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**SECTION 00010**  
**ADVERTISEMENT FOR BIDS**  
**GRANT UNION HIGH SCHOOL – PARTIAL ROOF REPLACEMENT**

Grant County School District will accept sealed bids for the construction of the Grant Union High School partial roof replacement.

Bids shall be addressed and delivered to Louis Dix – Superintendent **401 N. Canyon Blvd Canyon City, Oregon 97820**. No bids will be received after 2:00 PM on March 16 2023, at which time the bids will be publicly opened.

Plans and bid documents will be available to potential bidders and for public inspection starting Wednesday, February 15, 2023 between the hours of 8:00 am and 4:00 pm, by contacting Tim Barton, ZCS Engineering & Architecture, 524 Main Street, Suite 2. Oregon City, OR 97045 (503.558.4781 or [timl@zcsea.com](mailto:timl@zcsea.com)) and DJC Oregon Plan Center

The project will be a public improvement project subject to ORS 279C.800 to 279C.870, Prevailing Wage Rates.

The work contemplated consists of the following: partial re-roof of existing roofing with a new membrane roofing system at Grant Union High School.

A non-mandatory pre-bid meeting will be held on Wednesday March 1 at 2:00 pm at the entry of Grant Union High School. The address is 911 S Canyon Blvd, John Day, OR 97845. Attendance at the pre-bid meeting is not required but is highly recommended.

The owner reserves the right to postpone the award of the contract for sixty (60) days and may reject any bid not in compliance with all public bidding procedures and requirements on these solicitation documents and may reject for good cause any or all bids upon a finding of the Owner, that it is in the public interest to do so.

## SECTION 00100 INSTRUCTIONS TO BIDDERS

It is the intention of Grant County School District (also referred to as “Owner” or “District” or “GCSD”), to provide bidders and the subsequent successful contractor with complete and accurate information to facilitate bidding, and to thoroughly delineate the work to be done. If you have any questions regarding the work, please contact *Tim Barton* at ZCS Engineering & Architecture at (503) 558-4781 or [Timl@zcsea.com](mailto:Timl@zcsea.com).

The Contract Documents covering the proposed work are available to the public for review at ZCS Engineering & Architecture. The contract documents shall govern the work. For those items not covered in the contract documents, the provisions within the Current Editions of the *International Building Code and the Oregon Structural Specialty Code* shall apply.

It is the intent of Grant County School District (GCSD) to construct the entire project at once during the summer of 2023. Work should be planned to begin once school releases, on or around June 19, 2023. Substantial completion would be on or around August, 2023. Punch lists would occur between August 28, 2023. Final completion needs to be September 1, 2023. GCSD will award the contract to the responsible responsive bidder with the lowest total price.

### 102 BID REQUIREMENTS

#### 102.1.00 Form of Bid

To assure consideration, Bid must be made in strict accordance with the following:

**Bids must be made upon the bid form(s) enclosed. To be considered complete, the contractor must include/submit: Section 00310 (Bid Price), Section 00330 (List of Subcontractors), Section 00340 (Bidder Certifications), Section 00350 (Nondiscrimination in Employment), Section 00360 (Bid Bond), acknowledgment of all addenda, and a one-page sheet with the requested reference information. Bids will be non-responsive if the above list is not provided and all appropriate information in these pages must be completed. The contractor may elect to submit additional information beyond what is noted above, but it is not necessary.**

All Bids sent in by mail must be in the hands of the Superintendent of Business Services, by the hour and date set for the bid opening in the “Advertisement for Bids”, which is Thursday March 16, 2023, at 2:00 pm. All Bids shall be addressed to:

Louis Dix  
Superintendent  
Grant County School District  
401 N. Canyon Blvd  
Canyon City, Oregon 97820

**The outside of the envelope shall plainly identify the Project name, the Bid Opening date and the bidder’s Construction Contractors Board registration number.**

The bid bond and all requested sections noted herein, excluding the Drawings, must be submitted with the Bid or Bids to assure consideration. The Owner may reject any Bid not accompanied by Sections 00310, 00330, 00340, 00350, 00360, acknowledgement of all addenda, and the references.

All blank spaces in the Bid form covering the schedule or schedules upon which the Bidder is submitting a bid must be filled in clearly and distinctly, typed or written in ink, in both words and figures, where required. No changes shall be made in the phraseology of the forms of the items mentioned therein. Written amounts shall govern in case of discrepancy between the amounts stated in writing and the amounts stated in figures.

***All bids must include two references of public capital improvement projects of similar scope and size and/or price successfully completed in the State of Oregon in the last seven five years.***

Any Bid may be deemed non-responsive and subject to rejection which contains omissions, erasures, alterations, or additions of any kind, or items uncalled for, or in which any of the items are unbalanced, or which, in any manner, fail to conform to the conditions or intent of these Contract Documents.

A Bid by a person who affixes to his/her signature the word “President”, “Secretary”, or “Agent”, or other designation, without disclosing his/her principal, is the bid of an individual. The bid by a corporation should be signed with the name of the corporation, followed by the signature of the president, secretary, or other person authorized to make a binding contract. The bid of a partnership should be signed with the partnership name either by a member thereof or by its authorized agent, giving the names of all members of the firm. Anyone signing the bid as an agent of another, or others must file with it legal evidence of his/her authority to do so.

102.2.00 Bid Schedule

		Addendum Dates:
Advertisement of Bid:	February 8,2023	
Bid Documents Available:	February 15, 2023	
Non-Mandatory Pre-Bid Site Walk:	March 1, at 2:00pm	
Last Day for Contractor Question	March 8, 2023	
Final Addendum	March 10, 2023	
Bids Due:	March 16, 2023 at 2:00pm	
Notice of Intent to Award:	March 17, 2023	
Contract Award:	End of April, 2023	
Work Start / Work Schedule:	Work Start – 06/19/23 Substantial Completion – 08/25/23 Punchlist – 08/25 to 08/28/23 Final Completion – 09/1/23	

### 102.3.00 Withdrawal, Modification, or Alteration of Bid

A Bid may be withdrawn on written or telegraphic request of the bidder prior to the scheduled closing time for bids. Negligence on the part of the bidder in preparing the Bid confers no right to withdraw the Bid after the scheduled closing time for filing bids. Prior to bid opening, changes may be made provided the change is initiated by the bidder or his/her agent. If the intent of the bidder is not clearly identifiable, the interpretation most advantageous to Owner will prevail.

### 102.4.00 Late Bids

The GCSD's clock will be utilized for establishing the bid cutoff. Bids received by the Superintendent of Business Services after the scheduled closing time for filing bids will not be opened or considered by the Owner.

### 102.5.00 Bid Security

Bids must be accompanied by a certified check or cashier's check payable to the order of the Owner drawn on a bank in good standing, or a bid bond issued by an "A-", or better rated surety company licensed to issue such bonds in the State of Oregon, in an amount of not less than ten percent (10%) of the total amount of the bid submitted. Bid Bonds shall be submitted with an adequate power of attorney identifying the attorney-in-fact executing the bid bond.

### 102.6.00 Examination of Plans, Standard Plans or Drawings

#### Specifications and Site of Work

Bidders shall determine for themselves all the conditions and circumstances affecting the project or the cost of the proposed work by personal examination of the site, and make themselves thoroughly familiar with the Contract Documents. Failure to do so will not relieve the successful Bidder(s) of the obligations set forth in the Contract Documents. It is understood and agreed that information regarding existing conditions indicated in the Contract Documents has been obtained by the Owner from the data at hand. There is no express or implied agreement that such conditions are fully or correctly shown and the bidder must take into consideration the possibility that conditions affecting the cost of the quantity of work may differ from those indicated.

### 102.7.00 Interpretation of Contract Documents

Bidders, prospective bidders, manufacturers, and suppliers may request interpretation of the Contract Documents at least five (5) days prior to the scheduled closing time for filing bids. Requests shall be in writing and shall be received by the Engineer at least five (5) days before the scheduled closing time for filing bids. Then, if in the judgment of the Engineer, additional information or interpretation is necessary such information will be supplied in the form of an addendum which will be delivered to all individuals, firms, and corporations who have taken out Contract Documents.

**ORAL INSTRUCTIONS OR INFORMATION CONCERNING THE CONTRACT DOCUMENTS OR THE PROJECT GIVEN OUT BY OFFICERS, EMPLOYEES, OR AGENTS OF THE OWNER/ENGINEER TO PROSPECTIVE BIDDERS SHALL NOT BIND THE OWNER/ENGINEER.**

102.8.00 Addenda to Contract Documents

Any addendum or addenda issued by the Engineer which may include changes, corrections, additions interpretations, or information, and issued seventy-two (72) hours or more before the scheduled closing time for filing bids (Saturday, Sunday and legal holidays not included) shall be binding upon the bidder. The Owner shall send copies of such addenda to all contractors who have obtained copies of the Contract Documents for the purpose of bidding thereon, but failure of the contractor to receive or obtain such agenda shall not excuse it from compliance therewith, if awarded the Contract.

102.9.00 Familiarity with Laws and Ordinances

The bidder is assumed to be familiar with all Federal, State and local laws, ordinances, construction codes, and regulations which in any manner affect those engaged or employed in the work or the materials or equipment used in the proposed construction, or which in any way affect the conduct of the work, and no plea of misunderstanding will be considered on account of ignorance thereof. If the bidder discovers any provision in the Contract Documents which is contrary to or inconsistent with any law, ordinance, or regulation, he shall forthwith report it to the Owner in writing.

102.9.10 Federal and/or State of Oregon Debarment and Suspension.

The submittal of a bid to the Owner guarantees that the bidder and any of its subcontractors are not listed on the Federal or State of Oregon General Services Administration's "List of Parties" excluded from procurement or non-procurement programs in accordance with Federal Executive Orders 12549 and 12689, "Debarment and Suspension." Bids from contractors on the "List of Parties" will be declared non-responsive and rejected.

102.10.00 Work to be Performed

The Owner reserves the right to increase or decrease the amount of any class or portion of the work. No such change in the work shall be considered as a waiver of any condition of the Contract nor shall such change invalidate any of the provisions thereof. All quantity estimates of work to be performed under unit price bids are approximate and given only as a basis of calculation for comparison of bids and award of the Contract. The Owner does not by implication agree that the actual amount of work will correspond precisely to the amount as shown or estimated. The scheduled quantities of work to be done and materials to be furnished may each be increased, decreased, or omitted. Payment will be made at unit prices under the Contract only for the work performed or materials furnished.



#### 102.11.00 Bid Prices to Cover Entire Work

Bidders must include in their bid prices the entire cost of each item of the work set forth in the bid. It is understood and agreed that in each lump sum or unit price bid the entire cost of materials and labor incidental or necessary to the completion of the portion of the work is included, unless such incidental work is expressly included in other lump sum or unit price bids in the bid.

**IT SHALL BE THE COST BURDEN OF THE AWARDED CONTRACTOR TO PROVIDE BACKGROUND CHECKS FOR ALL EMPLOYEES, IN-HOUSE AND SUBS, THAT WILL WORK ON THIS PROJECT.** GCSO will provide the access information to the background check process. Any Contractors who have already completed background checks within the last 18 months may not need to do this again.

#### 102.12.00 Rejection of Bids

The Owner reserves the right to accept or reject any or all Bids, and to waive any informalities and/or irregularities in said Bids not affecting substantial rights. In all matters pertaining to the Bids, the Owner shall make such decisions that are, in its sole judgment, in the best interests of the Owner.

#### 102.13.00 List of Subcontractors

Each bidder shall submit to the Owner within two hours of the bid opening, on the form provided in Section 0330, a list of the name, address, and description of each subcontractor to whom the bidder proposes to subcontract portions of the work when the amount of the subcontract equals or exceeds: five percent (5%) of the bid or \$15,000, whichever is larger; or \$350,000, regardless of the percentage of the bid. The list shall include: 1) the name, address and description of labor or labor and materials supplied by each subcontractor; 2) the Construction Contractor's Board registration number of the subcontractor (if required); and the dollar value of the contract of the subcontractor. For the purposes of this paragraph, a subcontractor is defined as one who contracts with the prime contractor to provide materials, labor, materials and labor, or who specially fabricates and installs a portion of the work or improvement according to the specifications and drawings contained in the project contract documents. Failure to submit the required subcontractor list by the disclosure deadline will result in a non-responsive bid that will not be considered for award.

#### 1.02.14.00 Protest Procedures

- A. Form of Protest: In order to be considered, a Protest shall be in writing, addressed to Louis Dix Superintendent, Grant County School District Office, 401 N. Canyon Blvd Canyon City, Oregon 97820, and shall include:
1. The name, address, and phone number of the Bidder protesting, or the authorized representative of the Bidder;
  2. The Invitation for Bid Title under which the Protest is submitted;

3. A detailed description of the specific grounds for Protest and any supporting documentation. The Protest may be based on any alleged violation of the Public Contracting Rules and Procedures, applicable State public bidding requirements (ORS Chapter 279) or any other perceived defect in the Owner's process. It is the responsibility of the Protesting Bidder to supplement its Protest with any subsequently discovered documents prior to the hearing by the Owner/Agent;
4. The specific ruling or relief requested; and
5. Evidence that all persons with a financial interest in the procurement have been given notice of the Protest, or if such persons are unknown, a statement to that effect.

B. Who May Protest

1. Protests based on specifications. Any prospective Bidder.
2. Protests following Bid submittal. Any Bidder submitting a response to an IFB showing a substantial financial interest in the solicitation or award of the Contract.
3. Protests following opening of bids: Only "adversely affected" Bidder. A Bidder is adversely affected only if the Bidder is eligible for award of the Contract as the Responsible Bidder submitting the lowest Responsive Bid, or the Responsible Bidder submitting the best Responsive Bid, and Bidder is next in line for award, i.e., the protesting entity must claim that all lower Bidders, are ineligible for award because:
  - (a) Their Bid was nonresponsive; or
  - (b) The Owner committed a substantial violation of a provision in the Solicitation Document or of an applicable procurement statute or administrative rule, and the protesting Offeror was unfairly evaluated and would have, but for such substantial violation, been the lowest Bidder.

C. Time to Protest: Protests based on specifications or other terms in the Invitation for Bid document which are apparent on the face of said document must be received by the Owner no later than ten calendar days prior to the date established for submittal of Bids. Protests based on other circumstances must be received by the Owner as soon as possible so as to avoid unnecessarily delaying the bid process. In no event may a protest be filed later than 4:00 p.m. of the last business day prior to the scheduled award of the Contract by the Owner's Board of Superintendent's. The Owner will not consider a protest submitted after the time periods established herein.

D. Hearing: Upon receipt of a protest, the Owner will suspend the bidding/award process until a hearing has been conducted before the Owner/Agent (or his/her designee):

1. The hearing will be held within ten (10) days of receipt of the protest.
2. All other bidders will be notified of the hearing.

3. The protester, other interested bidders, Owner/Agent staff and other interested parties will be afforded an opportunity to appear and present their position and/or concerns at the hearing.
  4. The Superintendent of Business Services reserves the right to conduct a hearing in conjunction with the Owner's decision to award the Contract.
- E. Recommendation: On the basis of the hearing, the Owner/Agent shall make written findings and recommendations on the protest to the Grant County School Board. The Owner/Agent's findings and recommendations shall be accompanied by written minutes of the hearing. All persons appearing at the hearing shall be provided copies of the findings and recommendations.
- F. Board of Superintendent's Action: Upon receipt of the Agent's findings and recommendations, the Board of Superintendents shall consider the matter and may grant or deny the protest or may remand the matter back to the Agent for further hearing. Board of Superintendent's consideration of the Protest shall be on the record established at the hearing conducted by the Owner/Agent (or designee). The Board of Superintendent's decision shall be final.

## 103 AWARD AND EXECUTION OF CONTRACT

### 103.1.00 Award of Contract

The award will be made by the Owner to the bidder submitting the lowest responsive, responsible bid as defined herein.

The awarded contractor will be required to complete and submit the GCSD COVID-19 waiver, which would be included with the contract from the District.

### 103.1.01 Responsive

The Owner will consider all material submitted by the bidder to determine whether the bidder's offering is in substantial compliance with the Contract Documents and all prescribed public bidding procedures and requirements. Failure to complete and submit all the documents required by these Instructions to Bidders may render a bid non-responsive and may be grounds for rejection of the bid. Failure to submit the required subcontractor list by the disclosure deadline will result in a non-responsive bid that will not be considered for award. In determining the lowest responsive responsible bid, the Owner may take into account, among other factors:

The prices bid, discounts if any, the time of completion or delivery proposed as compared to equal bids, the relative merits and performance of any item specifically proposed by the bidder, any variation in maintenance and guarantee period specially proposed by the bidder in excess of any minimums specified, the balance of prices in the bids for various parts or units of the work, and evaluation of the three required references.

While price extensions are required as a matter of convenience, in the event of error in extensions the unit prices bid shall govern. In the event of discrepancy between the written and numerical amounts, the written prices will govern.

#### 1.03.1.02 Responsible

The Owner will consider all material submitted by the bidder, and evidence it may obtain otherwise, to determine whether the bidder, its key personnel, and proposed subcontractors have the qualifications and experience to successfully complete contracts of this type. Such evaluation will include, but not be limited to, the following factors: 1) the bidder has adequate financial resources to complete the work; 2) the bidder has the necessary equipment, facility, personnel resources, experience and organization to perform the work; 3) the bidder has a successful record of performance, integrity, experience, and skills to perform and complete the work; 4) the bidder has a history of completing, failing to complete, defaulting on or otherwise not completing construction projects with the Owner or other public agencies; 5) the bidder's proposed subcontractor appear capable of and have a history of successfully completing construction contracts with the Owner or other public agencies.

Determination of the lowest responsive, responsible bidder and award may be subject to review and determination by the Owner's Attorney as to legal sufficiency of any bid submitted. Within sixty (60) days after the opening of bids, the Owner will either accept a bid, reject all bids or take such other action as may be in its best interest. The Owner reserves the right to request an extension of the bid acceptance period. The acceptance of a bid will be evidenced by a written notice of award of contract delivered in person or by certified mail to the bidder whose bid is accepted.

#### 103.2.00 Execution of Contract Agreement

The successful bidder shall, within fifteen (15) calendar days after receiving Notice of Award, execute a Contract with the Owner. The successful bidder shall file with the Owner, at the time of execution of the Contract, proof of insurance as required under Section 00710 – 5.02, and a Performance Bond and Payment Bond, each in the full amount of the Contract price, with an "A-", or better rated surety company authorized and licensed to do business within the State of Oregon in accordance with the laws and statutes of the State of Oregon providing for performance and payment bonds for public works.

#### 103.3.00 Failure to Execute Contract

Should the successful bidder fail or refuse to execute a Contract and furnish a Performance Bond, Payment Bond and proof of insurance within the time herein set forth, the bid bond or check deposited by said bidder shall be retained by the Owner as liquidated damages; and it is agreed that said sum is a fair estimate of the amount of damages that the Owner will sustain in case the bidder fails to enter into a Contract and furnish bonds as above provided.

#### 103.4.00 Return of Bid Guarantee

The checks or bid bonds of the unsuccessful Bidders will be retained until the successful Bidder has signed and delivered the Contract and furnished a one hundred percent (100%) Performance and Payment Bond. The check or bid bond of the successful Bidder will be retained until the successful bidder has entered into a satisfactory Contract with the Owner and furnished one hundred percent (100%) Performance and Payment bonds.

#### 103.5.00 Assignments

Neither the Contract nor any interest therein shall be transferred to any other party or parties without the prior written consent of the Owner. In case of such attempted transfer without permission, the Owner may refuse to carry out the Contract either with the transfer or the transferee, but all rights of action for any breach of the Contract by said contractor are reserved to the Owner. No officer of said Owner nor any person employed in its service, is or shall be permitted any share or part of the Contract or is or shall be entitled to any benefit which may arise therefrom.

#### 103.6.00 Performance and Payment Bond

At the time of execution of the Contract, the successful bidder shall furnish a separate Performance Bond and Payment Bond each in an amount equal to the amount of the Contract, conditioned upon compliance with and fulfillment of the provisions of the Contract and as approved by the Owner. The Performance and Payment Bond shall be of the form included herein or a form acceptable to the Owner.

#### 103.7.00 Insurance

Prior to execution of the Contract and prior to expiration of insurance coverages, the Contractor shall file with the Owner evidences of insurance from the insurer(s) certifying to the coverage of all insurance required in Section 0710-5.02 herein.

**SECTION 00310  
BID**

TO: Louis Dix  
Superintendent  
Grant County School District Office  
401 N. Canyon Blvd  
Canyon City, Oregon 97820

**GRANT UNION HIGH SCHOOL – PARTIAL ROOF REPLACEMENT**

The undersigned, hereinafter called the Bidder, declares that the only persons or parties interested in this Bid are those named herein; that this Bid is in all respects fair and without fraud; that it is made without collusion with any official of Grant County School District and that the Bid is made without any connection or collusion with any person making another Bid on this Contract.

The Bidder further declares that he/she has carefully examined the Contract Documents for the construction detailed therein; that he/she has personally inspected the site; that he/she has satisfied himself/herself as to the quantities and qualities of materials, items of equipment and conditions of work involved, the means and technique of construction, and that this Bid is made according to the provisions and under the terms of the Contract Documents which are hereby made a part of this Bid.

The Bidder agrees to furnish all machinery, tools, labor, apparatus, and other means of construction, and do the work and furnish all the material necessary to complete the work which he/she shall be awarded in the manner, in the time, and according to the methods as specified in the Contract Documents and required by the Agent thereunder.

