



## **REQUEST FOR QUOTES**

June 7<sup>th</sup>, 2023

City of St. Helens  
Engineering Division  
265 Strand Street  
St. Helens, OR 97051

The City of St. Helens is asking for bids for the following project:

### **2023 ANNUAL STRIPING PROJECT Project No. R-715**

The contractor shall provide all materials, labor, supervision, and equipment required to paint approximately 93,200 linear feet of 4" yellow pavement striping; 57,200 linear feet of 8" white pavement striping; and 61,000 linear feet of 4" white pavement striping.

The work shall be fully completed within 30 calendar days from issuance of the Notice to Proceed and shall be completed no later than August 31<sup>st</sup>, 2023. Acceptable working hours are from 8:00 A.M. through 5:00 P.M. Monday through Friday, excepting legal holidays.

Please complete and sign the Proposal Form and Bid Schedule included with this request and return it by **3:00 p.m. June 27<sup>th</sup>, 2023**. Proposals may be submitted by mail, email, or delivered in person to the City's Engineering Division, Attention Nick Ford. Contact information for the project is listed below:

#### **Primary Contact**

Nick Ford  
Engineer I  
[nford@sthelensoregon.gov](mailto:nford@sthelensoregon.gov)  
503-366-8257

#### **Secondary Contact**

Sharon Darroux, PMP  
Engineering Manager  
[sdarroux@sthelensoregon.gov](mailto:sdarroux@sthelensoregon.gov)  
503-366-8243

Please note the mailing address as 265 Strand Street, the same as the physical address.

It is acknowledged that the City of St. Helens reserves the right to reject any and all bids. The successful bidder will be required to execute a Construction Contract with the city. A sample of the Construction Contract is attached at the end of this RFQ.



**PROPOSAL FORM**  
**R-715**  
**2023 ANNUAL STRIPING PROJECT**  
**Submittal Deadline: 3:00 p.m. June 27<sup>th</sup>, 2023**

**BID SCHEDULE**

<i><b>Item No.</b></i>	<b>Description</b>	<b>Estimated Quantity</b>	<b>Unit of Measure</b>	<b>Unit Price</b>	<b>Total Price</b>
1)	4" Yellow Striping	93,200	Linear Feet	\$	\$
2)	8" White Striping	57,200	Linear Feet	\$	\$
3)	4" White Striping	61,000	Linear Feet	\$	\$
				<b>Total Bid</b>	<b>\$</b>

Paint and reflectivity must conform to all current Federal Highway Administration, Oregon Department of Transportation, current version of the Oregon Standard Specifications for Construction including all revisions at date of bid submittal, City of St. Helens, and other applicable Federal, State, and Local standards.

Respectfully submitted: \_\_\_\_\_  
Name of Firm

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Address

\_\_\_\_\_  
Print Name & Title

\_\_\_\_\_  
Address

\_\_\_\_\_  
Date

\_\_\_\_\_  
Phone Number

If the bidder is a co-partnership, state giving firm name under which business is transacted.

If the bidder is a corporation, this proposal must be executed by its duly authorized officials.

If no bid is submitted, kindly mark "NO BID" and return to the Project Manager, [nford@sthelensoregon.gov](mailto:nford@sthelensoregon.gov) (503) 366-8257 or by mail to City of St. Helens, City Hall, 265 Strand Street, St. Helens, OR 97051





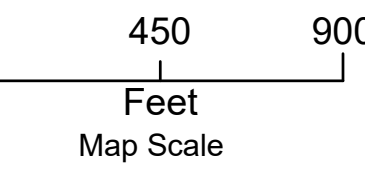
Map Provided by  
City of St. Helens  
Public Works Department  
Engineering Division  
265 Strand Street  
St. Helens, OR 97051  
503.397.6272

# Striping Project 2023 R-715

Print Date: 6/7/2023

## Legend

- 8' WHITE
- BIKE LANE
- 4' YELLOW
- SOLID
- 4' YELLOW
- SKIPS
- 4' WHITE SKIPS
- 4' WHITE FOG



**DISCLAIMER:**  
This map has been provided for reference only. The City of St. Helens makes no warranty, representation, or guarantee of any kind regarding the use of this product. The Requestor/User assumes all responsibility for the use of this product and agrees to hold harmless the City of St. Helens against any loss or damage arising from any error, omission, or positional inaccuracy of this product. The City of St. Helens assumes no responsibility for the validity of any information presented herein, nor any responsibility for the use or misuse of this data. It is the requestor's responsibility to verify any information derived from the GIS data before making any decisions or taking any actions based on the information.



# CITY OF ST. HELENS, OREGON

PO BOX 278  
ST. HELENS OR 97051  
(503) 397-6272

## CONSTRUCTION CONTRACT

(LESS THAN \$50,000/NO PWR/NO BONDS)

PROJECT: \_\_\_\_\_ CONTRACT No.: \_\_\_\_\_  
CONTRACTOR: \_\_\_\_\_ Corporation ☐ Partnership ☐  
\_\_\_\_\_ Ltd Liability Co. ☐ Individual ☐  
\_\_\_\_\_ Const. Cont. Board Reg.: \_\_\_\_\_  
\_\_\_\_\_ Taxpayer ID: \_\_\_\_\_  
\_\_\_\_\_ Workers' Comp Carrier: \_\_\_\_\_  
Ph: \_\_\_\_\_ Fax: \_\_\_\_\_ Policy: \_\_\_\_\_  
DESIGN PROFESSIONAL ("Designer"): \_\_\_\_\_ Exp. Date: \_\_\_\_\_  
\_\_\_\_\_ City Business License No.: \_\_\_\_\_

**WORK:** Contractor will furnish labor, materials, and services necessary to complete the following work ("Work") [attach additional sheets as Attachment A if necessary]: \_\_\_\_\_.

**CONTRACT PRICE:** Owner will pay Contractor for the Work the following lump sum amount ("Contract Price"): \_\_\_\_\_.

Contractor represents that it has inspected the Project and has made all investigations essential to a full understanding of the difficulties which it may encounter in performing the Work. Contractor further represents that it has carefully reviewed and examined: (a) all of the Drawings, Specifications, General and Supplemental Conditions, addenda, amendments, modifications, and other document relevant to the Work.; and, (b) this Construction Contract and its terms and conditions ((a) and (b) collectively, "Contract Documents"). All of the Contract Documents, including the terms and conditions of this Construction Contract, are incorporated into this Construction Contract by this reference.

**TERMS:** Unless specifically stated otherwise, the Contract Price will be paid as specified in the payment schedule attached as Attachment B to this Construction Contract, which is by this reference incorporated into this Construction Contract, and according to the payment terms included in the Terms and Conditions of this Construction Contract. At a minimum, Owner shall pay per ORS 279C.570.

**CONTRACT TIME & LIQUIDATED DAMAGES:** Contractor agrees to substantially complete the Work in \_\_\_\_\_ calendar days after the Commencement of the Work ("Contract Time"). **Time is of the essence of this Construction Contract.** If the Work is not substantially completed within the Contract Time, the resulting damages and loss to the Owner will be difficult to accurately ascertain. Therefore, the Contractor agrees to pay Owner and Owner agrees to accept liquidated damages for late completion in the amount of \$\_\_\_\_\_ per calendar day for each day elapsing from expiration of the Contract Time until Substantial Completion of the Work. The Owner and Contractor agree these liquidated damages represent a reasonable forecast of the Owner's actual damages and that they are not a penalty. The Owner may deduct liquidated damages from any unpaid amounts due Contractor. Any liquidated damages not so deducted shall be payable to the Owner at the written demand of the Owner, together with simple interest at 9% after 15 days of the date of the written demand.

