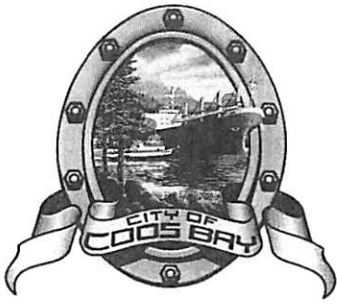




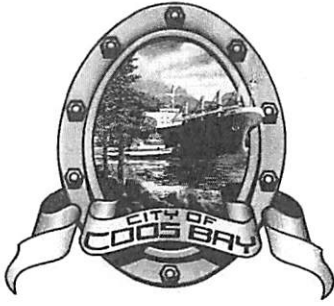
VOLUME 1 BIDDING REQUIREMENTS

Sanitary Sewer Outfall Repair (Wastewater Treatment Plant 2)

City of Coos Bay
Coos County, Oregon

City Project No. 140091

December 22, 2015



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VOLUME 1 - BIDDING REQUIREMENTS

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00200	INSTRUCTIONS TO BIDDERS
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* These forms require completion by Bidder.

VOLUME 2 – CONTRACT DOCUMENTS

00510	NOTICE OF AWARD
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VOLUME 3 TECHNICAL SPECIFICATIONS & DRAWINGS

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SECTION 00100
ADVERTISEMENT FOR BIDS

Sealed bids for the construction of Sanitary Sewer Outfall Repair, Wastewater Treatment Plant 2 (100 Fulton Avenue) for the City of Coos Bay will be received by Ms. Jennifer Wirsing at Coos Bay City Hall until 2:00 p .m. PDT January 4, 2016 at which time the sealed bids will be opened publicly and read aloud. Bids received after this time will not be accepted. All interested parties are invited to attend

This contract is for a public work. A brief description of the scope of work is provided below:

The work in this Section consists of general offshore operations relating to the construction of the outfall repair and documentation of the final work product. This Work includes, but may not be limited to:

1. General requirements pertaining to offshore construction equipment and diving operations. Placing buoys, lights, and warnings to mariners around offshore worksites.
2. Providing equipment and work platform as necessary to accomplish the work.
3. Dredging or water jetting as necessary to accomplish the work
4. Lowering repair pieces to project area.
5. Cutting off and removing existing bulkhead on terminal end of the outfall and diffuser ports as shown. Installation of repair and rehabilitation pieces.

Bidding documents may be examined at City Hall in the City of Coos Bay, 500 Central Avenue. To be qualified to submit a bid the contractor must obtain the bidding documents at the City's website, www.coosbay.org. The contractor must also contact Jennifer Wirsing to submit firm's name on a bidding list. Only firm's on the bidding list will be allowed to submit a bid. Contact Jennifer Wirsing at 541-269-1181 ext. 2247 or jwirsing@coosbay.org. All pre-bid questions shall be submitted to Jennifer Wirsing no later than December 29, 2015. A mandatory pre-bid conference **will not** be held.

Dated this 22 day of December, 2015.

By order of: Ms. Jennifer Wirsing
City of Coos Bay

Published:

The World, Coos Bay OR	The Daily Journal of Commerce, Portland OR
December 19, 2015	December 18 & 24, 2015

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SECTION 00200

INSTRUCTIONS TO BIDDERS

ARTICLE 1 – DEFINED TERMS

Terms used in these Instructions to Bidders have the meanings indicated in the General Conditions of the Construction Contract, EJCDC Document No. C-700 (Rev-1), and Supplementary Conditions (SGC). Additional terms used in these Instructions to Bidders have the meanings indicated below which are applicable to both the singular and plural thereof:

- 1.01 Responsive Bidder – a Bidder who submits a “Responsive Bid” as defined in the City of Coos Bay “Rules of Local Contract Review”. The referenced rules are available at City Hall for review.
- 1.02 Responsible Bidder – A Bidder who, in the Owner’s opinion, meets the standard of Responsibility as defined in the City of Coos Bay “Rules of Local Contract Review”.