The Bidder further agrees to commence work promptly after the effective date of the "Notice to Proceed" and to complete, in all respects, the construction as set forth in Part B of the Contract Documents.

In the event a Bidder is awarded a Contract and shall fail to complete the work covered therein within the time limit, or extended time limit agreed upon, as more particularly set forth in the Contract Documents, liquidated damages shall be paid to Grant County School District by the Bidder at the rate set forth in the Contract Documents per working day until the work shall be finished.

The Bidder further proposes to accept as full payment for the work proposed herein the lump sum amount listed for each Schedule as follows:

BID PRICE SCHEDULE FOR:

**GRANT UNION HIGH SCHOOL – PARTIAL ROOF REPLACEMENT**

**BASE BID PRICE** \$ \_\_\_\_\_

**TOTAL BID PRICE** \$ \_\_\_\_\_

**UNIT PRICING** \$ \_\_\_\_\_ per SF  
(Assume 5% Removal & Replacement  
5/8" Sheathing)

**UNIT PRICING** \$ \_\_\_\_\_ per SF  
(Assume 5% Removal & Replacement  
Stucco and paint)

\_\_\_\_\_  
(Name of Firm)

\_\_\_\_\_  
(Signature of Bidder)

The name of the Company who is submitting this Bid is:

\_\_\_\_\_

doing business at \_\_\_\_\_

Street Address

\_\_\_\_\_

City

County

State

which address is the address to which all communications concerning this Bid and Contract shall be sent.

I (We), acknowledge that Addenda numbers \_\_\_\_\_ through \_\_\_\_\_ have been received and have been examined as part of the Contract Documents. (If none have been received, write "none" in the above space.) The Presidents Executive Order 11246, the Certification of Nonsegregated Facilities and the Certification of Nondiscrimination in Employment contained herein and executed by the Bidder is hereby made a part of this Bid.

The Contractor and/or each Subcontractor, in preparing the Bid submitted, shall pay each employee an amount not less than the prevailing rate of wage, as determined by BOLI, for an hour's work in the same trade or occupation in the locality where such labor is performed. Any employee whose type of work is not covered by any of the classified wage rates shall be paid not less than the rate of wage listed for the classification which most nearly corresponds to the type of work to be performed.

The name of the principal officers of the corporation, or members of the partnership, or individuals submitting this Bid are as follows:

\_\_\_\_\_, \_\_\_\_\_

\_\_\_\_\_, \_\_\_\_\_

The name of the Bidder is: \_\_\_\_\_

\_\_\_\_\_  
Contractor Board Registration Number

\_\_\_\_\_  
Signature of Bidder

Title: \_\_\_\_\_

Date: \_\_\_\_\_



**SECTION 00330**  
**LIST OF SUBCONTRACTORS**  
Services and Suppliers

**PROJECT NAME: GRANT UNION HIGH SCHOOL – PARTIAL ROOF REPLACEMENT**

**BID CLOSING DATE:** March 16, 2023

**TIME:** 2:00 P.M.

The Bidder shall submit the name, business address, and portion of work (description of work to be performed) for each subcontractor that will be used in the Project work if the Bidder is awarded the contract. The bidder shall submit this form directly to the Superintendent of Business Services with the bid or within (40) working hours after the advertised bid closing date and time. The disclosure shall include all first-tier subcontractors that will be furnishing labor, or labor and materials whose contract value equals or exceeds: five percent (5%) of the Contract Price or \$15,000, whichever is greater; or \$350,000, regardless of the percentage of the contract bid. The bidder must also disclose the category of work that the subcontractor will be performing and the dollar value of the subcontract. Enter "NONE" if there are no subcontractors that need to be disclosed. Failure to submit this form by the disclosure deadline will result in a non-responsive bid that will not be considered for award.

1. Bid Item No.(s) \_\_\_\_\_ , Bid Item Name(s): \_\_\_\_\_  
Subcontractor/ Suppliers Name: \_\_\_\_\_  
CCB # \_\_\_\_\_ Address: \_\_\_\_\_  
Dollar Value of Contract \_\_\_\_\_  
Description of Services/Category of Work: \_\_\_\_\_  
\_\_\_\_\_
  
2. Bid Item No.(s) \_\_\_\_\_ , Bid Item Name(s): \_\_\_\_\_  
Subcontractor/ Suppliers Name: \_\_\_\_\_  
CCB # \_\_\_\_\_ Address: \_\_\_\_\_  
Dollar Value of Contract \_\_\_\_\_  
Description of Services/Category of Work: \_\_\_\_\_  
\_\_\_\_\_

3. Bid Item No.(s) \_\_\_\_\_ , Bid Item Name(s): \_\_\_\_\_  
Subcontractor/ Suppliers Name: \_\_\_\_\_  
CCB # \_\_\_\_\_ Address: \_\_\_\_\_  
Dollar Value of Contract \_\_\_\_\_  
Description of Services/Category of Work: \_\_\_\_\_  
\_\_\_\_\_

4. Bid Item No.(s) \_\_\_\_\_ , Bid Item Name(s): \_\_\_\_\_  
Subcontractor/ Suppliers Name: \_\_\_\_\_  
CCB # \_\_\_\_\_ Address: \_\_\_\_\_  
Dollar Value of Contract \_\_\_\_\_  
Description of Services/Category of Work: \_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Name of Bidder

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

\*\*\***NOTE**\*\*\*: If you have more than four subcontractors, submit the above information for each on a separate sheet.

\*\*\***NOTE**\*\*\*: Any proposed changes in the above list after award shall be subject to the prior review and approval of the Owner and in no case shall have the effect of increasing the Contract Amount.

**SECTION 00340  
BIDDER CERTIFICATIONS**

The Bidder hereby certifies the following:

A. Non-discrimination: The Bidder certifies that it does not and will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not and will not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. The construction Contractor agrees that it will obtain identical certifications from proposed subcontractors exceeding \$10,000.00 which are not exempt from the provisions of the Equal Opportunity clause, and that he will retain such certifications in its files. The Bidder further certifies pursuant to ORS 279.111 that Bidder has not discriminated against minority women or emerging small business enterprises in obtaining any required subcontractors.

B. Resident Bidder: The Bidder hereby certifies that it: is \_\_\_ is not \_\_\_ a “resident bidder”. Resident bidder means a bidder that has a business address in the State of Oregon and has paid unemployment taxes or income taxes in Oregon during the twelve (12) calendar months immediately preceding submission of the bid.

C. Employee Drug Testing Program: The bidder hereby certifies that it has an employee drug testing program in place and a copy of its program is included with the bid submittal.

\_\_\_\_\_  
Name of Bidder

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Title

(Please Print or Type)

**SECTION 00350  
NONDISCRIMINATION IN EMPLOYMENT**

To: Grant County School District

Regarding a Construction Contract for:

**GRANT UNION HIGH SCHOOL – PARTIAL ROOF REPLACEMENT**

You are advised that, under the provisions of the above contract(s) or subcontract(s) and in accordance with Section 202 of Executive Order No. 11246 dated September 24, 1965, the undersigned will not discriminate against any employee or applicant for employment because of race, color, creed, sex or national origin. This obligation not to discriminate in employment includes, but is not limited to, the following:

EMPLOYMENT, UPGRADING, TRANSFER OR DEMOTION

RECRUITMENT AND ADVERTISING

RATES OF PAY OR OTHER FORMS OF COMPENSATION

SELECTION FOR TRAINING INCLUDING APPRENTICESHIP, LAYOFF OR TERMINATION

This notice is furnished you pursuant to the provisions of the above contract(s) or subcontract(s) and Executive Order No. 11246.

Copies of this notice will be posted by the undersigned in conspicuous places to employees or applicants for employment upon award of the above Contract(s).

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Contractor or Subcontractor

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Signature

Date

**SECTION 00360**  
**Grant County School District**  
**BID BOND**

**BIDDER/PRINCIPAL (Name and Address):**

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**SURETY (Name and Address of Principal Place of Business):**

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**OWNER:**

Grant County School District  
401 N. Canyon Blvd  
Canyon City, Oregon 97820

**BID:**

Bid Due Date: March 16, 2023  
Project (Brief Description Including Location)

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**BOND:**

Bond Number: \_\_\_\_\_

Penal Sum: \_\_\_\_\_  
(Words) Not less than 10% of bid total (Figures)

WHEREAS, the Bidder/Principal above-named is herewith submitting its bid to the Owner on the above-referenced Project; and

WHEREAS, the Owner is requiring the Bidder/Principal to provide Owner with bid security in an amount not less than ten percent (10%) of the total amount of the bid submitted by Bidder/Principal;

NOW, THEREFORE Bidder/Principal and Surety hereby agree to the following:

1. Bidder/Principal and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to pay to OWNER, upon default of Bidder, the penal sum set forth above.
2. Default of Bidder shall occur upon the failure of Bidder to deliver within the time required by the Bidding Documents (or any extension thereof agreed to in writing by OWNER) the executed Contract, Performance Bond, Payment Bond and proof of insurance required by the Bid Documents.
3. This obligation shall be null and void if:
  - 3.1 OWNER accepts Bidder's Bid and Bidder delivers within the time required by the Bid Documents (or any extension thereof agreed to in writing by OWNER) the executed Contract, Performance Bond, Payment Bond and proof of insurance required by the Bid Documents; or
  - 3.2 All Bids are rejected by OWNER; or
  - 3.3 OWNER fails to award the contract within the time specified in the Bid Documents (or any extension thereof agreed to in writing by Bidder and, if applicable, consented to by Surety when required by paragraph 5 hereof).
4. Payment under this Bond will be due and payable upon default by Bidder and within 30 calendar days after receipt by Bidder and Surety of written notice of default from OWNER, which notice will be given with reasonable promptness, identifying this Bond and the Project and including a statement of the amount due.
5. Surety waives notice of any and all defenses based on or arising out of any time extension to award the Contract agreed to in writing by OWNER and Bidder, provided that the total time for awarding the Contract including extensions shall not in the aggregate exceed 120 days from Bid due date without Surety's written consent.
6. No suit or action shall be commenced under this Bond prior to 30 calendar days after the notice of default required in paragraph 4 above is received by Bidder and Surety, and in no case later than one year after Bid Due Date specified above.
7. Any suit or action under this Bond shall be commenced only in the Grant County Circuit Court.
8. Notices required hereunder shall be in writing and sent to Bidder and Surety at their respective addresses. Such notices may be sent by personal delivery, commercial courier or by United States Registered or Certified Mail, return receipt requested, postage pre-paid and shall be deemed to be effective the earlier of actual receipt or two (2) days after mailing.

9. Surety shall cause to be attached to this Bond a current and effective Power of Attorney evidencing the authority of the officer, agent or representative who executed this Bond on behalf of Surety to execute, seal and deliver such Bond and bind the Surety thereby.
10. This Bond is intended to conform to all applicable statutory requirements. Any applicable requirement of any applicable statute that has been omitted from this Bond shall be deemed to be included herein as if fully set forth. If any provision of this Bond conflicts with any applicable statute, then the provision of said statute shall govern and the remainder of the Bond that is not in conflict therewith shall continue in full force and effect.
11. The term "Bid" as used herein includes a bid, offer or bid as applicable. The addresses listed above are to be used for giving required notice. Any singular reference to Bidder, Surety, Owner or other party shall be considered plural where applicable.

IN WITNESS WHEREOF, Surety and Bidder, intending to be legally bound hereby, subject to the terms hereinabove set forth, do each cause this Bid Bond to be duly executed on its behalf by it's authorized officer, agent, or representative.

DATED: \_\_\_\_\_

DATED: \_\_\_\_\_

BIDDER

SURETY

\_\_\_\_\_(Seal)  
Bidder's Name and Corporate Seal

\_\_\_\_\_(Seal)  
Surety's Name and Corporate Seal

By: \_\_\_\_\_  
Signature and Title

By: \_\_\_\_\_  
Signature and Title  
(Attach Power of Attorney)

Attest: \_\_\_\_\_  
Signature and Title

Attest: \_\_\_\_\_  
Signature and Title

**SECTION 00410  
SAMPLE CONTRACT AGREEMENT**

THIS AGREEMENT, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between Grant County School District, John Day, Oregon, hereinafter called the "Owner" and \_\_\_\_\_, hereinafter called the "Contractor".

**WITNESSETH:**

That by Motion of the Board of Superintendents, on \_\_\_\_\_, 20\_\_\_\_, proceedings were initiated for Facility Improvements, known as:

\_\_\_\_\_

That on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, the Owner published notice calling for bids for the construction of said improvements.

That on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, the day fixed for opening and considering such bids, the Contractor submitted a bid for said improvement, which bid is attached hereto and made a part thereof, said bid having been regularly and duly accepted on the \_\_\_\_\_, day of \_\_\_\_\_, 20\_\_\_\_, all in full compliance with the "Contract Documents" referred to herein.

The "Bidding Requirements and General Conditions", the "Plans and Specifications," the signed copy of the "Bid", the "Drawings" and Addendum or Addenda thereto are hereby referred to and, by reference made a part of this Contract as the "Contract Documents", and shall have the same force and effect as though all of the same were fully inserted herein.

NOW THEREFORE, the Contractor, in consideration of the sums to be paid it by the Owner in the manner and at the times as provided in the Specifications, and of the other covenants, agrees



to complete the work herein before described within the time limit specified herein and to accept as full payment hereunder the amounts computed as determined by the Contract Documents and based on said Bid. Alternate \_\_\_\_\_ was/was not selected.

It is agreed that the Completion of the project shall be completed by **September 1, 2023**. In the event the Contractor shall fail to complete the work within the time limit or the extended time limit agreed upon, as more particularly set forth in the Contract Documents, liquidated damages shall be computed at the rate set forth in the Contract Documents. Saturdays, Sundays and legal holidays shall be excluded in determining days of default.

IN WITNESS WHEREOF, we, the parties hereto, each herewith subscribed the same this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**CONTRACTOR**

**Grant County School District**

By: \_\_\_\_\_

By: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**SECTION 00420  
DECLARATION OF INDEPENDENT CONTRACTOR STATUS**

DATA:

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Name of Person Letting Contract

---

Address

---

Insurer

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Address

---

Name of Independent Contractor

---

Address

---

If Partnership, List All Partners

---

Address

Time or Project(s) covered by the Declaration:

The undersigned hereby declares that all services performed under the attached Contract dated \_\_\_\_\_ shall be rendered by the independent contractor in his or her status as an independent contractor.

The independent contractor shall give the person letting the Contract seven (7) days advance written notice before obtaining the assistance of any other person in performance of the Contract. Upon receipt of this notice, the person letting the Contract may require the independent contractor

to qualify as a direct responsibility employer under ORS 656.407 or as a contributing employer under ORS 656.411. Failure to give the notice required by the declaration or to obtain workers compensation coverage as required by the person letting the Contract shall constitute grounds for termination of the Contract by the person letting the Contract.

The independent contractor agrees to indemnify the person letting the Contract for any damages, expenses, costs and disbursements and attorney fees incurred by said person as a result of the independent contractor's failure to adhere to the terms of this declaration.

The parties to this declaration understand that a person who files a declaration of status as an independent contractor is not eligible to receive workers compensation benefits (under ORS Chapter 656) in the event of injury or disease, unless said person has obtained coverage for such benefit pursuant to ORS 656.128.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
Independent Contractor

\_\_\_\_\_  
Grant County School District

**SECTION 00430  
PAYMENT AUTHORIZATION LIST**

Project Identification: \_\_\_\_\_

The following personnel are authorized to receive progress payments in behalf of:

Company Name		
1.	_____ Name	_____ Position
2.	_____ Name	_____ Position
3.	_____ Name	_____ Position
4.	_____ Name	_____ Position
5.	_____ Name	_____ Position

(Signed by Officer of the Company)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Office Held

**SECTION 00510  
GRANT COUNTY SCHOOL DISTRICT  
PERFORMANCE BOND**

WE, \_\_\_\_\_,  
as principal, and \_\_\_\_\_ (name of  
surety), an \_\_\_\_\_ corporation, authorized to  
transact business in Oregon, as surety, hereby jointly and severally bind ourselves, our respective  
heirs, executors, administrators, successors and assigns to pay unto Grant County School District  
the sum of \_\_\_\_\_ (penal sum of bond)  
(\$ \_\_\_\_\_) dollars.

WHEREAS, the principal has entered into a contract with Grant County School District, the  
specifications, terms and conditions of which are contained in Invitation to Bid for that Project  
described as \_\_\_\_\_;  
and

WHEREAS, that contract is made a part of this performance bond by reference; and

WHEREAS, the principal has agreed to perform the contract in accordance with the certain terms,  
conditions, requirements, plans and specifications which are set forth in said contract, and all  
authorized modifications of the contract which increase the amount of the work and the amount of  
the contract, notice of any such modifications hereby being waived by the surety; and

WHEREAS, the principal has agreed to perform that contract as summarized below:

Furnish all equipment, materials, labor and supplies to perform the Owner's project  
designated as Grant Union High School Partial Re-Roof in strict accordance with  
plans and specifications contained in Principal's Bid.

NOW, THEREFORE, THE CONDITION OF THIS BOND IS SUCH THAT, if the principal shall  
faithfully perform all matters and things as agreed under the contract within the time prescribed  
therein, including the conditions listed in ORS 279.310 to 279.320, and shall indemnify and save  
harmless Grant County School District, its officers, employees and agents against any claim 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 said contract by the said Contractor or its  
subcontractors; 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.

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

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
Surety

\_\_\_\_\_  
Principal

By: \_\_\_\_\_  
Attorney in Fact

By: \_\_\_\_\_

\_\_\_\_\_  
Company

\_\_\_\_\_  
Address

\_\_\_\_\_  
Telephone No.: \_\_\_\_\_

**SECTION 00511  
GRANT COUNTY SCHOOL DISTRICT  
PAYMENT BOND**

WE, \_\_\_\_\_,  
as principal, and \_\_\_\_\_ (name of  
surety), an \_\_\_\_\_ corporation, authorized to  
transact business in Oregon, as surety, hereby jointly and severally bind ourselves, our respective  
heirs, executors, administrators, successors and assigns to pay unto Grant County School District  
the sum of \_\_\_\_\_ (penal sum of bond)  
(\$ \_\_\_\_\_) dollars.

WHEREAS, the principal has entered into a contract with Grant County School District, the  
specifications, terms and conditions of which are contained in Invitation to Bid for that Project  
described as Grant Union High School Partial Re-Roof; and

WHEREAS, that contract is made a part of this payment bond by reference; and

WHEREAS, the principal has agreed to perform the contract in accordance with the certain terms,  
conditions, requirements, plans and specifications which are set forth in said contract, and all  
authorized modifications of the contract which increase the amount of the work and the amount of  
the contract, notice of any such modifications hereby being waived by the surety; and

WHEREAS, the principal has agreed to perform that contract as summarized below:

Furnish all equipment, materials, labor and supplies to perform the Owner's  
project designated as Grant Union High School Partial Re-Roof, in strict  
accordance with plans and specifications contained in Principal's Bid.

NOW, THEREFORE, THE CONDITION OF THIS BOND IS SUCH THAT, if the principal shall  
promptly pay all persons supplying labor or materials to the principal or its subcontractor for  
prosecution of the work provided in said contract; and shall promptly pay all contributions due the  
State Industrial Accident Fund and the State Unemployment Compensation Fund from the  
principal or its subcontractor 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 subcontractor pursuant to ORS 316.167; and shall  
permit no lien nor claim to be filed or prosecuted against the Owner on account of any labor or  
materials furnished; and shall indemnify and save harmless Grant County School District, its  
officers, employees and agents against any claim 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 payment  
provision of the said contract by the said Contractor or its subcontractors; 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.

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

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
Surety

\_\_\_\_\_  
Principal

By: \_\_\_\_\_  
Attorney in Fact

By: \_\_\_\_\_

\_\_\_\_\_  
Company

\_\_\_\_\_  
Address

\_\_\_\_\_  
Telephone No.: \_\_\_\_\_



**SECTION 00520**

**CONTRACTOR'S  
CERTIFICATE OF COMPLIANCE  
FOR FINAL PAYMENT**

Name of Project: \_\_\_\_\_

Project No. \_\_\_\_\_ Contract Award Date \_\_\_\_\_  
\_\_\_\_\_

I, \_\_\_\_\_,  
(Name of Signatory Party) (Title)

do hereby state that:

1. I paid or supervised the payment of persons employed by \_\_\_\_\_  
(Contractor) on the subject Project:

2. During the payroll period commencing on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, and ending the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, all persons employed on said project have been paid the full wages earned, that no rebates have been made or will be made either directly or indirectly to or on behalf of said \_\_\_\_\_ (Contractor) from the full wages earned by any person and that no deductions have been made either directly or indirectly from the full wages earned by any person, other than permissible deductions, as defined in Regulations, (29 CFR, Part 3) issued by the Secretary of Labor under the Copeland Act; under the published wage schedule at the time and date of the bid opening.

3. The payrolls were correct and complete, the wage rates contained therein were not less than the applicable rates contained in the Wage Determination decision of the Commissioner of the Bureau of Labor and Industries and the classification set forth for each Laborer or Mechanic conformed with the work he performed.

4. All Contract requirements as specified under the Labor Standards have been complied with by \_\_\_\_\_ as Contractor and by each subcontractor employing Mechanics or Laborers at the site of work, or therein is an honest dispute with respect to the required provisions;

5. All work has been performed and materials supplied in accordance with the plans and specifications, and Contract Documents for the above stated Project.