**COMMENCEMENT OF THE WORK:** Unless a different date is stated below, the date of Commencement of the Work will be the later of the expressed date of execution by the Owner or execution by the Contractor, or in the case that only one of the parties dated their execution, Commencement of the Work will be the date of execution by that party. If the date of execution is not written below the signature of both the Owner and the Contractor and a date is not provided below, the date of Commencement will be the first day of performance of the Work by the

Contractor at the Project location. Date of Commencement of the Work: \_\_\_\_\_.

**TAXES:** Contractor represents and warrants that Contractor has complied with the tax laws of this state or a political subdivision of this state, including but not limited to ORS 305.620 and ORS chapters 316, 317 and 318. Contractor covenants that contractor will continue to comply with the tax laws of this state or a political subdivision of this state during the term of this Contract. Failure by the Contractor to comply with the tax laws of this state or a political subdivision of this state before the execution of this Contract or during the term of this Contract is a default for which the Owner may terminate this Contract and seek damages and other relief available under the terms of this Contract or under applicable law.

**ACCEPTANCE:** Contractor accepts this Construction Contract, including all of its terms and conditions, by execution below or by commencing any part of the Work. Any additional or different terms proposed by the Contractor are hereby rejected unless expressly identified and agreed to in writing by the Owner.

**OWNER:**

**CONTRACTOR:**

**CITY OF ST. HELENS**

Council Meeting Date: \_\_\_\_\_

Signature: \_\_\_\_\_

Print: \_\_\_\_\_

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

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

\_\_\_\_\_

Signature: \_\_\_\_\_

Print: \_\_\_\_\_

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

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

## **TERMS & CONDITIONS**

### **1. Definitions.** The following definitions apply to this Construction Contract:

**1.1** “Contract Documents” means the Construction Contract and these terms and conditions, and all of the Drawings, Specifications, General and Supplemental Conditions, addenda, amendments, modifications, and other document relevant to the Work. Unless specifically enumerated in the Contract Documents as a Contract Document, the Contract Documents do not include the invitation to bid, instructions to bidders, the Contractor’s bid or proposal, or other documents relating to bidding instructions and requirements.

**1.2** “Drawings” means pictorial or graphic portions of the Contract Documents showing the design, location, dimensions, and details of the Work.

**1.3** “Project” means the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner and by other contractors.

**1.4** “Specifications” means the portions of the Contract Documents consisting of written requirements for and descriptions of the Work.

**1.5** “Work” means the construction required under the Contract Documents including all work reasonably inferable as necessary to produce the results intended by the Contract Documents. The Work may include performing labor, furnishing and incorporating materials, equipment, and other components into the Project, and supplying goods.

### **2. Owner.**

**2.1** The Owner is the City of St. Helens, Oregon. The Owner will designate a construction representative who will be the Contractor’s point of contact for the Project and will coordinate the activities of the Contractor, the Owner, and any designer, on behalf of the Owner. The Owner may, in its discretion, designate a new construction representatives before, during, and after the life of the Project. “Owner” means the Owner or the Owner’s designated representative.

**2.2** Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, the Owner will secure necessary approvals and permits necessary for the Work.

**2.3** As a convenience, utilities will be indicated on the Drawings if the location is known to the Owner or the designer, and the Owner will provide the Contractor with any readily known information in the Owner’s possession concerning existing utilities. Notwithstanding the foregoing, the Contractor is solely responsible for determining the location of utilities and for reviewing and confirming information provided by Owner or designer with utility owners and for sources otherwise available.

**2.4** If the Contractor fails to correct Work that is not in conformance with the Contract Documents or materially fails to carry out the Work in accordance with the Contract Documents or without reasonable promptness, the Owner may, but is not obligated to, issue a written order to the Contractor to stop the Work, or any portion thereof. The Owner’s exercise of its right to stop the Work will not relieve the Contractor of any of its responsibilities and obligations under the Contract Documents.

### **3. Contractor.**

**3.1** The Contractor will remain properly licensed with the Oregon Construction Contractors Board throughout the performance of the Work. Prior to Commencement of the Work, Contractor will designate in writing a representative who shall have the authority to bind the Contractor with respect to all

matters under this Construction Contract. "Contractor" means the Contractor or the Contractor's designated representative.

**3.2** The Contractor will perform the Work in strict accordance with the Contract Documents and in a workmanlike manner. Unless otherwise expressly provided for in the Contract Documents, the Contractor shall provide and pay for all labor, materials, equipment, tools, machinery, water, heat, electricity, utilities, transportation, and other facilities, goods or services necessary for the proper execution and full completion of the Work.

**3.3** Before starting each portion of the Work, the Contractor shall carefully study and compare the Contract Documents and the Project location relative to that portion of the Work, and shall take field measurements of any existing conditions related to that portion of the Work, to ensure that the Work will be properly integrated with the Project location or existing Work. The Contractor shall promptly notify the Owner of any errors, omissions, or inconsistencies in the Contract Documents of which it becomes aware or that a qualified contractor should recognize with the use of reasonable diligence. The Contractor's review will be made in the Contractor's capacity as a contractor and not as a licensed design professional.

**3.4** The Contractor will be solely responsible for, and have control over, the construction means and methods for the Work unless the Contract Documents give other specific instructions concerning certain matters. If the Construction Documents give specific instructions for the means and methods, the Contractor shall evaluate the job safety of performing under those means and methods before performing any such work and notify the Owner and not proceed if it determines that the means and methods specified are not safe. Contractor is solely responsible for the safety of all construction means and methods for the Work and the safety of its employees.

**3.5** The Contractor may make substitutions only with the written consent of the Owner. Notwithstanding the Owner's consent for a substitution, Contractor remains solely responsible for the substitution's compliance with the requirements of the Contract Documents.

**3.6** The Contractor shall comply with and give all notices required by applicable laws, rules, and regulations, or otherwise required by public agencies or authorities applicable to the performance of the Work.

#### **4. Schedule.**

**4.1** Before Commencement of the Work, the Contractor will prepare and submit to the Owner a construction schedule for the Work. The schedule shall not exceed the Contract Time for the Work and shall be updated during the performance of the Work at least on a bi-weekly basis. Bi-weekly schedule updates shall be submitted to the Owner. The Contractor shall perform the Work in general accordance with the most recent schedules submitted to and approved by the Owner. The construction schedule shall be in a detailed precedence-style critical path method (CPM) type format, which shall include any interim dates that are critical in insuring the timely completion of the Work. The Contractor shall indicate in the schedule updates any Work that is not proceeding according to the original schedule and shall provide a written plan of action to bring the Work into compliance with the approved schedule or to ensure that the Work will be completed within the Contract Time. Any modifications to the Contractor's schedule notwithstanding, the Contractor shall remain responsible to complete the Work within the Contract Time.

**4.2** If the Work is not proceeding according to the schedule and the Owner does not reasonably believe Contractor's proposed actions or schedule modifications are sufficient to accomplish completion of the Work within the Contract Time, the Owner may find the Contractor to be in default. If the Contractor fails to cure such default by submitting proposed actions or schedule modifications, reasonably acceptable to the Owner, within seven (7) days of receiving written notice of the default, the Owner may perform such work as the Owner deems necessary to bring the Work into compliance with the current approved schedule and to credit the costs thereof against payments due to the Contractor. Such action shall not constitute the Owner's waiver of any other rights, claim or claims against the Contractor resulting from the Contractor's failure to perform on schedule or within the Contract Time.

