

SUPPLEMENTAL GENERAL CONDITIONS

The following modify the Portland State University “General Conditions for Public Improvement Agreements”, July 1, 2014, (PSU General Conditions) for this Contract. Where a portion of the PSU General Conditions is modified by these Supplemental General Conditions, the unaltered portions shall remain in effect.

- SG-1** Throughout the General Conditions, the term “Agreement” is changed to “Contract” and the term “Agreement Documents” is changed to “Contract Documents.”
- SG-2** Section A.1 is modified as follows: Add “the Division 01 (General Requirements)” to the definition of “Agreement Documents”.
- SG-3** Section A.4.4 is deleted and replaced with the following:
“A.4.4 If the Contractor believes that additional cost or Contract Time is involved because of clarifications or instructions issued by the Owner's Authorized Representative (or Architect/Engineer) in response to the Contractor's notices or requests for information, the Contractor must notify Owner within seven (7) Days that additional cost or Contract Time may be involved and must submit a written request to the Owner's Authorized Representative, setting forth the nature and specific extent of the request, including all time and cost impacts against the Contract as soon as possible, but no later than thirty (30) Days after receipt by Contractor of the clarifications or instructions issued. If the Owner's Authorized Representative denies Contractor's request for additional compensation, additional Contract Time, or other relief that Contractor believes results from the clarifications or instructions, the Contractor may proceed to file a Claim under Section D.3, Claims Review Process. If the Contractor fails to perform the obligations of Sections A.4.1 to A.4.3, the Contractor shall pay such costs and damages to the Owner as would have been avoided if the Contractor had performed such obligations.”
- SG-4** Section B.1.2 is deleted and replaced with the following:
“B.1.2 The Owner's Authorized Representative will not make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Owner's Authorized Representative will neither have control over or charge of, nor be responsible for the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work.”
- SG-5** Section B.2.2 is modified as follows: Add the following:
"Should the Contractor request the assistance of Owner in the performance of any Work included in the Contract Documents, and should Owner, at its discretion, agree to provide such assistance, Owner may provide such assistance by using its own forces or by using another contractor. If Owner performs Work using Owner's own forces, Contractor shall pay Owner at the rate of one and one-half (1½) times the standard hourly rate of Owner's forces, plus related overhead and any direct non-salary costs. If Owner performs the Work using another contractor, Contractor shall pay Owner the amount of Owner's direct costs billed by the other contractor for the Work performed, plus the direct salary costs and related overhead and direct non-salary expenses of Owner's forces who are required to monitor that contractor's work. Work performed by Owner

using Owner's own forces or those of another contractor shall not affect the Contractor's contractual duties under these provisions, including warranty provisions."

SG-6 Section B.3.1 is deleted and replaced with the following:

"B.3.1 All Work shall be performed in a professional manner and unless the means or methods of performing a task are specified elsewhere in the Contract Documents, Contractor shall employ methods that are generally accepted and used by the industry, in accordance with industry standards."

SG-7 Section B.3.2 is deleted and replaced with the following:

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

SG-8 Section B.4 is modified as follows: Revise to read:

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

SG-9 Section B.11 is amended to add the following:

For any Subcontractor working on a cost plus, time and materials, GMP, or any other reimbursable Subcontract with Contractor, Contractor shall have written Owner approval of the Subcontract agreement utilized prior to execution with the Subcontractor.

SG-10 Section B.16 is deleted and replaced with the following:

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

SG-11 Section D.1.2. In the last paragraph, replace the first sentence with the following:

"Deductive changes shall be made by mutual agreement whenever feasible."

SG-12 Section D.1.3.c Is deleted and replaced with the following:

“In the event that unit pricing and fixed pricing are not utilized, then adjustments to or deletions from the Work shall be performed on a cost reimbursement basis for Direct Costs. Such Work shall be compensated on the basis of the actual, reasonable and allowable cost of labor, equipment, and material furnished on the Work performed. In addition, the following markups shall be added to the Contractor's or Subcontractor's Direct Costs as full compensation for profit, Overhead and other indirect costs for Work directly performed with the Contractor's or Subcontractor's own forces:

On Labor*15%

On Equipment.....10%

On Materials.....10%

Subject to approval by Owner, an additional markup may be added for Consumables (as defined below) used during the performance of the Work at an agreed upon rate not to exceed 8% of direct labor. The term “Consumables” means small tools, accessories, supplies, and other material, including, but not limited to, welding supplies, safety supplies, gloves, safety glasses, harnesses, lanyards, first aid kits, fasteners, tape and glue.

