has submitted its proposal or bid to an agency of the Obligee in response to Obligee's procurement document (No. _____) for the project identified as: Westmoreland HVAC Updgrades which proposal or bid is made a part of this bond by reference, and Principal is required to furnish bid security in an amount equal to ten (10%) percent of the total amount of the bid pursuant to the procurement document and ORS 279C.365(4) for competitive bidding or 279C.400(5) for competitive proposals.

NOW, THEREFORE, if the proposal or bid submitted by Principal is accepted, and if a contract pursuant to the proposal or bid is awarded to Principal, and if Principal enters into and executes such contract within the time specified in the procurement document and executes and delivers to Obligee its good and sufficient performance and payment bonds required by Obligee, as well as any required proof of insurance, within the time fixed by Obligee, then this obligation shall be void; otherwise, it shall remain in full force and effect.

IN WITNESS WHEREOF, we have caused this instrument to be executed and sealed by our duly authorized legal representatives this _____ day of _____, 20__.

PRINCIPAL: _____

SURETY: _____

By _____
Signature

BY ATTORNEY-IN-FACT:

Official Capacity

Name

Attest: _____
Corporation Secretary

Signature

Address

City State Zip

Phone Fax

EXHIBIT 3

Lane Education District Performance Bond Form

STATE OF OREGON

STANDARD PUBLIC IMPROVEMENT CONTRACT

PERFORMANCE BOND

Bond No.: _____

Solicitation: P20002-1006-20

Project Name: Westmoreland HVAC Upgrades

_____ (Surety #1)	Bond Amount No. 1:	\$ _____
_____ (Surety #2)*	Bond Amount No. 2:*	\$ _____
	Total Penal Sum of Bond:	\$ _____

** If using multiple sureties*

We, _____ as Principal, and the above identified Surety(ies), authorized to transact surety business in Oregon, as Surety, hereby jointly and severally bind ourselves, our respective heirs, executors, administrators, successors and assigns firmly by these presents to pay unto the Lane Education Service District the sum of (Total Penal Sum of Bond)

(Provided, that we the Sureties bind ourselves in such sum "jointly and severally" as well as "severally" only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sum only as is set forth opposite the name of such Surety), and

WHEREAS, the Principal has entered into a contract with the Lane Education Service District, the plans, specifications, terms and conditions of which are contained in the above-referenced Solicitation;

WHEREAS, the terms and conditions of the contract, together with applicable plans, standard specifications, special provisions, schedule of performance, and schedule of contract prices, are made a part of this Performance Bond by reference, whether or not attached to the contract (all hereafter called "Contract"); and

WHEREAS, the Principal has agreed to perform the Contract in accordance with the terms, conditions, requirements, plans and specifications, and all authorized modifications of the Contract which increase the amount of the work, the amount of the Contract, or constitute an authorized extension of the time for performance, notice of any such modifications hereby being waived by the Surety:

NOW, THEREFORE, THE CONDITION OF THIS BOND IS SUCH that if the Principal herein shall faithfully and truly observe and comply with the terms, conditions and provisions of the Contract, in all respects, and shall well and truly and fully do and perform all matters and things undertaken by Contractor to be performed under the Contract, upon the terms set forth therein,

and within the time prescribed therein, or as extended as provided in the Contract, with or without notice to the Sureties, and shall indemnify and save harmless the Lane Education Service District, and members thereof, its officers, employees and agents, against any direct or indirect damages or claim of every kind and description that shall be suffered or claimed to be suffered in connection with or arising out of the performance of the Contract by the Principal or its subcontractors, and shall in all respects perform said contract according to law, then this obligation is to be void; otherwise, it shall remain in full force and effect.

Nonpayment of the bond premium will not invalidate this bond nor shall the Lane Education Service District be obligated for the payment of any premiums.

This bond is given and received under authority of ORS Chapter 279C, the provisions of which hereby are incorporated into this bond and made a part hereof.

IN WITNESS WHEREOF, WE HAVE CAUSED THIS INSTRUMENT TO BE EXECUTED AND SEALED BY OUR DULY AUTHORIZED LEGAL REPRESENTATIVES.

Dated this _____ day of _____, 20__.

PRINCIPAL: _____

By _____
Signature

Official Capacity
Attest: _____
Corporation Secretary

SURETY: _____
[Add signatures for each surety if using multiple bonds]

BY ATTORNEY-IN-FACT:
[Power-of-Attorney must accompany each surety bond]

Name

Signature

Address

City State Zip

Phone Fax

EXHIBIT 4

Lane Education District Payment Bond Form

STATE OF OREGON

STANDARD PUBLIC IMPROVEMENT CONTRACT

PAYMENT BOND

Bond No. _____

Solicitation: P20002-1006-20

Project Name Westmoreland HVAC Upgrades

_____ (Surety #1)	Bond Amount No. 1:	\$ _____
_____ (Surety #2)*	Bond Amount No. 2:*	\$ _____
	Total Penal Sum of Bond:	\$ _____

* If using multiple sureties

We, _____, as Principal, and the above identified Surety(ies), authorized to transact surety business in Oregon, as Surety, hereby jointly and severally bind ourselves, our respective heirs, executors, administrators, successors and assigns firmly by these presents to pay unto the Lane Education Service District the sum of _____ (Total Penal Sum of Bond) _____ (Provided, that we the Sureties bind ourselves in such sum "jointly and severally" as well as "severally" only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sum only as is set forth opposite the name of such Surety), and

WHEREAS, the Principal has entered into a contract with the Lane Education Service District, the plans, specifications, terms and conditions of which are contained in above-referenced Solicitation;

WHEREAS, the terms and conditions of the contract, together with applicable plans, standard specifications, special provisions, schedule of performance, and schedule of contract prices, are made a part of this Payment Bond by reference, whether or not attached to the contract (all hereafter called "Contract"); and

WHEREAS, the Principal has agreed to perform the Contract in accordance with the terms, conditions, requirements, plans and specifications, and schedule of contract prices which are set forth in the Contract and any attachments, and all authorized modifications of the Contract which increase the amount of the work, or the cost of the Contract, or constitute authorized extensions of time for performance of the Contract, notice of any such modifications hereby being waived by the Surety:

NOW, THEREFORE, THE CONDITION OF THIS BOND IS SUCH that if the Principal shall faithfully and truly observe and comply with the terms, conditions and provisions of the Contract, in all respects, and shall well and truly and fully do and perform all matters and things by it undertaken to be performed under said Contract and any duly authorized modifications that are made, upon the terms set forth therein, and within the time prescribed therein, or as extended therein as provided in the Contract, with or without notice to the Sureties, and shall indemnify and save harmless the Lane Education Service District, and members thereof, its officers, employees and agents, against any claim for direct or indirect damages of every kind and description that shall be suffered or claimed to be suffered in connection with or arising out of the performance of the Contract by the Contractor or its subcontractors, and shall promptly pay all persons supplying labor, materials or both to the Principal or its subcontractors for prosecution of the work provided in the Contract; and shall promptly pay all contributions due the State Industrial Accident Fund and the State Unemployment Compensation Fund from the Principal or its subcontractors in connection with the performance of the Contract; and shall pay over to the Oregon Department of Revenue all sums required to be deducted and retained from the wages of

employees of the Principal and its subcontractors pursuant to ORS 316.167, and shall permit no lien nor claim to be filed or prosecuted against the Lane Education Service District on account of any labor or materials furnished; and shall do all things required of the Principal by the laws of this State, then this obligation shall be void; otherwise, it shall remain in full force and effect.

Nonpayment of the bond premium will not invalidate this bond nor shall the Lane Education Service District be obligated for the payment of any premiums.

This bond is given and received under authority of ORS Chapter 279C, the provisions of which hereby are incorporated into this bond and made a part hereof.

IN WITNESS WHEREOF, WE HAVE CAUSED THIS INSTRUMENT TO BE EXECUTED AND SEALED BY OUR DULY AUTHORIZED LEGAL REPRESENTATIVES:

Dated this _____ day of _____, 20__.

PRINCIPAL: _____

By _____

Signature

Official Capacity

Attest: _____

Corporation Secretary

SURETY: _____

[Add signatures for each if using multiple bonds]

BY ATTORNEY-IN-FACT:

[Power-of-Attorney must accompany each bond]

Name

Signature

Address

City State Zip

Phone

EXHIBIT 5

Sample Public Improvement Agreement Form

COPIES OF THIS PUBLIC IMPROVEMENT AGREEMENT FORM WILL BE SENT TO THE INTENDED AWARDEE (CONTRACTOR) BY LANE ESD AT THE TIME OF THE STATE'S INTENT TO AWARD NOTICE. THE BLANKS IN THIS SAMPLE WILL BE FILLED IN BY LANE ESD. THE INTENDED AWARDEE WILL THEN COMPLETE AND SIGN THE AGREEMENT. AFTER ALL REQUIREMENTS ARE MET, LANE ESD WILL THEN SIGN THE PUBLIC IMPROVEMENT AGREEMENT FORM AND SEND AN ORIGINAL, SIGNED FULLY EXECUTED PUBLIC IMPROVEMENT AGREEMENT FORM TO THE CONTRACTOR ALONG WITH THE NOTICE TO PROCEED.