6. There have been no unauthorized substitutions of subcontractors nor have any subcontracts been entered into without the names of the subcontractors having been submitted to the Agent prior to the start of subcontract work.

7. No subcontract was assigned or transferred or performed by any subcontractor other than the original subcontractor, without prior notice having been submitted to the Agent together with the names of all subcontractors;

8. All claims for materials and labor and other services performed in connection with these specifications have been paid;

9. All fees or monies due the Bureau of Labor Industries, State Industrial Accident Fund, the State Unemployment Compensation Trust Fund, the State Tax Commission, hospital association and/or other, have been paid;

10. Under the provisions of the above Contract(s) and in accordance with Section 202 of Executive Order No. 11246 dated September 24, 1965, the undersigned did not discriminate against any employee or applicant for employment because of race, color, creed, or national origin.

11. I did not maintain or provide for my employees any segregated facilities during this Contract(s) at any location, under my control.

Request is therefore made for Grant County School District to make final payment for the contracted work to the undersigned.

\_\_\_\_\_  
Contractor

By: \_\_\_\_\_  
Signature Date

**SECTION 00530  
DEPOSIT OF BONDS OR SECURITIES IN LIEU OF RETAINAGE**

Date: \_\_\_\_\_

Louis Dix  
Superintendent of Business Services  
Grant County School District  
401 N. Canyon Blvd  
Canyon City, Oregon 97820

Re: Contract No.: \_\_\_\_\_

Contract Title: **GRANT UNION HIGH SCHOOL – PARTIAL ROOF REPLACEMENT**

Contractor: \_\_\_\_\_

Dear Mr. Louis Dix:

The captioned Contractor has signed “Retainage Escrow Instructions” and has deposited with this bank bond or securities of a character approved by the State Treasurer having a market value on this day of \$\_\_\_\_\_ pursuant to ORS 279.575 to be held in lieu of retainage on the captioned Contract.

The bonds or securities are negotiable upon thirty (30) days prior written notice and will be retained for the benefit of Grant County School District until written notice of release or other direction is received from you.

Very truly yours,

\_\_\_\_\_  
(Bank or Trust Company)

By: \_\_\_\_\_

Title: \_\_\_\_\_

Approved by Contractor

\_\_\_\_\_

Date: \_\_\_\_\_

**SECTION 00610**  
**MAXIMUM HOURS OF LABOR ON PUBLIC CONTRACTS; HOLIDAYS**  
**EXCEPTIONS; LIABILITY TO WORKERS (ORS 279.334)**

(1) In all cases where labor is employed by the State, County, School District, Municipality, Municipal Corporation or political subdivision of the state, through a contractor, no person shall be required or permitted to labor more than eight hours in any one day, or 40 hours in any one week, except in cases of necessity, emergency or where the public policy absolutely requires it, in which event, the person or persons so employed for excessive hours shall receive at least time and a half pay for all overtime in excess of eight hours a day, and for work performed on Saturday and on the following legal holidays:

- (a) Each Sunday
- (b) New Year's day on January 1
- (c) Memorial Day on the last Monday in May
- (d) Independence Day on July 4
- (e) Labor Day on the first Monday in September
- (f) Thanksgiving Day on the fourth Thursday of November
- (g) Christmas Day on December 25

(2) For the purpose of this section, each time a holiday, other than Sunday, listed in subsection (1) of this section falls on Sunday, the succeeding Monday shall be recognized as a legal holiday. Each time a holiday listed in subsection (1) of this section falls on Saturday, the preceding Friday shall be recognized as a legal holiday.

(3) Subsection (1) and (2) of this section do not apply to a contract for a public improvement if the contractor is a party to a collective bargaining agreement in effect with the labor organization.

(4) When specifically agreed to under a written labor-management negotiated labor agreement, a laborer may be paid at least time and a half pay for work performed on any holiday specified in ORS 187.010 and 187.020 that is not listed in subsection (1) of this section.

(5) Any contractor or subcontractor or contractor's or subcontractor's surety who violates the provisions of subsection (1) of this section shall be liable to the employees affected in the amount of their unpaid overtime wages and in an additional amount equal to the unpaid overtime wages as liquidated damages.

(6) An action to enforce liability to workers under subsection (5) of this section may be brought as an action on the contractor's bond as provided for in ORS 279.536

**SECTION 00710  
GENERAL CONDITIONS**

**PART 1--GENERAL**

**1.01 DEFINITIONS OF WORDS AND TERMS**

Where used in the Contract Documents, the following words and terms shall have the meanings indicated. The meanings shall be applicable to the singular, plural, masculine, feminine and neuter of the words and terms.

**Acceptance.** Formal action of the Agent in determining that the Contractor's work has been completed in accordance with the Contract.

**Act of Nature.** A cataclysmic phenomenon of nature, such as an earthquake, flood or cyclone. Abnormal weather conditions as described in paragraph 00710-8.02 will be construed as an act of Nature.

**Addenda.** Written additions, deletions, clarifications, interpretations, modifications or corrections to the Contract Documents issued by the Owner during the bidding period and prior to the date and time established for submittal of bids.

**Bid.** The offer of a bidder submitted on the prescribed Bid Form and including the Bidding Schedule, bid guaranty, qualifications information, and all other forms and documentation required by the Contract Documents.

**Bidder.** Individual, association, partnership, firm, company, corporation, or a combination thereof, including joint ventures, submitting a bid to perform the work.

**Bid Price.** Offer of a bidder submitted on the prescribed form setting forth the price or prices for the work to be performed.

**Change Order.** Written order issued by the Owner, with or without notice to sureties, making changes in the work within the scope of this Contract.

**Construction Manager.** The agent(s) or employee(s) designated in writing by the Superintendent of Business Services to act as the Superintendent of Business Services' representative at the construction site and to perform construction inspection services and administrative functions relating to this Contract.

**Contract Documents or Contract.** The writings and drawings embodying the legally binding obligations between the Owner and the Contractor for completion of the work. The Contract or Contract Documents (terms used interchangeably) includes the following parts:

Volume 1--Bidding and Contract Requirements

Addenda  
Change Orders

**Contract Drawings or Drawings.** The drawings included in the Contract plus those prepared by the Owner and the Contractor pursuant to the terms of the Contract. They include:

1. Drawings in Part C of the Contract;
2. Drawings issued by addenda;
3. Drawings submitted by the Contractor to the Owner during the progress of the work either as attachments to change orders or as non-modifying supplements to drawings in Part C; and,
4. Drawings submitted by the Owner to the Contractor during the progress of the work either as attachments to change orders or as explanatory supplements to drawings in Part C.

**Contract Price.** Amount payable to the Contractor under the terms and conditions of the Contract based on the lump sum prices, unit prices, or combination thereof, on the Bidding Schedule, with adjustments made in accordance with the Contract.

**Contract Time.** Number of calendar days and/or the intermediate and final completion dates stated in the Contract for the completion of the work.

**Contractor.** The individual, association, partnership, firm, company, corporation, or combination thereof, including joint ventures, contracting with the Owner for the performance of the work.

**Contractor's Plant and Equipment.** Equipment, material, supplies, and all other items, except labor, brought onto the site by the Contractor to carry out the work, but not to be incorporated in the work.

**Contractor's Representative.** The individual designated in writing by the Contractor to act on its behalf under this Contract.

**Day.** Calendar day.

**Design Consultant.** The professional Agent(s) or firm hired by the Owner to perform design services and produce the bid documents. For this contract, the firm is *ZCS Engineering and Architecture*.

**Design Professional.** The professional engineer(s) or firm hired by the Contractor to perform design services during construction including inspection, and certification for the piping supports, seismic restraints, and provisions for control of pipe expansion. The Design Professional shall be a professional engineer licensed to practice in the State of Oregon.

**Direct.** Action of the Owner by which the Contractor is ordered to perform or refrain from performing work under the Contract.

**Directive.** Written documentation of the actions of the Owner in directing the Contractor.

**Agent.** The agent(s) or employee(s) designated in writing by the Superintendent of Business Services to act as the Superintendent of Business Services' representative at the construction site and to perform construction inspection services and administrative functions relating to this Contract.

**Director of Business Services.** Director of Business Services as referenced in these documents is the Superintendent of Business Services of Grant County School District or their designee. The Superintendent of Business Services will delegate another person as the Construction Manager for this project. That person will be the first contact for all issues on this project, will attend project meetings, and will review all change orders and project payment requests prior to approval by the Superintendent of Business Services.

**Furnish.** To supply and deliver any item, equipment or material to the job site or other specified location.

**Herein.** Refers to the Contract.

**Install.** Placing, erecting, or constructing complete in place any item, equipment, or material.

**May.** Refers to permissive actions.

**Owner.** Grant County School District. The term "Owner" and "GCSD" is used interchangeably.

**Paragraph.** For reference or citation purposes, paragraph shall refer to the paragraph, or paragraphs, called out by section number and alphanumeric designator. For example, this definition is found in paragraph 00710-1.01; permits and licenses are discussed in paragraph 00710-1.05 B.

**Person.** Includes individuals, associations, firms, companies, corporations, partnerships, and joint ventures.

**Proposed Work Change or PWC.** A written document issued by the Agent to the Contractor identifying contemplated changes in the work and requesting a price and/or schedule bid from the Contractor; such a request shall not be interpreted or construed to constitute a change order.

**Provide.** Furnish and install, complete in place, without additional charge.

**Punch List.** List prepared by the Agent identifying items of work which are incomplete or not in conformance with the Contract.

**Reference Documents.** Reports and drawings, if any, available to bidders for information and reference in preparing bids but not as part of the Contract.

**ORS.** Means the Oregon Revised Statutes

**Shall or Will.** Whenever used to stipulate anything, “shall” or “will” means mandatory by either the Contractor or the Owner, as applicable, and means that the Contractor or the Owner, as applicable, has thereby entered into a covenant with the other party to do or perform the same.

**Shown.** Refers to information presented on the Contract Drawings, with or without reference to such Drawings.

**Special Inspector.** The independent, third-party qualified personnel and testing laboratory under contract with the Owner and in conformance with the Current edition of the IBC and OSSC.

**Specifications or Technical Specifications.** Part B of the Contract consisting of written descriptions of the technical features of materials, equipment, construction systems, standards, workmanship and installation.

**Specify.** Refers to information described, shown, noted, indicated or presented in any manner in any part of the Contract.

**Subcontractor.** The individual, association, partnership, firm, company, corporation, or joint venture entering into an agreement with the Contractor or another Subcontractor to perform a specific part of the work covered by this Contract.

**Submittals.** Information which is submitted to the Agent in accordance with the Technical Specifications.

**Work.** Refers to the labor, materials, equipment, supplies, services, and other items necessary for the execution, completion and fulfillment of this Contract by the Contractor to the satisfaction of the Owner.

## **1.02 JOINT VENTURE CONTRACTOR**

In the event the Contractor is a joint venture of two or more contractors, the grants, covenants, provisions and claims, rights, power, privileges and liabilities of the Contract shall be construed and held to be several as well as joint. Any notice, order, direction, request or any communication required to be or that may be given by the Owner to the Contractor under this Contract, shall be well and sufficiently given to all persons being the Contractor if given to any one or more of such joint venture contractors. Any notice, request or other communication given by any one of such joint venture contractors to the Owner under this Contract shall be deemed to have been given by and shall bind all joint venture contractors being the Contractor.



In the event of the dissolution of the joint venture Contractor, the Owner shall have the unqualified right to select which joint venture partner, if any, shall continue with the work under this Contract, and such selected partner shall assume all liabilities, obligations, rights and benefits of the Contractor under this Contract. Such dissolution of the joint venture shall not be effected without prior consultation with the Owner. In the event of failure or inability of either joint venture partner to continue performance under this Contract, the other joint venture partner shall perform all services and work and assume all liabilities, obligations, rights and benefits to the Contractor under this Contract. Such determination of failure or inability to continue performance shall not be effected without prior consultation with the Owner. Nothing in this subparagraph shall be construed or interpreted to limit the Owner's rights under this Contract or by law to determine whether the Contractor or either joint venture partner thereof has performed within the terms of this Contract.

### **1.03 CONTRACT REQUIREMENTS**

#### **A. SUCCESSORS' OBLIGATIONS:**

The grants, covenants, provisions and claims, rights, powers, privileges and liabilities contained in the Contract shall be read and held as made by and with, and granted to and imposed upon, the Contractor and the Owner and their respective heirs, executors, administrators, successors and assigns. A surety under the Performance and Payment Bond electing to complete the work in the event of a default, termination or other failure of the Contractor to perform the work, will comply fully with all Contract requirements.

#### **B. ASSIGNMENT OF CONTRACT:**

The Contract shall not be assigned in whole or in part by the Contractor without the prior written consent of the Owner. To the maximum extent permitted by law, involuntary assignment of the Contract caused by the Contractor being adjudged bankrupt, assignment of the Contract for the benefit of Contractor's creditors or appointment of a receiver on account of Contractor's insolvency shall be considered as a failure to comply with the provisions of the Contract and subject to the termination provisions contained herein.

#### **C. WAIVER OF RIGHTS BY OWNER:**

Except as herein provided, no action or want of action on the part of the Owner at any time with respect to the exercise of any rights or remedies conferred upon it under this Contract shall be deemed to be a waiver on the part of the Owner of any of its rights or remedies. No waiver shall be effective against the Owner except an express waiver in writing. No waiver of one right or remedy by the Owner shall act as a waiver of any other right or remedy or as a subsequent waiver of the same right or remedy.

#### **D. AMENDMENT OF GENERAL CONDITIONS:**

After award of this Contract, these general conditions may be amended only by change order under paragraph 00710-7.02.

## **1.04 LABOR STANDARDS**

### **A. WAGES OF EMPLOYEES:**

1. **GENERAL.** This Contract is subject to the minimum wage requirements of ORS 279.348 et.seq. (as amended or supplemented). The Contractor, each subcontractor and other person doing any work under this Contract shall pay laborers, workers and mechanics not less than the prevailing rate of wage for an hour's work in the same trade or occupation in the locality within the state of Oregon where such labor is performed. Wages and benefits higher than the minimums required by law may be paid. It shall be the responsibility of the bidder to inform himself of said prevailing wage rates. In the event rates of wages and benefits change while this Contract is in force, the Contractor shall bear the cost of such changes and shall have no claim against the Owner on account of such changes.

The successful bidder shall have, available for inspection by his employees, a copy of the prevailing wage rates. A copy of the Bureau of Labor and Industries current prevailing wage rate booklet is included following this section.

2. **PREVAILING RATES OF WAGES.** All determinations of the prevailing rate of wage shall be made by the Bureau of Labor and Industries (BOLI) of the State of Oregon. The schedule of prevailing wage rates applicable to this Contract are set forth in Section 00581. If employing labor in a class not listed in such schedule, the Contractor shall request the industrial statistician to determine the correct wage rate for that class and locality.

3. **DISPUTES.** In case any dispute arises as to what are the prevailing rates of wages for work of a similar nature and such dispute cannot be adjusted by the parties in interest, including labor and management representatives, the matter shall be referred for arbitration to the Director of the Bureau of Labor and Industries of the State of Oregon and said Director's decision therein shall be final and conclusive and binding on all parties involved in the dispute.

4. **POSTING NOTICES.** The Contractor, each subcontractor and other person required to pay the prevailing rate of wage shall post in a location(s) readily visible to workers at the job site: (1) a copy of the statement of intent to pay prevailing wages approved by the industrial statistician of the Department of Labor and Industries; and (2) the address and telephone number of the industrial statistician of the Department of Labor and Industries where a complaint or inquiry concerning prevailing wages may be made.

5. **APPRENTICES.** Apprentice workers employed hereunder for whom an apprenticeship agreement has been registered must be paid at least the prevailing hourly rate for an apprentice for that trade. Any worker for whom an apprenticeship agreement has not been registered and approved by the state apprenticeship council shall be considered to be a fully qualified journeyworker, and, therefore, shall be paid at the prevailing hourly rate for journeyworkers.

6. **REQUIRED DOCUMENTS.** Pursuant to ORS 279.348 et. seq. the Contractor and each subcontractor shall submit a statement that prevailing wages have been paid in accordance with the "Statement of Intent to Pay Prevailing Wages" prior to first payment and hereafter as described herein. The statement shall be in a form prescribed by the Bureau of Labor and Industries, certifying under oath the hourly rate of wage paid each worker employed upon the work, and further certifying that no worker employed upon the work has been paid less than the prevailing rate. Certified statements shall be submitted as follows: the minimum hourly rate of wage specified. A statement that prevailing wages have been paid in accordance with the "Statement of Intent to Pay Prevailing Wages" filed with the Owner. The "Statement of Intent to Pay Prevailing Wages" shall be submitted in a form that has been approved by the Bureau of Labor and Industries. Any fees charged by the department of labor and industries for filing the "Statement of Intent to Pay Prevailing Wages" and the "Affidavit of Wages Paid" shall be paid by the Contractor and each subcontractor, as applicable; if, for any reason, the Owner pays such fees, then the Contractor shall be charged the amounts thereof. Contractor shall submit the following:

- a. For any project 90 days or less from the date of award of the contract to the date of completion of the work, the statement shall be submitted once before the first payment and once before the final payment is made of any sum due under this contract.
- b. For any project exceeding 90 days from the date of award of the contract to the date of completion of the work, the statement shall be submitted once before the first payment, at 90 day intervals thereafter, and once before the final payment is made of any sum due under this contract.
- c. Following final acceptance of the work and before funds retained according to ORS 279 are released to the Contractor, the Contractor and each subcontractor shall submit an "Affidavit of Wages Paid" which has been approved and certified by the Bureau of Labor and Industries.

7. **AUDITS.** The Owner may inspect or audit the Contractor's wage and payroll records at any time while the Contract is in force and for at least three years after the date of final acceptance. The Contractor shall maintain such records for that period. The Contractor shall also guarantee that wage and payroll records of all its subcontractors and agents shall be open to similar inspection and auditing for the same period of time. The Owner will give the Contractor reasonable notice of the starting date if an audit will begin more than 60 days after the date of acceptance of work.

**B. WORKER'S BENEFITS:**

The Contractor shall make all payments required for unemployment compensation under ORS 656.017 and for industrial insurance and medical aid required under ORS. The Contractor shall also obey all federal, state and local laws, ordinances, and regulations establishing safety standards for the protection of employees. If any payment required is not made when due, the Owner may retain such payments from any money due the Contractor and pay the same into the appropriate fund. The Bureau of Labor and Industries will provide the Contractor with applicable industrial insurance and medical aid classification and premium rates. Before release of any funds retained, the Contractor shall complete a "Request for Release" form and submit such form to the Department of Labor and Industries for approval for the purpose of obtaining a release with respect to the payments of industrial insurance and medical aid premiums. Such approved form shall be submitted to the Agent.

C. HOURS OF LABOR:

The Contractor shall comply with ORS 279.316. Failure of the Contractor to perform the work in accordance with this policy of the State of Oregon shall be deemed a failure on its part to comply with the provisions of this Contract within the meaning of paragraph 00710-6.04.

D. SCHEDULE OF WORKING HOURS, OVERTIME, SHIFT AND TIDE WORK:

Within ten days after the effective date of Notice to Proceed, the Contractor shall submit a schedule of working hours, including overtime, shift and tide work, to the Agent for approval. Such schedule shall take into account applicable governmental laws, regulations and permits and shall comply with any other work hour constraints set forth in the Specifications. The schedule approved by the Agent shall be effective during the performance of work under this Contract. If allowed by such laws, regulations, permits and constraints, the Contractor may work hours other than those on the approved schedule ("unscheduled hours") but will be responsible for paying the Owner/Agent's overtime inspection costs unless the Contractor obtains the Agent's concurrence at least 72 hours prior to working unscheduled hours.

If the Contractor works unscheduled hours and/or if the Contractor did not obtain the Agent's concurrence at least 72 hours prior to the start of unscheduled work, the Contractor shall be liable for the costs of the Owner/Agent's overtime inspection at the rate for each person performing such inspection for and on behalf of the Owner. The Contractor agrees that the Owner will deduct overtime inspection charges from payments due the Contractor. In the event of a change order requiring the Contractor to work unscheduled hours, the Contractor will not be charged for the Owner's overtime inspection costs.

E. BOLI FEE:

The Contractor is required to pay a fee to the Commissioner of the Bureau of Labor and Industries (BOLI) pursuant to the provisions of ORS 279.375 and the administrative rules of the Commissioner. The fee is one-tenth of one percent of the Contract price, but not less than \$100.00 nor more than \$5,000.00, regardless of the Contract Amount. The fee shall be paid on or before the first progress payment or 60 days from the date work first begins on the Contract, whichever

comes first. The fee is payable to the Bureau of Labor and Industries and shall be mailed or otherwise delivered to the Bureau with the appropriate form as found in the Labor Standards of the Project Manual.

**F. OTHER REQUIREMENTS:**

The Contractor shall pay all contributions or amounts due the Industrial Accident Fund from Contractor or Subcontractor incurred during the performance of the work. Contractor shall also pay the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.

