

SUPPLEMENTAL CONDITIONS OF THE CONTRACT FOR CONSTRUCTION

(REVISED NOVEMBER 2023)

FOR STATE OF MONTANA GENERAL CONDITIONS

ARTICLE 1 – GENERAL PROVISIONS

1.1 BASIC DEFINITIONS

1.1.3 SPECIFICATIONS

1.1.3.1 ADD: “Approved”: When used to convey Architect’s/Engineer’s action on Contractor’s submittals, applications, and requests, “approved” is limited to Architect’s/Engineer’s duties and responsibilities as stated in the Conditions of the Contract.

1.1.3.2 ADD: “Directed”: A command or instruction by Architect/Engineer. Other terms including “requested,” “authorized,” “selected,” “required,” and “permitted” have the same meaning as “directed.”

1.1.3.3 ADD: “Indicated”: Requirements expressed by graphic representations or in written form on Drawings, in Specifications, and in other Contract Documents. Other terms including “shown,” “noted,” “scheduled,” and “specified” have the same meaning as “indicated.”

1.1.3.4 ADD: “Regulations”: Laws ordinances, statutes, and lawful orders issued by authorities having jurisdiction, and rules, conventions, and agreements within the construction industry that control performance of the Work.

1.1.3.5 ADD: “Furnish”: Supply and deliver to Project site, ready for unloading, unpacking, assembly, installation, and similar operations.

1.1.3.6 ADD: “Install”: Operations at Project site including unloading, temporarily shoring, unpacking, assembling, erecting, placing, anchoring, applying, working to dimension, finishing, curing, protecting, cleaning, and similar operations.

1.1.3.7 ADD: “Provide”: Furnish and install, complete and ready for the intended use.

1.1.3.8 ADD: “Project site”: Space available for performing construction activities. The extent of Project site is shown on Drawings and may or may not be identical with the description of the land or portion of the building on which the Project is to be built.

1.6.1 Insert in the sixth line: “All documents which constitute the instruments of service are the property of the Owner.” In lieu of the phrase “Unless otherwise indicated, the Architect/Engineer and the Architect/Engineer’s consultants shall be deemed the authors of them... except as defined in the Owner’s Contract with the Architect/Engineer.”

ARTICLE 2 – THE OWNER

2.1 THE STATE OF MONTANA

2.1.1.1 ADD: The State of Montana includes its officers, elected and approved officials, employees and volunteers, and political subdivisions thereof. The State of Montana and Montana State University are synonymous throughout the contract documents.

ARTICLE 3 – THE CONTRACTOR

3.3 SUPERVISION AND CONSTRUCTION PROCEDURES

3.3.6 ADD: PRODUCT DELIVERY, STORAGE AND HANDLING

3.3.6.1 ADD: Deliver, store, and handle products using means and methods that will prevent damage, deterioration, and loss, including theft and vandalism. Comply with manufacturer’s written instructions.

3.3.6.2 ADD: DELIVERY AND HANDLING:

3.3.6.2.1 ADD: Schedule delivery to minimize long-term storage at Project site and to prevent overcrowding of construction spaces.

3.3.6.2.2 ADD: Coordinate delivery with installation time to ensure minimum holding time for items that are flammable, hazardous, easily damaged, or sensitive to deterioration, theft, and other losses.

3.3.6.2.3 ADD: Deliver products to Project site in an undamaged condition in manufacturer’s original sealed container or other packaging system, complete with labels and instructions for handling, storing, unpacking, protecting, and installing.

3.3.6.2.4 ADD: Inspect products on delivery to determine compliance with the Contract Documents and to determine that products are undamaged and property protected.

3.3.6.3 ADD: STORAGE

3.3.6.3.1 ADD: Store products to allow for inspection and measurement of quantity or counting of units

3.3.6.3.2 ADD: Store materials in a manner that will not endanger Project structure.

3.3.6.3.3 ADD: Store products that are subject to damage by the elements under cover in a weathertight enclosure above ground, with ventilation adequate to prevent condensation.

3.3.6.3.4 ADD: Protect foam plastic from exposure to sunlight, except to extent necessary for period of installation and concealment.

3.3.6.3.5 ADD: Comply with product manufacturer’s written instructions for temperature, humidity, ventilation, and weather-protection requirements for storage.