STATE OF OREGON PUBLIC IMPROVEMENT AGREEMENT for WESTMORELAND HVAC UPGRADES

P20002-1006-20

This Agreement for the **WESTMORELAND HVAC UPGRADES** (the "Agreement"), made by and between **Lane Education Service District**, hereinafter called OWNER, and **(Insert Contractor's Name)** hereinafter called the CONTRACTOR (collectively the "Parties"), is effective on the date this Agreement has been signed by all the Parties and all required State of Oregon governmental approvals have been obtained. Unless otherwise defined in the Invitation to Bid or in this Agreement, the capitalized terms used herein are defined in Section A.1 of the State of Oregon General Conditions for Public Improvement Contracts.

WITNESSETH:

1. Contract Price, Contract Documents and Work.

The CONTRACTOR, in consideration of the sum of **(Insert Price)** (the "Contract Price"), to be paid to the CONTRACTOR by OWNER in the manner and at the time hereinafter provided, and subject to the terms and conditions provided for in the Invitation to Bid, this Public Improvement Agreement and other Contract Documents, all of which are incorporated herein by reference, hereby agrees to perform all Work described and reasonably inferred from the Contract Documents.

The Contract Price includes the following items: **(Insert Items)**

2. Representatives.

Unless otherwise specified in the Contract Documents, the OWNER designates **Brad Johnston**, as its Authorized Representative in the administration of this Contract. The above-named individual shall be the initial point of contact for matters related to performance, payment, authorization, and to carry out the responsibilities of the OWNER. CONTRACTOR has named **(Insert Name)** its Authorized Representative to act on its behalf.

3. Contract Dates.

PROJECT START DATE: **30** calendar days from issuance of Notice to Proceed.

SUBSTANTIAL COMPLETION: **90** calendar days from issuance of Notice to Proceed.

FINAL COMPLETION: **120** calendar days from issuance of Notice to Proceed.

4. Liquidated Damages.

Failure to complete the project known as Westmoreland HVAC Upgrades by the specified time will result in damage to the Lane Education Service District. Since actual damage will be difficult to determine, it is agreed that the Contractor shall pay to the Lane Education Service District, not as a penalty but as liquidated damages, \$500.00 per calendar day for each day elapsed in excess of the Substantial Completion date stated in Section 3 of this Agreement.

5. Integration

THE CONTRACT DOCUMENTS CONSTITUTE THE ENTIRE AGREEMENT BETWEEN THE PARTIES. NO WAIVER, CONSENT, MODIFICATION OR CHANGE OF TERMS OF THIS CONTRACT SHALL BIND EITHER PARTY UNLESS IN WRITING AND SIGNED BY BOTH PARTIES. SUCH WAIVER, CONSENT, MODIFICATION OR CHANGE, IF MADE, SHALL BE EFFECTIVE ONLY IN THE SPECIFIC INSTANCE AND FOR THE SPECIFIC PURPOSE GIVEN. THERE ARE NO OTHER UNDERSTANDINGS, AGREEMENTS, OR REPRESENTATIONS, ORAL OR WRITTEN, NOT SPECIFIED HEREIN REGARDING THIS CONTRACT. CONTRACTOR, BY THE SIGNATURE BELOW OF ITS AUTHORIZED REPRESENTATIVE, HEREBY ACKNOWLEDGES THAT IT HAS READ THIS CONTRACT, UNDERSTANDS IT, AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

In witness whereof, the LANE EDUCATION SERVICE DISTRICT executes this Agreement and the CONTRACTOR does execute the same as of the day and year of this Agreement first above written.

CONTRACTOR DATA:

CONTRACTOR NAME _____

CONTRACTOR ADDRESS _____

CONTRACTOR ADDRESS _____

CONTRACTOR'S CCB # _____ Expiration Date: _____

CONTRACTOR'S SIGNATURE: _____
Date

LANE EDUCATION SERVICE DISTRICT:

Date

STATE OF OREGON

GENERAL CONDITIONS

FOR

PUBLIC IMPROVEMENT

CONTRACTS



NOTICE TO STATE AGENCIES AND PUBLIC IMPROVEMENT CONTRACTORS

January 1, 2012 Edition

Changes to the General Conditions (including any additions, deletions or substitutions) should only be made by Supplemental General Conditions, unless the General Conditions are specifically modified in the Public Improvement Agreement (which has a higher order of precedence under Section A.3 of the General Conditions). The text of these General Conditions should not otherwise be altered.

NOTE: THE FOLLOWING GENERAL CONDITIONS HAVE BEEN REVIEWED AS TO FORM BY THE OREGON DEPARTMENT OF JUSTICE. THE LEGAL SUFFICIENCY AND APPROVAL REQUIREMENTS OF ORS 291.047 ARE STILL APPLICABLE FOR INDIVIDUAL PROCUREMENTS OF STATE AGENCIES, UNLESS AN EXEMPTION HAS BEEN GRANTED PURSUANT TO THAT STATUTE AND ADMINISTRATIVE RULES AT OAR CHAPTER 137, DIVISION 45.

STATE OF OREGON
GENERAL CONDITIONS FOR PUBLIC IMPROVEMENT CONTRACTS
JANUARY 1, 2012

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**STATE OF OREGON
GENERAL CONDITIONS FOR PUBLIC IMPROVEMENT CONTRACTS
("General Conditions")**

**SECTION A
GENERAL PROVISIONS**

A.1 DEFINITION OF TERMS

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

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

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

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

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

CONTRACT DOCUMENTS, means the Solicitation Document and addenda thereto, the State of Oregon Public Improvement Agreement Form, General Conditions, Supplemental General Conditions, if any, the accepted Offer, Plans, Specifications, amendments and Change Orders.

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

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

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

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

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

DIRECT COSTS, means, unless otherwise provided in the Contract Documents, the cost of materials, including sales tax, cost of delivery; cost of labor, including social security, old age and unemployment insurance, and fringe benefits required by agreement or custom; worker's compensation insurance; project specific insurance (including, without limitation, Builder's Risk Insurance and Builder's Risk Installation Floater); bond premiums, rental cost of equipment, and machinery required for execution of the work; and the additional costs of field personnel directly attributable to the Work.

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

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

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

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

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

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

OWNER, means the State of Oregon acting by and through the governmental entity identified in the Solicitation Document.

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

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

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

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

RECORD DOCUMENT, means the as-built Plans, Specifications, testing and inspection records, product data, samples, manufacturer and distributor/supplier warranties evidencing transfer to Owner, operational and maintenance manuals, shop drawings, Change Orders, correspondence, certificate(s) of occupancy, and other documents listed in Subsection B.9.1 of these General Conditions, recording all Services performed.

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

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

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

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

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

SUPPLEMENTAL GENERAL CONDITIONS, means those conditions that remove from, add to, or modify these General Conditions. Supplemental General Conditions may be

included in the Solicitation Document or may be a separate attachment to the Contract.

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

A.2 SCOPE OF WORK

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

A.3 INTERPRETATION OF CONTRACT DOCUMENTS

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

1. Contract amendments and Change Orders, with those of later date having precedence over those of an earlier date;
2. The Supplemental General Conditions;
3. The State of Oregon Public Improvement Agreement Form;
4. The General Conditions
5. The Plans and Specifications
6. The Solicitation Document and any addenda thereto;
7. The accepted Offer.

A.3.2 In the case of an inconsistency between Plans and Specifications or within either document not clarified by addendum, the better quality or greater quantity of Work shall be provided in accordance with the Owner or Owner's Authorized Representative's interpretation in writing.

A.3.3 If the Contractor finds discrepancies in, or omissions from the Contract Documents, or if the Contractor is in doubt as to their meaning, the Contractor shall at once notify the Owner or Owner's Authorized Representative. Matters concerning performance under, and interpretation of requirements of, the Contract Documents will be decided by the Owner's Authorized Representative, who may delegate that duty in some instances to the Architect/Engineer. Responses to Contractor's requests for interpretation of Contract Documents will be made in writing by Owner's Authorized Representative (or the Architect/Engineer) within any time limits agreed upon or otherwise with reasonable promptness.

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

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

A.4 EXAMINATION OF PLANS, SPECIFICATIONS, AND SITE

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

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

A.5 INDEPENDENT CONTRACTOR STATUS

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

A.6 RETIREMENT SYSTEM STATUS AND TAXES

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

A.7 GOVERNMENT EMPLOYMENT STATUS

- A.7.1 If this payment is to be charged against federal funds, Contractor represents and warrants that it is not currently employed by the Federal Government. This does not preclude the Contractor from holding another contract with the Federal Government.
- A.7.2 Contractor represents and warrants that Contractor is not an employee of the State of Oregon for purposes of performing Work under this Contract.