**1.05 LAWS, REGULATIONS AND PERMITS**

**A. GENERAL:**

The Contractor shall perform all work hereunder in full compliance with the terms and conditions of the Contract, with local, state and federal laws, ordinances, resolutions and regulations, and with permit and easement conditions pertaining to the conduct of the work; the Contractor shall be liable for violations of same. The Contractor shall give the notices, file information and pay taxes, deductions and premiums as may be required by law. The Contractor shall cooperate with all governmental entities regarding inspection of the work and compliance with such requirements. The Contractor shall not perform work known to be contrary to the terms and conditions of the Contract and/or laws, ordinances, resolutions, regulations or permit and easement conditions. If the Contractor observes that the Drawings, Specifications or other portions of the Contract Documents are in conflict with any laws, resolutions, regulations and/or permit and easement conditions, the Contractor shall promptly notify the Agent in writing of such conflict. The Owner will promptly review the matter and, if necessary, will issue a change order or take any other action necessary to bring about compliance.

**B. PERMITS AND LICENSES:**

Unless otherwise specified, permits from governmental agencies which are necessary only for and during the prosecution of the work and the subsequent guarantee period shall be secured and paid for by the Owner. Permits and licenses of regulatory agencies which are necessary to be maintained after expiration of the guarantee period will be secured and paid for by the Owner.

**C. PATENTS AND ROYALTIES:**

The costs involved in fees, royalties or claims for any patented invention, article, process or method that may be used upon or in a manner connected with the work under this Contract or with the use of completed work by the Owner shall be paid by the Contractor. The Contractor and its sureties shall protect and hold the Owner, and its officers, agents and employees, harmless against any and all demands made for such fees or claims brought or made by the holder of any invention or patent. Before final payment is made on the account of this Contract, the Contractor shall, if requested by the Owner, furnish acceptable proof of a proper release from all such fees or claims.

Should the Contractor, its agent, servants or employees, or any of them be enjoined from furnishing or using any invention, article, material or appliances supplied or required to be supplied or used under the Contract, the Contractor shall promptly substitute other articles, materials or appliances in lieu thereof of equal efficiency, quality, finish, suitability, and market value, and satisfactory in all respects to the Owner. In the event that the Owner elects, in lieu of such substitution, to have supplied and to retain and use any such invention, article, material or appliances as may be required to be supplied by the Contract, the Contractor shall pay such royalties and secure such valid licenses as may be requisite and necessary for the Owner, its officers, agents, servants and employees, or any of them to use such invention, article, material or appliance without being disturbed or in any way interfered with by any proceeding in law or equity on account thereof. Should the Contractor neglect or refuse to make the substitution promptly or to pay such royalties and secure such licenses as may be necessary, then in that event the Owner shall have the right to make such substitution or the Owner may pay such royalties and secure such licenses and charge the Contractor even though final payment under the Contract may have been made.

## **1.06 HEADINGS**

Headings to plans, divisions, sections, paragraphs, subparagraphs and forms are inserted for convenience of reference only and shall not affect the interpretation of the Contract.

## **1.07 SUBCONTRACTORS**

Subcontractors to the Contractor will not be recognized as having a direct relationship with the Owner, nor are subcontractors intended or incidental third-party beneficiaries to this Contract. The persons engaged in the work, including employees of subcontractors and suppliers, will be considered employees of the Contractor and their work shall be subject to the provisions of the Contract.

This Contract is between the Owner and the Contractor. The Contractor will be responsible for performing all work shown on the Drawings and described in all sections of the Specifications. The Contract Documents have not been written with the intent of, and the Owner shall not be a party to, defining the division of work between the Contractor and its subcontractors.

No work shall be subcontracted without written consent of the Agent; provided, written consent shall not be required for subcontractors identified by the Contractor as part of its bid to perform the work under this Contract if the Owner did not object to such subcontractors; and, provided further, written consent shall not be required for a subcontractor whose subcontract amount equals or exceeds five (5%) percent of the Contract Price or greater than \$15,000, whichever is larger. Each request to subcontract shall be on the form the Agent provides. If requested by the Agent, the Contractor shall provide documentation that the proposed subcontractor is experienced and equipped to do the subcontract work. The subcontractor shall be properly licensed, registered or certified, as applicable to perform the assigned work. The Contractor shall require each subcontractor to comply with all provisions of this Contract pertinent to the subcontract work, including affirmative action in employment and employee drug testing program. Consent to subcontract any portion of the work shall not relieve the Contractor of any

responsibility for performance of the Contract. Subcontracting shall create no contract between the Owner and the subcontractor, nor shall the subcontractor have any rights against the Owner by reason of its subcontract with the Contractor. The Contractor shall be responsible for all work and material furnished, and no subcontract shall in any case release the Contractor of its obligations or liability under this Contract and the Performance and Payment Bond.

Before payment on each monthly partial payment request and the final payment, the Contractor shall submit the affidavits identifying amounts paid to and owed to, as applicable, minority and women business enterprises as required by paragraph 00710-9.01 herein.

If dissatisfied with any part of the subcontracted work, the Agent may request in writing that the subcontractor be removed. The Contractor shall comply with this request at once, shall not employ the subcontractor for any further work under the Contract, and shall have no claim whatsoever against the Owner on account of such removal.

### **1.08 DISRUPTIONS CAUSED BY LABOR OR OTHER DISPUTES**

The Contractor shall take all reasonable steps to prevent all disputes arising from the presence of or the performance of work by the Contractor and any of its subcontractors or suppliers from: (1) disrupting the work under this Contract; (2) interfering with access to the Owner's property by the Owner, including its agents, representatives, employees and officials; (3) interfering with access and work by any other contractors engaged in construction activities; and, (4) interfering with access to property by members of the public.

If such a dispute disrupts the work under this Contract or interferes in any way with access to the Owner's property or to the site of the work by any persons, the Contractor shall promptly and expeditiously take all reasonable actions to eliminate or minimize such disruption or interference, including but not limited to: (1) utilizing all reasonable means to prevent all unlawful conduct or picketing, and restricting all lawful picketing or other activities to a single entrance to the property or site of the work; (2) posting notices or signs which advise interested persons and labor organizations that a particular entrance to the property or site of the work is for the employees of "primary" or, as the case may be, "neutral" employers; (3) policing entrances to ensure that only authorized personnel use the entrances; (4) notifying all interested labor organizations of the "primary" or "neutral" status of particular entrances; (5) upon request of the Owner, altering or rerouting the access to the site; and (6) in the event of any such picketing or activity is unlawful or has a secondary impact upon the employees of neutral employers, promptly and expeditiously taking appropriate action to seek recourse through the appropriate governmental agency or state or federal courts to limit the location of such picketing or activity so as to reduce the impact thereof upon neutral employers.

The Owner will cooperate with the Contractor to accomplish the foregoing actions and will render assistance as may be in the best interests of the Owner. However, the Owner shall have the right, without providing additional compensation to the Contractor, to direct the Contractor to modify any of the foregoing actions the Contractor has taken or plans to take or to overrule such actions, to designate the entrances to be used as "primary" or "neutral" entrances, and to take appropriate legal action in order to protect the Owner's property and interests. Neither the failure

of the Owner to request that the Contractor take a specific action nor the exercise by the Owner of its rights hereunder shall modify or constitute a defense to or waiver of the obligations imposed upon the Contractor in this paragraph. Failure by the Contractor to take the actions described above or to comply with the directives of the Owner shall be considered a material breach of this Contract and the Owner shall have all rights provided by law and in this Contract for such breach.

In any event, to the maximum extent permitted by law, the Contractor shall be liable for and shall defend, indemnify, save and hold harmless the Owner and its agents, representatives, employees and officials from: (1) all claims, suits, or actions brought against the Owner by any third party (including, but not limited to, contractors, licensees and invitees of the Owner), including the costs of the same and attorney's and consultant's fees, which claims, suits, actions, damages or costs are caused in whole or in part by any dispute which disrupts the work hereunder or otherwise interferes with access to Owner property; (2) all damages sustained by the Owner, including but not limited to the costs incurred by the Owner in relocating or rerouting access to Owner property and for taking other actions required to maintain the uninterrupted progress of work under this Contract or other contracts and the uninterrupted operations of Owner facilities; and (3) all extra costs incurred by the Owner in administering this Contract, including attorney's and consultant's fees, arising from such disruptions or interference.

The term "dispute" as used in this paragraph 00710-1.08 includes labor-related and non labor-related disputes, whether or not the person or other entities involved in the dispute have an employment relationship with either the Contractor or the Owner. Examples of such disputes include, but are not limited to, informational or other picketing, and all other forms of concerted or non-concerted activity.

The Owner shall be entitled to recover from the Contractor all of the attorney's fees and costs incurred by the Owner in establishing or enforcing the Owner's right to indemnity under this paragraph 00710-1.08.

## **1.09 INTERPRETATION OF CONTRACT DOCUMENTS**

In the event of any conflict or inconsistency between any of the Contract Documents, the conflict or inconsistency shall be resolved upon the governing document. The hierarchy of the documents is listed below, with each document governing over those listed below it:

1. Change Orders
2. Addenda
3. Bidding and Contract Requirements
4. Technical Specifications
5. Contract Drawings

## **1.10 INTENT-OF-CONTRACT**

The intent of the Contract is to prescribe a complete work. The Contractor shall provide, coordinate and supervise all labor, services, materials, tools, equipment, transportation, supplies and incidentals required to complete all work in compliance with the requirements of the Contract.



The Contract Price, whether lump sum or unit prices or a combination thereof, shall be full pay for all work and materials required to fully complete the Contract work.

### **1.11 ARCHAEOLOGICAL AND HISTORICAL PRESERVATION**

Not applicable to this project.

### **1.12 WATER POLLUTION CONTROL REQUIREMENTS**

The Contractor shall comply with the appropriate sections of ORS 449 and be liable for all penalties, damages and violations thereof in the performance of this work. By submitting a bid for and entering into this Contract, the Contractor has thereby assured the Owner that the Contractor has knowledge of, understands and will comply with the provisions and requirements of ORS 449 and , including any regulations issued pursuant thereto. The Contractor shall also perform its work in compliance with water pollution control requirements as may be set forth in this Contract and as may be a part of any permit or other authorization issued or obtained for this Contract.

### **1.13 RIGHTS OF WAY**

All rights of way to be provided by the Owner for use by the Contractor and for the completed work shall be set forth in the Specifications and may be shown on the Drawings. The Contractor's construction activities shall be confined within the identified rights of way, unless the Contractor makes arrangements for use of additional public and/or private property and complies with this paragraph 00710-1.13. The Contractor shall comply with all requirements set forth in such rights of way documents and in the Contract applicable to the performance of work hereunder. The Contractor shall provide written notice to the Agent of the dates of commencement and completion of work on each right of way provided by the Owner. If the Contractor fails to diligently prosecute and complete the work on each such right of way and, as a result of such failure, the Owner becomes obligated to pay additional amounts for the use of such right of way, the Contractor shall be charged such additional costs in accordance with paragraph 00710-7.03. Upon completion of use of each right of way, the Contractor shall provide the Agent with a written release signed by such owner, or authorized agent therefor, stating that the owner has no claims whatsoever against the Owner on account of the Contractor's use of such right of way. Such release shall be on the form set forth in the Specifications.

If the Contractor makes arrangements for use of such additional public and/or private property, the Contractor, prior to using such property, shall provide the Agent with written permission of the owner, or duly authorized agent of such owner, for such use. Upon completion of use of such property, the Contractor shall provide the Agent with a written release signed by such owner or authorized agent therefor stating that the owner has no claims whatsoever against the Owner on account of the Contractor's use of such property. Such release shall be on the form set forth in the Specifications.

The Contractor shall save the Owner harmless from all suits and legal proceedings of every kind and description that might result from use of or damage to rights of way and public and/or private property by the Contractor. The Contractor shall comply with all laws, rules, regulations,

ordinances, resolutions or directives relating to its use of public rights or way, streets or highways; and its use of same shall not disturb the rights and property of adjacent property owners.

#### **1.14 ENVIRONMENTAL MITIGATION PLAN**

The Contractor shall comply with the appropriate sections of ORS 279 dealing with the prevention of environmental pollution and ORS 468 for safeguarding the air resources of the state. The Contractor is liable for all penalties, damages and violations thereof in the performance of this work. If and as required in the Specifications, the Contractor shall prepare and submit to the Agent, within 15 days after the effective date of Notice to Proceed, a plan by which the Contractor and its subcontractors shall ensure all environmental mitigation requirements shall be complied with during performance of the work under this Contract. The plan shall specifically address each such requirement. Failure to submit a complete environmental mitigation plan may result in suspension of work; delays, if any, resulting therefrom shall be considered avoidable delays, and additional costs, if any, resulting therefrom shall be borne by the Contractor. Preparation of such a plan and compliance with all environmental mitigation requirements shall be deemed incidental to the work under this Contract and all costs therefor shall be included in the Contract Price.

#### **1.15 COMPLIANCE WITH REQUIREMENTS**

The Agent will not approve payments for portions of the work not performed in full compliance with provisions of the Contract, laws, ordinances, resolutions, regulations, permits and/or easements and will withhold such payments from monthly progress payments to the Contractor. At any time prior to final payment by the Owner, the Contractor shall have the right to present to the Agent written evidence explaining why such withheld payments should be paid.

Such evidence shall include a record of compliance and mitigation steps taken by the Contractor to avoid subsequent incidents of non-compliance and to reduce the effects of the previous incidents of non-compliance.

The Contractor shall be responsible, and have no claim whatsoever against Grant County School District, for all costs and effects of delays resulting or arising from suspension and/or stop work orders issued by the Agent and/or any governmental authority as a result of incidents of non-compliance by the Contractor and/or its subcontractors and suppliers.

#### **1.16 CONFLICTS OF INTEREST AND NON-COMPETITIVE PRACTICES**

Consistent with state law and Grant County School District's administrative policy, the Contractor agrees as follows:

##### **A. CONFLICT OF INTEREST:**

The Contractor, by entering into this Contract with the Owner to perform or provide work, services or materials, has thereby covenanted that it has no direct or indirect pecuniary or proprietary interest, and that it shall not acquire any interest, which conflicts in any manner or degree with the work, services or materials required to be performed and/or provided under this

Contract and that it shall not employ any person or agent having any such interest. In the event that the Contractor or its agents, employees or representatives hereafter acquires such a conflict of interest, it shall immediately disclose such interest to the Owner and take action immediately to eliminate the conflict or to withdraw from this Contract, as the Owner may require.

**B. CONTINGENT FEES AND GRATUITIES:**

The Contractor, by entering into this Contract with the Owner to perform or provide work, services or materials, has thereby covenanted:

1. That no person or selling agency except bona fide employees or designated agents or representatives of the Contractor has been employed or retained to solicit or secure this Contract with an agreement or understanding that a commission, percentage, brokerage, or contingent fee would be paid; and ;
2. That no gratuities, in the form of entertainment, gifts or otherwise, were offered or given by the Contractor or any of its agents, employees or representatives, to any official, member or employee of the Owner or other governmental agency with a view toward securing this Contract or securing favorable treatment with respect to the awarding or amending, or the making of any determination with respect to the performance of this Contract.

**PART 2--OWNER-CONTRACTOR RELATIONS**

**2.01 AUTHORITY OF OWNER**

**A. GENERAL:**

The Owner, acting through the Facilities and Maintenance Supervisor and the Agent, shall be the sole judge of the work and materials with respect to both quantity and quality as set forth in the Contract. It is expressly stipulated that the Drawings, Specifications and other Contract Documents set forth the requirements as to the nature of the completed work and do not purport to control the means or method of performing work except in those instances where the nature of the completed work is dependent on the method of performance. The Superintendent of Business Services will designate the Agent and notify the Contractor in writing.

**B. AUTHORITY OF SUPERINTENDENT OF BUSINESS SERVICES:**

1. **GENERAL.** The Facilities and Maintenance Supervisor shall act on behalf of the Owner on change orders, extensions in time, progress payments, contract interpretation and administrative decisions, acceptability of the Contractor's work, early possession, assessment of damages and all other matters related to administration of this Contract.

2. **CHANGE ORDERS.** The Facilities and Maintenance Supervisor or his designee shall accept or reject change orders.

3. **PROGRESS PAYMENTS.** The Facilities and Maintenance Supervisor shall accept or reject requests for progress payments which have been submitted by the Contractor and recommended by the Agent.

4. **CONTRACT DECISIONS.** Should the Contractor disagree with the Agent's decision with respect to the Contract, the Contractor may request that the Facilities and Maintenance Supervisor review the Agent's decision and make a determination on behalf of the Owner in the manner provided under paragraph 00710-2.04 G.2.

5. **ACCEPTABILITY OF WORK.** The Facilities and Maintenance Supervisor shall make determinations of the acceptability of the work. The Facilities and Maintenance Supervisor also shall accept or reject the Agent's recommendations regarding retention of defective work as provided in paragraph 00710-4.09.

6. **EARLY POSSESSION.** The Facilities and Maintenance Supervisor shall determine whether to take early possession in accordance with paragraph 00710-6.05.

7. **ASSESSMENT OF DAMAGES.** The Facilities and Maintenance Supervisor shall determine amounts to be assessed as damages hereunder.

C. **AUTHORITY OF AGENT:**

1. **GENERAL.** The Agent is the construction site representative of the Owner. The Facilities and Maintenance Supervisor has delegated the authority to the Agent to make decisions regarding questions which may arise as to the quality or acceptability of materials and work furnished, the manner of performance and the rate of progress of the work under the Contract. The Agent interprets the intent and meaning of the Contract and makes initial decisions with respect to the Contractor's fulfillment of the Contract and the Contractor's entitlement to compensation. The Contractor shall look initially to the Agent in matters relating to compliance with Contract requirements. The Agent's decisions are subject to review by the Facilities and Maintenance Supervisor in accordance with paragraph 00710-2.04 G.2.

2. **INSPECTION OF CONSTRUCTION.** The Agent and its designated representative(s) shall have access to the work and to the site of the work and to the places where work is being prepared or where materials, supplies, equipment, machinery and other items are being obtained for the work. If requested by the Agent, the Contractor shall provide the assistance necessary for obtaining such access, and shall provide information related to the inspection of construction. Absence of such access or information, as and when needed, will result in the non-acceptance of the work.

3. **CHANGE ORDERS.** The Agent has the authority to initiate change orders, subject to the review and approval by the Facilities and Maintenance Supervisor or his designee.

4. **PROGRESS PAYMENTS.** The Agent has the authority to process payment requests submitted by-the Contractor and recommend payment in accordance with paragraph 00710-7.01.

5. **POSSESSION.** The Agent has the authority to recommend the taking possession by the Owner of completed portions of the work, in accordance with paragraph 00710-6.05.

## **2.02 AUTHORITY OF CONTRACTOR**

### **A. CONTRACTOR'S REPRESENTATIVE:**

The Contractor shall in writing notify the Agent of the name of the Contractor's Representative. The Contractor's Representative shall supervise the work to ensure that the Contractor carries out the provisions of the Contract and provides all necessary supplies, services, materials, equipment, tools and labor without delay. The Contractor's Representative shall have the authority to act for the Contractor in all matters relating to this Contract unless the Owner is advised in writing of limitations on said authority. The Contractor shall provide full-time supervision whenever its employees, subcontractors or suppliers are performing work under this Contract.

### **B. CONSTRUCTION PROCEDURES:**

The Contractor shall actively supervise and direct the work at all times. The Contractor shall determine the means, methods, techniques, sequences and procedures of construction, except in those instances where the Contract Documents, to define the quality or sequencing of an item of work. specify a means, method, technique, sequence or procedure for construction of that item of work.

## **2.03 RESPONSIBILITIES OF CONTRACTOR**

### **A. SUBCONTRACTORS, MANUFACTURERS AND SUPPLIERS:**

The Contractor shall be responsible for the adequacy, timeliness, efficiency and sufficiency of its subcontractors, manufacturers, suppliers and their employees. References in the Contract, if any, to actions required of subcontractors, manufacturers, suppliers, or any person other than the Contractor, the Owner or the Agent shall be interpreted as requiring that the Contractor shall require such subcontractor, manufacturer, supplier or person to perform the specified action.

### **B. CONTRACTOR'S EMPLOYEES:**

The Contractor shall be responsible for the adequacy, timeliness, efficiency and sufficiency of its employees. Workers shall have sufficient knowledge, skill and experience to perform properly the work assigned to them. The Contractor's and its subcontractor's employees shall be properly licensed, registered or certified, as applicable, to perform their assigned work. Upon

request of the Agent, the Contractor shall provide copies of licenses, registrations or certifications held by its employees. In addition, any such employee determined by the Agent in writing not to be sufficiently qualified to perform assigned work or not to be appropriately cooperative with the Agent shall be removed by the Contractor from all work under this Contract.

C. PAYMENT FOR LABOR AND MATERIALS:

The Contractor shall pay and require its subcontractors to pay any and all accounts for labor including workers compensation premiums, state unemployment and federal social security payments and other wage and salary deductions required by law. The Contractor also shall pay and cause its subcontractors to pay any and all accounts for services, equipment, and materials used by it and its subcontractors during the performance of work under this Contract. Such accounts shall be paid by the Contractor as they become due and payable. If requested by the Agent or Owner, the Contractor shall promptly furnish proof of payment of such accounts.

Pursuant to ORS 279.445(+), Contractor shall include in each subcontract for property or services, entered into by Contractor and a first-tier subcontractor, including a material supplier for purpose of performing this contract:

(a) A payment clause that obligates the contractor to pay the first-tier subcontractor for satisfactory performance under its subcontract within 10 days out of such amounts as are paid to the contractor by the public contracting agency under such contract; and

(b) An interest penalty clause that obligates the contractor, if payment is not made within 30 days after receipt of payment from the public contracting agency, to pay an interest penalty as set forth in the following paragraph.