3.3.6.3.6 ADD: Protect stored products from damage and liquids from freezing.

3.10 CONSTRUCTION SCHEDULES

3.10.1.1 ADD: A pre-construction meeting will be held at a time mutually agreed upon by the Owner, Architect/Engineer and Contractor at Campus Planning, Design and Construction, Montana State University, Bozeman, Montana. The contractor shall confirm the Contractor’s Construction Schedule for the Work. Coordination of operating requirements of the affected buildings, and surrounds, schedule of activities and Owner requirements will be discussed, as well as the order in which the Contractor intends to pursue the work. This schedule will be reviewed and must be mutually agreed upon by the Architect, Contractor and Owner.

3.11 DOCUMENTATION AND AS-BUILT CONDITIONS AT THE SITE

3.11.4 ADD: The contractor shall maintain at the site two (2) construction reference sets of all specifications, drawings, approved shop drawings, change orders and other modifications, addenda, schedules and instructions, in good order.

3.11.4.1 ADD: The record drawings shall be two (2) sets of black (or blue) and white prints of the drawings on which the contractor must record all “red line” changes during the course of construction and will include references to change order numbers, field directives, etc., and their dates. This record set shall be maintained separate and apart from documents used for construction reference. This set will be available for review by the project consultant, architect, engineer and MSU project manager at all times.

3.11.4.2 ADD: All as-built conditions shall be kept current and the contractor shall not permanently conceal or cover any work until all required information has been recorded.

3.11.4.3 ADD: All survey and exterior underground utilities shall be recorded using the spatial reference, Montana State Plane, NAD 83, CORS 96, Lambert Conformal Conic. The National Geodetic Survey publishes NAD 83

coordinates in the metric system (i.e., meters). The conversion factor that should be used to convert between English and metric systems is the international conversion factor of 1 ft. = 0.3048 m. coordinate system.

3.11.4.4 ADD: In marking any as-built conditions, the contractor shall ensure that such drawings indicate by measured dimension to building corners or other permanent monuments the exact locations of all piping, conduit or utilities concealed in concrete slabs, behind walls or ceilings or underground. Record drawings shall be made to scale and shall also include exact locations of valves, pull boxes and similar items as required for maintenance or repair service.

3.11.4.5 ADD: The contractor shall prepare and maintain a binder with all project warranty information. This will be provided to the project consultant, architect or engineer at final acceptance.

3.12.1 DEFINITIONS:

3.12.1.4 ADD: Products: Items obtained for incorporating into the Work, whether purchased for Project or taken from previously purchased stock. The term “product” includes the terms “material,” “equipment,” “system,” and terms of similar intent.

3.12.1.5 ADD: Named Products: Items identified by manufacturer’s product name, including make or model number or other designation shown or listed in manufacturer’s published product literature that is current as of date of the Contract Documents.

3.12.1.6 ADD: New Products: Items that have not previously been incorporated into another project or facility. Products salvaged or recycled from other projects are not considered new products.

3.12.1.7 ADD: Comparable Products: Product that is demonstrated and approved through submittal process to have the indicated qualities related to type, function, dimension, in-service performance, physical properties, appearance, and other characteristics that equal or exceed those of specified product.

3.12.1.8 ADD: Basis-of-Design Product Specification: A specification in which a specific manufacturer’s product is named and accompanied by the words “basis-of-design product,” including make or model number or other designation, to establish the significant qualities related to type, function, dimension, in-service performance, physical properties, appearance, and other characteristics for purposes of evaluating comparable products of additional manufacturers named in the specifications.

3.13. USE OF SITE

3.13.3 ADD: MSU BOZEMAN Vehicle Regulations state:

“All students, faculty, staff, and visitors must register any motor vehicle they park on the University campus, for any reason. A visitor is anyone not defined as student, staff or faculty.”

All Contractor and Contractor employees shall comply with Montana State University parking regulations. MSU parking permits can be purchased at the Huffman Building at Seventh Avenue and Kagy Boulevard. Contractor should call University Police at 994-2121 for permit information. Violators of MSU Bozeman Vehicle Regulations may be ticketed and towed.