SECTION B ADMINISTRATION OF THE CONTRACT

B.1 OWNER'S ADMINISTRATION OF THE CONTRACT

- B.1.1 The Owner's Authorized Representative will provide administration of the Contract as described in the Contract Documents (1) during construction (2) until final payment is due and (3) during the one-year period for correction of Work. The Owner's Authorized Representative will act on behalf of the Owner to the extent provided in the Contract Documents, unless modified in writing in accordance with other provisions of the Contract. In performing these tasks, the Owner's Authorized Representative may rely on the Architect/Engineer or other consultants to perform some or all of these tasks.
- B.1.2 The Owner's Authorized Representative will visit the site at intervals appropriate to the stage of the Contractor's operations (1) to become generally familiar with and to keep the Owner informed about the progress and quality of the portion of the Work completed, (2) to endeavor to guard the Owner against defects and deficiencies in the Work, and (3) to determine in general if Work is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. The Owner's Authorized Representative

will not make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Owner's Authorized Representative will neither have control over or charge of, nor be responsible for the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work.

- B.1.3 Except as otherwise provided in the Contract Documents or when direct communications have been specifically authorized, the Owner and Contractor shall endeavor to communicate with each other through the Owner's Authorized Representative or designee about matters arising out of or relating to the Contract. Communications by and with the Architect/Engineer's consultants shall be through the Architect/Engineer. Communications by and with Subcontractors and material suppliers shall be through the Contractor. Communications by and with separate contractors shall be through the Owner's Authorized Representative.
- B.1.4 Based upon the Architect/Engineer's evaluations of the Contractor's Application for Payment, or unless otherwise stipulated by the Owner's Authorized Representative, the Architect/Engineer will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

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

- B.2.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures.
- B.2.2 The Contractor is responsible to protect and maintain the Work during the course of construction and to mitigate any adverse impacts to the project, including those caused by authorized changes, which may affect cost, schedule, or quality.
- B.2.3 The Contractor is responsible for the actions of all its personnel, laborers, suppliers, and Subcontractors on the project. The Contractor shall enforce strict discipline and good order among Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of persons who are unfit or unskilled for the tasks assigned to them.

B.3 MATERIALS AND WORKMANSHIP

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

and used by the industry, in accordance with industry standards.

- B.3.2 The Contractor is responsible to perform the Work as required by the Contract Documents. Defective Work shall be corrected at the Contractor's expense.
- B.3.3 Work done and materials furnished shall be subject to inspection and/or observation and testing by the Owner's Authorized Representative to determine if they conform to the Contract Documents. Inspection of the Work by the Owner's Authorized Representative does not relieve the Contractor of responsibility for the Work in accordance with the Contract Documents.
- B.3.4 Contractor shall furnish adequate facilities, as required, for the Owner's Authorized Representative to have safe access to the Work including without limitation walkways, railings, ladders, tunnels, and platforms. Producers, suppliers, and fabricators shall also provide proper facilities and access to their facilities.
- B.3.5 The Contractor shall furnish Samples of materials for testing by the Owner's Authorized Representative and include the cost of the Samples in the Contract Price.

B.4 PERMITS

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

B.5 COMPLIANCE WITH GOVERNMENT LAWS AND REGULATIONS

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

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

(a) Contractor shall not discriminate against Disadvantaged, Minority, Women or Emerging Small Business enterprises, as those terms are defined in ORS 200.005, or a business enterprise that is owned or controlled by or that employs a disabled veteran, as that term is defined in ORS 408.225, in the awarding of subcontracts.

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

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

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

B.5.5 The following notice is applicable to Contractors who perform excavation Work. ATTENTION: Oregon law requires you to follow rules adopted by the Oregon Utility Notification Center. Those rules are set forth in OAR 952-001-0010 through OAR 952-001-0090. You may obtain copies of the rules by calling the center at (503)232-1987.

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

B.6 SUPERINTENDENCE

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

B.7 INSPECTION

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

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

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

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

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

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

B.7.7 When the United States government participates in the cost of the Work, or the Owner has an agreement with other public or private organizations, or if any portion of the Work is being performed for a third party or in close proximity to third party facilities, representatives of these organizations have the right to inspect the Work affecting their interests or property. Their right to inspect shall not make them a party to the Contract and shall not interfere with the rights of the parties of the Contract. Instructions or orders of such parties shall be transmitted to the Contractor, through the Owner's Authorized Representative.

B.8 SEVERABILITY

If any provision of this Contract is declared by a court to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected and the rights and obligations of the parties shall be construed and

enforced as if the Contract did not contain the particular provision held to be invalid.

B.9 ACCESS TO RECORDS

B.9.1 Contractor shall keep, at all times on the Work site, one record copy of the complete Contract Documents, including the Plans, Specifications, Change Orders and addenda, in good order and marked currently to record field changes and selections made during construction, and one record copy of Shop Drawings, Product Data, Samples and similar submittals, and shall at all times give the Owner's Authorized Representative access thereto.

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

B.10 WAIVER

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

B.11 SUBCONTRACTS AND ASSIGNMENT

B.11.1 Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound by the terms and conditions of these General Conditions, and to assume toward the Contractor all of the obligations and responsibilities which the Contractor assumes toward the Owner thereunder, unless (1) the same are clearly inapplicable to the subcontract at issue because of legal requirements or industry practices, or (2) specific exceptions are requested by Contractor and approved in writing by Owner. Where appropriate, Contractor shall require each Subcontractor to enter into similar agreements with sub-subcontractors at any level.

B.11.2 At Owner's request, Contractor shall submit to Owner prior to their execution either Contractor's form of subcontract, or the subcontract to be executed with any particular Subcontractor. If Owner disapproves such form, Contractor shall not execute the form until the matters disapproved are resolved to Owner's satisfaction. Owner's review, comment upon or approval of any such form shall not relieve Contractor of its obligations under this Agreement or be deemed a waiver of such obligations of Contractor.

B.11.3 Contractor shall not assign, sell, or transfer its rights, or delegate its responsibilities under this Contract, in whole or in part, without the prior written approval of the Owner. No such written approval shall relieve Contractor of any obligations of this Contract, and any transferee shall be considered the agent of the Contractor and bound to perform in accordance with

the Contract Documents. Contractor shall remain liable as between the original parties to the Contract as if no assignment had occurred.

B.12 SUCCESSORS IN INTEREST

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

B.13 OWNER'S RIGHT TO DO WORK

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

B.14 OTHER CONTRACTS

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

B.15 GOVERNING LAW

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

B.16 LITIGATION

Any Claim between Owner and Contractor that arises from or relates to this Contract and that is not resolved through the Claims Review Process in Section D.3 shall be brought and conducted solely and exclusively within the Circuit Court of Marion County for the State of Oregon; provided, however, if a Claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. In no event shall this section be construed as a waiver by the State of Oregon on any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any claim or from the jurisdiction of any court. CONTRACTOR BY EXECUTION OF THIS CONTRACT HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF THE COURTS REFERENCED IN THIS SECTION B.16.

B.17 ALLOWANCES

B.17.1 The Contractor shall include in the Contract Price all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such

amounts and by such persons or entities as the Owner may direct.

B.17.2 Unless otherwise provided in the Contract Documents:

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

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

B.18.1 The Contractor shall prepare and keep current, for the Architect's/Engineer's approval (or for the approval of Owner's Authorized Representative if approval authority has not been delegated to the Architect/Engineer), a schedule and list of submittals which is coordinated with the Contractor's construction schedule and allows the Architect/Engineer reasonable time to review submittals. Owner reserves the right to finally approve the schedule and list of submittals. Submittals include, without limitation, Shop Drawings, Product Data, and Samples which are described below:

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

B.18.2 Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. The purpose of their submittal is to demonstrate for those portions of the Work for which submittals are required by the Contract Documents the way by which the Contractor proposes to conform to the information given and the design concept expressed

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

B.18.3 The Contractor shall review for compliance with the Contract Documents, approve and submit to the Architect/Engineer Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of separate contractors. Submittals which are not marked as reviewed for compliance with the Contract Documents and approved by the Contractor may be returned by the Architect/Engineer without action.

B.18.4 By approving and submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents that the Contractor has determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and has checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

B.18.5 The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal has been approved by the Architect/Engineer.

B.18.6 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Architect/Engineer's review or approval of Shop Drawings, Product Data, Samples or similar submittals unless the Contractor has specifically informed the Architect/Engineer in writing of such deviation at the time of submittal and (i) the Architect/Engineer has given written approval to the specific deviation as a minor change in the Work, or (ii) a Change Order has been executed by Owner authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by the Architect/Engineer's review or approval thereof.

B.18.7 In the event that Owner elects not to have the obligations and duties described under this Section

B.18 performed by the Architect/Engineer, or in the event no Architect/Engineer is employed by Owner on the project, all obligations and duties assigned to the Architect/Engineer hereunder shall be performed by the Owner's Authorized Representative.