**If the Contractor or a first-tier subcontractor fails, neglects or refuses to make payment to a person furnishing labor or materials in connection with the Project within 30 days after receipt of payment from the Owner or the Contractor, the contractor or first-tier subcontractor shall owe the person the amount due plus interest charges commencing at the end of the 10-day period that payment is due under ORS 279.445(4) and ending upon final payment, unless payment is subject to a good faith dispute as defined in ORS 279.445. The rate of interest charged to the contractor or first-tier subcontractor shall equal three times the discount rate on 90-day commercial paper in effect at the Federal Reserve Bank in the Federal Reserve District that includes Oregon on the date that is 30 days after the date when payment was received from the public contracting agency or the contractor, but the rate of interest shall not exceed 30 percent. The amount of interest may not be waived.**

**If the contractor or a subcontractor fails, neglects or refuses to make payment to a person furnishing labor or materials in connection with the Project, the person may file a complaint with the Construction Contractors Board, unless payment is subject to a good faith dispute as defined in ORS 279.445.**

**The payment of the claim in the manner authorized in this section shall not relieve the Contractor or the Contractor's surety from obligation with respect to any unpaid claims.**

**If requested in writing by a first-tier subcontractor, the Contractor shall within 10 days after receiving the request, send to the first-tier subcontractor a copy of that portion of any invoice, request for payment submitted to the Owner or pay document provided by the Owner to the Contractor specifically related to any labor or materials supplied by the first-tier subcontractor.**

**The Contractor shall not permit any lien or claim to be filed or prosecuted against the Owner on account of any labor or material furnished on the Project.**

**D. ATTENTION TO WORK:**

The Contractor, acting through its Representative, shall give personal attention to and shall manage the work so that it shall be prosecuted faithfully and completed in accordance with all requirements of the Contract. When the Contractor's Representative is not personally present at the site, its designated alternate shall be available and shall have the authority to act in matters relating to this Contract.

**E. EMPLOYEE SAFETY:**

The Contractor shall be solely and completely responsible for conditions of the work site, including safety of all persons and property, during performance of the work. The Contractor shall maintain the work site and perform the work in a manner which meets statutory and common law for the provision of a safe place to work. This requirement shall apply continuously and not be limited to normal working hours. That the Agent conducts construction review of the Contractor's performance does not and shall not be intended to include review of the adequacy of the Contractor's safety measures in, on or near the site of the work. The Contractor shall comply with the safety standards and provisions of applicable laws, building and construction codes, and the safety regulations set forth by the State of Oregon.

The Contractor shall maintain at the work site office or other well known place at the work site all materials (e.g., a first aid kit) necessary for giving first aid to the injured, and shall establish, publish and make known to all employees procedures for ensuring immediate removal to a hospital or a doctor's care, persons, including employees, who may have been injured on the site. Employees shall not be permitted to work on the site before the Contractor has established and made known procedures for removal of injured persons to a hospital or a doctor's care. If the Contractor's and/or any subcontractors work crew consists of five or more employees, the Contractor shall ensure that at least one of such employees has a valid, effective first aid card.

In order to protect the lives and health of employees performing work under this Contract, the Contractor shall comply with the Oregon Safe Employment Act (OR-OSHA), including all regulations issued there under. The Contractor shall prepare a written "Safety Program" demonstrating the methods by which all applicable safety requirements will be met. The Contractor shall ensure its subcontractors have a written "Safety Program" or formally adopt the Contractor's "Safety Program". The Contractor shall designate a Safety Officer who shall be

responsible for proper implementation of the "Safety Program". The Contractor shall submit a copy of its "Safety Program" to the Agent or Owner as required in the Specifications.

The Contractor shall conduct a monthly safety meeting with all subcontractors and others on the site performing work hereunder to discuss general and specific safety matters. The Contractor shall provide written notice of each meeting to the Agent. The Contractor shall provide the Agent with a record of each meeting, including a sheet on which each attendee signed in and a list of the matters discussed.

The Contractor shall conduct weekly safety meetings ("tool box talk") with employees of the Contractor and subcontractors. The Contractor shall provide written notice of each meeting to the Agent. The Contractor shall provide the Agent with a copy of the sheet on which each attendee signed in and a description of the safety topics discussed at the meeting.

**F. PUBLIC SAFETY AND CONVENIENCE:**

The Contractor shall conduct its work so as to ensure the least possible obstruction to vehicular traffic and inconvenience to the general public and the residents in the vicinity of the work and to ensure the protection of persons, property and natural resources. No road or street shall be closed to the public except with the permission of the Agent/Owner and the proper governmental authority. Fire hydrants on or adjacent to the work shall be accessible to fire fighting equipment at all times. Temporary provisions shall be made by the Contractor to ensure the safe use of sidewalks, private and public Streetways and proper functioning of gutters, sewer inlets, drainage ditches and culverts, irrigation ditches and natural water courses, if any, on the work site.

**G. SANITATION:**

The Contractor shall comply with the requirements and regulations of the Grant County Department of Health.

**H. HAZARDOUS MATERIALS:**

The Contractor shall conduct its work to meet the requirements set forth in the Specifications and any applicable state or federal laws or regulations related to hazardous materials encountered during performance of the work. Hazardous materials include asbestos, PCBs, radioactive materials, explosives and other materials deemed as such by regulatory agencies. The Contractor shall give immediate oral notice and written notice within three days to the Agent/Owner upon the discovery of any such hazardous materials and proceed thereafter only as directed by the Agent/Owner or as set forth in the Specifications. In case of any conflict between any such requirements, the more stringent requirement shall apply.

**2.04 OWNER-CONTRACTOR COORDINATION**

**A. SERVICE OF NOTICE:**



Any notice, order, direction, request or other communication given by the Agent or Owner to the Contractor will be deemed to be well and sufficiently given to the Contractor if left at any office used by the Contractor or delivered to any of its officers, clerks or employees or posted at the site of the work or mailed to any post office addressed to the Contractor at the address given in the Contract or mailed to the Contractor's last known place of business. If mailed, any form of communication will be deemed to have given to and received by the Contractor a day after the day of mailing as evidenced by the postmark date.

**B. SUGGESTIONS TO CONTRACTOR:**

Any plan or method of work suggested by any representative of the Owner to the Contractor but not specified or required by the Contract Documents, if adopted or followed by the Contractor in whole or in part, shall be used at the risk and responsibility of the Contractor. The Owner and the Agent assume no responsibility therefor and in no way will be held liable for any defects in the work which may result from or be caused by use of such plan or method of work.

**C. COOPERATION WITH AGENT:**

The Contractor, when requested, shall assist the Agent in obtaining access to work which is to be inspected. The Contractor shall provide the Agent with information requested in connection with the inspection of the work and administration of this Contract.

**D. COOPERATION OF OTHERS:**

The Contractor agrees to permit entry to the site of the work by the Owner, the Agent, other employees of the Owner, representatives of federal, state or local agencies, or other contractors performing work on behalf of the Owner. The Contractor shall cooperate with the Owner, other contractors and their employees and shall arrange its work and dispose of its materials in such a manner as not to interfere with the activities of the Owner or of others upon the site of the work. The Contractor shall promptly make good any Contractor-caused injury or damage that may be sustained by other contractors or employees of the Owner and other agencies. The Contractor shall coordinate its work with that of others and perform its work in proper sequence in relation to that of others.

If requested by the Contractor, the Agent will arrange meetings with other contractors performing work on behalf of the Owner to plan coordination of construction activities and to keep the Contractor informed of the planned activities of other contractors. The Contractor shall attend such meetings if directed by the Agent.

**E. DEVIATION FROM CONTRACT:**

The Contractor shall not make an alteration or variation in, addition to, or deviation or omission from the requirements of this Contract without the written consent of the Agent or Owner. Unless such written consent expressly so provides, any such alteration, variation, addition, deviation or omission by the Contractor shall not result in any extra compensation or extension of

time. The Owner shall have the right to treat a deviation as a breach or default, if the Owner determines the deviation to jeopardize the integrity or quality of the work.

F. PHYSICAL CONDITIONS:

Except as indicated in this paragraph 00710-2.04 F, the Contractor shall have full responsibility with respect to surface and subsurface conditions at the site.

If the Contractor believes that any physical condition uncovered or revealed at the site differs materially from that indicated, shown, reflected or referred to in the Contract Documents, then the Contractor shall, promptly after becoming aware thereof and before performing any work in connection therewith, notify the Agent in writing about the difference. **THIS NOTICE SHALL BE MADE WITHIN TEN DAYS OF DISCOVERY OF SUCH CONDITION. NO CLAIMS OF THE CONTRACTOR UNDER THIS PARAGRAPH 00710-2.04 F WILL BE ALLOWED UNLESS THE CONTRACTOR HAS PROVIDED THE REQUIRED NOTICE.**

If the Agent concurs that a difference exists and that such difference will cause an increase or decrease in the Contractor's cost of or time required for performance of the work, a change order incorporating the necessary revisions shall be prepared in accordance with paragraph 00710-7.02 and submitted to the Facilities and Maintenance Supervisor for approval. If the Agent finds there is no such difference, or if no decision is made in writing within 10 days of the written notice by the Contractor (which 10th day shall be deemed the date on which the Agent denied the claim), the Contractor must submit a claim to the Agent in accordance with paragraph 00710-2.04 G.

This paragraph 00710-2.04.F shall not be construed or interpreted to allow claims by the Contractor for physical conditions (1) ordinarily encountered or generally recognized as inherent in the work or (2) directly or by implication referenced, mentioned or otherwise addressed in the Contract Documents.

G. CLAIMS:

1. **DETERMINATION BY AGENT.** Questions or claims regarding the meaning and intent of the Contract or arising from this Contract shall be referred by the Contractor in writing to the Agent for decision within five (5) days of the date in which the Contractor knows or should know of the question or claim. The Agent will ordinarily respond to the Contractor in writing with its decision, but absent such written response the question or claim shall be deemed denied upon the tenth day following receipt by the Agent. If the Contractor disagrees with the Agent's decision or is of the opinion that the decision requires extra work, the Contractor shall, within five (5) days thereafter, notify the Agent in writing of the disagreement or of the claimed extra work involved and of the cost of said work. Failure of the Contractor to timely file a claim will operate as a complete waiver of the Contractor's right thereafter to pursue that claim in any forum.

2. **APPEALS TO THE DIRECTOR OF BUSINESS SERVICES.** In the event the Contractor disagrees with any determination or decision of the Agent, the Contractor

shall, within 15 days of the date of such determination or decision, appeal the determination or decision in writing to the Facilities and Maintenance Supervisor. Such written notice of appeal shall include all documents and other information necessary to substantiate the appeal. The Facilities and Maintenance Supervisor will review the appeal and will transmit a decision in writing to the Contractor within 30 days from the date of receipt of the appeal, or the appeal will be deemed denied on the 30th day. Failure of the Contractor to appeal the decision or determination of the Agent within said 15-day period constitute a waiver of the Contractor's right to thereafter assert any claim resulting from such determination or decision. Appeal to the Facilities and Maintenance Supervisor shall be a condition precedent to litigation under paragraph 00710-2.04 G.3.

3. **JURISDICTION AND VENUE.** All claims, counterclaims, disputes and other matters in question between the Owner and the Contractor that are not resolved between the Facilities and Maintenance Supervisor and the Contractor, or waived, will be decided in the Circuit Court of Grant County, Oregon, which shall have exclusive jurisdiction and venue over all matters in question between the Owner and the Contractor. This Contract shall be interpreted and construed in accordance with the laws of the State of Oregon.

4. **LITIGATION COSTS.** As a condition precedent to any litigation under paragraph 00710-2.04 G.3, for all claims arising under this Contract or arising out of the work under this Contract, the party asserting a claim against the other must in a written notice state the following:

- a. the dollar amount of the claim; and
- b. the specific legal bases and/or contract sections upon which the claim is made.

If in any subsequent legal action the claiming party recovers less than ninety percent (90%) of the amount claimed, the claiming party shall pay to the other that other party's attorneys' fees, expert witness and consultant fees and all other litigation costs, in such proportion as the difference between the amount claimed and the principal amount recovered bears to the amount claimed. This paragraph shall not apply to claims relating to defective work (paragraph 00710-4.09) or guarantees (paragraph 00710-4.11).

5. **NO CONSEQUENTIAL DAMAGES.** No claim for equitable adjustment, extra work or any other claim arising from this Contract will be made by the Contractor or allowed by the Owner for the recovery of consequential damages, including (without limitation), lost profits, lost opportunities or the like. Pending final decision of a dispute hereunder, the Contractor shall proceed diligently with the performance of the Contract and in accordance with the direction of the Facilities and Maintenance Supervisor. Failure to comply precisely with the time deadlines under this paragraph 00710-2.04.G as to any claim shall operate as a waiver and release of that claim and an acknowledgement of prejudice to the Owner.

### **PART 3--SPECIFICATIONS AND DRAWINGS**

### **3.01 INTERPRETATION OF SPECIFICATIONS AND DRAWINGS**

The Specifications and Drawings are intended to be explanatory and supportive of each other. Work specified on such Drawings and not in such Specifications, or vice versa, shall be executed as if specified in both. In the event the work to be done or matters relative thereto are not sufficiently detailed or explained in the Contract, the Contractor shall apply to the Agent for further explanations as may be necessary and shall conform thereto so far as may be consistent with the terms of the Contract. The Contractor shall refer issues or questions regarding the true meaning of such Specifications or Drawings to the Agent for decision.

The Specifications and Drawings are divided into groups for convenience. These divisions are not for the purpose of apportioning work or responsibility for work among subcontractors, suppliers and manufacturers. The Contractor is responsible for all work shown, specified or described, regardless of location(s) in the Contract.

### **3.02 DISCREPANCIES IN SPECIFICATIONS AND DRAWINGS**

#### **A. ERRORS AND OMISSIONS:**

If the Contractor, in the course of the work, becomes aware of any errors or omissions in the Contract or in the Owner's field work, the Contractor shall immediately inform the Agent in writing. The Agent will promptly review the matter and if the Agent finds an error or omission has been made, the Agent, in conjunction with owner, will determine the corrective actions and advise the Contractor and the owner accordingly. If the corrective work associated with an error or omission increases or decreases the amount of work called for in the Contract, the Contractor shall prepare or request in writing that the Agent prepare an appropriate change order in accordance with paragraph 00710-7.02. After discovery by the Contractor of an error or omission, related work performed by the Contractor shall be done at its own risk unless authorized by the Owner.

#### **B. CONFLICTING PROVISIONS:**

In cases of conflict between the Specifications and Drawings, the Specifications shall govern. Figure dimensions on such Drawings shall govern over scale dimensions and detail drawings shall govern over general drawings.

In the event an item of work is described differently in two or more locations on such Drawings or in such Specifications, the Contractor shall immediately notify the Agent in writing and request clarification. Upon request of the Agent, the Contractor shall submit in writing to the Agent the description upon which the Contractor relied in preparing its bid or laying out the work, excerpts from its bid worksheets and all information supporting the Contractor's claim of reliance. If the Agent directs the Contractor to perform work in a manner other than that contemplated by the Contractor in preparing its bid or laying out the work, the Contractor will request in writing that the Agent prepare a change order. In this event, the Contractor shall submit to the Agent such supporting information, including bidding or layout documents, as may reasonably be necessary for the Agent to determine whether the Contract Price and Contract Time should be increased or decreased or remain unchanged by the change order.

### **3.03 PROTECTION OF PUBLIC AND PRIVATE UTILITIES:**

The Contractor shall protect from damage public and private utilities encountered during the work. Utilities and similar facilities and structures shall include, but not be limited to: sewer and storm drain systems; water distribution systems; electrical distribution systems; natural gas distribution systems; telephone, telegraph and CATV systems; fire alarm systems; petroleum pipe lines; steam distribution systems; traffic control systems; powerlines and appurtenances; railroad tracks and appurtenances; and, similar utilities, facilities, systems and structures.

Removal, relocation and adjustment of utilities, facilities and structures where necessary to accommodate the work hereunder shall be performed in a manner satisfactory to the utility owner. If the Specifications or Drawings do not specifically provide for the payment for such removal, relocation and adjustment by the Owner, then it shall be the Contractor's responsibility to perform such removal, relocation and adjustment and to bear all costs associated therewith without additional cost to the Owner and within the Contract Price.

The right is reserved to the Owner and the owners of utilities, facilities and structures, or their authorized agents, to enter upon the site of the work hereunder for the purpose of making changes as are necessary for the rearrangement of their facilities, utilities and structures or for making necessary connections or repairs. The Contractor shall cooperate with work forces engaged in this work and shall conduct its operations in such a manner to avoid any unnecessary delay or hindrance to the work being performed by other work forces. Wherever necessary, the Contractor's work shall be coordinated with the rearrangement of utilities, facilities and structures, and the Contractor shall make arrangements with the owner of the utility, facility or structure for the coordination of the work. This coordination with others for the purpose of rearranging, relocating, or repairing facilities, structures, or utilities is to be anticipated and planned for by the Contractor and shall not be claimed as unavoidable delay by the Contractor, except as provided in paragraph 00710-6.02 D permitting extensions of time for reasonable delays.

The existence and approximate locations of underground utilities, facilities and structures, as determined from available public records, are shown or indicated on the Drawings; however, additional utilities, facilities and structures may be encountered and the locations of the utilities, facilities and structures may vary from the locations shown or indicated on the Drawings. The Contractor shall take the necessary precautionary measures to protect utilities, facilities and structures encountered during the work, whether they are shown or indicated on the Drawings or revealed during the course of the work hereunder. Failure by the Agent to show or indicate the existence of utilities, facilities or structures on the Drawings shall not relieve the Contractor from the responsibility to make an independent review and exploratory investigation of the site of the work to ascertain the existence and location of utilities, facilities and structures, nor relieve the Contractor from all liability for any damages to such utilities, facilities and structures, or to the work, resulting from the Contractor's operations.

Any depths of utilities indicated are approximations and for the Contractor's convenience only, and the Contractor's responsibility for damage as specified above shall not be altered due to the actual depth being different or other than that indicated in this Contract.

Prior to beginning work, the Contractor shall give proper notification through Grant Utility Coordination Council to the agencies that have utilities in place, and shall cooperate with these agencies in the protection and relocation of underground utilities, facilities and structures. In all cases, and to the maximum extent allowed by law, public and private utilities damaged by the Contractor shall be repaired by the Contractor at the Contractor's own expense. All costs incurred as the result of the performance of the Contractor's obligations in this paragraph 00710-3.03 shall be considered as incidental to the Contract, and the cost thereof shall be included in the Contract Price.

### **3.04 SUBMITTALS**

Where required by the Specifications, the Contractor shall submit specified information which will enable the Agent to assess whether the Contractor's proposed materials, equipment or methods of work are in general conformance with the Drawings and Specifications. The Owner will not be obligated to accept or pay for materials, equipment or work for which submittals are required herein, unless and until all submittals have been submitted and reviewed in accordance with the Specifications.

When submitting information, the Contractor shall identify and state reasons for each deviation from the Specifications and Drawings. If the Contractor neglects or fails to identify a deviation, the Contractor shall perform the work in compliance with the Specifications and Drawings regardless of any submittal review comments by the Owner. Neglect or failure to identify each deviation shall prejudice the Owner.

The Owner's cost of review of submittals for the same proposed materials, equipment or work shall be apportioned as follows: (1) the cost of review of the initial submittal and the first revised submittal shall be borne by the Owner; and (2) the cost of all additional revised submittals shall be charged to the Contractor. The cost of review shall include, without limitation, administrative, design and Agenting activities directly related to review of submittals.

If a submittal requires further Agenting or re-design efforts on the part of the Owner, the cost of such efforts shall be charged to the Contractor; provided, the Contractor shall not be charged for such efforts if implementation of the submittal results in savings to the Owner greater than the cost of such efforts.

### **3.05 CONTRACTOR'S COPIES OF CONTRACT DOCUMENTS**

The Agent will furnish the Contractor within seven days after Notice to Proceed the following: five sets of the Contract Documents, one set of reproducible full-size drawings, and four sets of half size drawings. The Contractor is advised that revisions incorporating changes by addenda will not be incorporated into the drawings furnished under the provisions of this paragraph. Additional copies of the Contract Documents, if required by the Contractor, will be furnished by the Owner at cost. The Contractor shall keep at the construction site at least one set of Contract Documents and one set of full-size drawings which shall be available to the Agent.

## **PART 4--MATERIAL, EQUIPMENT AND WORKMANSHIP**

### **4.01 GENERAL**

Unless otherwise specifically stated in the Contract, the Contractor shall provide and pay for materials, labor, tools, equipment, water, light, power, heat, transportation, supervision, and temporary construction of any nature, and other services and facilities of any nature, whatsoever necessary, to execute, complete and deliver the work within the Contract Time. Construction work shall be executed in conformity with the best modern practice of the trade. Material and equipment shall be new and of a quality equal to or better than that specified. Equipment offered shall be current modifications which have been in successful regular operation under comparable conditions.

The Contractor shall furnish to the Owner any guarantee or warranty furnished as a normal trade practice in connection with the purchase by the Contractor or any subcontractor of any equipment, materials, or items required hereunder; provided, such guarantee or warranty shall be in addition to those specific guarantee or warranty requirements for particular equipment and/or work items indicated in the Specifications, and shall not relieve the Contractor of its obligations under paragraph 00710-4.11.