Unless otherwise indicated on the drawings, all Contractor and Contractor employee vehicles on campus shall be parked in designated parking lots. If allowed on the drawings, vehicles to a maximum number stated, may be parked in project site areas designated and shall only be Contractor vehicles with company signs clearly visible. No personal vehicles shall be parked at the project site in any case. If a driver of a vehicle not allowed to be parked at the project site must unload equipment, tools, or materials, the vehicle must be immediately thereafter moved to a designated lot or leave campus. Vehicles parked in the project site, other than those allowed on the drawings, may be ticketed and towed.

Access to the project site shall be only by the route designated on the drawings. In cases where a different route must be used for a specific purpose, permission must be obtained from MSU Facilities Services. In no case will vehicles be used on the Centennial Mall paving. Access routes are for delivery of equipment, tools, and not for parking.

Site staging areas for materials and equipment if permitted, will be designated on the drawings if permitted. If not designated, staging is intended to be in the construction area boundaries. Staged materials and equipment must be secured on the ground surface or in trailers. Site staging areas shall be fenced.

3.13.4 ADD: The Contractor shall coordinate his operations with the Owner in order that the Owner will have maximum use of existing facilities surrounding the area of the Work, as agreed upon, at all times during normal working hours. Contractor further agrees to coordinate his operations so as to avoid interference with the Owner's normal operations to as great an extent as possible.

3.13.5 ADD: By acceptance of MSU Building Keys the Contractor agrees with the following: University keys are the property of Montana State University. Fabricating, duplicating or modifying University keys is prohibited. Doors must remain locked at all times. The use of these keys to allow unauthorized persons to enter the above areas is prohibited. Loss of any key must be reported immediately to the Director, Office of Facilities Services and University Police, if the loss of keys results in re-keying costs, these costs will be charged to the Contractor. **See attached Estimated Re-Keying Costs.**

3.13.6 ADD: The Montana Legislature decreed that the "right to breath smoke-free air has priority over the desire to smoke" (MCA 20-40-102). It is the policy of MSU to promote the health, wellness and safety of all employees, students, guests, visitors, and contractors while on campus. Therefore, the campus will be free of tobacco-use effective August 1, 2012. The use of tobacco (including cigarettes, cigars, pipes, smokeless tobacco and all other tobacco products) by students, faculty, staff, guests, visitors, and contractors is prohibited on all properties owned or leased by MSU.

Littering any university property, whether owned or leased, with the remains of tobacco products is prohibited.

All university employees, students, visitors, guests, and contractors are required to comply with this policy, which shall remain in effect at all times. Refusal to comply with this policy may be cause for disciplinary action in accordance with employee and student conduct policies. Refusal to comply with the policy by visitors, guests and contractors may be grounds for removal from campus. (http://www2montana.edu/policy/smoking_facilities/)

3.13.7 ADD: The Contractor may use the University's toilet facilities only as directed by the Owner.

ARTICLE 4 – ADMINISTRATION OF THE CONSTRUCTION CONTRACT

4.6. ARBITRATION

4.6.3 Insert in the second line "the Eighteenth Judicial District, Gallatin County" in lieu of "First Judicial District, Lewis & Clark County."

4.6.11 ADD: In responding to a claim brought by a Contractor, the Owner shall have a minimum of forty-five (45) days in which to respond to a revised claim prior to the arbitration hearing.

ARTICLE 7 – CHANGES IN WORK

7.2 CHANGE ORDERS

7.2.2.1 Insert the word "maximum" before "5%" and insert the word "maximum" before "10%".

7.2.2.4 ADD: Total Change Order markup shall not exceed (cost of the work) x 1.15.

7.2.3.1 Insert at the beginning of the first sentence the word "Itemized".

7.2.3.2 Insert at the beginning of the first sentence the word "Itemized".

7.2.3.3 Insert at the beginning of the first sentence the word "Itemized".

7.2.3.4 ADD: The Contractor shall provide a complete description summarizing all work involved.

ARTICLE 8 - TIME

8.1. DEFINITIONS

8.1.8.1 ADD: The Owner will issue a written Notice to Proceed on satisfactory receipt of the signed Contract and all required bonds, insurance and other required submittals. Work commenced before receipt of the Notice to Proceed will be entirely at the Contractor's risk.