B.19 SUBSTITUTIONS

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

B.20 USE OF PLANS AND SPECIFICATIONS

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

B.21 FUNDS AVAILABLE AND AUTHORIZED

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

B.22 NO THIRD PARTY BENEFICIARIES

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

SECTION C WAGES AND LABOR

C.1 MINIMUM WAGE RATES ON PUBLIC WORKS

Contractor shall comply fully with the provisions of ORS 279C.800 through 279C.870. Documents establishing those conditions, as determined by the Commissioner of the Bureau of Labor and Industries (BOLI), are included as attachments to or are incorporated by reference in the Contract Documents. Contractor shall pay workers at not less than the specified minimum hourly rate of wage, and shall include that requirement in all subcontracts.

C.2 PAYROLL CERTIFICATION; ADDITIONAL RETAINAGE; FEE REQUIREMENTS

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

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

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

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

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

C.3 PROMPT PAYMENT AND CONTRACT CONDITIONS

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

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

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

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

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

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

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

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

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

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

- (1) Demonstrate to the Contractor that it has a Qualifying Employee Drug Testing Program for the Subcontractor's Subject Employees,

and represent and warrant to the Contractor that the Qualifying Employee Drug Testing Program is in place at the time of subcontract execution and will continue in full force and effect for the duration of the subcontract, or

- (2) Require that the Subcontractor's Subject Employees participate in the Contractor's Qualifying Employee Drug Testing Program for the duration of the subcontract.

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

C.3.2.1 If Contractor fails, neglects or refuses to pay promptly a person's claim for labor or services that the person provides to the Contractor or a Subcontractor in connection with the project as such claim becomes due, the proper officer that represents the Owner may pay the amount of the claim and charge the amount of the payment against funds due or to become due Contractor under this Contract. Paying a claim in this manner shall not relieve the Contractor or the Contractor's surety from obligation with respect to an unpaid claim.

C.3.2.2 If the Contractor or a first-tier Subcontractor fails, neglects or refuses to pay a person that provides labor or materials in connection with the public contract for a public improvement within thirty (30) Days after receiving payment from Owner or a contractor, the contractor or first-tier Subcontractor owes the person the amount due plus interest charges that begin at the end of the 10-Day period within which payment is due under ORS 279C.580(3) and that end upon final payment, unless payment is subject to a good faith dispute as defined in ORS 279C.580. The rate of interest on the amount due is nine percent per annum. The amount of interest may not be waived.

C.3.2.3 If the Contractor or a Subcontractor fails, neglects or refuses to pay a person that provides labor or materials in connection with the Contract, the person may file a complaint with the Construction Contractors Board, unless payment is subject to a good faith dispute as defined in ORS 279C.580. Every contract related to this Contract must contain a similar clause.

C.3.3 Pursuant to ORS 279C.580, Contractor shall include in each subcontract for property or services the Contractor enters into with a first-tier Subcontractor, including a material supplier, for the purpose of performing a construction contract:

- (a) A payment clause that obligates the Contractor to pay the first-tier Subcontractor for satisfactory performance under the subcontract within ten (10) Days out of amounts the Owner pays to the Contractor under the Contract;
- (b) A clause that requires the Contractor to provide the first-tier Subcontractor with a standard form that the first-tier Subcontractor may use as an application for payment or as another method by which the Subcontractor may claim a payment due from the Contractor;

- (c) A clause that requires the Contractor, except as otherwise provided in this paragraph, to use the same form and regular administrative procedures for processing payments during the entire term of the subcontract. The Contractor may change the form or the regular administrative procedures the Contractor uses for processing payments if the Contractor:

- (1) Notifies the Subcontractor in writing at least 45 days before the date on which the Contractor makes the change; and
- (2) Includes with the written notice a copy of the new or changed form or a description of the new or changed procedure.

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

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

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

C.4 PAYMENT FOR MEDICAL CARE

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

C.5 HOURS OF LABOR

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

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

- (a) For all overtime in excess of eight (8) hours a day or forty (40) hours in any one week when the work week is five consecutive Days, Monday through Friday; or
- (b) For all overtime in excess of ten (10) hours a day or forty (40) hours in any one week when the work week is four consecutive Days, Monday through Friday; and
- (c) For all Work performed on Saturday and on any legal holiday specified in ORS 279C.540.

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

This Section C.5 shall not excuse Contractor from completion of the Work within the time required under this Contract.

SECTION D **CHANGES IN THE WORK**

D.1 CHANGES IN WORK

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

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

- (a) Modification of specifications and design.
- (b) Increases or decreases in quantities.
- (c) Increases or decreases to the amount of Work.

- (d) Addition or elimination of any Work item.
- (e) Change in the duration of the project.
- (f) Acceleration or delay in performance of Work.
- (g) Deductive changes.

Deductive changes are those that reduce the scope of the Work, and shall be made by mutual agreement whenever feasible, as determined by Owner. In cases of suspension or partial termination under Section J, Owner reserves the right to unilaterally impose a deductive change and to self perform such Work, for which the provisions of B.13 (Owner's Right to Do Work) shall then apply.

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

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

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

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

When Change Order Work under D.1.3(c) is invoiced by an authorized Subcontractor at any level, each ascending

tier Subcontractor or Contractor will be allowed a 5% supplemental mark-up on each piece of subcontract Work covered by such Change Order.

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

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

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

The thirty (30) day time limit applies to claims of Subcontractors, suppliers, or manufacturers that may be affected by the Change Order and that request additional compensation or an extension of Contract Time to perform; Contractor has responsibility for contacting its Subcontractors, suppliers, or manufacturers within the thirty (30) day time limit, and including their requests with Contractor's requests. If the request involves Work to be completed by Subcontractors, or materials to be furnished by suppliers or manufacturers, such requests shall be submitted to the Contractor in writing with full analysis and justification for the compensation and additional Contract Time

requested. The Contractor will analyze and evaluate the merits of the requests submitted by Subcontractors, suppliers, and manufacturers to Contractor prior to including those requests and Contractor's analysis and evaluation of those requests with Contractor's requests for additional compensation or Contract Time that Contractor submits to the Owner's Authorized Representative. Failure of Subcontractors, suppliers, manufacturers or others to submit their requests to Contractor for inclusion with Contractor's requests submitted to Owner's Authorized Representative within the time period and by the means described in this section shall constitute a waiver of these Subcontractor claims. The Owner's Authorized Representative and the Owner will not consider direct requests or claims from Subcontractors, suppliers, manufacturers or others not a party to this Contract. The consideration of such requests and claims under this section does not give any person, not a party to the Contract the right to bring a claim against the State of Oregon, whether in this claims process, in litigation, or in any dispute resolution process.

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

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

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

D.2 DELAYS

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

D.2.1.1 Avoidable Delays include any delays other than Unavoidable Delays, and include delays that

otherwise would be considered Unavoidable Delays but that:

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

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

- (a) Caused by any actions of the Owner, Owner's Authorized Representative, or any other employee or agent of the Owner, or by separate contractor employed by the Owner.
- (b) Caused by any site conditions which differ materially from what was represented in the Contract Documents or from conditions that would normally be expected to exist and be inherent to the construction activities defined in the Contract Documents. The Contractor shall notify the Owner's Authorized Representative immediately of differing site conditions before the area has been disturbed. The Owner's Authorized Representative will investigate the area and make a determination as to whether or not the conditions differ materially from either the conditions stated in the Contract Documents or those which could reasonably be expected in execution of this particular Contract. If Contractor and the Owner's Authorized Representative agree that a differing site condition exists, any additional compensation or additional Contract Time will be determined based on the process set forth in Section D.1.5 for Change Order Work. If the Owner's Authorized Representative disagrees that a differing site condition exists and denies Contractor's request for additional compensation or Contract Time, Contractor may proceed to file a Claim under Section D.3, Claims Review Process.
- (c) Caused by Force Majeure acts, events or occurrences that could not have been avoided by the exercise of care, prudence, foresight, and diligence on the part of the Contractor or its Subcontractors.
- (d) Caused by adverse weather conditions. Any adverse weather conditions must be substantiated by documentary evidence that weather conditions were abnormal for the specific time period claimed, could not have been anticipated by the Contractor, and adversely impacted the project in a manner that could not be avoided by rescheduling the Work or by implementing measures to protect against the weather so that the Work could proceed. A rain, windstorm, high water, or other natural

phenomenon for the specific locality of the Work, which might reasonably have been anticipated from the previous 10-year historical records of the general locality of the Work, shall not be construed as abnormal. The parties agree that rainfall greater than the following levels cannot be reasonably anticipated:

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

The Office of the Environmental Data Service of the National Oceanic and Atmospheric Administration of the U.S. Department of Commerce nearest the project site shall be considered the official agency of record for weather information.

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

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

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

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

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

D.3 CLAIMS REVIEW PROCESS

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

D.3.2 The Detailed Notice of the Claim shall be submitted in writing by Contractor and shall include a detailed, factual statement of the basis of the Claim, pertinent dates, Contract provisions which support or allow the Claim, reference to or copies of any documents which support the Claim, the dollar value of the Claim, and the Contract Time extension requested for the Claim. If the Claim involves Work to be completed by Subcontractors, the Contractor will analyze and evaluate the merits of the Subcontractor claim prior to forwarding it and that analysis and evaluation to the Owner's Authorized Representative. The Owner's Authorized Representative and the Owner will not consider direct claims from Subcontractors, suppliers, manufacturers, or others not a party to this Contract. Contractor agrees that it will make no agreement, covenant, or assignment, nor will it commit any other act that will permit or assist any Subcontractor, supplier, manufacturer, or other to directly or indirectly make a claim against Owner.