### **4.02 PRODUCT DATA**

Data required for constructing, accepting, operating or maintaining parts of the work shall be provided by the Contractor when specified. Unless otherwise specified, such data shall be provided at the time the referenced material or equipment is delivered to the job site. The data shall include (without limitation) such items as concrete reinforcing information, concrete pour joint information and forming details, product compliance certificates, operations manuals, maintenance procedures, parts lists and record drawings. Such data shall be provided as part of the work under this Contract and its acceptability determined under normal inspection procedures. Product data will not be reviewed in the same manner as submittals.

### **4.03 QUALITY IN THE ABSENCE OF DETAILED SPECIFICATIONS**

Where the Contract requires that materials or equipment be provided or that construction work be performed and detailed specifications of such materials, equipment or construction work are not set forth, the Contractor shall perform the work using materials and equipment of a sound quality, at least comparable to the materials and workmanship specified for the other parts of the work, from firms of established good reputations, and shall follow best practices in the performance of construction work. The work performed shall be in conformity and harmony with the intent to secure the best standard of construction and equipment of work as a whole and in part.

#### **4.04 MATERIAL AND EQUIPMENT SPECIFIED BY NAME**

##### **A. GENERAL:**

Except as provided in paragraph 000710-4.04B below, when material or equipment is specified by one or more patents, brand names, or catalog numbers, it shall be understood that this is for purpose of defining the performance or other salient requirements, and shall be considered as if followed by the words "or equal," whether or not such words appear. Other materials or equipment, of equal or better capacities, quality and function, may be considered by the Agent in its sole discretion upon the Contractor's request for substitution. Requests for substitution shall be made in accordance with paragraph 00710-4.05.

##### **B. SINGLE SOURCE AND PREQUALIFIED MATERIAL AND EQUIPMENT:**

If material or equipment is specified as a single source or prequalified, the Owner will not consider substitutions.

#### **4.05 REQUESTS FOR SUBSTITUTION**

Except as provided in paragraph 00710-4.04B, the Contractor may offer material or equipment of equal or better quality and performance in substitution for those specified. The Owner will consider offers for substitution only from the Contractor and not from suppliers, distributors, manufacturers or subcontractors. If the offered substitution necessitates changes to or coordination with other portions of the work, the Contractor, as a condition of the Owner's acceptance of the substitution, shall perform such changes or coordination at no additional cost to the Owner.

The Contractor's offers of substitution shall be made in writing to the Agent and shall include sufficient data to enable the Agent to assess the acceptability of the material or equipment for the particular application and requirements. The written offer of substitution shall include all pertinent data describing the proposed product including, but not limited to, a statement on how the proposed product differs (if at all) from the specified product, details and drawings of all other portions of the work affected by the proposed product, a statement regarding the efficiency and appearance of the proposed product, a list of installations where the proposed product has been in successful operation and service, and such other information as may be required by the Agent.

Within ten (10) days after receipt of the offer of substitution, the Agent will review the data submitted by the Contractor and advise the Contractor of any objections to the proposed product or of any additional information necessary to complete the review. The cost of review of an initial proposed substitution will be borne by the Owner; the cost of review, including design and Agenting review, of an additional or separate proposed substitution for the same material or equipment covered by an initial proposed substitution shall be charged to the Contractor. In addition, the cost of Agenting or re-design efforts incurred by the Owner as necessary to acceptance of a proposed substitution shall be charged to the Contractor.



While the Agent might not take any objections to the proposed substitution, such action or determination shall not relieve the Contractor from responsibility for the efficiency, sufficiency, quality and performance of the substitute material or equipment, in the same manner and degree as the material and equipment specified by name. The Agent shall be the judge of whether the offered substitution is acceptable for the work and whether the changes to other portions of the work necessitated by the incorporation of the offered substitution are acceptable.

#### **4.06 DEMONSTRATION OF COMPLIANCE WITH REQUIREMENTS**

##### **A. INSPECTION AND TESTING:**

The Contractor is responsible to ensure all materials, equipment and workmanship comply with the Contract terms and conditions. Materials, equipment and workmanship which do not comply shall be corrected by the Contractor or by the Owner at the Contractor's expense.

The burden of proof that the work, whether in progress or completed, complies with the Contract shall be on the Contractor. The Contractor shall be responsible for inspecting and testing of the component parts of the work, including its subcontractors' work. The Contractor shall provide inspection and testing reports in the format and at the times requested by the Agent.

The Owner and Agent shall be entitled to have its representatives present at all locations where Contractor or its subcontractors are engaged in the performance of the work, at any and all times, to review and inspect all aspects of their performance of the work and to perform or witness whatever tests are required by the Specifications. The Contractor shall cooperate with the Agent's review and inspection of Contractor's performance.

For inspections or tests to be witnessed by the Agent or its designate, Contractor shall advise the Agent of said inspection or test sufficiently in advance (but in any event no later than five (5) days prior to the date thereof for inspections and tests in the Grant County area (and thirty (30) days prior to the date thereof if beyond said area) to enable Agent to attend.

Inspection or non-inspection, or witnessing or non-witnessing, by the Agent shall not be construed as acceptance of any part of the work or an assumption of risks or liability by the Owner nor as relieving Contractor of its responsibilities for compliance with the Contract.

In connection with the specific inspections or tests required by the Agent pursuant to this Contract, any materials necessary for the safe and efficient performance of such inspections or tests shall be provided by the Contractor at no additional cost to the Owner. Any other inspections or tests which may be required by the Agent and are not indicated or referred to in this Contract may be compensated by change order. All tests performed for the Agent shall be carried out so as not to unnecessarily interfere with the work. If the Contractor closes or covers any part of the work before the required inspection or witnessing has been performed or without agreement by the Agent, the Contractor shall, if required by the Agent, open or uncover such work for inspection or witnessing and reclose or recover, all at Contractor's expense.

Work rejected by the Agent shall be corrected by the Contractor at the Contractor's expense subject to claim by the Contractor in accordance with paragraph 00710-2.04 G. The Contractor shall proceed with the correction to ensure completion of the work in accordance with the intermediate and final completion dates set forth in the Specifications.

**B. SAMPLES OF MATERIALS:**

In cases where compliance with requirements for materials to be incorporated in the work requires laboratory examination or special testing, the Contractor shall provide samples or specimens to the Agent. Such samples shall be taken in the presence of the Agent if so requested. The Contractor shall inform the Agent of the Contractor's schedule prior to all sample taking. Such samples or specimens shall be provided in ample time to permit making proper test analysis and examinations before the time at which it is desired to incorporate the material into the work. Tests of materials shall be conducted by an independent testing laboratory in accordance with the Specifications and at the Owner's expense. In the absence of a specific test requirement, the Agent will determine the appropriate standard test to be used.

**C. CERTIFICATION:**

In cases where compliance of materials or equipment to requirements in the Specifications is not determinable through inspection and tests, the Contractor shall, at the direction of the Agent, provide properly authenticated documents, certificates or other satisfactory proof of compliance. Such documents, certifications and evidence shall include performance characteristics, materials of construction and the physical and chemical characteristics of materials. All costs associated with obtaining such documents, certifications and evidence shall be paid by the Contractor.

**D. INSPECTION AT POINT OF MANUFACTURING:**

If inspection and testing of materials or equipment by the Agent in the vicinity of the work is not practicable, the Specifications may require that such inspection and testing or witnessing of tests take place at the point of manufacture. In this case and also in the event that the remote inspection and testing is not specified herein and is subsequently requested by the Agent, the required travel, subsistence, and labor expenses of the Agent will be paid by the Owner, only if the approval of the Owner is given in writing prior to travel. If the Contractor requests the Agent to inspect and test material or equipment at the point of manufacture, then the cost to the Agent for travel, subsistence, and labor expenses shall be paid by the Contractor.

**E. TESTING AND COMMISSIONING OF COMPLETED WORK:**

Testing and commissioning of all mechanical, electrical and instrumentation systems and completed portions of the work functioning as a completed system and the entirety of the work functioning as a completed facility, shall be done in accordance with the requirements of the Specifications and in the presence of the Agent.

**4.07 STORAGE OF MATERIALS AND EQUIPMENT**

Materials and equipment shall be stored in accordance with the manufacturer's recommendation or as specified in the Specifications, so as to ensure the preservation of their quality and fitness for the work. Stored equipment and materials shall be located so as to facilitate inspection by the Agent. The Contractor shall be responsible for damages that occur in connection with the care and protection of materials and equipment until final acceptance of the work.

#### **4.08 MANUFACTURER'S DIRECTIONS**

Manufactured articles, material and equipment shall be transported, stored, applied, installed, connected, erected, adjusted, tested, operated and maintained as recommended by the manufacturer, unless otherwise specified herein.

#### **4.09 DEFECTIVE WORK**

##### **A. REINSPECTION OF WORK:**

In the event the Agent determines that a part of the work is defective, the Contractor shall be responsible for all costs to the Owner for subsequent re-inspection(s) of the defective work. For the purposes of this paragraph 00710-4.09, the term "defective work" shall mean the work was not complete at the time of inspection or the work failed to comply with the requirements of the Contract.

##### **B. CORRECTION OF DEFECTIVE WORK:**

If the Agent determines through its inspection procedures that material, equipment or workmanship-proposed for or incorporated in the work does not meet the requirements of the Contract, the Agent will give written notice of the non-compliance to the Contractor. Within five days from the receipt of such notice, the Contractor shall undertake the work necessary to correct the deficiencies and to comply with the Contract. If the Contractor disagrees with the Agent's determination and concludes that the corrective work should be covered by a change order, the Contractor shall set forth its claim in accordance with paragraph 00710-2.04 G.

##### **C. RETENTION OF DEFECTIVE WORK:**

The Facilities and Maintenance Supervisor may retain work which is not in compliance with the Contract if the Facilities and Maintenance Supervisor determines that such defective work is not of sufficient magnitude or importance to make the work dangerous or undesirable. The Facilities and Maintenance Supervisor also may retain defective work if removal of such work is impractical or will create conditions which are dangerous or undesirable. Just and reasonable value for such defective work will be determined by the Facilities and Maintenance Supervisor and appropriate deductions will be made in the payments due or to become due to the Contractor. Final acceptance will not act as a waiver of the Owner's right to recover from the Contractor an amount representing the deduction for retention of defective work.

#### **4.10 MATERIALS AND EQUIPMENT FURNISHED BY OWNER**

Materials and equipment, if any, specified in the Specifications to be furnished by the Owner shall be installed by the Contractor. Furnishing of material and equipment by the Owner will be considered conclusive evidence of their acceptability for the purpose intended. If the Contractor discovers defects in material or equipment furnished by the Owner, the Contractor shall immediately notify the Agent in writing. After such discovery, the Contractor shall not proceed with work involving Owner-furnished materials and equipment unless otherwise authorized by the Agent. Unless otherwise noted or specifically stated, materials and equipment furnished by the Owner, which are not of local occurrence, are considered to be "FOB" railroad station or truck terminal nearest to the site of the work. The Contractor shall promptly unload, transport, store and protect such material and equipment from damage. The Contractor shall inspect such Owner-furnished material and equipment on receipt and provide the Agent with written acceptance for the incorporation of said material and equipment into the work. After receipt by the Contractor at the point of delivery, Owner-furnished material and equipment shall form part of the work for purposes of the Contract, including risk of loss and damage, as if it had been supplied and stored by the Contractor.

#### **4.11 GUARANTEE**

For a period of 365 days commencing on the date of final acceptance of the work under paragraph 00710-7.05 or on the date of possession and use under paragraph 00710-6.05 by the Owner (but commencing only as to such portions of the work so possessed or used), the Contractor shall, upon the receipt of notice in writing from the Owner, promptly correct any defective work. If the defective work cannot be corrected, or if the corrected work has been rejected by the Owner, the Contractor shall promptly remove it from the site and replace it with non-defective work, all at no cost to the Owner. The Owner is hereby authorized to make such corrections if, ten (10) days after giving of such notice to the Contractor, the Contractor has failed to make or undertake the corrections or removal/replacement with due diligence. In case of an emergency where, in the opinion of the Facilities and Maintenance Supervisor, delay could cause serious loss or damage, corrections or replacement may be made prior to or concurrent with notice being sent to the Contractor. All expenses in connection with such corrections or replacement, including costs for professional services, will be charged to the Contractor. For defective work either corrected or replaced, this guarantee shall be extended for a period equal to the time of correction or replacement.

For the purpose of this paragraph 00710-4.11, acceptance of the work shall not extinguish any covenant or agreement on the part of the Contractor to be performed or fulfilled under this Contract which has not, in fact, been performed or fulfilled at the time of such acceptance. All covenants and agreements shall continue to be binding on the Contractor until they have been fulfilled.

The guarantee provided in this paragraph 00710-4.11 shall be in addition to those specific guarantee or warranty requirements for particular equipment and/or work items indicated in the

Specifications, and in addition to any other rights or remedies available to the Owner under this Contract or at law.

#### **4.12 WARRANTY OF TITLE**

No material, supplies, equipment or items for the work shall be purchased subject to any chattel mortgage or under a conditional sale or other agreement by which an interest therein or in any part thereof is retained by the seller or supplier. The Contractor shall warrant good title to all materials, supplies, equipment and items installed or incorporated in the work, and upon completion of all the work shall deliver the same together with all improvements and appurtenances constructed or placed thereon by the Contractor to the Agent free from any claims, liens, or charges. Neither the Contractor nor any person, firm, or corporation furnishing any material or labor for any work covered by this Contract shall have any right to lien upon any improvement or appurtenance thereon. Nothing contained in this paragraph 00710-4.12, however, shall defeat or impair the right of the persons furnishing materials or labor to recover under any bond given by the Contractor for their protection or any rights under any law permitting such persons to look to funds due the Contractor in the hands of the Owner. The provisions of this paragraph 00710-4.12 shall be inserted or referenced in or otherwise made a part of all subcontracts and material contracts, and notice of its provisions shall be given to all persons furnishing materials for the work when no formal contract is entered into for such materials.

### **PART 5--LIABILITY, INDEMNIFICATION, AND INSURANCE**

#### **5.01 LIABILITY AND INDEMNIFICATION**

To the maximum extent permitted by law, the Contractor shall be liable for all damages and injury which shall be caused to owners of property on or in the vicinity of the work or which shall occur to any person or persons or property whatsoever arising out of the performance of this Contract, whether or not such damage or injury be caused by negligence of the Contractor and whether or not such damage or injury be caused by the inherent nature of the work specified.

To the maximum extent permitted by law, the Contractor shall indemnify and hold the Owner and all of its officers, principals, agents and employees harmless from any liability whatsoever for any injuries to persons or property arising out of the performance of this Contract. The Contractor specifically assumes potential liability for actions brought by the Contractor's own employees against the Owner and for that purpose the Contractor specifically waives any immunity under the workers compensation act.

In case any suit or legal proceedings shall be brought against the Owner or any of its officers, principals, agents or employees on account of loss or damage sustained by any person or property as a result of the performance of this Contract, whether or not such injuries or damage be due to the negligence of the Contractor and whether or not such injuries or damage be caused by the inherent nature of the work specified, the Contractor agrees to assume the defense thereof and to pay all expenses connected therewith and all judgements that may be obtained against the Owner or any of its officers, principals, agents or employees in such suits or legal proceedings. In the event that any lien is placed upon the property of the Owner or any of its, officers, principals,

agents or employees as a result of such suits or legal proceedings, the Contractor agrees to at once cause the same to be dissolved and discharged by giving bond or otherwise.

Certain kinds of incidents may result in claims which create special problems for the Owner. Therefore, in addition to the retainage amounts to be withheld from the progress payments to the Contractor, if the Contractor or its insurance carrier does not respond in a reasonable time or manner, the Owner may, in its sole discretion, (1) withhold amounts sufficient to pay the amount of any property damage or bodily injury claim and/or (2) pay any property damage claim of which the Owner may have knowledge, regardless of the informalities of notice of such claim, arising out of the performance of this Contract. The terms "property damage claim" and "bodily injury claim" shall not include any claim by persons furnishing supplies or materials or performing labor under the Contract. An amount withheld will be held until the Contractor secures a written release from the claimant, obtains a court decision that such claim is without merit, or satisfies any judgment in favor of the claimant on such claim. In addition, the Contractor shall reimburse and otherwise be liable for claims costs incurred by the Owner including without limitation costs for claims adjusting services, attorneys, Agenting and administration.

## **5.02 INSURANCE**

### **A. EVIDENCES AND CANCELLATION OF INSURANCE:**

Prior to execution of the Contract and prior to expiration of insurance coverages, the Contractor shall file with the Owner evidences of insurance from the insurer(s) certifying to the coverage of all insurance required herein. All evidences of insurance must be certified by a properly authorized officer, agent, general agent or qualified representative of the insurer(s) and shall certify the name of the insured, the type and amount of insurance, the location and operations to which the insurance applies, the expiration date, and that the insurer(s) shall give, by registered mail, notice to the Owner at least 30 days prior to the effective date of any cancellation, lapse or material change in the policy. Any failure to mail such notice shall not relieve the insurance company, its agents or representatives from obligations and/or liability hereunder.

The Contractor shall, upon demand of the Owner, deliver to the Owner all such policies of insurance and the receipts for payment of premiums thereon; and should the Contractor neglect so to obtain and maintain in force any such insurance or deliver such policies and receipts to the Owner, then the Owner shall request that the Contractor deliver a specific action plan to acquire such insurance and/or deliver policies and receipts within three days or before any further performance hereunder, whichever is first. Failure to provide such policies of insurance within a time acceptable to the Owner shall entitle the Owner to suspend or terminate the Contractor's work hereunder in accordance with paragraph 00710-6.04. Suspension or termination of this Contract shall not relieve the Contractor from its insurance obligations hereunder.

### **B. INSURANCE REQUIREMENTS:**

The Contractor shall obtain and maintain the minimum insurance set forth below. By requiring such minimum insurance, the Owner shall not be deemed or construed to have assessed the risks that may be applicable to the Contractor under this Contract. The Contractor shall assess

its own risks and, if it deems appropriate and/or prudent, maintain greater limits and/or broader coverage.

1. **GENERAL LIABILITY:**

a. Bodily Injury Liability affording limits of liability of **\$1,000,000** each occurrence and **\$2,000,000** aggregate, for bodily injury or death suffered or alleged to have been suffered by any person or persons by reason of or in the course of operations under the Contract.

b. Property Damage Liability affording limits of **\$1,000,000** each occurrence and **\$2,000,000** aggregate, for damages to property suffered or alleged to have been suffered by any person or persons by reason of or in the course of operations under the Contract.

c. If such insurance is written on a Combined Single Limit (CSL) basis, the limit of liability required is **\$1,000,000** per occurrence, **\$2,000,000** aggregate, CSL, plus an umbrella/excess policy with a minimum limit of **\$1,000,000**.

2. **AUTOMOBILE LIABILITY:**

a. Bodily Injury Liability affording limits of liability of **\$500,000** each person and **\$1,000,000** each accident, for bodily injury or death suffered or alleged to have been suffered by any person or persons by reason of or in the course of operations under the Contract.

b. Property Damage Liability affording limits of **\$1,000,000** each accident, for damages to property suffered or alleged to have been suffered by any person or persons by reason of or in the course of operations under the Contract.

c. If such insurance is written on a Combined Single Limit (CSL) basis, the limit of liability required is **\$1,000,000** per accident, CSL.

3. The liability insurance in paragraph 00710-5.02 B.1 and B.2 shall indemnify the Contractor, the Owner and its officers, officials, agents and employees against loss from liability imposed by law upon, or assumed under agreement by the Contractor and/or its subcontractors for damages on account of bodily injury, property damage and/or other damages. Such insurance shall include: (1) personal injury; (2) blanket contractual; (3) broad form property damage; (4) products and completed operations liability; (5) owned and non-owned vehicles and equipment; and (6) stop-gap (Employer's Liability). Such insurance shall **not** exclude explosion, collapse, or underground hazards (X,C,U).

4. **ADDITIONAL COVERAGES REQUIRED:**

a. Whenever the work under this Contract includes "professional services", the Contractor shall maintain the appropriate Professional Liability, affording limits of liability of **\$500,000** each claim and **\$1,000,000** aggregate for damages sustained by reason of or in the course of operations under the Contract, whether occurring by reason of acts, errors or omissions of the Contractor.

b. Whenever the work under this Contract involves construction on premises of the Owner, the Contractor shall provide Owners' and Contractors' Protective coverage for limits as stated in subparagraphs 1, 2 and 3 above.

c. Whenever the work under this Contract involves pollution risk to the environment, the Contractor shall provide Pollution Liability insurance affording a limit of **\$1,000,000** each occurrence, **\$2,000,000** aggregate, for damages sustained by reason of sudden and accidental pollution, or the minimum limits required by the Oregon Department of Environmental Quality if greater than required herein for damages sustained by reason of sudden and accidental pollution.

d. Other insurances as may be deemed appropriate by the Owner. Such insurance shall be maintained through the term of this Contract and, except for automobile liability, for a period of 365 days after the date of substantial completion under paragraph 00710-6.02 F or the date of termination under paragraph 00710-6.04, as the case may be. If coverage is on a "claims made" basis, coverage shall be further extended to cover claims made during one additional year beyond said period.

All liability insurance policies, except as required in items 4a and 4b above, shall include the Owner and its officers, officials, agents and employees as additional insured and shall contain "severability of interest" (cross liability) wording.

The Contractor's insurance shall be primary to and not contributing with any insurance or self insurance which may be carried by the Owner.

Such insurance shall be provided on forms and by insurance companies satisfactory to the Owner.