ARTICLE 2 – COPIES OF BIDDING DOCUMENTS

- 2.01 Complete sets of the Bidding Documents (Including Volume 1 – Bidding Requirements, Volume 2 – Contract Documents and Volume 3 – Technical Specifications and Drawings) are available as stated in the Advertisement or Invitation and may be obtained in electronic format for printing by the Bidder.
- 2.02 Complete sets of Bidding Documents shall be used in preparing Bids; neither Owner nor Engineer assumes any responsibility for errors or misinterpretations resulting from the use of incomplete sets of Bidding Documents.
- 2.03 Owner and Engineer, in making copies of Bidding Documents available on the above terms, do so only for the purpose of obtaining Bids for the Work and do not authorize or confer a license or grant for any other use.
- 2.04 Volume 1 is intended to be submitted intact. See Article 15 for further requirements for Volume 1.

ARTICLE 3 – QUALIFICATIONS OF BIDDERS

- 3.01 All bidders must have a valid Contractor’s license in the state where the project is located.
- 3.02 Bidders must submit with their Bidder Prequalification form, at least five (5) days prior to bid opening, descriptions, contract value, and owner contact information required on the form for a minimum of three similar underwater construction projects completed in the last 10 years. See the attached form for additional direction.
 - A. Bidders must also prequalify with Owner by submitting the completed form in section 00451 of the bidding documents.
- 3.03 Bidder’s failure to submit required qualification information within the times indicated may disqualify Bidder from receiving an award of the Contract.

ARTICLE 4 – EXAMINATION OF BIDDING DOCUMENTS, OTHER RELATED DATA AND SITE

4.01 *Site and Other Areas*

- A. The Site is identified in the Bidding Documents. By definition, the Site includes rights-of-way, easements, and other lands furnished by Owner for the use of the Contractor. Any additional lands required for temporary construction facilities, construction equipment, or storage of materials and equipment, and any access needed for such additional lands, are to be obtained and paid for by Contractor.

4.02 *Existing Site Conditions*

A. Subsurface and Physical Conditions;

- 1. The Supplementary Conditions identify:
 - a. Those reports of explorations and tests of subsurface conditions at or adjacent or contiguous to the Site that Engineer has used in preparing the Bidding Documents, if any.
 - b. Those drawings of physical conditions relating to existing surface or subsurface structures at or contiguous the Site (except Underground Facilities) that Engineer has used in preparing the Bidding Documents, if any.
 - c. Technical Data contained in such reports and drawings.
- 2. Owner will make copies of reports and drawings referenced above available to any Bidder on request. These reports and drawings are not part of the Contract Documents, but the Technical Data contained therein upon whose accuracy Bidder is entitled to rely, as provided in the General Conditions, has been identified and established in the Supplementary Conditions. Bidder is responsible for any interpretation or conclusion Bidder draws from any Technical Data or any other data, interpretations, opinions, or information contained in such reports or shown or indicated in such drawings.

B. Underground Facilities

- 1. Underground Facilities: Information and data shown or indicated in the Bidding Documents with respect to existing Underground Facilities at or adjacent to the Site are set forth in the Contract Documents and are based upon information and data furnished to Owner and Engineer by owners of such Underground Facilities, including Owner, or others
 - a. Hazardous Environmental Conditions reports and drawings known to Owner relating to Hazardous Environmental Conditions that have been identified at or adjacent to the Site.

4.03 *Hazardous Environmental Condition*

- A. The SGCs identifies those reports and drawings related to a Hazardous Environmental Condition identified at the Site, if any, that Engineer has used in preparing the Bidding Documents.
- B. Copies of reports and drawings referenced in SGCs will be made available by Owner to any Bidder on request. Those reports and drawings are not part of the Contract Documents, but the "technical data" contained therein upon which Bidder is entitled to rely as provided in GCs has been identified and established in SGCs. Bidder is responsible for any interpretation or conclusion Bidder draws from any "technical data" or any other data, interpretations, opinions, or information contained in such reports or shown or indicated in such drawings.