8.2. PROGRESS AND COMPLETION

8.2.5 ADD: Completion of the work within the stated time and/or by the date stated on the Notice to Proceed is of the essence of this Contract and failure to complete, without approved time extension, may be considered default of the Contract. At the time for completion as stated on the Notice to Proceed or as extended by approved change order, if the work is not substantially complete, the Owner may notify the Contractor and the Contractor's surety company in writing of the recourse the Owner intends to take, within the Contract, to assess liquidated damages and /or cause the work to be completed.

8.3. DELAYS AND EXTENSIONS OF TIME

8.3.4 ADD: By the act of signing the Contract, the Contractor signifies that he/she and all subcontractors can perform the work within the stated schedule and that subcontractors, manufacturers, suppliers, and deliverers are known to be able to support the schedule. Time extension may be granted for unforeseen conditions or events out of the Contractor's control causing delay in delivery of materials or causing delay in the Contractor's ability to perform the work within the Contract Documents. The Contractor is expected to take all possible measures and bear all reasonable costs in order to anticipate, control, counteract, and expedite such delay-causing conditions, including finding alternative sources of materials, equipment, shipping, and labor. Notification of any claim for schedule delay must be made in writing to the Owner within one week of the causing event or of first knowledge of a known delay causing condition with supporting documentation as required by the Owner. The Owner will respond in writing within one week to claims of delay. No claims of delay will be entertained after the date of completion as stated on the Notice to Proceed or as extended by previously approved delay claims.

ARTICLE 9 – PAYMENTS AND COMPLETION

9.3. APPLICATIONS FOR PAYMENT

9.3.7.2.1. Insert in the first line "Schedule of Values" in lieu of "Schedule of Amounts for Contract Payment".

9.3.7.2.3 ADD: Subcontractor's List: The Contractor shall list all subcontractors doing work in excess of \$5,000.

9.8. SUBSTANTIAL COMPLETION

9.8.4.1 ADD: Prior to the inspection, the Contractor shall complete the final clean-up of the project site which, unless otherwise stated in the Contract Documents, shall consist of:

9.8.4.1.1 Removal of all debris and waste. All construction debris and waste shall be removed from the campus grounds. Use of the University trash containers will not be permitted.

9.8.4.1.2 Removal of all stains, smears, marks of any kind from surfaces including existing surfaces if said damage is the result of the work.

9.8.4.1.3 Removal of all temporary structures and barricades.

9.10. FINAL COMPLETION AND FINAL PAYMENT

9.10.2.4 Insert in the first line after the word "(Form 103)": "for contracts greater than or equal to \$150,000"

ARTICLE 10 – PROTECTIONS OF PERSONS AND PROPERTY

10.1. SAFETY

10.1.2 Insert in the second line before the word "safeguards": "and as approved by Owner,"

10.1.2.1 ADD: The Contractor recognizes that the Work will be conducted in and around buildings and areas that are occupied and will continue to function for the purposes of the University. The Contractor shall conduct a project safety meeting prior to the start of the Work, with the Owner's representative and all others that the Owner's representative deems necessary. The purpose of the meeting shall be to produce project specific rules and guidelines pertaining to but not restricted to: safety of persons in and around the area of the Work including type and location of fencing, guards, signage, etc.; closing of existing campus circulation routes and designation of alternate routes,

including creation of temporary routes of access as required; creation and location of temporary signage as required to maintain accessible routes for handicapped access to and around the site of the Work. The Contractor shall be solely responsible for implementing all required means and methods for site safety and security that may be agreed upon in this meeting.

10.1.2.2 ADD: Contractor shall notify Owner any time his operations will disrupt use of and access to existing accessible routes. Contractor is solely responsible for maintaining existing accessible routes in the area of the project with the exception of temporary interruptions lasting one day or less. Contractor is responsible for erecting signage identifying temporary re-routing of accessible routes. Such re-routing shall be coordinated with Owner in advance.

10.3. UTILITIES

10.3.1 ADD: Underground Utilities: Buried utilities, including, but not limited to, electricity, gas, steam, air, water, telephone, sewer, irrigation, broadband coaxial computer cable, and fiber optic cables are very vulnerable and damage could result in loss of service. The telephone, broadband and fiber optic cables are especially sensitive and the slightest damage to these components will result in disruption of the operations of the campus.