No provision in this paragraph 00710-5.02 or in paragraph 00710-4.11 shall be construed to limit the liability of the Contractor for work not done in accordance with the Contract, or express or implied warranties. The Contractor's liability for the work shall extend as far as the appropriate periods of limitation provided by law.

#### C. WORKER'S COMPENSATION:

The Contractor and its subcontractors are subject employers under the Oregon Workers Compensation law and shall comply with ORS 656.017. The Contractor shall maintain worker's compensation insurance in the amount and type required by law for all employees employed under this Contract who may come within the protection of worker's compensation laws. Industrial accident protection shall be in full compliance with ORS Chapters 656 and 864.

### **5.03 DAMAGE TO WORK**

The work shall be under the Contractor's responsible care and charge. The Contractor shall bear all loss and damage whatsoever and from whatsoever cause, except that caused solely by the



act of the Owner, which may occur on or to the work during the fulfillment of the Contract. If any such loss or damage occurs, the Contractor shall immediately make good any such loss or damage, and in the event of the Contractor refusing or neglecting so to do, the Owner may itself or by the employment of some other person make good such loss or damage, and the cost and expense of so doing shall be charged to the Contractor.

#### **5.04 LITIGATION EXPENSES**

In any legal action arising from the Contractor's obligations under paragraph 00710-5.01 or asserting claims that the Contractor has not met the requirements of the Contract Documents, the prevailing party shall recover its reasonable attorneys' fees and litigation costs; provided, however that this paragraph shall not apply to any legal action (or portion thereof) by the Contractor seeking compensation from the Owner including (without limitation) actions for delay or extra work.

### **PART 6--PROGRESS AND COMPLETION**

#### **6.01 NOTICE TO PROCEED**

Following execution of the Contract by the Owner, written Notice to Proceed will be given to the Contractor. Unless specifically required in the Contract, the Contractor shall not be obligated to perform work, and the Owner will not be obligated to accept or pay for work performed by the Contractor, prior to delivery of the Notice to Proceed.

#### **6.02 CONTRACT TIME**

##### **A. GENERAL:**

Time shall be strictly of the essence of the Contract. The Contractor shall promptly start the work as soon as possible after the date of the Notice to Proceed and shall prosecute the work so that the various portions of the work shall be complete in accordance with the completion date(s) set forth in the Specifications. During periods when weather or other conditions are unfavorable for construction, the Contractor shall pursue only such portions of the work as will not be damaged thereby; no portions of the work shall be constructed while those conditions exist if acceptable quality or efficiency will be adversely affected. It is expressly understood and agreed by and between the Contractor and the Owner that the Contract Time for completion of the work described herein is a reasonable time taking into consideration the weather conditions and other factors prevailing in the locality of the work.

##### **B. CONSTRUCTION SCHEDULE:**

The Contractor shall provide progress schedules, cash flow projections and additional reports, as specified in the Specifications, demonstrating the Contractor's logic and sequencing plan for scheduling and completing the work within the Contract Time. Contract Time extensions approved by the Facilities and Maintenance Supervisor shall be incorporated into updated

schedules reflecting their effect at the time of occurrence. Progress payments will not be considered by the Agent until the Contractor complies with these requirements.

The Contractor shall promptly notify the Agent and Owner in writing of any facts or conditions which would affect the Contractor's ability to meet the intermediate or final completion date(s) for the work. If the Contractor fails to maintain the progress necessary for the completion of the intermediate or final completion date(s) as required under this Contract, the Owner shall have all of the rights and remedies provided by law and under this Contract. Notwithstanding such rights and remedies, the Contractor shall, upon written notice by the Agent and at no additional cost to the Owner, work such hours as allowed by applicable permits and other such constraints, and furnish such additional personnel, equipment and construction plant for such a period of time as necessary to regain and thereafter maintain the progress required by the Contract. If the Contractor fails to comply with the Agent's notice or fails to regain and thereafter maintain the progress required by the Contract, the Owner shall have all rights and remedies provided by law and provided by this Contract, including those set forth in paragraph 00710-6.04 A herein.

C. DELAYS:

1. **NOTICE OF DELAYS.** Immediately (but in any event no more than three (3) days after the Contractor foresees or should foresee a delay in the prosecution of the work or upon the occurrence of a delay which the Contractor regards as unavoidable, the Contractor shall notify the Agent and the Owner in writing of the probability or the occurrence of such delay, the extent of the delay, the specific impacts and effects of the delay on the construction schedule, and its possible cause. The Contractor shall take immediate steps to prevent, if possible, the occurrence or continuance of the delay. If this cannot be done, the Agent will determine how long the delay will continue and to what extent the prosecution and completion of the work are being or will be delayed thereby. The Agent will also determine whether the delay is to be considered avoidable or unavoidable and notify the Contractor of the Agent's determination. The Contractor agrees that no claim shall be made for the delays for which timely written notice to the Agent is not made.

2. **AVOIDABLE DELAYS.** Avoidable delays in the prosecution of the work shall include delays which could have been avoided by the exercise of care, prudence, coordination, foresight and diligence on the part of the Contractor, its subcontractors, or its suppliers at any tier. In addition, avoidable delays include, but are not limited to:

- a. Delays which may in themselves be unavoidable but do not necessarily prevent or delay the prosecution of parts of the work or the completion of the whole work within the Contract Time (e.g., fit within the float time shown on the accepted construction schedule).
- b. Time associated with reasonable interference of the Owner or other contractors employed by the Owner which do not necessarily prevent the completion of the whole work within the Contract Time.

- c. Delays which may in themselves be unavoidable, but which do not affect any critical path activity on the accepted construction schedule.

3. **UNAVOIDABLE DELAYS.** An unavoidable delay means a delay in the prosecution of the work which cannot be regarded as avoidable under paragraph 00710-6.02 C.2. Unavoidable delays shall include delays which result from causes beyond the control of the Contractor and which could not have been avoided by the exercise of care, prudence, coordination, foresight and diligence on the part of the Contractor, its subcontractors or its suppliers at any tier. Delays in completion of the work of other contractors employed by the Owner will be considered unavoidable delays insofar as they interfere with the Contractor's completion of the current controlling item on the accepted construction schedule. Delays due to abnormal weather conditions under paragraph 00710-8.02 will be regarded as unavoidable, but the Contractor agrees to plan its work with prudent allowances for interference by normal weather conditions. Delays caused by acts of Nature, acts of public enemy, fires, floods, epidemics, quarantine restrictions, strikes and freight embargos will be considered as unavoidable delays insofar as they prevent the Contractor from proceeding toward completion of the current controlling item on the accepted construction schedule.

D. EXTENSION OF TIME:

1. **AVOIDABLE DELAYS.** The Facilities and Maintenance Supervisor may grant, if requested by the Contractor, an extension of time for avoidable delay, if the Facilities and Maintenance Supervisor determines that an extension is in the Owner's best interest. If the Facilities and Maintenance Supervisor grants an extension of time for avoidable delay, the Contractor agrees to pay certain of the Owner's actual costs resulting therefrom, as specified in paragraph 00710-7.04, incurred during the extension.

2. **UNAVOIDABLE DELAYS.** For delays which the Contractor has given notice pursuant to paragraph 00710-6.02 C.1 and considers to be unavoidable, the Contractor shall submit to the Agent and Owner complete written information demonstrating the effect of the delay on the controlling operations on the accepted construction schedule. The submission shall be made within 10 days of the occurrence which is claimed to be responsible for the unavoidable delay. The Agent will review the Contractor's submission and determine the number of days of unavoidable delay and the effect of such unavoidable delay on such controlling operations. The Facilities and Maintenance Supervisor will grant an extension of time to the extent that unavoidable delays necessarily affect controlling operations in the construction schedule. During such extension of time, neither compensation under paragraph 00710-7.04 nor damages for delay will be charged to the Contractor. It is understood and agreed by the Contractor and Owner that time extensions due to unavoidable delays necessarily involve controlling operations which would prevent completion of the work or portion thereof within the Contract Time. To the extent that any such extension of time is caused by act(s) or omission(s) of someone other than the Owner or persons acting for the Owner, or to the extent that the extension of time arises from a reasonable delay, the Contractor's sole remedy shall be the extension of time and it may not recover any damages whatsoever arising in any manner from such delay. For purposes of this paragraph, any individual delay of up to the greater of 5 days or one percent of the Contract Time (as extended)

shall be deemed reasonable and any individual delay of up to the greater of 10 days or five percent of the Contract Time (as extended) shall be presumed unreasonable.

**E. DAMAGES FOR DELAYS:**

For each and every day that any portion of the work remains incomplete after the Contract Time, including intermediate or final completion dates, specified in the Specifications, as modified by any extension of time granted hereunder, damage will be sustained by the Owner. Because of the difficulty in computing the actual material loss and disadvantages to the Owner, it is determined in advance and agreed by the parties hereto that the Contractor will pay the Owner the amount set forth in Part 8 of Section 00710 for each day of delay as representing a reasonable forecast of the actual damages which the Owner will suffer by the failure of the Contractor to complete such work or portion thereof within said time(s). The execution of this Contract shall constitute acknowledgement by the Contractor that it has ascertained and agrees that the Owner will actually suffer damages in the amount herein fixed for each and every day during which the completion of the work or portions thereof is avoidably delayed beyond the specified time(s).

**F. SUBSTANTIAL COMPLETION:**

When the work under this Contract is completed to the extent that the Owner has full and unrestricted use and benefit of the facilities, both from the operational and safety standpoint, and only minor incidental work, replacement of temporary substitute facilities, or correction or repair remains to complete the entirety of the work, the Agent will determine that the work is substantially complete. The Agent will notify the Contractor in writing of the substantial completion date. For overruns in Contract Time occurring after the substantial completion, damages for delay assessed against the Contractor as provided in paragraph 00710-6.02 E will not apply. For overruns in Contract Time occurring after substantial completion, damages shall be assessed against the Contractor on the basis of direct Agenting, inspection, and related costs assignable to this Contract. The Contractor shall complete the remaining work as promptly as possible. Upon request by the Agent, the Contractor shall furnish a written schedule for completing the remaining work.

**6.03 SUSPENSION PROCEDURES**

The Agent and the Owner may, at any time and without cause, suspend all or any part of the work by notice in writing to the Contractor. The Contractor shall resume the work within five (5) days after receiving written notice from the Agent to do so. The Contractor may submit a claim, as provided in paragraph 00710-7.02, for an increase in the cost of performing the Contract or an extension of Contract Time, or both, necessarily caused by any suspension; provided, the Contractor shall not be entitled to any increase for any suspension, delay, or interruption to the extent that performance would have been so suspended, delayed, or interrupted by any other cause, including the fault or negligence of the Contractor, or for which an equitable adjustment is provided for or excluded under any other provision of this Contract, or if suspension does not affect any critical activity on the accepted construction schedule, or if the suspension is based on non-compliance with requirements under paragraph 00710-1.15. If the Agent does not give notice in writing to the Contractor to resume work at a date within 180 days of the date of the notice to

suspend, then the Contract shall be assumed to be terminated and the Contractor shall be entitled to compensation in accordance with paragraph 00710-6.04 B.

#### **6.04 TERMINATION PROCEDURES**

##### **A. TERMINATION BY OWNER FOR DEFAULT:**

The Facilities and Maintenance Supervisor shall act for and on behalf of the Owner in all termination actions and determinations. The Facilities and Maintenance Supervisor may terminate the Contract upon written notice to the Contractor whenever the Contractor is deemed to be in default or fails to fulfill, in a timely and proper manner, the contract obligations, or is in violation of any provisions or covenants of the Contract. Termination shall be effective upon receipt of such notice by the Contractor. The Contractor shall immediately discontinue work and take all reasonable steps with its suppliers and subcontractors to minimize cancellation and other costs.

The Contractor shall be deemed to be in default and subject to termination upon the occurrence of any one or more of the following events:

1. If Contractor is insolvent.
2. If Contractor makes a general assignment for the benefit of creditors.
3. If a trustee or receiver is appointed for Contractor, or for any of Contractor's property.
4. If Contractor without good cause repeatedly fails to make prompt payments to subcontractors or others for labor, materials, or equipment.
5. If Contractor disregards laws, ordinances, rules, regulations, or orders of any public body having jurisdiction.
6. If Contractor disregards the authority of any of the Owner's representatives or Agent.
7. If Contractor violates in any material way the provisions of the Contract Documents by failing, neglecting, or refusing to proceed according to and in full compliance with the provisions and covenants of the Contract Documents.
8. If Contractor fails to provide required insurance or bonds, or proceeds thereof.

After the termination of the Contract, the Owner may complete the unfinished work by obtaining the services of another contractor. In doing so, the Owner will not be obligated to obtain the lowest bid to complete the unfinished work, unless required by an applicable Oregon Revised Statute or Oregon Administrative Rule . Further, the Owner may exclude the Contractor from the

site and take possession of the work. Materials and equipment for which the Owner has paid any amount on to the Contractor may be incorporated in the work regardless of whether they are stored at the site or stored elsewhere. In such cases, the Contractor will not be entitled to receive any further payment until all work is finished. The Contractor shall only be entitled to payment for portions of the work satisfactorily completed prior to termination for default.

If the cost to complete the work, including compensation for additional professional services, is in excess of the unpaid balance to the Contractor, the Contractor shall pay the difference to the Owner.

Where the Contract has been so terminated by the Facilities and Maintenance Supervisor, the termination shall not affect any rights of the Owner against the Contractor then existing or which may thereafter accrue. Any retention or payment of monies due the Contractor by the Owner will not release the Contractor from liability. Amounts retained and accumulated will be held as provided therein for a period of not less than thirty days following termination for default.

If the Facilities and Maintenance Supervisor terminates this Contract for default, and it is thereafter determined that the Contractor had not so failed to perform its obligations or defaulted in any way, the termination shall then be deemed to have been effected for the convenience of the Owner. In that event, any adjustment of compensation to Contractor shall be determined in accordance with paragraph 00710-6.04 B.

**B. TERMINATION BY OWNER FOR OTHER THAN DEFAULT:**

The Facilities and Maintenance Supervisor may, without prejudice to any other remedy the Owner may have under law and the provisions of the Contract, terminate this Contract, in whole or in part, at any time by giving written notice to the Contractor. Termination will be effective upon receipt of such notice by the Contractor. The Contractor shall immediately discontinue work and take all reasonable steps with its suppliers and subcontractors to minimize cancellation charges and other costs. If such termination is effected after award hereof but prior to the Owner issuing Notice to Proceed to the Contractor, the Owner will pay the reasonable, verifiable and directly attributable costs incurred by the Contractor in the preparation of its bid plus fifteen percent of such costs. If such termination is effected after the Owner has issued Notice to Proceed and the Contractor has commenced performance hereunder, the Owner will pay the reasonable, verifiable and directly attributable costs incurred by the Contractor as determined by the physical progress of the work satisfactorily completed to date of such termination evaluated against the approved schedule of values, plus costs of removing equipment and materials and otherwise demobilizing, plus ten percent of the sum of all such costs; provided, said payment shall not in any event exceed the Contract Price hereunder. The payment by the Owner shall constitute full and complete satisfaction and settlement for the Contractor's overhead, anticipated profits, and all other inconvenience, expenses, damages, costs and lost profits whatsoever. The Contractor will be entitled to no further payments whatsoever for the work. Amounts retained and accumulated under ORS 279.400 et.seq. will be held as provided therein for a period of not less than thirty days following termination.

**C. CONTRACTOR OBLIGATIONS UPON TERMINATION:**

On receipt of notice of termination under paragraphs 00710-6.04 A or 00710-6.04 B, the Contractor shall immediately discontinue the work but shall do such extra work as may be ordered by the Agent to safeguard the work then completed and the materials and equipment then delivered to the site of the work and to leave the work in a safe and useful condition. Payment for this extra work will be made in the manner set forth in paragraph 00710-7.02 B.

**D. TERMINATION BY CONTRACTOR:**

If any delay in issuance of Notice to Proceed hereunder or in construction following award of this Contract is caused by litigation as set forth in ORS 279.400 et.seq. and such delay exceeds 180 days, the Contractor may elect to terminate this Contract. In the event of such termination, which would be effective upon ten days written notice to the Owner, the Owner shall estimate all of the work completed up to the time of such termination. The Owner will pay the Contractor in proportion to the amount of the work completed, plus the cost of delay under paragraph 00710-7.06 herein.

Amounts retained and accumulated in accordance with ORS 279.400 et.seq. will be held as provided herein for a period of not less than thirty days following election of the Contractor to terminate.

**E. OWNERSHIP OF MATERIALS UPON TERMINATION:**

As of the date of termination, whether effected by the Owner or the Contractor as provided herein, all the Contractor's right, title, and interest in and to materials ordered by the Contractor prior to the termination, whether or not they have been delivered to the site of the work, shall be vested in the Owner, and the Contractor shall, upon demand of the Owner, execute and deliver to the Owner all requisite bills of sale, assignments, and other documents of transfer that may be necessary to give effect to the intention of the termination procedures set forth above.

**6.05 POSSESSION AND USE OF COMPLETED PORTIONS OF THE WORK**

The Owner shall have the right to take possession of and use completed or partially completed portions of the work notwithstanding the time for completing such portions may not have expired. Operations and maintenance costs of use of such portions will be borne by the Owner. Such taking possession and use shall not be deemed as acceptance of the work. If such prior possession or use increases the cost of the work, the Contractor shall be entitled to request extra compensation within five days of each occurrence. The amount of extra compensation, if any, will be determined in accordance with the procedures given herein for determination of change order cost. The Contractor shall not be entitled to extra compensation for possession by the Owner of portions of the work which are specifically required in the Contract Documents to be placed into use and operation before completion of the entirety of the work.

**PART 7--MEASUREMENT AND PAYMENT**

**7.01 PAYMENTS TO CONTRACTOR**

**A. BREAKDOWN OF CONTRACT PRICE:**

The Contractor shall, within the time specified in the Specifications, submit a schedule of values and cash flow projection for the Contract Price, acceptable to the Agent, showing the value assigned to each activity of the work, including an allowance for profit and overhead. The Contractor warrants that such values are accurate representations of the value of each activity, on which the Owner may rely. The schedule of values and cash flow projection shall be prepared in accordance with the requirements of the Specifications and shall be sufficiently detailed to permit its use by the Agent as one of the bases for evaluating requests for payment. Failure to meet the submittal schedule of the schedule of values will delay the processing of progress payments.

**B. INCREASED OR DECREASED QUANTITIES:**

Unless specifically provided otherwise on the Bidding Schedule, if there is any change that increases or decreases the actual quantity for any unit price item by more than 30 percent, the unit price will apply for the portion up to the 30 percent increase or decrease, and the adjustment for that portion of the work in excess of the 30 percent increase or decrease shall be as follows:

1. Increases in excess of 30 percent will be determined by agreement of the parties. If the parties are unable to agree, the Agent will determine the equitable adjustment by using unit bid prices, or by establishing the costs by other means, or by using force account, and will adjust the Contract Time as the Agent deems appropriate.

2. Decreases in excess of 30 percent will be determined by agreement of the parties. If the parties are unable to agree, the Agent will determine the adjustment taking into account a redistribution of fixed costs, if any. If the Contractor disagrees with an equitable adjustment determination by the Agent, the Contractor shall appeal and strictly follow all procedures in accordance with paragraph 00710-2.04 G.2. Failure to do so shall constitute the Contractor's acceptance of determinations by the Agent. When ordered by the Agent, the Contractor shall proceed with the work pending determination of the adjustment in costs or time, as applicable. When the Owner has entered an amount for any bid item, whether unit or otherwise, solely for the purpose of providing a common bid for all bidders, this paragraph 00710-7.01 B shall not apply. Any impact due to an increase or decrease in the amount provided for the purpose of obtaining a common bid shall be the sole risk of the Contractor.

**C. PROGRESS PAYMENTS**

**1. PAYMENT REQUEST PROCEDURES:**

a. General: By the 5th day of each month the Contractor shall submit to the Agent a partial payment request filled out and signed by the Contractor covering acceptable work performed and materials received during the previous payment period, or since the last partial payment estimate was submitted. Payment periods shall end on the last day of each month. The Contractor's statement regarding payment of prevailing wages as specified in paragraph 00710-1.04, and the Contractor's current progress schedules, cash flow projections and reports as



specified in the Specifications shall be provided with each partial payment estimate. If requested by the Agent, the Contractor shall provide such additional data as may be reasonably required to support the payment for materials and labor, including payments to subcontractors and suppliers. The term "materials", as used herein, shall be considered to include those items which are fabricated and manufactured material and equipment. Only those materials for which the Contractor can transfer clear title to the Owner will be qualified for partial payment, except as specifically provided below.

b. Partial Payment Requests: The first partial payment request shall include (1) the value of the work performed, and (2) a percentage (as determined below) of the purchase value of materials delivered but not yet incorporated in the work, all of which shall have been incurred since the Contractor's receipt of the Notice to Proceed. Every subsequent partial payment request, except the final payment request, shall include (1) the value of the work performed, and (2) a percentage (as determined below) of the purchase value of materials delivered but not yet incorporated in the work, all of which shall have been incurred since the last partial payment request was submitted. As used in this paragraph 00710-7.01, "purchase value" shall be the Contractor's actual net cost of such materials.

c. Partial Payment for Material Delivered but not Installed: To receive partial payment for materials delivered but not yet incorporated in the work, the Contractor shall submit a list with certified invoices of such materials to the Agent for approval with the Contractor's partial payment estimate. The Contractor's claimed purchase value must be supported by certified invoices of subcontractors or suppliers. Proper storage and protection in accordance with paragraph 00710-4.07 shall be provided. Partial payment for materials delivered but not yet incorporated in the work will not exceed 75 percent of the purchase value for such materials, except as may be determined otherwise by the Agent. As a condition precedent to making any such payment, the Agent may require that the Contractor provide a bond or other form of security to protect the interests of the Owner.

d. Partial Payment Based on Unit Prices: If the Bidding Schedule for this Contract included unit price items, then partial payments for such items will be based on the actual quantities performed or provided under such unit price items. For work performed or provided under such unit price items, the Contractor shall not be entitled to any payment beyond those unit prices, except as may be elsewhere provided herein.