4.04 Adequacy of Data: Provisions concerning responsibilities for the adequacy of data furnished to prospective Bidders with respect to subsurface conditions, other physical conditions, and Underground Facilities, and possible changes in the Bidding Documents due to differing or unanticipated subsurface or physical conditions appear in Paragraphs 5.03, 5.04, and 5.05 of the General Conditions. Provisions concerning responsibilities for the adequacy of data furnished to prospective Bidders with respect to a Hazardous Environmental Condition at the Site, if any, and possible changes in the Contract Documents due to any Hazardous Environmental Condition uncovered or revealed at the Site which was not shown or indicated in the Drawings or Specifications or identified in the Contract Documents to be within the scope of the Work, appear in Paragraph 5.06 of the General Conditions

4.05 *Site Visit and Testing by Bidders*

- A. On request, Owner will provide Bidder access to the Site to conduct such examinations, investigations, explorations, tests, and studies as Bidder deems necessary for submission of a Bid. Bidder shall fill all holes and clean up and restore the Site to its former condition upon completion of such explorations, investigations, tests, and studies.

4.06 Reference is made to Article 8 of the SGCs for the identification of the general nature of other work, if any, that is to be performed at the Site by Owner or others (such as utilities and other prime contractors) that relates to the Work for which a Bid is to submitted. On request, Owner will provide to each Bidder for examination access to or copies of Contract Documents (other than portions thereof related to price) for such other work.

4.07 It is responsible of each Bidder before submitted a Bid to:

- A. Examine and carefully study the bidding Documents, including an Addenda and the other related data identified in the bidding Documents;
- B. Visit the Site and become familiar with and satisfy Bidder as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work;
- C. Become familiar with and satisfy Bidder as to all Federal, State, and local Laws Ordinances, Rules and Regulations that may affect cost, progress , or performance of the Work;

- D. Carefully study all reports of explorations and tests of subsurface conditions at or contiguous to the Site and all drawings of physical conditions in or relating to existing surface or subsurface structures, if any, at or contiguous to the Site which have been identified in the Supplementary General Conditions as provided in paragraph 5.02 of the General Conditions, and carefully study all reports and drawings of a Hazardous Environmental Condition, if any, at the Site which have been identified in the Supplementary General Conditions as provided in paragraph 4.06 of the General Conditions;
 - E. Obtain and carefully study, or assume responsibility for conducting, all additional or supplementary examinations, investigations, explorations, tests, studies, and data concerning conditions (surface, subsurface, and Underground Facilities) at or contiguous to the Site which may affect cost, progress, or performance of the Work or which relate to any aspect of the means, methods, techniques, sequences, and procedures of construction to be employed by Bidder, including any specific means, methods, techniques, sequences, and procedures of construction expressly required by the Bidding Documents, and safety precautions and programs incident thereto;
 - F. Agree at the time of submitting its Bid that no further examinations, investigations, explorations, tests, studies, or data are necessary for the determination of its Bid for performance of the Work at the price bid and within the times and in accordance with the other terms and conditions of the Bidding Documents;
 - G. Become aware of the general nature of the work, if any, to be performed by Owner and others at the Site that relates to the Work as indicated in the Bidding Documents;
 - H. Correlate the information known to Bidder, information and observations obtained from visits to the Site, reports and drawings identified in the Bidding Documents, and all additional examinations, investigations, explorations, tests, studies, and data with the Bidding Documents;
 - I. Promptly give Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Bidder discovers in the Bidding Documents and confirm that the written resolution thereof by Engineer is acceptable to Bidder; and
 - J. Determine that the Bidding Documents are generally sufficient to indicate and convey understanding of all terms and conditions for the performance of the Work.
- 4.08 The submission of a Bid will constitute an incontrovertible representation by Bidder that Bidder has complied with every requirement of this Article 4, that without exception the Bid is premised upon performing and furnishing the Work required by the Bidding Documents and applying any specific means, methods, techniques, sequences, and procedures of construction that may be shown or indicated or expressly required by the Bidding Documents, that Bidder has given Engineer written notice of all conflicts, errors, ambiguities, and discrepancies that Bidder has discovered in Bidding Documents and the written resolutions thereof by Engineer are acceptable to Bidder, and that the Bidding Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performing and furnishing the Work.

ARTICLE 5 – PRE-BID CONFERENCE

- 5.01 There will not be a pre-bid conference.