## **5. Subcontracting.**

**5.1** Any work that is performed by a person which is not hired and paid as an employee of the Contractor, including Work performed with construction equipment that is rented with an operator, must be performed under a written subcontract that meets the requirements of this Article. A prospective subcontractor or sub-subcontractor must qualify as an independent contractor under ORS 670.600. Each subcontract shall require the subcontractor to assume toward the Contractor all obligations and responsibilities which the Contractor, by the Contract Documents, assumes toward the Owner. Each subcontract agreement shall preserve and protect the rights of the Owner under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. The Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors.

**5.2** Each subcontract and materials contract shall require that the subcontracted portion of the Work be performed and materials to be supplied in accordance with the requirements of the Contract Documents.

**5.3** Each Subcontract must include a provision requiring the subcontractor or sub-subcontractor, as the case may be, to carry the same liability insurance and workers' compensation insurance coverage that the Contractor is required to carry under the Contract Documents.

**5.4** Each subcontract must state that the subcontractor or sub-subcontractor will defend and indemnify Owner and its officers, employees, and agents against any and all third-party claims arising out of the subcontractor's or sub-subcontractor's performance of the Work, negligence or other wrongful acts or omissions.

**5.5** No subcontractor, sub-subcontractor, or supplier will be deemed to have any contractual relationship with the Owner, nor deemed to be a third-party beneficiary of this Construction Contract. Notwithstanding any provision of the Contract Documents or Oregon Revised Statutes, the Owner had no, and will have no, obligation to pay or to assure the payment of any amounts due any subcontractor, or sub-subcontractor, or any supplier, and the Contractor shall defend and hold the Owner harmless from any claims asserted by a subcontractor, sub-subcontractor, or supplier who has not received payment when due.

**5.6** The Contractor will schedule, supervise, and coordinate the operations of all Subcontractors. No subcontracting of any of the Work shall relieve the Contractor from its responsibility for the performance or any other of its obligations under the Contract Documents. Contractor remains fully responsible and liable for any Work performed by subcontractors.

## **6. Shop Drawings.**

**6.1** Shop Drawings are drawings, diagrams, schedules and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier, or distributor to illustrate some portion of the Work.

**6.2** Shop Drawings and similar submittals are not Contract Documents. Their purpose is to demonstrate the way by which the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review and/or approval by the Owner does not constitute approval of any change from the requirements of the Contract Documents, any safety precautions, or of any construction means, methods, techniques, sequences or procedures. The Owner's review is solely for the benefit and protection of the Owner and the Contractor may not rely upon any such review or approval as an acknowledgement or certification that the submittal is adequate, accurate, complete, or proposes work in compliance with all aspects of the Contract Documents. Contractor remains solely responsible for ensuring that all Work complies with the Contract Documents.



**6.3** The Contractor shall review for compliance with the Contract Documents, approve and submit to the Owner, Shop Drawings and similar submittals required by the Contract Documents with reasonable promptness and in such sequence as to cause no delay to the Work or to the activities of the Owner or of its separate contractors.

**6.4** By submitting Shop Drawings and similar submittals, the Contractor represents to the Owner that the Contractor has (1) reviewed and approved them; (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so; and (3) checked and coordinated the information contained within such submittals with the requirements of the Contract Documents.

**6.5** The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings or similar submittals until the respective submittal has been approved and returned by the Owner.

**6.6** The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Owner's approval of Shop Drawings or similar submittals unless the Contractor has specifically informed the Owner in writing of such deviation at the time of submittal and a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings or similar submittals by the Owner's approval thereof.

**6.7** The Contractor shall make all corrections to Shop Drawings or similar submittals requested by the Owner and provide a corrected Submittal without change in the Contract Price or Contract Time.

**7. Concealed and Unknown Conditions.** If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents; or (2) unknown physical conditions of an unusual nature, that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner before the conditions are disturbed and in no event later than three (3) calendar days after first observance of the conditions. Failure of Contractor to notify Owner before proceeding with work affected by a concealed and unknown condition shall constitute a waiver by Contractor of any additional costs or time associated with the condition. The Owner will promptly investigate such conditions and the Owner will make a determination whether they will cause an increase or decrease in the cost of the Work or the time required for performance of the Work. The Owner will notify the Contractor of the Owner's decision. If the Contractor does not agree with the Owner's decision, Contractor shall proceed with the Work and the disagreement will be subject to the provisions of the Contract Documents on resolution of Claims and Disputes. No adjustment in the Contract Time or Price will be allowed, however, in connection with concealed or unknown conditions which reasonably should have been disclosed by the Contractor's prior inspections, tests, reviews and preconstruction services.

## **8. Changes.**

**8.1** A "Change Order" is a written instrument signed by the Owner and Contractor stating their agreement upon a change in the Work, a change, if any, in the Contract Price, and a change, if any, in the Contract Time. Agreement on any Change Order shall constitute a final settlement of all matters relating to the Work that is the subject of the Change Order, including, but not limited to, all direct and indirect costs associated with changes and any and all direct and indirect adjustments to the Contract Price and the Contract Time.

**8.2** A "Construction Change Directive" is a written order prepared by the Owner or an authorized representative of the Owner or the Owner's designer, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Price or Contract Time, or both. The Owner, its authorized representative or its designer may by Construction Change Directive, without invalidating the Contract, order

changes in the Work. A Construction Change Directive shall be used in the absence of agreement on the terms of a Change Order.

**8.3** Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work and advise the Owner of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Price or Contract Time.

**8.4** The Owner and the Contractor shall attempt to negotiate fair and reasonable adjustments for changes in the Work prior to the time when the Owner directs changed Work to be performed. If the Owner and the Contractor are unable to agree upon change order terms prior to the time for performance of the changed Work as stated in or reasonably inferable from the Owner's direction, the Contractor will proceed with the changes. In such event, the Contractor shall keep daily records as to all labor employed and materials and equipment supplied in connection with the changes. The Contractor's records shall itemize costs for labor, materials, equipment rental, and transportation. The Contractor shall submit the records for approval by the Owner daily. If the Contractor fails to keep such records, all such Work will be deemed to have been performed at the Contractor's own risk and without any change in Contract Price or Contract Time.

**8.5** In the absence of applicable unit prices or other agreement, the changed Work will be priced as follows: for additional Work to be performed by Contractor's own forces, Contractor shall add an amount equal to Contractor's direct costs for labor, materials, equipment rental, and transportation, plus ten percent (10%) for profit, overhead, and to cover all other charges for or in connection with such work. The percentage fee includes, but is not limited to, all charges for layout, supervision (field and home office), small tools and related items, general expenses, overhead, and profit.

**8.6** For work to be deleted, Contractor shall deduct an amount equal to the direct cost savings for labor, material, equipment, transportation, and taxes deleted from the work, plus ten percent (10%).

**8.7** In no event shall the Contractor proceed with changes in the Work without a written order from the Owner or an authorized representative of the Owner or the Owner's designer to so proceed. The Owner will be under no obligation to pay for unauthorized extra, additional, or changed Work performed by the Contractor without a written Change Order or other written order to proceed executed by the Owner or an authorized representative of the Owner or the Owner's designer.