2. **REVIEW OF PAYMENT REQUEST.** After receipt of the partial payment request, the Agent will review the request and either indicate approval in writing to the Facilities and Maintenance Supervisor or indicate in writing to the Contractor reasons for not concurring with the request. If the Agent recommends payment and the Facilities and Maintenance Supervisor concurs, the Owner will pay the Contractor a progress payment, within 15 days after the Agent approves the payment or within 30 days after the receipt of invoice in accordance with ORS 279.435. The payments will take into account the retention provisions provided for herein. In the event the Agent does not concur with the request, the Contractor may make the changes necessary to obtain the Agent's concurrence and resubmit the partial payment request.

Resubmitted approved partial payment requests approved by the Agent will be paid 15 days after the Agent approves the payment or within 30 days after the receipt of the resubmitted invoice.

3. **RETAINAGE.** The Owner will retain five (5) percent of all progress payments as a trust fund for the protection and payment of any person or persons, mechanic, subcontractor, or materialmen who performs any labor upon the contract or work hereunder, and all persons who shall supply such person or persons or subcontractors with provisions and supplies for carrying on such work, and of a person claiming moneys due. The Owner shall retain at all times as a trust fund a sum equal to five percent of the monies earned by the Contractor. In the event that during the performance of the Contract and prior to the expiration of the claim period, the amount retained is reduced to an amount below five percent, then the Owner shall retain additional sums from monies earned by the Contractor so as to maintain at all times a five percent retained trust fund.

Monies shall be retained under provisions of ORS 279.560, and at the option of the Contractor. The Contractor shall designate the option desired on a form as may be provided by the Owner. This form shall be submitted no later than with the Contractor's first partial payment request

D. **FINAL PAYMENT:**

The Owner will make final payment to the Contractor following acceptance of work under paragraph 00710-7.05, including completion of all Punch List items, release of claims brought to the attention of the Owner as set forth in paragraph 00710-5.01, receipt of releases from owners of property affected by the Contractor's performance under this Contract. Final payment shall include the entire sum found to be due hereunder after deducting therefrom such amounts as the terms of this Contract permit. Prior estimates and payments, including those relating to extra work or work omitted, shall be subject to correction by the final payment. Final payment will be made only for materials actually incorporated in the work; and, all materials remaining for which progress payments have been made shall revert to the Contractor, unless otherwise agreed, and partial payments made for these items shall be deducted from the final payment for the work.

By accepting final payment, the Contractor shall be deemed thereby to have released the Owner from all claims of and all liability to the Contractor for things done or furnished in connection with the work and for every act and neglect of the Owner and others relating to or arising out of the work, other than timely written claims identified in detail and stated amounts that were submitted prior to final payment and in strict compliance with the requirements of this Contract. Payment by the Owner shall not release the Contractor or its surety from any obligation under the Contract or under the Performance and Payment Bond.

E. **RELEASE OF RETAINAGE:**

The retainage will be held and applied by the Owner as a trust fund as required by ORS 279.400 et.seq. Payment or release of retainage will be made in ordinary course of business within

thirty days following final acceptance of the work under paragraph 00710-7.05 provided the following conditions are met:

1. Certificates approved by the other departments and agencies having jurisdiction over the activities of the Contractor have been provided to the Agent.
2. If the Contract Price hereunder exceeds \$20,000, a release obtained from the Department of Revenue has been provided to the Agent.
3. "Affidavits of Wages Paid" for the Contractor and each subcontractor approved by Oregon Bureau of Labor and Industries have been provided to the Agent.
4. No claims or notices of lien, as provided by law, have been filed against the retainage.
5. The Owner has no claims under this Contract.

Notices of claims against the Performance and Payment Bond, or liens against the retainage, are filed with the Owner. The Contractor may obtain a copy or a list of such notices by written request to the Owner.

In the event claims or notices of lien are filed and not resolved at the end of said thirty day period, the Contractor shall be paid such retainage less an amount sufficient to pay any such claims or notices together with a sum determined by the Owner sufficient to pay the cost of such action and to cover attorney's fees, together with any sums determined by the Owner sufficient to pay any of its claims against the Contractor.

## **7.02 CHANGE ORDERS**

### **A. GENERAL:**

The Owner may at any time by written order designated or indicated to be a change order, make any change in the work within the scope of this Contract. Such written orders may be made without notice to any surety(ies), in the Performance and Payment Bond herein, the surety(ies) waived notice of any alteration or extension of time made by the Owner and agreed to be bound in all ways to the Owner for any such alterations or extensions of time as if it(they) had received notice of the same. Any other written order (which includes direction, instruction, interpretation or determination) from the Owner, which causes any such change, shall be treated as a change order only if the Contractor gives the Agent written notice within five days of the order stating the date, circumstances, source of the order, and that the Contractor regards the order as a change order. Oral orders will not be binding on the Owner unless confirmed in writing by the Facilities and Maintenance Supervisor. The Contract Price may be changed only by a change order signed by the Superintendent of Business Services, or the Board of Superintendents.

Except as provided herein, no order, statement, or conduct of any representative of the Owner will be treated as a change hereunder.

If any change hereunder causes an increase or decrease in the Contractor's cost of, or the time required for, the performance of any part of the work under this Contract, an equitable adjustment will be made consistent with paragraph 00710-7.02 B and the Contract modified in writing accordingly. However, no claim will be allowed for any costs incurred more than five days before the Contractor gives written notice as required.

If the Contractor intends to assert a claim for an equitable adjustment hereunder, the Contractor shall comply with the claims procedure of paragraph 00710-2.04 G. The Contractor shall provide additional detailed bid, schedule, labor and equipment records, invoices, purchase orders, job records and cost summaries as may be required by the Superintendent of Business Services to analyze and respond to such claims.

**B. EXTRA WORK:**

Extra work means the furnishing of materials and equipment and the doing of work not directly or by implication called for by the Contract. If the Owner requires extra work, it may do the extra work itself or by the employment of others or it may direct the Contractor to do the extra work, in which case the Contractor will be paid for the extra work in accordance with paragraph 00710-7.02 A.

The value of any work covered by a change order or of any claim for increase or decrease in the Contract Price will be determined by one or more of the following methods in the order of precedence listed below:

1. Unit prices set forth in the Contract Documents or previously agreed upon in the Contract Price breakdown and schedule of values, as applicable.
2. An agreed lump sum; provided, that the basis for such lump sum shall be determined by negotiations between the Agent and the Contractor. At least five days prior to the first negotiation meeting, the Contractor shall provide the Agent with a detailed cost estimate for the proposed extra work. The detailed cost estimate shall be prepared in the format and detail requested by the Agent and consistent with construction industry practice.
3. On time and materials basis in accordance with the following provisions:
  - a. The Contractor will be reimbursed for labor and for foreman supervision dedicated solely to the particular operation. The Contractor will not be reimbursed for general superintendents or general foremen. Payment will be computed by the Agent and will be the sum of the following:
    - 1) Weighted Wage Rate: The agreed basic wage rate for all labor used shall be restricted to the current basic wage the

Contractor is obligated to pay and shall reflect the Contractor's actual cost. Fringe benefits will be added to the basic wage rates and will include mandated benefits paid on behalf of labor by the Contractor such as the following: 1) Federal Insurance Compensation Act (FICA); 2) Federal Unemployment Tax Act (FUTA); and 3) Oregon Unemployment Compensation Trust Fund. The above items will be combined into a single wage rate for each classification of labor used which shall be designated as the "Weighted Wage Rate" for the identified class of labor. The weighted wage rate shall reflect the Contractor's actual cost and shall not exceed that which is customarily paid comparable labor. The Contractor shall pay not less than the minimum rate as specified in paragraph 00710-1.04. If overtime is authorized by the Agent, the weighted wage rate will be established in the same manner as above.

- 2) Travel Allowance and/or Subsistence: The Contractor will be reimbursed the actual cost of travel and/or subsistence allowances paid to labor engaged upon the work when travel and/or such allowances are required by labor agreement.
  - 3) Industrial Insurance and Medical Aid Premiums: The Contractor will be reimbursed for Industrial Insurance and Medical Aid premiums which become an obligation of the Contractor and are chargeable to the work on the basis of time worked. The agreed rate(s) of compensation for the above premiums shall be a composite rate(s) based upon the full premium for Industrial Insurance and one-half the premium for Medical Aid which premiums are prescribed by the regulatory body for the contractor(s) actually performing the time and materials work. This composite rate may be adjusted upon request to conform with adjustments prescribed by the regulatory body.
  - 4) Overhead and Profit: The Contractor will be reimbursed an amount equal to 20 percent of the sum of the items listed in (i), (ii), and (iii) above for overhead, profit and any other cost incurred in supplying labor.
- b. The actual net cost to the Contractor for materials and supplies incorporated in, or necessary for, such extra work, excluding materials and supplies necessary to operate and maintain equipment. To such costs shall be added an amount equal to 15 percent thereof for overhead, profit and any other cost incurred in supplying such materials and supplies.

- c. For Contractor-owned operating equipment, excluding small hand tools, the Contractor shall be compensated for each hour that such equipment is in use on such work at the rates in effect on the date such extra work is ordered as set forth in the "Rental Rate Blue Book for Construction Equipment" published by Equipment Guide-Book Company; for such equipment not included in said Blue Book, compensation shall be at such rates as shall be mutually agreed to in writing by the Contractor and Agent. For Contractor-owned operating equipment on standby, the Contractor shall be compensated at fifty percent (50%) of the rate in said Blue Book or mutually agreed rate, as applicable. For rented operating equipment, the Contractor shall be compensated at invoiced rental rates plus reasonable, documented costs for fuel and lube for such operating equipment.

No payment will be made for standby on any piece of equipment which has been used for 8 hours or more of productive work in any 24-hour period, and payment for a combination of productive work and standby shall not exceed a total of 8 hours in any work day. Weekends and holidays are excluded from standby time. No standby costs will be paid for any equipment idled due to routine maintenance, down time, or late delivery of other equipment. To such costs shall be added an amount equal to 15 percent thereof for overhead, profit and any other cost incurred in supplying such equipment.

- d. For purpose of this paragraph, the term "overhead" shall include, but not be limited to: Agenting, both field and office; Estimating; General superintendence; Purchasing; Quality Control/Quality Assurance; Clerical; Office facilities; Small hand tools; All applicable taxes; Bonding and insurance costs; Any other costs of doing business.
- e. Extra work performed on a time and materials basis by approved subcontractors shall be charged to the Owner by the Contractor in accordance with subparagraphs a through d above. To the accumulative total (excluding all markups for overhead and profit) shall be added an amount for the Contractor's supervision and overhead support of subcontractors based on the following supplemental markup schedule: (1) a ten percent supplemental markup shall be added for the initial \$10,000 accumulated total of all extra work (excluding markups for overhead and profit) performed by subcontractors; (2) a five percent supplemental markup shall be added for all extra work in excess of the initial

\$10,000 accumulative total (excluding markups for overhead and profit).

- f. All costs of the Contractor and any subcontractor attributable to extra work are either specifically listed or covered by the multipliers specified in subparagraphs a through e above.
- g. The Contractor's and subcontractor's labor hours charged to extra work shall be substantiated by detailed timecards or timesheets completed on a daily basis before the close of business each working day and available for inspection thereafter at the Contractor's office. The Contractor's and subcontractor's material used for extra work shall be recorded as the extra work is performed and material costs determined as soon as supplier invoices are rendered; such records shall be available for inspection by the Agent at the Contractor's office. The Contractor's and subcontractor's equipment hours for extra work shall be recorded on the labor timecards or timesheets as the extra work is performed.
- h. The Contractor's records pertaining to work paid for on a time and materials basis shall be maintained and retained as required by paragraph 00710-8.03. Failure to maintain and produce for inspection the required records shall constitute a waiver of the Contractor's claim for costs not documented.

C. OMITTED WORK:

The Agent may, by written order to the Contractor, omit work, equipment and/or material to be provided under this Contract, and the value of the omitted work, equipment and/or material will be deducted from the Contract Price. The deducted value will be a unit price, or if there is no such unit price, the deducted value will be a lump sum agreed upon in writing by the Contractor and Agent based on the schedule of values and other cost information submitted by the Contractor or obtained otherwise by the Owner. In the event that no agreement can be reached on a lump sum basis, the Owner shall be entitled to a deduction based on the value calculated on an estimated time and materials basis as determined by the Agent, subject to the Contractor's right of claim under paragraph 00710-2.04 G herein.

D. PROPOSED WORK CHANGES:

The Agent may from time to time request the Contractor to provide price estimates on Proposed Work Changes (PWCs). The Contractor shall prepare such price estimates within 14 days of receipt of a request for a PWC from the Agent. If the Contractor fails to prepare such price estimates within that time, the Agent has the right to determine the reasonable price under the PWC and to direct the Contractor to proceed with the PWC at that price; provided, the Contractor may submit a claim in accordance with paragraph 00710-2.04 G herein. If the Contractor prepares such price estimates within 14 days of receipt of a PWC from the Agent, the documented

reasonable costs incurred by the Contractor in preparing such estimates shall be paid by the Owner either as part of the accepted PWC overhead markup cost or separately if the PWC is not accepted.

**E. EFFECT OF CHANGE ORDERS:**

The payment, additional time, or both payment and additional time specified and agreed to in a change order shall be construed and interpreted to include all claims by the Contractor for any extra payment, extension of time, lost profits and/or other incidental or consequential damages with respect to the work covered by such change order, including, but not limited to, delays to the completion of all work under this Contract and associated costs to the Contractor.

**7.03 CHARGES TO CONTRACTOR**

Everything charged to the Contractor by the Owner under the terms of this Contract shall be paid by the Contractor to the Owner on demand. Such charges may be deducted by the Facilities and Maintenance Supervisor from money due or to become due to the Contractor under the Contract. The Owner may recover such charges from the Contractor or from its surety notwithstanding that the work has been accepted under paragraph 00710-7.05.

**7.04 COMPENSATION TO OWNER FOR TIME EXTENSION**

In exchange for granting an extension of time for avoidable delay, the Contractor shall compensate the Owner for the actual costs to the Owner of Agenting, inspection, general supervision, right-of-way costs, permit fees, overhead expenses, and any other specifically ascertainable direct and indirect costs which are directly chargeable to the work and which accrue during the period of such extension. The actual costs will not include charges for final inspection and preparation of the final payment by the Facilities and Maintenance Supervisor and Agent.

**7.05 ACCEPTANCE OF WORK**

Upon completion of the work, or a designated portion thereof, the Contractor shall so notify the Agent in writing. Upon receipt of the notification, the Agent will promptly, by personal inspection, determine the actual status of the work in accordance with the terms of the Contract. If the Agent finds materials, equipment, or workmanship which do not meet the terms of the Contract, the Agent will prepare a Punch List of such items and submit it to the Contractor. Following completion of the corrective work and submittal of all required documents and forms by the Contractor, the Agent will notify the Facilities and Maintenance Supervisor that the work has been completed in accordance with the Contract. Determination of the acceptability and acceptance of the work will be made by the Facilities and Maintenance Supervisor.

A written notice of acceptance, issued by the Facilities and Maintenance Supervisor, shall constitute acceptance of the work. Notice of acceptance shall not constitute acceptance of any unauthorized or defective work or material, nor shall progress payment estimates be construed as acceptance of any work under this Contract. The Owner shall not be barred from requiring the Contractor to remove, replace, repair or dispose of any unauthorized or defective work or from



recovering damages for any such work or material; the Owner's rights hereunder shall exist and remain to the full extent permitted by law and/or set forth in this Contract.

## **7.06 LITIGATION DELAY COSTS**

If any delay in issuance of Notice to Proceed or in construction following award of this Contract is primarily caused by acts or omissions of persons or agencies other than the Contractor, anyone employed by it or any of its subcontractors or suppliers, and a preliminary, special or permanent restraining order of a court of competent jurisdiction is issued pursuant to litigation and the Owner does not elect to terminate the Contract or order funds reserved be paid to the Contractor, then the Superintendent of Business Services will issue a change order to cover reasonable costs incurred by the Contractor as a result of such delay. The parties hereto agree that the reasonable costs of such litigation delay shall consist only of the following:

- A. Actual and necessary direct costs to the Contractor directly attributable to the period of delay for wages, wage taxes and labor costs other than wages; provided, that such costs could not be otherwise avoided by layoffs or employment on other projects during the period of delay. The wage rates shall not exceed those listed on the Contractor's "Statement of Intent to Pay Prevailing Wages on Public Works Contract" pursuant to ORS 279.348 through 279.355.
- B. Additional and necessary direct costs for materials and equipment rentals actually incurred and paid by the Contractor directly attributable to the period of delay.
- C. Equipment standby costs established by paragraph 00710-7.02 B.
- D. Additional and necessary direct costs of insurance premiums and bonds actually incurred and paid by the Contractor directly attributable to the period of delay.
- E. Additional and necessary costs for subcontracts actually incurred and paid by the Contractor directly attributable to the period of delay; provided, that such additional costs could not be avoided by cancellation or renegotiation of such subcontracts.
- F. To such costs shall be added an amount equal to 10 percent thereof as a reasonable amount for overhead, profit, and all other costs not specifically accounted for above.

Within three days after notice of litigation delay under this paragraph 00710-7.06, the Contractor shall notify the Agent in writing of the Contractor's estimated weekly litigation delay costs as described above; provided, however, that in no event will payment for actual litigation delay costs exceed one hundred twenty five percent (125%) of the said estimated costs. The Contractor shall submit to the Agent no later than the fifth day of each month a request for such litigation delay costs incurred during the previous calendar month. The request for payment shall be in a form satisfactory to the Agent and shall include copies of invoices, correspondence and such other verifiable evidence of delay costs actually and necessarily incurred by the Contractor

as the Agent may require. Payment will be in accordance with paragraph 00710-7.01 C. This paragraph 00710-7.06 shall be the Contractor's exclusive remedy for litigation delay costs.

#### **7.07 STATEMENT CONCERNING IMPORTED ITEMS**

The Contractor shall furnish to the Agent, upon completion of the Contract, a statement certified by the Contractor setting forth the nature and source of offshore items in excess of \$2,500 which have been utilized in the performance of the Contract. The term "offshore items" shall mean those items procured by the Contractor from sources beyond the territorial boundaries of the United States including Alaska and Hawaii.

### **PART 8--SUPPLEMENTARY PROVISIONS**

#### **8.01 DAMAGES FOR DELAY**

Damages for avoidable delay, as provided in paragraph 00710-6.02. shall be **\$500.00 per working day**.

#### **8.02 ABNORMAL WEATHER CONDITIONS**

Precipitation as rain, hail or snow, low temperature, a windstorm, ice, snow and other weather conditions which could reasonably have been anticipated from the National Weather Service historical records of the general locality of the work shall not be construed as abnormal. It is hereby agreed abnormal conditions may exist and that the contracted parties will mutually agree upon the abnormality of such condition.

Ice, snow and other weather conditions may be considered as abnormal in the sole discretion of the Agent upon written request by the Contractor. Such written request shall describe in detail the weather condition, identify the specific impacts resulting from the weather condition, and be submitted to the Agent within five days of the onset of the weather condition.

#### **8.03 RETENTION OF RECORDS AND AUDIT**

The Contractor shall maintain and retain for a period of not less than three years after the date of acceptance of work documents related to the Contractor's bid for this Contract (e.g., estimating sheets, take offs, etc.) and all records pertaining to the performance of the work under this Contract including work performed as extra work under paragraph 00710-7.02 B. The Contractor shall ensure each of its subcontractors maintains and retains for said period all records pertaining to performance of subcontractor work under this Contract, including work performed as extra work under paragraph 00710-7.02 B. All such documents and records shall be open to inspection and audit by the Owner or others designated or authorized by the Owner or under applicable law and regulations. If an audit is to be commenced more than 60 days after the acceptance of work, the Contractor will be given reasonable notice of the time when the audit is to begin. The Owner may conduct an audit for purposes of evaluating a claim, contract payments or any other reason.

**PART 9--REQUIREMENTS FOR MINORITY AND WOMEN BUSINESS ENTERPRISE  
AND EQUAL EMPLOYMENT OPPORTUNITY**

**9.01 NONDISCRIMINATION REQUIREMENTS DURING WORK**

In accordance with the Owner's administrative policy the Contractor shall not discriminate against any employee or applicant for employment because of religion, color, race, sex, age, national origin, or the presence of any sensory, mental or physical handicap, unless based upon a bona fide occupational qualification. The Contractor will take affirmative action to ensure that applicants are employed, and employees are treated during employment, without regard to their religion, color, race, sex, age, national origin, or the presence of such handicap. Such action shall include, but not be limited to, the following: employment upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and, selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Owner setting forth the provisions of this nondiscrimination clause.

**\*\*END OF SECTION\*\***

**PART B**  
**SPECIFICATIONS**