10.3.2 ADD: "One Call" must be notified by phone and in writing at least 72 hours (3 business days) prior to digging to arrange and assist in the location of buried utilities in the field. (Dial 811). The Contractor shall mark the boundary of the work area. The boundary area shall be indicated with white paint and white flags. In winter, pink paint and flags will be accepted.

10.3.3 ADD: After buried utilities have been located, the Contractor shall be responsible for any utilities damaged while digging. Such responsibility shall include all necessary care including hand digging. Contractor's responsibility shall also include maintaining markings after initial locate. The area for such responsibility, unless otherwise indicated, shall extend 24 inches to either side of the marked center line of a buried utility line. In cases of multiple or overlapping utilities or inconclusive electronic locating signals, MSU Project Manager may specifically indicate a wider area for Contractor's responsibility.

10.3.4 ADD: The Contractor's responsibility shall include repair or replacement of damaged utilities. In the event of damage to the 15 KV electrical distribution system, the broadband or fiber optic cables, repair will consist of replacement from termination to termination. Facilities Services and the MSU Information Technology Center will verify repair and recertification. The Contractor will also be responsible for all costs associated with re-terminations and recertification.

10.3.5 ADD: Any buried utilities exposed by the operations of the Contractor shall be marked on the plans and adequately protected by the Contractor. If any buried utilities not located are exposed, the Contractor shall immediately contact Facilities Services at the numbers above. If, after exposing an unlocated buried utility, the Contractor continues digging without notifying Facilities Services and further damages the utility, the Contractor will be responsible.

10.3.6 ADD: Damage to irrigation systems during seasons of no irrigation that are not immediately and adequately repaired and tested will require the Contractor to return when the system is in service to complete the repair.

10.3.7 ADD: In the event of a planned interruption of any existing utility service, the Contractor shall make arrangements with Facilities Services at least 72 hours (3 business days) in advance. Shutdowns of the broadband or fiber optic cables will normally require 5 working days notice to Facilities Services and the Information Technology Center. The Contractor shall bear all costs associated with the interruptions and restorations of service.

10.3.8 ADD: The Owner allows the contractor to use the Owner's utilities (water, heat, electricity) services without charge for procedures necessary for the completion of the work.

ARTICLE 11 - INSURANCE AND BONDS

11.4. COMMERCIAL GENERAL LIABILITY INSURANCE

11.4.1.3. Insert in the first line after "State of Montana": ", Montana State University".

11.7. PERFORMANCE BOND AND LABOR & MATERIAL PAYMENT BOND (BOTH ARE REQUIRED ON THIS PROJECT)

11.7.1. Insert in the first line at the beginning of the sentence "For contracts equal to or greater than \$150,000".

11.8. CANCELLATION

11.8 ADD All Certificates shall contain a provision that coverage provided by the policies will not be cancelled without at least thirty (30) days prior notice to the Owner.

ARTICLE 13 – MISCELLANEOUS PROVISIONS

13.1. GOVERNING LAW

13.1.1. Insert in the second line “The Eighteenth Judicial District, Gallatin County” in lieu of “First Judicial District, Lewis and Clark County”.

13.9 EMERGENCY AND PUBLIC SAFETY

Montana State University has an Emergency and Public Safety Alert System that warns the campus community in the event of an emergency or public safety event. Because contractors, consultants, and vendors are considered members of the campus community when working on campus, they must be familiar with the alert system and understand when the system is used. Montana State University requires all contractors, consultants, vendors, and their employees working on or entering the MSU-Bozeman campus to register for the Emergency and Public Safety Alert System. The link to register is: <http://www.montana.edu/msualert/>.

END OF SUPPLEMENTARY GENERAL CONDITIONS

Cost Estimate to Re-key Buildings

Access to campus buildings is controlled for safety and security reasons. As a key holder the contractor is responsible for following processes associated with maintaining the integrity of our access control program. If a key is lost the contractor is liable for costs associated with ensuring access control is maintained. In some cases that requires re-keying an entire building or key sequence. Cost can range from \$2,000 to over \$200,000 depending on building and key hierarchy.