**8.8** Pending final determination of the total cost of a Construction Change Directive, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Owner will make an interim determination for purposes of monthly payment and make payment for the amount that the Owner determines to be reasonably justified. The Owner's interim determination and payment for the changed Work shall change the Contract Price on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim.

**8.9** The Contractor shall maintain books, records, documents, and other evidence pertaining to the costs incurred by the Contractor in connection with the Contract ("the Records") to such extent and in such detail as will properly reflect and fully support all costs, charges, and other amounts of whatever nature for which reimbursement or payment is or may be claimed under the Contract. The Contractor shall preserve such Records for a period of three (3) years following the date of final payment under the Contract. The Contractor agrees to make available at the office of the Contractor at all reasonable times all Records for inspection, audit, and reproduction by the Owner. The Owner reserves the right to audit the Contractor's books and Records at any time with respect to the cost of changes in the Work. If the audit determines that the Contractor has billed or has been paid one hundred and two percent (102%) or more of the amount due under the Contract Documents, the Contractor shall reimburse the Owner for the cost of such audit.

## **9. Delay & Acceleration.**

**9.1** No claim for delay shall be allowed the Contractor, including claims for delay on account of the Owner's failure or interference, unless the Contractor provides written notice of the delay to the Owner within three (3) days of the occurrence of the event giving rise to the delay. If the Contractor fails to provide timely notice of delay, the Contractor shall be deemed to have waived its right to recover additional compensation or time because of the delay.

**9.2** The Owner reserves the right to accelerate the schedule from time to time upon written direction to the Contractor to so accelerate. If the forces of the Contractor or any of its subcontractors are required to work overtime as a result of such acceleration, the Owner will reimburse the Contractor for the premium portion of overtime wages paid plus applicable federal and state payroll taxes and other actual payroll costs attributable to the overtime premium. Reimbursement for such acceleration shall not include any markup for overhead or profit of the Contractor or its subcontractors on the premium portion of overtime wages. This provision shall have no application to overtime work that the Contractor is required to perform due to its own failure to meet the schedule or, without limitation, due to any other fault of the Contractor.

## **10. Payment.**

**10.1** The Contractor shall submit to the Owner, before the first Application for Payment or other invoice, a schedule of values allocating the entire Contract Price to the various portions of the Work and prepared in such form and supported by such data to substantiate its accuracy as the Owner may require. This schedule of values, unless objected to by the Owner, shall be used as a basis for reviewing the Contractor's Applications for Payment.

**10.2** Based upon the percentage of the Work completed and Contractor's Applications for Payment, including all supporting documentation submitted to the Owner by the Contractor, the Owner shall make progress payments to the Contractor as provided below.

**10.3** The period covered by each Application for Payment shall be one calendar month ending on the last day of the month. Provided that an Application for Payment is received by the Owner not later than the 30<sup>th</sup> day of a month, the Owner shall make payment not later than 30 days after receipt of the invoice from the Contractor or 15 days after the payment is approved by the contracting agency, whichever is the earlier date.

**10.4** Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. In addition to other required items, each Application for Payment shall be accompanied by (1) a current sworn statement from the Contractor setting forth all subcontractors and material suppliers with whom the Contractor has subcontracted, the amount of such subcontract, the amount requested for any subcontractor or material supplier in the Application for Payment and the amount to be paid to the Contractor from such progress payment, together with a current, duly executed conditional claim waiver from the Contractor establishing satisfaction of the payment requested in the current Application for Payment; and (2) commencing with the second Application for Payment, duly executed unconditional waivers of claims from Contractor and all subcontractors, material suppliers and lower tier subcontractors, with respect to payments disbursed prior to the current Application for Payment.

**10.5** The amount of each progress payment shall be computed as follows:

**10.5.1** Take that portion of the Contract Price properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the Contract Price allocated to that portion of the Work in the approved schedule of values, less retainage of five percent (5%) (pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be permitted to be included);

**10.5.2** Add that portion of the Contract Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed

construction (or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing), less retainage of five percent (5%); and

**10.5.3** Subtract the aggregate of previous payments made by the Owner.

**10.6** Upon Substantial Completion of the Work and with consent of surety, retainage withheld shall be paid to the Contractor, less the amount the Owner determines in its reasonable discretion to represent one hundred and fifty percent (150%) of the cost to complete unfinished Work and one hundred and fifty percent (150%) of the amount reasonably necessary to protect the Owner from unsettled claims.

**10.7** The Owner shall have the option, but not the obligation, to reduce the retainage requirements of this Construction Contract or release any portion of retainage prior to the date specified above. Any reduction or release of retainage, or portion thereof, however, shall not be a waiver of (1) any of the Owner's rights to retainage in connection with other payments to the Contractor or (2) any other right or remedy that the Owner has under the Contract Documents, at law or in equity.

**10.8** Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when the Contractor has fully performed the Contract and Owner has accepted the Work. The Owner's final payment to the Contractor shall be made no later than 30 days after receipt of the Contractor's final Application for Payment and inspection of and approval of the Work by the Owner. The Owner will inspect the Work within 15 days from receipt from the Contractor of notice that the Project is fully complete.

**10.9** Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site.

**10.10** In accordance with ORS 279C.570, the Owner shall pay to the Contractor interest on the progress payment, not including retainage, due the Contractor. The interest shall commence 30 days after receipt of the invoice from the Contractor or 15 days after the payment is approved by the Owner, whichever is the earlier date. The rate of interest shall be the rate provided under ORS 279C.570(2). If an invoice is filled out incorrectly, when there is any defect or impropriety in any submitted invoice or when there is a good faith dispute, the Owner will notify the Contractor within 15 days stating the reason or reasons the invoice is defective or improper or the reasons for the dispute. If a defective or improper invoice is corrected by the Contractor and received by the Owner within seven days of the Owner's notice, payment will not be delayed beyond the date otherwise due unless interest is also paid.

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

**10.12** Pursuant to ORS 279C.505, Contractor will:

**10.12.1** Make payment promptly, as due, to all persons supplying to the contractor labor or material for the performance of the work provided for in the contract;

**10.12.2** Pay all contributions or amounts due the Industrial Accident Fund from the contractor or subcontractor incurred in the performance of the contract;

**10.12.3** Not permit any lien or claim to be filed or prosecuted against the state or a county, school district, municipality, municipal corporation or subdivision thereof, on account of any labor or material furnished;

**10.12.4** Pay to the Department of Revenue all sums withheld from employees under ORS 316.167.

**10.12.5** Demonstrate that an employee drug testing program is in place;

**10.12.6** To the extent the Work includes demolition, salvage or recycle construction and demolition debris, if feasible and cost-effective; and

**10.12.7** To the extent the Work includes lawn and landscape maintenance, compost or mulch yard waste material at an approved site, if feasible and cost-effective.

**10.13** Pursuant to ORS 279C.515, if Contractor fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to the Contractor or a subcontractor by any person in connection with the public improvement contract as the claim becomes due, the proper officer or officers representing the contracting agency may pay such claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due the Contractor by reason of the Contract.

**10.14** Pursuant to ORS 279C.515, if the Contractor or its subcontractor fails, neglects or refuses to pay a person that provides labor or materials in connection with the Contract within 30 days after receiving payment from Owner, Contractor or its subcontractor owes the person the amount due plus interest charges that begin at the end of the 10-day period within which payment is due under ORS 279C.580 (4) and that end upon final payment, unless payment is subject to a good faith dispute as defined in ORS 279C.580. The rate of interest on the amount due is nine percent per annum. The amount of interest may not be waived .