*Labor includes time for non-supervisory Contractor employees, including craftpersons, and other personnel working exclusively on the project job site. Costs for labor shall be subject to audit to actual costs.”

SG-13 Section D.1.3 is amended at the end to add the following:

The following costs are allowable for Contractor to add to the cost of charges. No other costs will be allowed without prior written approval.

Insurance – at the same rate set forth in the contract.

Performance and Payment Bonds – at the same rate (or less in the event of a price reduction compared to scope) as on the original Scope of Work.

Subguard – at the same rate as on the original Scope of Work.

General Conditions – only to the extent of actual, additional costs properly identified and subject to audit.

CM/GC Fee – at the same rate set forth in the contract.

SG-14 Section D.1.4 is deleted and replaced with the following:

“D.1.4 Any necessary adjustment of Contract Time that may be required as a result of a Change Order must be agreed upon by the parties before the start of the Change Order Work, unless the Owner's Authorized Representative authorizes Contractor to start the Work before agreement on Contract Time adjustment. Contractor shall notify Owner within seven (7) Days of receipt of the Change Order that additional compensation or adjustment of Contract Time may be required. Contractor shall submit any request for additional compensation (and additional Contract Time if Contractor was authorized to start Work before an adjustment of Contract Time was approved) as soon as possible but no later than thirty (30) Days after receipt of the Change Order. If Contractor's request for additional compensation or adjustment of Contract Time is not made within the thirty (30) Day time limit, Contractor's requests pertaining to that Change Order are barred. The thirty (30) Day time limit for making requests shall not be extended for any reason, including, without limitation, Contractor's claimed inability to determine the amount of additional compensation or adjustment of Contract Time, unless an extension is granted in writing by Owner. If the Owner's Authorized Representative denies Contractor's request for additional compensation or adjustment of Contract Time, Contractor may proceed to file a Claim under

Section D.3, Claims Review Process. No other reimbursement, compensation, or payment will be made, except as provided in Section D.1.5 for impact claims.”

SG-15 Section D.1.5 is deleted and replaced with the following:

“D.1.5 If any Change Order Work under Section D.1.3 causes an increase or decrease in the Contractor's cost of, or the Contract Time required for the performance of any other part of the Work under this Contract, the Contractor shall notify Owner within seven (7) Days of receipt of Change Order that Contractor's cost or the Contract time may increase or decrease. Contractor must submit a written request to the Owner's Authorized Representative, setting forth the nature and specific extent of the request, including all time and cost impacts against the Contract as soon as possible, but no later than thirty (30) Days after receipt of the Change Order by Contractor.

The thirty (30) Day time limit applies to claims of Subcontractors, suppliers, or manufacturers who may be affected by the Change Order and who request additional compensation or an extension of Contract Time to perform; Contractor has responsibility for contacting its Subcontractors, suppliers, or manufacturers within the thirty (30) Day time limit, and including their requests with Contractor's requests. If the request involves Work to be completed by Subcontractors, or materials to be furnished by suppliers or manufacturers, such requests shall be submitted to the Contractor in writing with full analysis and justification for the compensation and additional Contract Time requested. The Contractor will analyze and evaluate the merits of the requests submitted by Subcontractors, suppliers, and manufacturers to Contractor prior to including those requests and Contractor's analysis and evaluation of those requests with Contractor's requests for additional compensation or Contract Time that Contractor submits to the Owner's Authorized Representative. Failure of Subcontractors, suppliers, manufacturers or others to submit their requests to Contractor for inclusion with Contractor's requests submitted to Owner's Authorized Representative within the time period and by the means described in this section shall constitute a waiver of these Subcontractor claims. The Owner's Authorized Representative and the Owner will not consider direct requests or claims from Subcontractors, suppliers, manufacturers or others not a party to this Contract. The consideration of such requests and claims under this section does not give any person, not a party to the Contract the right to bring a claim against the State of Oregon or the Owner, whether in this claims process, in litigation, or in any dispute resolution process.