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

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

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

considered to have commenced as of the date the Contractor delivers the request. Both parties acknowledge and agree that participation in mediation is a prerequisite to commencement of litigation of any disputes relating to the Contract. Both parties further agree to exercise their best efforts in good faith to resolve all disputes within sixty (60) Days of the commencement of the mediation through the mediation process set forth herein.

In the event that a lawsuit must be filed within this sixty (60) day period in order to preserve a cause of action, the parties agree that notwithstanding the filing, they shall proceed diligently with the mediation to its conclusion prior to actively prosecuting the lawsuit, and shall seek from the Court in which the lawsuit is pending such stays or extensions, including the filing of an answer, as may be necessary to facilitate the mediation process. Further, in the event settlements are reached on any issues through mediation, the parties agree to promptly submit the appropriate motions and orders documenting the settlement to the Court for its signature and filing.

- D.3.6 The mediator shall be an individual mutually acceptable to both parties, but in the absence of agreement each party shall select a temporary mediator and the temporary mediators shall jointly select the permanent mediator. Each party shall pay its own costs for the time and effort involved in mediation. The cost of the mediator shall be split equally between the two parties. Both parties agree to exercise their best effort in good faith to resolve all disputes in mediation. Participation in mediation is a mandatory requirement of both the Owner and the Contractor. The schedule, time and place for mediation will be mutually acceptable, or, failing mutual agreement, shall be as established by the mediator. The parties agree to comply with Owner's administrative rules governing the confidentiality of mediation, if any, and shall execute all necessary documents to give effect to such confidentiality rules. In any event, the parties shall not subpoena the mediator or otherwise require the mediator to produce records, notes or work product, or to testify in any future proceedings as to information disclosed or representations made in the course of mediation, except to the extent disclosure is required by law.
- D.3.7 Owner may at any time and at its discretion issue a construction change directive adding to, modifying or reducing the scope of Work. Contractor and Owner shall negotiate the need for any additional compensation or additional Contract Time related to the change, subject to the procedures for submitting requests or Claims for additional compensation or additional Contract Time established in this Section D. Unless otherwise directed by Owner's Authorized Representative, Contractor shall proceed with the Work while any request or Claim is pending, including but not limited to, a request or Claim for additional compensation or additional Contract Time resulting from Work under a Change Order or construction change directive. Regardless of the review period or the final decision of the Owner's Authorized Representative, the Contractor shall continue to diligently pursue the Work as identified in the Contract Documents. In no case is the Contractor justified or allowed to cease Work without a written stop work order from the Owner or Owner's Authorized Representative.

SECTION E PAYMENTS

E.1 SCHEDULE OF VALUES

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

E.2 APPLICATIONS FOR PAYMENT

- E.2.1 Owner shall make progress payments on the Contract monthly as Work progresses. Payments shall be based upon estimates of Work completed and the Schedule of Values. All payments shall be approved by the Owner's Authorized Representative. A progress payment shall not be considered acceptance or approval of any Work or waiver of any defects therein. Owner shall pay to Contractor interest on the progress payment, not including retainage, due the Contractor. The interest shall commence thirty (30) Days after the receipt of invoice ("application for payment") from the Contractor or fifteen (15) Days after the payment is approved by the Owner's Authorized Representative, whichever is the earlier date. The rate of interest shall equal three times the discount rate on 90-day commercial paper in effect at the Federal Reserve Bank in the Federal Reserve district that includes Oregon on the date that is thirty (30) Days after receipt of the application for payment from the Contractor or fifteen (15) Days after the payment is approved by the Owner, whichever is the earlier date, but the rate of interest shall not exceed thirty (30) percent. Notwithstanding the foregoing, in instances when an application for payment is filled out incorrectly, or when there is any defect or impropriety in any submitted application or when there is a good faith dispute, Owner shall so notify the Contractor within fifteen (15) Days stating the reason or reasons the application for payment is defective or improper or the reasons for the dispute. A defective or improper application for payment, if corrected by the Contractor within seven (7) Days of being notified by the Owner, shall not cause a payment to be made later than specified in this section unless interest is also paid. Accrual of interest will be postponed when payment on the principal is delayed because of disagreement between the Owner and the Contractor.

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

Owner, upon written notice to the Contractor, may elect to make payments to the Contractor only by means of Electronic Funds Transfers (EFT) through Automated Clearing House (ACH) payments. If

Owner makes this election, the Contractor will be required to arrange to receive EFT/ACH payments.

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

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

Signed: _____"

E.2.3 Generally, applications for payment will be accepted only for materials that have been installed. Under special conditions, applications for payment for stored materials will be accepted at Owner's sole discretion. Such a payment, if made, will be subject to the following conditions:

- (a) The request for stored material shall be submitted at least thirty (30) Days in advance of the application for payment on which it appears. Applications for payment shall be entertained for major equipment, components or expenditures only.
- (b) The Contractor shall submit applications for payment showing the quantity and cost of the material stored.
- (c) The material shall be stored in a bonded warehouse and Owner's Authorized Representative shall be granted the right to access the material for the purpose of removal or inspection at any time during the Contract Period.
- (d) The Contractor shall name the Owner as co-insured on the insurance policy covering the full value of the property while in the care and custody of the Contractor until it is installed. A certificate noting this coverage shall be issued to the Owner.
- (e) Payments shall be made for materials only. The submitted amount of the application for payment shall be reduced by the cost of transportation and for the cost of an inspector to check the delivery at out of town storage sites. The cost of said inspection shall be borne solely by the Contractor.
- (f) Within sixty (60) Days of the application for payment, the Contractor shall submit evidence of payment covering the material stored.
- (g) Payment for stored materials shall in no way indicate acceptance of the materials or waive any rights under this Contract for the rejection of the Work or materials not in conformance with the Contract Documents.

- (h) All required documentation must be submitted with the respective application for payment.

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

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

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

- (a) Take that portion of the Contract Price properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the total Contract Price allocated to that portion of the Work in the Schedule of Values, less retainage as provided in Section E.5. Pending final determination of cost to the Owner of changes in the Work, no amounts for changes in the Work can be included in application for payment until the Contract Price has been adjusted by Change Order;
- (b) Add that portion of the Contract Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction (or, if approved in advance by the Owner pursuant to Section E.2.3, suitably stored off the site at a location agreed upon in writing), less retainage as provided in Section E.5;
- (c) Subtract the aggregate of previous payments made by the Owner; and

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

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

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

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

E.3 PAYROLL CERTIFICATION REQUIREMENT

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

E.4 DUAL PAYMENT SOURCES

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

E.5 RETAINAGE

E.5.1 Retainage shall be withheld and released in accordance with ORS 279C.550 to 279C.580:

E.5.1.1 Owner may reserve as retainage from any progress payment an amount not to exceed five percent of the payment. As Work progresses, Owner may reduce the amount of the retainage and may eliminate retainage on any remaining monthly Contract payments after 50 percent of the Work under the Contract is completed if, in the Owner's opinion, such Work is progressing satisfactorily. Elimination or reduction of retainage shall be allowed only upon written application by the Contractor, which application shall include written approval of Contractor's surety; except that when the Work is 97-1/2 percent completed the Owner may, at its discretion and without application by the Contractor, reduce the retained amount to 100 percent of the value of the Work remaining to be done. Upon receipt of written application by the Contractor, Owner shall respond in writing within a reasonable time.

E.5.1.2 In accordance with the provisions of ORS 279C.560 and any applicable administrative rules, unless the Owner finds in writing that

accepting a bond, security or other instrument described in options (a) or (c) below poses an extraordinary risk that is not typically associated with the bond, security or instrument, the Owner will approve the Contractor's written request:

- (a) to be paid amounts which would otherwise have been retained from progress payments where Contractor has deposited acceptable bonds, securities or other instruments of equal value with Owner or in a custodial account or other mutually-agreed account satisfactory to Owner, with an approved bank or trust company to be held in lieu of the cash retainage for the benefit of Owner. Interest or earnings on the bonds, securities or other instruments shall accrue to the Contractor. The Contractor shall execute and provide such documentation and instructions respecting the bonds, securities and other instruments as the Owner may require to protect its interests. To be permissible the bonds, securities and other instruments must be of a character approved by the Director of the Oregon Department of Administrative Services, including but not limited to:
 - (i) Bills, certificates, notes or bonds of the United States.
 - (ii) Other obligations of the United States or agencies of the United States.
 - (iii) Obligations of a corporation wholly owned by the federal government.
 - (iv) Indebtedness of the Federal National Mortgage Association.
 - (v) General obligation bonds of the State of Oregon or a political subdivision of the State of Oregon.
 - (vi) Irrevocable letters of credit issued by an insured institution, as defined in ORS 706.008.
- (b) that retainage be deposited in an interest bearing account, established through the State Treasurer for state agencies, in a bank, savings bank, trust company or savings association for the benefit of Owner, with interest from such account accruing to the Contractor; or
- (c) that the Contractor be allowed, with the approval of the Owner, to deposit a surety bond for the benefit of Owner, in a form acceptable to Owner, in lieu of all or a portion of funds retained, or to be retained. Such bond and any proceeds therefrom shall be made subject to all claims and liens in the manner and priority as set forth for retainage under ORS 279C.550 to ORS 279C.625.