**10.15** Pursuant to ORS 279C.515, if Contractor or a subcontractor fails, neglects or refuses to make payment to a person furnishing labor or materials in connection with the public improvement contract, the person may file a complaint with the Construction Contractors Board, unless payment is subject to a good faith dispute as defined in ORS 279C.580.

**10.16** Paying a claim in the manner authorized in 10.13 through 10.15 above does not relieve the Contractor or the Contractor's surety from obligation with respect to an unpaid claim.

**10.17** No person may not be employed for more than 10 hours in any one day, or 40 hours in any one week, except in cases of necessity, emergency or when the public policy absolutely requires it, and in such cases the employee shall be paid at least time and a half pay:

**10.17.1**

**10.17.1.1** For all overtime in excess of eight hours in any one day or 40 hours in any one week when the work week is five consecutive days, Monday through Friday; or

**10.17.1.2** For all overtime in excess of 10 hours in any one day or 40 hours in any one week when the work week is four consecutive days, Monday through Friday; and

**10.17.2** For all work performed on Saturday and on any legal holiday specified in ORS 279C.540.

**10.18** Contractor shall give notice in writing to employees who work on Work covered by the Agreement, either at the time of hire or before commencement of work on the Agreement, or by posting a notice in a location frequented by employees, of the number of hours per day and days per week that the employees may be required to work.



**10.19** Pursuant to ORS 279C.530, Contractor shall promptly, as due, make payment to any person, co-partnership, association or corporation furnishing medical, surgical and hospital care services or other needed care and attention, incident to sickness or injury, to the employees of the contractor, of all sums that the contractor agrees to pay for the services and all moneys and sums that the contractor collected or deducted from the wages of employees under any law, contract or agreement for the purpose of providing or paying for the services.

**10.20** Contractor shall comply with ORS 656.017 unless exempt under ORS 656.126.

**10.21** The withholding of retainage by Contractor and its subcontractors shall be in accordance with ORS 701.420.

**10.22** Pursuant to ORS 279C.580(3), Contractor must include in each subcontract for property or services entered into by Contractor, including a material supplier, for the purpose of performing this Construction Contract:

**10.22.1** A payment clause that obligates 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 contracting agency under the Contract; and

**10.22.2** A clause that requires Contractor to provide subcontractor with a standard form that the subcontractor may use as an application for payment or as another method by which the subcontractor may claim a payment due from Contractor.

**10.22.3** A clause that requires Contractor, except as otherwise provided in this paragraph, to use the same form and regular administrative procedures for processing payments during the entire term of the subcontract. Contractor may change the form or the regular administrative procedures Contractor uses for processing payments if Contractor: (i) Notifies the subcontractor in writing at least 45 days before the date on which the contractor makes the change; and (ii) Includes with the written notice a copy of the new or changed form or a description of the new or changed procedure.

**10.22.4** An interest penalty clause that obligates Contractor, if the Contractor does not pay the subcontractor within 30 days after receiving payment from Owner, to pay subcontractor an interest penalty on amounts due in each payment Contractor does not make in accordance with the payment clause included in the subcontract under 10.21.1 of this subsection. Contractor or subcontractor is not obligated to pay an interest penalty if the only reason that Contractor or subcontractor did not make payment when payment was due is that Contractor or subcontractor did not receive payment from Owner or Contractor when payment was due. The interest penalty: (i) Applies to the period that begins on the day after the required payment date and that ends on the date on which the amount due is paid; and (ii) Is computed at the rate specified in ORS 279C.515 (2).

**10.22.5** Contractor shall, in each of the Contractor's subcontracts, require the first-tier subcontractor to include a payment clause and an interest penalty clause that conforms to the standards of subsection (n) of this section in each of the first-tier subcontractor's subcontracts and to require each of the first-tier subcontractor's subcontractors to include such clauses in the first-tier subcontractors' subcontracts with each lower-tier subcontractor or supplier..

**10.23** The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid subcontractors and material and equipment suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors to ascertain whether they have been properly paid. Neither the Owner nor Designer shall have an obligation to pay or to see to the payment of money to a Subcontractor, except as may otherwise be required by law.

**10.24** A payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

**10.25** The Owner may condition any payment otherwise due to Contractor upon the Contractor's prior submission of unconditional lien waivers from subcontractors and suppliers covering any work for which Contractor has received payment from the Owner.

## **11. Completion.**

**11.1** Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use. The Owner's receipt of all certificates of occupancy and any other permits, approvals, licenses, and documents from any governmental authority having jurisdiction necessary for the beneficial occupancy of the Project shall be a condition precedent to Substantial Completion.

**11.2** When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Owner a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

**11.3** The Owner may use any completed or partially completed portions of the Work. If such use unreasonably interferes with the continued performance of the Work by the Contractor, the Contractor will be entitled to an equitable adjustment in Contract Price and Contract Time.

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

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

## **12. Obligations of the Contractor.**

**12.1** The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities and the Contract Documents and shall not unreasonably encumber the site with materials or equipment. The Contractor shall not perform any Work on or near and will not disturb any utility lines, fiber-optic cables, or similar equipment and structures without the prior written consent of the Owner and the utility or service company owning such lines, cables, or structures.

**12.2** The Contractor shall keep the Project site and surrounding area free from accumulation of waste materials or rubbish caused by Contractor. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery, and surplus materials from and about the Project. If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and Owner shall be entitled to reimbursement from the Contractor.

**12.3** The Contractor shall provide the Owner access to the Work, or portions of the Work, in preparation and progress wherever located.

**12.4** The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and any designer harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications or other documents prepared by the Owner. However, if the Contractor has reason to believe that the required design, process, or product is an infringement of a copyright or a patent, the Contractor shall be responsible for such loss unless such information is promptly furnished to the Owner.

**12.5** In addition to the Contractor's indemnity obligations under this Construction Contract, Contractor will hold the Owner, and its agents and employees, harmless from all fines, penalties, damages, liability, costs, expenses (including, without limitation, reasonable attorneys' fees), and punitive damages (if any) to the full extent arising out of any (1) violation of or failure to comply with any law, statute, ordinance, rule, regulation, code, or requirement of a public authority that bears upon the performance of the Work by the Contractor, its subcontractors, or any person or entity for whom either is responsible; (2) the exercise of discretion with respect to means, methods, procedures, techniques, or sequences of execution or performance of the Work; and (3) failure to secure and pay for permits, fees, approvals, licenses, and inspections as required under the Contract Documents, or any violation of any permit or other approval of a public authority applicable to the Work, by the Contractor, a Subcontractor, or any person or entity for whom either is responsible.

**12.6** If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a separate contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Owner apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor to report shall constitute an acknowledgment that the Owner's or separate contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work, except as to defects not then reasonably discoverable.

**12.7** The Contractor acknowledges and agrees that it alone has the duty and obligation to furnish its employees, and the employees of others, a safe place to work whether on-site or off-site. Contractor shall furnish its agents and employees with all necessary protective clothing, protective equipment, and monitoring equipment, and shall conduct a "Safety Orientation" for all new hires.