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

SG-16 Section D.2.1s deleted and replaced with the following:

“D.2.1.1 Avoidable Delays include any delays other than Unavoidable Delays, and include delays that otherwise would be considered Unavoidable Delays but that:

- (a) Could have been avoided by the exercise of care, prudence, foresight, and diligence on the part of the Contractor or its Subcontractors; or
- (b) Affect only a portion of the Work and do not necessarily prevent or delay the prosecution of neither other parts of the Work nor the completion of the whole Work within the Contract Time; or

(c) Do not impact activities on the accepted critical path schedule; or

(d) Are associated with the reasonable interference of other contractors employed by the Owner that do not necessarily prevent the completion of the whole Work within the Contract Time.”

SG-17 Section E.2.3 is replaced with the following:

Generally, applications for payment will be accepted only for materials that have been installed. Under limited circumstances, applications for payment for stored materials may be accepted by Owner. Acceptance or rejection of such a payment will be made by Owner in its sole discretion. Such a payment, if made, will be subject to the following conditions unless expressly waived in writing by Owner in its sole discretion. Depending on the circumstances underlying the request for stored materials, Owner may require other conditions at its sole discretion.

(a) The request for stored material shall be submitted at least thirty (30) Days in advance of the application for payment on which it appears. Requests for payment of stored material will be entertained for major equipment, components, or expenditures only. In each request for stored material, Contractor shall provide a description of the nature, quantity and cost of the stored material and shall include a justification of the need for early procurement and storage of the material.

(b) The Contractor shall submit applications for payment showing the quantity and cost of the material stored.

(c) The material must be stored at a third party warehouse (i.e., a warehouse not owned or operated by the Contractor or a Subcontractor) that meets the requirements set forth below in paragraph (d). The material cannot be installed for at least three months. The value of the stored material is at least \$100,000 or ten percent (10%) of the amount of the applicable subcontract, whichever is less.

(d) The material shall be stored in a safe and secure warehouse within reasonable proximity to the Project site. If practicable, the storage facility should meet industry standards for a bonded warehouse. Storage conditions must meet manufacturer’s recommendations and warranty requirements. The storage facility must provide protection from the elements, including, without limitation, rain or other water, dust, sunlight, freezing temperatures, and excessive heat. The storage facility must provide segregated storage so that the stored material is easily viewed and inspected. The Contractor must represent and warrant that the storage facility meets the requirements of this section.

(e) Owner shall be granted the right to access the material for the purpose of removal or inspection at any time during the Contract Period. Contractor shall provide any reasonable documentation (e.g., bill of sale, permit of entry and similar documentation) required by Owner to ensure Owner has access to the stored material.

(f) Contractor shall bear the risk of loss of the stored material and Contractor shall be responsible for the full replacement of stored material. The Contractor shall provide adequate insurance (including coverage in-transit and coverage for theft, vandalism, and weather damage) covering the full value of the material while in the care and custody of the Contractor until it is installed. The Contractor shall name the Owner as an additional insured on the insurance policy. Contractor shall provide to Owner a certificate noting this coverage.

(g) Costs of storage, materials, and equipment shall be considered Direct Cost of Work as provided in Article 8.4 of the Contract. The submitted amount in the application for payment shall be reduced by the cost of transportation from the storage site to the project site and for the cost of an inspector to verify delivery and condition of the goods at the storage site.

(h) The Contractor shall submit evidence of payment showing the quantity and cost of the material stored and evidence of payment for the material stored and of payment for the storage site.

(i) Payment for stored materials and/or equipment shall in no way indicate acceptance of the materials and/or equipment or waive any rights under this Contract for the rejection of the Work or materials and/or equipment not in conformance with the Contract Documents.

(j) All required documentation shall be submitted no later than the date the respective application for payment is submitted.

SG-18 Section E.3 is replaced with the following:

“Owner’s receipt of payroll certification from the previous month pursuant to Section C.2 of these Supplemental General Conditions shall be a condition precedent to Owner’s obligation to pay any progress payments or final payment otherwise due.”