Where the Owner has accepted the Contractor's election of any of the options above, Owner may recover from Contractor any additional costs incurred through such election by reducing Contractor's final payment. Where the Owner has agreed to Contractor's request to deposit a surety bond under option (c), Contractor shall accept like bonds from Subcontractors and suppliers on the project from which Contractor has required retainage.

E.5.1.3 The retainage held by Owner shall be included in and paid to the Contractor as part of the final payment of the Contract Price. The Owner shall pay to Contractor interest at the rate of one and one-half percent per month on the final payment

due Contractor, interest to commence thirty (30) Days after the Work under the Contract has been completed and accepted and to run until the date Contractor shall notify Owner in writing when the Contractor considers the Work complete and Owner shall, within fifteen (15) Days after receiving the written notice, either accept the Work or notify the Contractor of Work yet to be performed on the Contract. If Owner does not within the time allowed notify the Contractor of Work yet to be performed to fulfill contractual obligations, the interest provided by this subsection shall commence to run thirty (30) Days after the end of the 15-Day period.

E.5.1.4 In accordance with the provisions of ORS 279C.560, if the Owner accepts bonds, securities or other instruments deposited as provided in paragraphs (a) and (c) of subsection E.5.1.2, the Owner shall reduce the moneys held as retainage in an amount equal to the value of the bonds, securities and other instruments and pay the amount of the reduction to the Contractor in accordance with ORS 279C.570.

E.5.1.5 Contractor agrees that if Contractor elects to reserve a retainage from any progress payment due to any Subcontractor or supplier, such retainage shall not exceed five percent of the payment, and such retainage withheld from Subcontractors and suppliers shall be subject to the same terms and conditions stated in Subsection E.5 as apply to Owner's retainage from any progress payment due to Contractor. Provided, however, if in accordance with the provisions of ORS 279C.560 the Contractor has deposited bonds, securities or other instruments or has elected to have the Owner deposit accumulated retainage in an interest-bearing account, the Contractor shall comply with the provisions of ORS 701.435 respecting the deposit of bonds, securities or other instruments by Subcontractors and suppliers and the sharing of interest earnings with Subcontractors and suppliers.

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

E.6 FINAL PAYMENT

E.6.1 Upon completion of all the Work under this Contract, the Contractor shall notify the Owner's Authorized Representative, in writing, that Contractor has completed Contractor's part of the Contract and shall request final payment. Upon receipt of such notice the Owner's Authorized Representative will inspect the Work, and if acceptable, submit to the Owner a recommendation as to acceptance of the completed Work and the final estimate of the amount due the Contractor. If the Work is not acceptable, Owner will notify Contractor within fifteen (15) Days of Contractor's request for final payment. Upon approval of this final estimate by the Owner and compliance by the Contractor with provisions in Section K. 3 AFFIDAVIT/RELEASE OF LIENS AND CLAIMS, and other provisions as may be applicable,

the Owner shall pay to the Contractor all monies due under the provisions of these Contract Documents.

E.6.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Owner's Authorized Representative (1) a notarized affidavit/release of liens and claims in a form satisfactory to Owner that states that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least thirty (30) Days' prior written notice has been given to the Owner, (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment and (5), if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

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

SECTION F JOB SITE CONDITIONS

F.1 USE OF PREMISES

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

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

F.2.1 Contractor shall maintain continuous and adequate protection of all of the Work from damage, and shall protect the Owner's Authorized Representative, workers and property from injury or loss arising in connection with this Contract. Contractor shall remedy acceptably to the Owner, any damage, injury, or loss, except such as may be directly due to errors in the Contract Documents or caused by authorized representatives or personnel of the Owner. Contractor shall adequately protect adjacent property as provided by law and the Contract Documents.

F.2.2 Contractor shall take all necessary precautions for the safety of all personnel on the job site, and shall comply with the Contract Documents and all applicable provisions of federal, state and municipal safety laws and building codes to prevent accidents or injury to persons on, about or adjacent to the premises where the Work is being performed. Contractor shall erect and properly maintain at all times, as required by the conditions and progress of the Work, all necessary safeguards for protection of workers and the public against any hazards created by construction. Contractor shall designate a responsible employee or associate on the Work site, whose duty shall be the prevention of accidents. The name and position of the person designated shall be reported to the Owner's Authorized Representative. The Owner's Authorized Representative has no responsibility for Work site safety. Work site safety is the responsibility of the Contractor.

F.2.3 Contractor shall not enter upon private property without first obtaining permission from the property owner or its duly authorized representative. Contractor shall be responsible for the preservation of all public and private property along and adjacent to the Work contemplated under the Contract and shall use every precaution necessary to prevent damage thereto. In the event the Contractor damages any property, the Contractor shall at once notify the property owner and make, or arrange to make, full restitution. Contractor shall immediately and in writing, report to the Owner's Authorized Representative, all pertinent facts relating to such property damage and the ultimate disposition of the claim for damage.

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

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

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

F.3 CUTTING AND PATCHING

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

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

shall be responsible for restoring such surfaces to the condition specified in the Contract Documents.

F.4 CLEANING UP

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

F.5 ENVIRONMENTAL CONTAMINATION

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

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

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

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

applicable federal, state, or local statutes, rules or ordinances.

F.5.2 Contractor shall report all reportable quantity releases to applicable federal, state, and local regulatory and emergency response agencies. Reportable quantities are found in 40 CFR Part 302, Table 302.4 for hazardous substances and in OAR 340-142-0050 for all products addressed therein. Upon discovery, regardless of quantity, Contractor must telephonically report all releases to the Owner. A written follow-up report shall be submitted to Owner within 48 hours of the telephonic report. Such written report shall contain, as a minimum:

- (a) Description of items released (identity, quantity, manifest no., and all other documentation required by law.)
- (b) Whether amount of items released is EPA/DEQ reportable, and, if so, when it was reported.
- (c) Exact time and location of release, including a description of the area involved.
- (d) Containment procedures initiated.
- (e) Summary of communications about the release Contractor has had with members of the press or State officials other than Owner.
- (f) Description of cleanup procedures employed or to be employed at the site, including disposal location of spill residue.
- (g) Personnel injuries, if any, resulting from, or aggravated by, the release.

F.6 ENVIRONMENTAL CLEAN-UP

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

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

F.7 FORCE MAJEURE

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

SECTION G INDEMNITY, BONDING, AND INSURANCE

G.1 RESPONSIBILITY FOR DAMAGES / INDEMNITY

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

G.1.2 To the fullest extent permitted by law, Contractor shall indemnify, defend (with counsel approved by Owner) and hold harmless the Owner, Owner's Authorized Representative, Architect/Engineer, Architect/Engineer's consultants, and their respective officers, directors, agents, employees, partners, members, stockholders and affiliated companies (collectively "Indemnitees") from and against all liabilities, damages, losses, claims, expenses (including reasonable attorney fees), demands and actions of any nature whatsoever which arise out of, result from or are related to, (a) any damage, injury, loss, expense, inconvenience or delay described in this Section G.1.2, (b) any accident or occurrence which happens or is alleged to have happened in or about the project site or any place where the Work is being performed, or in the vicinity of either, at any time prior to the time the Work is fully completed in all respects, (c) any failure of the Contractor to observe or perform any duty or obligation under the Contract Documents which is to be observed or performed by the Contractor, or any breach of any agreement, representation or warranty of the Contractor contained in the Contract Documents or in any subcontract, (d) the negligent acts or omissions of the Contractor, a Subcontractor or anyone directly or indirectly employed by them or any one of them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder (except to the extent otherwise void under ORS 30.140), and (e) any lien filed upon the project or bond claim in connection with the Work. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Section G.1.2.

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

**G.2 PERFORMANCE AND PAYMENT SECURITY:
PUBLIC WORKS BOND**

G.2.1 When the Contract Price is \$100,000 or more (or \$50,000 or more in the case of Contracts for highways, bridges and other transportation projects) the Contractor shall furnish and maintain in effect at all times during the Contract Period, a performance bond in a sum equal to the Contract Price, and a separate payment bond also in a sum equal to the Contract Price. The bonds may be required if the Contract Price is less than the above thresholds, if required by the Contract Documents.

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

G.2.3 Before execution of the Contract Contractor shall file with the Construction Contractors Board, and maintain in full force and effect, the separate public works bond required by Oregon Laws 2005, Chapter 360, and OAR 839-025-0015, unless otherwise exempt under those provisions. The Contractor shall also include in every subcontract a provision requiring the Subcontractor to have a public works bond filed with the Construction Contractors Board before starting Work, unless otherwise exempt, and shall verify that the Subcontractor has filed a public works bond before permitting the Subcontractor to start Work.