**12.8** In the performance of the work, the Contractor shall conform to the highest safety practice standards. To that effect, Contractor shall organize and vigorously maintain a comprehensive Safety Program covering all phases of the Work which shall conform to all safety practices required by all federal, state, or local laws, rules or regulations applicable to health and safety and all other legally required safety and health standards, orders, rules, regulations, and other laws. Contractor shall be solely responsible for ensuring compliance with Contractor's Safety Program and such laws, rules, or regulations, and may not rely on the Owner to enforce the same.

**12.9** Contractor shall designate a "Safety Representative" to implement and maintain Contractor's Safety Program on all shifts worked. The Safety Representative shall have the authority to stop Contractor's Work in the event of unsafe or potentially unsafe conditions.

**12.10** Within 24 hours after each occurrence, Contractor shall furnish to Owner a written report of all injuries to persons or damage to property. A complete accident investigation report shall be submitted at the same time.

**12.11** Contractor is required to comply with all applicable "Hazard Communication/Right to Know" laws concerning toxic or hazardous substances. Contractor shall maintain an index of those materials that are stored or used in the performance of the Work which contain toxic or hazardous substances. A copy of said list shall be provided to Owner. Contractor shall make Material Safety Data Sheets available to all its employees. Copies of all reports made pursuant to the Material Safety Data Sheets shall be furnished to Owner.

**12.12** Contractor and all its subcontractors are required to maintain a drug and alcohol-free working environment. Contractor shall conduct new-hire, post-accident, and reasonable-cause drug and alcohol screening tests.

**12.13** Contractor shall keep the Project and its premises free from debris and unsafe conditions resulting from Contractor's Work. If Contractor fails to commence compliance with the duties of this Article within 24 hours after receipt from Owner of written notice of non-compliance, Owner may, but is not obligated to, perform such necessary cleanup or implement safety measures without further notice and deduct the cost thereof from any amounts due or to become due Contractor.

### **13. Hazardous Materials.**

**13.1** The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner in writing.

**13.2** Upon receipt of the Contractor's written notice, the Owner shall verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. When the material or substance has been rendered harmless, Work in the affected area shall resume.

**13.3** The Owner shall not be responsible for materials or substances, including hazardous materials, whether or not called for in the Contract Documents, the Contractor brings to the site.

**13.4** The Contractor shall indemnify the Owner for the reasonable cost and expense the Owner incurs (1) for remediation of a material or substance the Contractor brings to the site and negligently handles; or (2) where the Contractor fails to perform its obligations to stop Work and notify the Owner of the hazardous materials, except to the extent that the cost and expense are due to the Owner's fault or negligence.

**14. Bonds.** No performance or payment bonds are required for this Contract.

### **15. Warranty & Correction.**

**15.1** The Contractor warrants that materials and equipment furnished by Contractor will be new, of good quality unless the Contract Documents require or permit otherwise, and free from defects. The Contractor warrants that the Work will be performed in a workmanlike manner and conform to the requirements of the Contract Documents and will be free from defects. The Contractor's warranties exclude normal wear and tear and damage caused by abuse. Any equipment or machinery incorporated into the Work must be cleaned, conditioned, installed, and tested in accordance with the instructions of the manufacturer. The Contractor shall assign to the Owner, at the time of final completion, any and all manufacturer's warranties or guarantees relating to any components of the Work and shall perform the Work so as to preserve all such warranties.

**15.2** If a portion of the Work has been covered that the Owner has not specifically requested to examine prior to its being covered, the Owner may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be at the Owner's expense. If such Work is not in accordance with the Contract Documents, such costs and the cost of correction shall be at the Contractor's expense unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs.

**15.3** Before Substantial Completion, the Contractor shall promptly correct Work failing to conform to the requirements of the Contract Documents. Costs of correcting such Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for any services and expenses of the Owner made necessary thereby, shall be at the Contractor's expense.

**15.4** If, within two years after the date of Substantial Completion of all of the Work, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. If, after 10 days of receipt of the Owner's notice, the Contractor fails to correct nonconforming Work, the Owner may correct it and the Contractor agrees to reimburse the Owner for the cost of correction promptly upon the Owner's demand. In case of an emergency where, in the opinion of the Owner, delay would cause serious loss or damage, corrective work may be undertaken without advance notice to the Contractor, but Contractor and its surety will remain liable for such expenses incurred. The two-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work. The two-year period for correction of Work shall also be extended for corrective Work performed by the Contractor.

**15.5** The Contractor shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Owner or separate contractors caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

**15.6** No correction obligation of the Contractor shall be construed to establish a period of limitation with respect to other obligations, such as warranty obligations, the Contractor has under the Contract Documents. Establishment of the two-year period for correction of Work relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

## **16. Claims & Disputes.**

**16.1** A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, or other relief with respect to the terms of the Contract. A Claim also is any other dispute between the Owner and Contractor arising out of or relating to the Construction Contract. The responsibility to substantiate Claims shall rest with the party making the Claim.

**16.2** If the Contractor claims that any instructions issued after the effective date of this Construction Contract, by drawings or otherwise, involve extra costs, Contractor shall be entitled to reimbursement for such extra costs only to the extent the Contractor so notifies the Owner in writing before proceeding to execute the affected Work and within seven (7) calendar days after receipt of such instructions, otherwise such claim for costs is waived. Claims and demands for costs for any other cause, whatsoever, by the Contractor against the Owner must be served in writing upon the Owner within seven (7) calendar days from the occurrence of the cause giving rise to the claim or the claim for costs is waived. Timely compliance with the written claim requirements of this Construction Contract are a condition precedent to the Contractor's right to payment on account of any claim and failure to provide such written claim or demand or notice shall constitute a waiver of such claim.

**16.2.1** Pending final resolution of a Claim, except as otherwise agreed in writing by the Owner, the Contractor shall proceed diligently with performance of the Construction Contract and the Owner shall continue to make payments in accordance with the Contract Documents.

**16.2.2** If the Contractor wishes to make a Claim for a delay, written notice shall be given within three (3) calendar days of the occurrence of the event giving rise to the delay or the claim for time is waived. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on



progress of the Work. In the case of a continuing delay, only one Claim is necessary. The Contractor will not be entitled to additional Contract Time for delays that do not affect the critical path of the Work. Timely compliance with the written claim requirements of this Construction Contract are a condition precedent to the Contractor's right to additional time on account of any delay claim and failure to provide such written claim or demand or notice shall constitute a waiver of such claim.

**16.2.3** If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated, and had an adverse effect on the scheduled construction. Contractor will not be entitled to additional compensation for delays caused by adverse weather conditions or any caused beyond the Owner's control.

**16.2.4** Upon timely receipt of a properly completed Claim and any documentation and/or evidence necessary to substantiate the Claim, the Owner shall evaluate the Claim and provide the Contractor with its written decision either accepting the Claim (in whole or in part) or rejecting the Claim (in whole or in part) within 20 days. The Owner may, but is not required to, seek the recommendation of any designer on any Claim. Should the Owner reject the Claim in whole or in part, the Owner shall generally explain the reasons for such rejection.

**16.2.5** As a condition precedent to arbitration, the Contractor and the Owner agree that any dispute that may arise under this Construction Contract will be submitted to a mediator agreed to by both parties as soon as such dispute arises, but in any event prior to commencement of arbitration. Such mediation shall occur at the place where the Project is located, and the mediation fee and expenses shall be shared equally by the parties who agree to exercise their best efforts in good faith to resolve all disputes in mediation.