SG-19 Section F.1 is amended at the end to add the following:

“Contractor shall confine equipment storage of materials and operation of Work to the limits indicated by Agreement Documents, Applicable Laws, permits or directions of the Owner. Only materials and equipment that are to be used in connection with the Work shall be brought to and stored on the Project site by Contractor. After construction equipment is no longer required for the Work, it shall be promptly removed from the Project site. Protection of construction materials and equipment stored at the Project site from weather, theft, damage and all other adversity is the sole responsibility of Contractor. Subject to applicable insurance requirements, damaged materials whether installed or stored shall be promptly removed from the Project site and properly disposed by Contractor.

SG-20 Section F.4 is amended to delete “From time to time as may be prudent” and insert “As needed but no less than once per day.”

SG-21 Sections G.3.2 and G.3.3 are modified as follows: Revise to read:

G.3.2 Commercial General Liability: Upon execution of this Contract, Contractor shall obtain, and keep in effect at Contractor's expense for the term of this Contract, Commercial General Liability Insurance covering bodily injury and property damage in the amount of **\$2,000,000** per claim and **\$4,000,000** per occurrence in a form satisfactory to Owner. This insurance shall include personal injury liability, products and completed operations, and contractual liability coverage for the indemnities provided under this Contract (to the extent contractual liability coverage for the indemnity is available in the marketplace), and shall be issued on an occurrence basis.

G.3.3 Automobile Liability: Automobile Liability: Contractor shall obtain, at Contractor's expense, and keep in effect during the term of this Contract, Automobile Liability Insurance covering owned, and/or hired vehicles, as applicable. The coverage may be written in combination with the Commercial General Liability Insurance. Contractor shall provide proof of

insurance of not less than **\$2,000,000** per claim and **\$4,000,000** per occurrence. Contractor and its Subcontractors shall be responsible for ensuring that all non-owned vehicles maintain adequate Automobile Liability insurance while on site.

SG-23 Section G.3.5 are modified to add the following:

“The Owner and Contractor waive all rights against each other and any subcontractor, sub-tier subcontractor participant in the Project for damage to the Work caused by fire or other causes of loss to the extent covered by Builder’s Risk or other property insurance applicable to the Work or the existing property.”

SG-23 Section H.1.1, “Contract Period” is deleted and replaced with the following:

“H.1.1 Time is of the essence under this Contract. The Contractor shall at all times carry on the Work diligently, without delay and punctually fulfill all requirements herein.”

SG-24 Section H.2.1 is deleted and replaced with the following:

“H.2.1 Contractor shall provide, by or before the pre-construction conference, a detailed project Work schedule for review and acceptance by the Owner. The submitted schedule must illustrate Work by significant Project components, significant labor trades, long lead items, broken down by building and/or floor where applicable. Each schedule item shall account for no greater than 5% of the monetary value of the project or 5% of the available time. Schedules with activities of less than one day or valued at less than 1% of the Contract shall be considered too detailed and shall not be accepted. Schedules lacking adequate detail, or unreasonably detailed, shall be rejected. Included within the schedule are the following: Notice to Proceed, Substantial Completion, and Final Completion. Contractor shall provide an updated, full Project schedule with each payment request. In addition, twice monthly, the Contractor shall provide an updated three-week forward-looking schedule. Acceptance of the Schedule by the Owner does not constitute agreement by the Owner as to the Contractor's sequencing, means, methods, or durations. Any positive difference between the Contractor's scheduled completion and the contract completion date is float owned by the Owner. Use of the float shall be negotiated. In no case shall the Contractor make a claim for delays if the Work is completed within the Contract Period but after Contractor's scheduled completion.”

SG-25 Section I.2 is modified as follows: Add the following:

“The repair warranty is without limitation to any and all other remedies that the Owner might have.”

SG-26 Section I.2.1 Correction of Work: Replace the first sentence with the following:

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

SG-27 Section J.6.1 is deleted and replaced with the following:

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

termination of subcontracts and orders. Furthermore, Contractor agrees to include in its subcontracts and major supplier contracts a provision that conditionally assigns to the Owner the subcontracts and major supplier contracts, in the event of a termination by the Owner and the Owner's decision to assume the subcontracts and major supplier contracts."