G.3 INSURANCE

G.3.1 Primary Coverage: Insurance carried by Contractor under this Contract shall be the primary coverage and non-contributory with any other insurance and self-insurance, and the Owner's insurance is excess and solely for damages or losses for which the Owner is responsible. The coverages indicated are minimums unless otherwise specified in the Contract Documents.

G.3.2 Workers' Compensation: All employers, including Contractor, that employ subject workers who work under this contract in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage, unless such employers are exempt under ORS 656.126. This shall include Employer's Liability Insurance with coverage limits of not less than \$100,000 for each accident. Contractors who perform the Work without the assistance or labor of any employee need not obtain such coverage if the Contractor certifies so in writing. Contractor shall ensure that each of its Subcontractors complies with these requirements. The Contractor shall require proof of such Workers' Compensation by receiving and keeping on file a certificate of insurance from each Subcontractor or anyone else directly employed by either the Contractor or its Subcontractors.

G.3.3 Builder's Risk Insurance:

G.3.3.1 Builder's Risk: During the term of this Contract, for new construction the Contractor shall obtain and keep in effect Builder's Risk insurance on an all risk form, including earthquake and flood, for an amount equal to the full amount of the Contract. Any deductible shall not exceed \$50,000 for each loss, except the earthquake and flood deductible shall not exceed 2 percent of each loss or \$50,000, whichever is more. The policy will include as loss payees the

Owner, the Contractor and its Subcontractors as their interests may appear.

G.3.3.2 Builder's Risk Installation Floater: For other than new construction the Contractor shall obtain and keep in effect during the term of this Contract, a Builder's Risk Installation Floater for coverage of the Contractor's labor, materials and equipment to be used for completion of the Work performed under this Contract. The minimum amount of coverage to be carried shall be equal to the full amount of the Contract. This insurance shall include as loss payees the State of Oregon, the Owner, the Contractor and its Subcontractors as their interests may appear.

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

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

G.3.4 Liability Insurance:

G.3.4.1 Commercial General Liability: Contractor shall obtain, at Contractor's expense, and keep in effect during the term of this Contract, Commercial General Liability Insurance covering bodily injury and property damage in a form and with coverages that are satisfactory to the State. This insurance shall include personal injury liability, products and completed operations, and contractual liability coverage for the indemnity provided under this Contract (to the extent contractual liability coverage for the indemnity is available in the marketplace), and shall be issued on an occurrence basis. Contractor shall provide proof of insurance of not less than the amounts listed in the following schedules:

Per Occurrence Limit for any single claimant:
From commencement of the Contract term to June 30, 2011: \$1,600,000
July 1, 2011 to June 30, 2012: \$1,700,000
July 1, 2012 to June 30, 2013: \$1,800,000
July 1, 2013 to June 30, 2014: \$1,900,000
July 1, 2014 to June 30, 2015: \$2,000,000
July 1, 2015 and thereafter the adjusted limitation as determined by the State Court Administrator pursuant to Oregon Laws 2009, chapter 67, section 3 (Senate Bill 311).

Per Occurrence Limit for multiple claimants:
From commencement of the Contract term to June 30, 2011: \$3,200,000
July 1, 2011 to June 30, 2012: \$3,400,000
July 1, 2012 to June 30, 2013: \$3,600,000
July 1, 2013 to June 30, 2014: \$3,800,000
July 1, 2014 to June 30, 2015: \$4,000,000
July 1, 2015 and thereafter the adjusted limitation as determined by the State Court Administrator pursuant to Oregon Laws 2009, chapter 67, section 3 (Senate Bill 311).

Property Damage:

Per Occurrence Limit for any single claimant:

From commencement of the Contract term to January 1, 2011: \$100,100.

From January 1, 2010, and every year thereafter the adjusted limitation as determined by the State Court Administrator pursuant to Oregon Laws 2009, chapter 67, section 5 (Senate Bill 311).

Per Occurrence Limit for multiple claimants:

From commencement of the Contract term to January 1, 2011 : \$500,600.

From January 1, 2010, and every year thereafter the adjusted limitation as determined by the State Court Administrator pursuant to Oregon Laws 2009, chapter 67, section 5 (Senate Bill 311).

- G.3.4.2 Automobile Liability: Contractor shall obtain, at Contractor's expense, and keep in effect during the term of this Contract, Automobile Liability Insurance covering owned, non-owned and/or hired vehicles, as applicable. The coverage may be written in combination with the Commercial General Liability Insurance. Contractor shall provide proof of insurance of not less than the amounts listed in the following schedules:

Bodily Injury/Death:

Per Occurrence Limit for any single claimant:

From commencement of the Contract term June 30, 2011: \$1,600,000

July 1, 2011 to June 30, 2012: \$1,700,000

July 1, 2012 to June 30, 2013: \$1,800,000

July 1, 2013 to June 30, 2014: \$1,900,000

July 1, 2014 to June 30, 2015: \$2,000,000

July 1, 2015 and thereafter the adjusted limitation as determined by the State Court Administrator pursuant to Oregon Laws 2009, chapter 67, section 3 (Senate Bill 311).

Per Occurrence Limit for multiple claimants:

From commencement of the Contract term to June 30, 2011: \$3,200,000

July 1, 2011 to June 30, 2012: \$3,400,000

July 1, 2012 to June 30, 2013: \$3,600,000

July 1, 2013 to June 30, 2014: \$3,800,000

July 1, 2014 to June 30, 2015: \$4,000,000

July 1, 2015 and thereafter the adjusted limitation as determined by the State Court Administrator pursuant to Oregon Laws 2009, chapter 67, section 3 (Senate Bill 311).

Property Damage:

Per Occurrence Limit for any single claimant:

From commencement of the Contract term to January 1, 2011: \$100,100

From January 1, 2010, and every year thereafter the adjusted limitation as determined by the State Court Administrator pursuant to Oregon Laws 2009, chapter 67, section 5 (Senate Bill 311).

Per Occurrence Limit for multiple claimants:

From commencement of the Contract term to January 1, 2011: \$500,600

From January 1, 2010, and every year thereafter the adjusted limitation as determined by the State Court Administrator pursuant to Oregon

- G.3.4.3 "Tail" Coverage: If any of the required liability insurance is arranged on a "claims made" basis, "tail" coverage will be required at the completion of this Contract for a duration of 24 months or the maximum time period available in the marketplace if less than 24 months. Contractor will be responsible for furnishing certification of "tail" coverage as described or continuous "claims made" liability coverage for 24 months following Final Completion. Continuous "claims made" coverage will be acceptable in lieu of "tail" coverage, provided its retroactive date is on or before the effective date of this Contract. This will be a condition of the final acceptance of Work or services and related warranty (if any).

- G.3.5 Excess/Umbrella Insurance: A combination of primary and excess/umbrella insurance is acceptable to meet the minimum coverage requirements for Commercial General Liability and Automobile Liability Insurance. In such case, the insurance certificate must include a list of the policies that fall under the excess/umbrella insurance. Sample wording is "The Excess/Umbrella policy is excess over primary Commercial General Liability and primary Automobile Liability Insurance."

- G.3.6 Additional Insured: The liability insurance coverage, except Professional Liability if included, required for performance of this Contract shall include the State of Oregon, its departments, divisions, officers, and employees, as Additional Insureds but only with respect to the Contractor's activities to be performed under this Contract.

If Contractor cannot obtain an insurer to name the State of Oregon, its departments, divisions, officers and employees as Additional Insureds, Contractor shall obtain at Contractor's expense, and keep in effect during the term of this Contract, Owners and Contractors Protective Liability Insurance, naming the State of Oregon, its departments, divisions, officers and employees as Named Insureds with not less than a \$1,500,000.00 limit per occurrence. This policy must be kept in effect for 12 months following Final Completion. As evidence of coverage, Contractor shall furnish the actual policy to Owner prior to execution of the Contract.

- G.3.7 Certificate(s) of Insurance: As evidence of the insurance coverage required by this Contract, the Contractor shall furnish certificate(s) of insurance to the Owner prior to execution of the Contract. The certificate(s) will specify all of the parties who are Additional Insureds or Loss Payees. Insurance coverage required under this Contract shall be obtained from insurance companies or entities acceptable to the Owner that are allowed to provide such insurance under Oregon law. Eligible insurers include admitted insurers that have been issued a certificate of authority from the Oregon Department of Consumer and Business Services authorizing them to do an insurance business in the state of Oregon, and certain non-admitted surplus lines insurers that satisfy the requirements of applicable Oregon law and are approved by the Owner. The Contractor shall be financially responsible for all deductibles, self-insured retentions and/or self-insurance included hereunder. Any deductible, self-insured retention and/or self-insurance in excess of

\$50,000 shall be approved by the Owner in writing prior execution of the Contract and is subject to Owner's approval. The Contractor shall immediately notify the Owner's Authorized Representative in writing of any change in insurance coverage.