**16.2.6** Any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Portland Arbitration in accordance with its Rules in effect on the date of the Contract. The Arbitration shall be conducted in the place where the Project is located unless another location is mutually agreed upon. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded. A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim. The award rendered by the arbitrator shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof. The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement, shall be specifically enforceable under applicable law in any court having jurisdiction thereof. Subject to the rules of the Portland Arbitration or other applicable arbitration rules, either party may consolidate an arbitration conducted under this Contract with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting the arbitrator. Subject to the rules of the Portland Arbitration or other applicable arbitration rules, either party may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent. The Owner and Contractor grant to any person or entity made a party to an arbitration conducted under this Section 15.4, whether by joinder or consolidation, the same rights of joinder and consolidation as those of the Owner and Contractor under this Contract.

## **17. Termination.**

**17.1** The Owner may terminate this Construction Contract if the Contractor:

**17.1.1** Materially refuses or fails to supply enough properly skilled workers or proper materials;

**17.1.2** Fails to make proper payment to Subcontractors for materials or labor;

**17.1.3** Materially disregards applicable laws, statutes, ordinances, or rules and regulations; or

**17.1.4** Otherwise is guilty of material breach of the Contract Documents.

**17.2** When any of the above reasons exist, the Owner may without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, ten days' written notice, terminate the Contractor (a termination "for Cause") and may, subject to any prior rights of the surety, finish the Work by whatever reasonable method the Owner may deem justified.

**17.3** When the Owner terminates the Construction Contract for Cause, the Contractor shall not be entitled to receive further payment until the Work is finished. If the unpaid balance of the Contract Price exceeds costs of finishing the Work, such excess shall be paid to the Contractor. If such costs exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The right of payment under Article 17 to the Contractor or Owner, as the case may be, shall survive termination of the Contract.

**17.4 Suspension.** The Owner may, without cause, order the Contractor in writing to suspend, delay, or interrupt the Work in whole or in part for such period of time as the Owner may determine. The Contract Price and Contract Time shall be equitably adjusted for any such suspension.

**17.5 Assignment.** Each subcontract for a portion of the Work is assigned by the Contractor to the Owner, provided that the (1) assignment is effective only after termination of the Contract by the Owner for Cause pursuant to Article 17 herein and only for those subcontracts that the Owner accepts by notifying the Subcontractor and Contractor in writing; and (2) assignment is subject to the prior rights of the surety, if any, obligated under Contractor's bond relating to the Contract. When the Owner accepts the assignment of a subcontract, the Owner assumes the Contractor's future rights and obligations under the subcontract but Contractor remains liable for obligations incurred prior to the assignment.

**17.6 Termination for Convenience.** The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

**17.6.1** Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Contractor shall:

**17.6.1.1** Cease operations as directed by the Owner in the notice;

**17.6.1.2** Take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and

**17.6.1.3** Except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

**17.6.2** In case of a termination for the Owner's convenience, the Contractor shall be entitled to receive payment, including reasonable overhead and profit, for Work executed, and costs incurred by reason of such termination. Contractor shall not be entitled to recover any overhead or profit on Work not performed by reason of the termination or otherwise.

**17.7 Conversion.** Any Termination for Cause found to be improper for any reason shall be converted into a Termination for Convenience and Contractor's remedies shall be limited as if the termination was a Termination for Convenience from inception.

## **18. Indemnity & Insurance.**

**18.1** To the fullest extent permitted by law, the Contractor shall defend, indemnify and hold harmless the Owner and the Owner's agents and employees for, from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work. Contractor is not required to indemnify Owner for Owner's own negligence. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist.

**18.2** Prior to the start of the Contractor's Work, and before any payment is made to the Contractor, Contractor will purchase and maintain in force the following minimum insurance coverage and limits of liability:

**18.2.1** Worker's Compensation and Employer's Liability meeting statutory limits mandated by State and Federal laws.

**18.2.2** Commercial or Comprehensive General Liability including all major divisions of coverage, including, but not limited to, Premises/Operations, Completed Operations, Independent Contractors' Protective, Products-Completed Operations, Contractual Liability (including coverage for the Contractor's indemnity obligations and other contractual indemnity obligations assumed by the Contractor), Personal Injury, and Broad Form Property Damage (including coverage for Explosion, Collapse, and Underground Hazards)

**Employer's Liability Insurance**

\$ 2,000,000.00 Each Occurrence  
\$ 2,000,000.00 Disease – Each Employee  
\$ 2,000,000.00 Disease – Policy

**Commercial or Comprehensive General Liability insurance**

\$ 2,000,000.00 Each Occurrence Limit  
\$ 2,000,000.00 General Aggregate  
\$ 2,000,000.00 Products/Completed Operations Aggregate  
\$ 2,000,000.00 Personal and Advertising Injury  
\$ 2,000,000.00 Limited Job Site Pollution Occurrence Sub-Limit

**Comprehensive Automobile Liability Insurance**

\$ 2,000,000.00 Each Occurrence Combined Single Limit  
\$ 2,000,000.00 Aggregate Bodily Injury & Property Damage  
or  
\$ 2,000,000.00 Each Person Bodily Injury  
\$ 2,000,000.00 Each Occurrence Bodily Injury  
\$ 2,000,000.00 Each Occurrence Property Damage  
\$ 2,000,000.00 Each Occurrence Pollution Occurrence Sub-Limit

The policy shall be endorsed to have the General Aggregate apply to this Project Only.

**18.2.3** Products and Completed Operations insurance shall be maintained for a minimum period of at least two (2) years after completion of the Contractor's Work.

**18.2.4** The Comprehensive General Liability and Commercial General Liability insurance policies shall provide aggregate limits per project, and shall evidence such coverage by use of endorsement CG 25 03 or equivalent. Comprehensive Automobile Liability insurance required shall also include coverage for all owned, hired, leased, and non-owned automobiles.

**18.2.5** If the Contractor, in performing the Work, will be required to perform any design work, Contractor shall carry Professional Liability (Errors and Omissions) Insurance in the amount of \$2,000,000. If the Contractor, in performing the Work, will be required to employ workers who are required to be covered under the Federal Longshore and Harbor Worker's Act, then Contractor shall obtain such coverage. If the Contractor's Work involves the use of watercraft, the Contractor shall procure and maintain Protection and Indemnity insurance coverage (which coverage shall apply to all of the crewmembers as well as passengers) with limits of \$5,000,000 or the value of the watercraft, whichever is greater. If the Contractor's Work involves the use of aircraft, the Contractor shall procure and maintain Aircraft Liability coverage on an occurrence basis for owned and non-owned aircraft, with limits of \$1,000,000 per passenger or \$5,000,000, whichever is greater.

**18.2.6** The Contractor shall maintain in effect all insurance coverage required under this Article, or by the other Contract Documents, at the Contractor's sole expense and with insurance companies acceptable to the Owner. The Owner expressly reserves the right to disapprove of any insurance company(ies) proposed to be used by the Contractor and to require that the Contractor's policies be written by an acceptable company. The Owner may not, however, arbitrarily or unreasonably withhold its acceptance of a proposed insurance company. In the event the Contractor fails to obtain or maintain any insurance coverage required, the Owner may purchase such coverage and charge the expense thereof to the Contractor. The Owner's approval, purchase, or maintenance of any insurance will not constitute a limitation on the Contractor's liability.