SECTION H SCHEDULE OF WORK

H.1 CONTRACT PERIOD

- H.1.1 **Time is of the essence on this Contract.** The Contractor shall at all times carry on the Work diligently, without delay and punctually fulfill all requirements herein. Contractor shall commence Work on the site within fifteen (15) Days of Notice to Proceed, unless directed otherwise.
- H.1.2 Unless specifically extended by Change Order, all Work shall be complete by the date contained in the Contract Documents. The Owner shall have the right to accelerate the completion date of the Work, which may require the use of overtime. Such accelerated Work schedule shall be an acceleration in performance of Work under Section D.1.2 (f) and shall be subject to the Change Order process of Section D.1.
- H.1.3 The Owner shall not waive any rights under the Contract by permitting the Contractor to continue or complete in whole or in part the Work after the date described in Section H.1.2 above.

H.2 SCHEDULE

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

H.3 PARTIAL OCCUPANCY OR USE

- H.3.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage, provided such occupancy or use is consented to by public authorities having jurisdiction over the Work.

Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have reasonably accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, insurance or self-insurance, maintenance, heat, utilities, and damage to the Work, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents with respect to such portion of the Work. Approval by the Contractor to partial occupancy or use shall not be unreasonably withheld. Immediately prior to such partial occupancy or use, the Owner and Contractor shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work. Partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

SECTION I CORRECTION OF WORK

I.1 CORRECTION OF WORK BEFORE FINAL PAYMENT

The Contractor warrants to the Owner that materials and equipment furnished under the Contract will be of good quality and new unless otherwise required or permitted by the Contract Documents, that the Work will be free from defects, and that the Work will conform to the requirements of the Contract Documents. Work failing to conform to these requirements shall be deemed defective. Contractor shall promptly remove from the premises and replace all defective materials and equipment as determined by the Owner's Authorized Representative, whether incorporated in the Work or not. Removal and replacement shall be without loss or expense to the Owner, and Contractor shall bear the cost of repairing all Work destroyed or damaged by such removal or replacement. Contractor shall be allowed a period of no longer than thirty (30) Days after Substantial Completion for completion of defective (punch list) work, unless otherwise agreed. At the end of that period, or earlier if requested by the Contractor, Owner shall arrange for inspection of the Work by the Architect/Engineer. Should the Work not be complete, and all corrections made, the costs for all subsequent re-inspections shall be borne by the Contractor. If Contractor fails to complete the punch list work within the above time period, Owner may perform such work and Contractor shall reimburse Owner all costs of the same within ten (10) days after demand without affecting Contractor's obligations.

I.2 WARRANTY WORK

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

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

event of warranty work consisting of emergency repairs, Owner may perform such work and Contractor shall reimburse Owner all costs of the same within ten (10) Days after demand without affecting Contractor's obligations.

- I.2.2 This provision does not negate guarantees or warranties for periods longer than one year including without limitation such guarantees or warranties required by other sections of the Contract Documents for specific installations, materials, processes, equipment or fixtures.
- I.2.3 In addition to Contractor's warranty, manufacturer's warranties shall pass to the Owner and shall not take effect until affected Work has been accepted in writing by the Owner's Authorized Representative.
- I.2.4 The one-year period for correction of Work shall be extended with respect to portions of Work performed after Substantial Completion by the period of time between Substantial Completion and the actual performance of the Work, and shall be extended by corrective Work performed by the Contractor pursuant to this Section, as to the Work corrected. The Contractor shall remove from the site portions of the Work which are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.
- I.2.5 Nothing contained in this Section I.2 shall be construed to establish a period of limitation with respect to other obligations which the Contractor might have under the Contract Documents. Establishment of the period for correction of Work as described in this Section I.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.
- I.2.6 If the Owner prefers to accept Work which is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Price will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

SECTION J

SUSPENSION AND/OR TERMINATION OF THE WORK

J.1 OWNER'S RIGHT TO SUSPEND THE WORK

- J.1.1 The Owner and/or the Owner's Authorized Representative has the authority to suspend portions or all of the Work due to the following causes:
- (a) Failure of the Contractor to correct unsafe conditions;
 - (b) Failure of the Contractor to carry out any provision of the Contract;
 - (c) Failure of the Contractor to carry out orders;

- (d) Conditions, in the opinion of the Owner's Authorized Representative, which are unsuitable for performing the Work;
- (e) Time required to investigate differing site conditions;
- (f) Any reason considered to be in the public interest.

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

J.2 CONTRACTOR'S RESPONSIBILITIES

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

J.3 COMPENSATION FOR SUSPENSION

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

J.4 OWNER'S RIGHT TO TERMINATE CONTRACT

- J.4.1 The Owner may, without prejudice to any other right or remedy, and after giving Contractor seven (7) Days' written notice and an opportunity to cure, terminate the Contract in whole or in part under the following conditions:
- (a) If Contractor should voluntarily or involuntarily, seek protection under the United States Bankruptcy Code and Contractor as debtor-in-possession or the Trustee for the estate fails to assume the Contract within a reasonable time;
 - (b) If Contractor should make a general assignment for the benefit of Contractor's creditors;
 - (c) If a receiver should be appointed on account of Contractor's insolvency;
 - (d) If Contractor should repeatedly refuse or fail to supply an adequate number of skilled workers

or proper materials to carry on the Work as required by the Contract Documents, or otherwise fail to perform the Work in a timely manner;

- (e) If Contractor should repeatedly fail to make prompt payment to Subcontractors or for material or labor, or should disregard laws, ordinances or the instructions of the Owner or its Authorized Representative; or
- (f) If Contractor is otherwise in material breach of any part of the Contract.

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

J.5 TERMINATION FOR CONVENIENCE

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

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

J.6 ACTION UPON TERMINATION

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

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

SECTION K CONTRACT CLOSE OUT

K.1 RECORD DOCUMENTS

As a condition of final payment (refer also to section E.6), Contractor shall comply with the following: Contractor shall provide to Owner's Authorized Representative, Record Documents of the entire project. Record Documents shall

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

K.2 OPERATION AND MAINTENANCE MANUALS

As part of the Work, Contractor shall submit two completed operation and maintenance manuals ("O & M Manuals") for review by the Owner's Authorized Representative prior to submission of any pay request for more than 75% of the Work. No payments beyond 75% will be made by the Owner until the O & M Manuals have been received. The O & M Manuals shall contain a complete set of all submittals, all product data as required by the specifications, training information, phone list of consultants, manufacturers, installer and suppliers, manufacturer's printed data, record and shop drawings, schematic diagrams of systems, appropriate equipment indices, warranties and bonds. The Owner's Authorized Representative shall review and return one O & M Manual for any modifications or additions required. Prior to submission of its final pay request, Contractor shall deliver three (3) complete and approved sets of O & M Manuals to the Owner's Authorized Representative.

K.3 AFFIDAVIT/RELEASE OF LIENS AND CLAIMS

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

K.4 COMPLETION NOTICES

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

K.4.2 Substantial Completion of a facility with operating systems (e.g., mechanical, electrical, HVAC) shall be that degree of completion that has provided a minimum of thirty (30) continuous Days of successful, trouble-free operation, which period shall begin after all performance and acceptance testing has been successfully demonstrated to the Owner's Authorized Representative. All equipment contained in the Work, plus all other components necessary to enable the Owner to operate the facility in the

manner that was intended, shall be complete on the Substantial Completion date. The Contractor may request that a punch list be prepared by the Owner's Authorized Representative with submission of the request for the Substantial Completion notice.

K.5 TRAINING

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

K.6 EXTRA MATERIALS

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

K.7 ENVIRONMENTAL CLEAN-UP

As part of the Final Completion notice, or as a separate written notice submitted with or before the notice of Final Completion, the Contractor shall notify the Owner that all environmental pollution clean-up performed as a part of this Contract has been disposed of in accordance with all applicable rules, regulations, laws, and statutes of all agencies having jurisdiction over such environmental pollution. The notice shall reaffirm the indemnification given under Section F.5.1 above.

K.8 CERTIFICATE OF OCCUPANCY

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

K.9 OTHER CONTRACTOR RESPONSIBILITIES

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

K.10 SURVIVAL

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

LEGAL RELATIONS & RESPONSIBILITIES

L.1 LAWS TO BE OBSERVED

In compliance with ORS 279C.525, Sections L.2 through L.4 contain lists of federal, state and local agencies of which the Owner has knowledge that have enacted ordinances or regulations relating to environmental pollution and the preservation of natural resources that may affect the performance of the Contract:

L.2 FEDERAL AGENCIES

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

L.3 STATE AGENCIES

Administrative Services, Department of
Agriculture, Department of
Soil and Water Conservation Commission

SECTION L

Columbia River Gorge Commission
Energy, Department of
Environmental Quality, Department of
Fish and Wildlife, Department of
Forestry, Department of
Geology and Mineral Industries, Department of
Human Resources, Department of
Consumer and Business Services, Department of
Land Conservation and Development Commission
Parks and Recreation, Department of

State Lands, Division of
Water Resources Department of

L.4 LOCAL AGENCIES

City Councils
County Courts
County Commissioner, Board of
Design Commissions
Historical Preservation Commission
Planning Commissions