**18.3** The Contractor's insurance policies, except Professional Liability, must be written on an occurrence basis, with no "sunset" clauses, and shall not contain coverage exclusions for explosion, building collapse, or damage to underground facilities. The Contractor's insurance policies that insure against claims for damages to or destruction of property must also insure against claims for the loss of use of such property. In addition, insurance policies provided by the Contractor shall contain an endorsement that specifically provides primary coverage for the benefit of the Owner when it is alleged that the Owner has "borrowed" a servant from the Contractor, or from the Contractor's subcontractors, and the Owner is allegedly liable because of the "Borrowed Servant Doctrine."

**18.4** Any deductible amount applied to any loss payable under Builders Risk Insurance shall be borne by the insured's interest whose Work is damaged in direct proportion as their individual losses shall bear to the total loss, regardless of whether such loss is to work installed and completed, to materials stored on or off site, or to materials in transit.

**18.5** Except for Worker's Compensation and Professional Liability insurance policies, the Contractor shall endorse all policies to name the Owner (including its affiliates, parents, and subsidiaries) as additional insured on a primary and noncontributory basis with respect to liability arising out of (1) operations performed for the Owner by the Contractor, and (2) claims for bodily injury or death brought against the Owner by the Contractor's employees, or employees of the Contractor's subcontractors of any tier, however caused, related to the performance of operations under the Contract Documents. To the fullest extent allowable under applicable state law, such insurance afforded to the Owner as additional insureds under the Contractor's policies shall be primary insurance and not excess over, or contributing with, any insurance purchased or maintained by the Owner.

**18.6** If owners of the Contractor perform work on or in connection with the Project, they shall each elect coverage for themselves under the applicable workers' compensation law and insurance policies.

**18.7** Prior to commencement of the Work, or within five (5) days from the date of execution of this Construction Contract, whichever is sooner, and as a condition precedent to any payment, the Contractor shall provide the Owner with Certificates of Insurance in a form acceptable to the Owner which shall provide satisfactory evidence that the Contractor has complied with all insurance requirements of this Construction Contract. Certificates shall evidence existence of endorsement CG2010 (1985) or the equivalent. At the Owner's sole option, it may require, in addition to Certificates of Insurance, properly completed and executed insurance endorsement forms, in a form acceptable to the Owner, evidencing the required insurance

coverage and/or certified copies of policies. Such Certificates of Insurance and/or endorsement forms shall include a provision that the coverages afforded thereunder shall not be cancelled, nor non-renewed, nor restrictive modifications added, unless at least thirty (30) days' prior written notice is given to the Owner. If the Certificate of Insurance includes language to the effect that – "This certificate is issued as a matter of information only and confers no rights upon the certificate holder" – such language shall be deleted.

**18.8** The Owner and the Contractor waive all rights against each other and the Designer, separate contractors, and all other subcontractors for loss or damage to the extent covered by builder's risk or any other property insurance, except such rights as they may have to the proceeds of such insurance; provided, however, that such waiver shall not extend to the acts of any architect or designer. In addition, the Contractor's workers compensation insurance policy shall contain a provision that the Contractor and its insurer waive all rights of subrogation or "claims over" against the Owner.

## **19. Compliance with Law.**

**19.1 Applicable Laws.** This Construction Contract will be construed in accordance with the laws of the State of Oregon. Contractor shall comply with all applicable federal, state, and local statutes, regulations, administrative rules, codes, ordinances, and other legal requirements in performance of this Construction Contract. Contractor shall comply with all applicable laws, including but not limited to ORS 279C.505, 279C.510, 279C.515, 279C.520, 279C.525(3) and (4), 279C.530, 279C.555, 279C.570, and 279C.580, which are incorporated herein by this reference.

**19.2** Contractor certifies that it currently has a City business license or will obtain one prior to delivering services under this Agreement. All subcontractors will also be required to obtain a City business license prior to delivering services under this agreement.

**19.3 Nonresident Contractors.** If Contractor is a nonresident Contractor as defined in ORS 279A.120, and the Contract Price exceeds \$10,000, Contractor shall comply with ORS 279A.120(3).

**19.4 Preference for Oregon Goods and Services.** Pursuant to ORS 279A.120, Contractor shall use products that have been manufactured in Oregon, provided that price, fitness, availability, and quality are otherwise equal.

**19.5 No Discrimination.** In connection with its performance under this Construction Contract, Contractor agrees not to discriminate against any employee or applicant for employment because of age, race, religion, sex, color, or national origin. The aforesaid provision 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. Contractor agrees to post hereafter, in conspicuous places, available for employees and applicants for employment, notices, prepared by Contractor, and approved by the government when required, setting forth the provisions of this Article.

## **20. Miscellaneous.**

**20.1 Governing Law.** The Contract shall be governed by the laws of the State of Oregon.

**20.2 Successors & Assigns.** The Owner and Contractor respectively bind themselves, their partners, successors, assigns and legal representatives to covenants, agreements, and obligations contained in the Contract Documents. Neither party to this Construction Contract shall assign the Construction Contract as a whole without written consent of the other.

**20.3 Notice.** Written notice shall be deemed to have been duly served if delivered in person to the individual, to a member of the firm or entity, or to an officer of the corporation for which it was intended; or if delivered at, or sent by registered or certified mail or by courier service providing proof of delivery to, the last business address known to the party giving notice. Notices may also be served by telecopy or facsimile transmission, or any other form of electronic communication, and shall be effective upon receipt.



**20.4 Severability and Waiver.** The partial or complete invalidity of any one or more provisions of this Construction Contract shall not affect the validity or continuing force and effect of any other provision. The failure of either party hereto to insist, in any one or more instances, upon the performance of any of the terms, covenants, or conditions of this Construction Contract, or to exercise any right herein, shall not be construed as a waiver or relinquishment of such term, covenant, condition, or right as respect further performance.

**20.5 Risk of Loss.** Contractor shall bear the risk of loss of the Work or any portion of the Work until Final Completion.

**Tests.** Tests, inspections, and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections, and approvals by public agencies or by independent testing laboratories as may be required by the permitting jurisdiction. The Contractor shall forward to the Owner copies of all inspection results, test results, orders, permits, and other directives or correspondence received by the Contractor from any inspector, testing laboratory, or agency with jurisdiction over the Work. If tests or inspections reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure including those of repeated tests and inspections shall be at the Contractor's expense.

**20.6 Integration.** This Construction Contract constitutes the complete and final agreement of the parties and supersedes and replaces all prior written or oral agreements.

**20.7 Contractor is Independent Contractor.**

**20.7.1** Contractor shall perform the Work required by this Contract as an independent contractor. Although Owner reserves the right (i) to specify the desired results; (ii) to determine (and modify) the delivery schedule for the Work to be performed; and (iii) to evaluate the quality of the completed performance, Owner cannot and will not control the means, methods or manner of the Contractor's performance. The Contractor is responsible for determining the appropriate means, methods and manner of performing the Work.

**20.7.2** The Contractor represents and warrants that Contractor (i) is not currently an employee of the federal government or the State of Oregon, and (ii) meets the specific independent contractor standards of ORS 670.600.

**20.7.3** Contractor will be responsible for any federal, state or local taxes applicable to any compensation or payment paid to Contractor under this Contract.

**20.7.4** Contractor is not eligible for any federal Social Security, unemployment insurance, state Public Employees' Retirement System, or workers' compensation benefits from compensation or payments to Contractor under this Contract.

**ATTACHMENT A**  
**WORK: Labor, Materials & Services**  
(Continued from Page 1)

ATTACHMENT B  
Payment Schedule