ARTICLE 6 – SITE AND OTHER

- 6.01 The Site is identified in the Bidding Documents. All additional lands and access thereto required for temporary construction facilities, construction equipment, or storage of materials and equipment to be incorporated in the Work are to be obtained and paid for by Contractor. Easements for permanent structures or permanent changes in existing facilities are to be obtained and paid for by Owner unless otherwise provided in the Bidding Documents.

ARTICLE 7 – INTERPRETATIONS AND ADDENDA

- 7.01 All questions about the meaning or intent of the Bidding Documents are to be submitted to Engineer in writing. Interpretations or clarifications considered necessary by Engineer in response to such questions will be issued by Addenda delivered to all parties recorded as having received the Bidding Documents. Questions received less than five days prior to the date for opening of Bids may not be answered. Only questions answered by Addenda will be binding. Oral and other interpretations or clarifications will be without legal effect.
- 7.02 Addenda may be issued to clarify, correct, supplement, or change the Bidding Documents as deemed advisable by Owner or Engineer.
- 7.03 No addenda will be issued later than 3 days prior to the date for receipt of bids except an addendum, if necessary, postponing the date for receipt of bids or withdrawing the request for bids.
- 7.04 Requests to clarify the source of materials, equipment suppliers, or any other such matter which does not modify, change, increase, or decrease the scope of work will be answered by Engineer up to the date of opening bids. No written responses will be made.

ARTICLE 8 – BID SECURITY

- 8.01 A Bid must be accompanied by Bid security made payable to Owner in an amount of five (5) percent of Bidder's maximum Bid price (determined by adding the base bid and all alternates) and in the form of a certified check, bank money order, or a Bid bond (on the form included in the Bidding Documents) issued by a surety meeting the requirements of Paragraphs 6.01 and 6.02 of the General Conditions.
- 8.02 The Bid security of the apparent Successful Bidder will be retained until Owner awards the contract to such Bidder, and such Bidder has executed the Contract Documents, furnished the required contract security, and met the other conditions of the Notice of Award, whereupon the Bid security will be released. If the Successful Bidder fails to execute and deliver the Contract Documents and furnish the required contract security as specified in Article 20 and 21 of these Instructions to Bidders, Owner may consider Bidder to be in default, annul the Notice of Award, and the Bid security of that Bidder will be forfeited. Such forfeiture shall be Owner's exclusive remedy if Bidder defaults.
- 8.03 The Bid security of other Bidders that Owner believes to have a reasonable chance of receiving the award may be retained by Owner during the period the Bids remain open whereupon Bid Security furnished by such Bidders will be returned.

- 8.04 Bid security of other Bidders that Owner believes do not have a reasonable chance of receiving the award will be released within seven days after the Bid opening.
- 8.05 Per ORS 279C.385, bid security is to be forfeited as fixed and liquidated damage should the bidder neglect or refuse to enter into a contract and provide suitable insurance certificates, bond and other required documents for the faithful performance of the work in the event bidder is awarded the contract.

ARTICLE 9 – CONTRACT TIMES

- 9.01 The number of days within which, or the dates by which, the Work is to be (a) Substantially Complete and (b) also completed and ready for final payment are set forth in the Bid Form and will be included in the Agreement.

ARTICLE 10 – LIQUIDATED DAMAGES

- 10.01 Provisions for liquidated damages, if any, are set forth in the Agreement.

ARTICLE 11 – SUBSTITUTIONS OF MATERIAL AND EQUIPMENT AND “OR-EQUAL” ITEMS

- 11.01 The Contract , if awarded, will be on the basis of materials and equipment specified or described in the Bidding Documents , or those "or-equal" materials and equipment approved by the Engineer and identified by Addendum. The materials and equipment described in the Bidding Documents establish a standard of required type, function and quality to be met by any proposed "or-equal" item. Request for Engineer 's clarification of materials and equipment considered "or- equal" prior to the Effective Date of the Agreement must be received by the Engineer at least five (5) days prior to the date specified for issuing the last addendum. The definition of "or-equal" materials and equipment, as well as information for determining the equality of submitted items, shall be as described in Paragraph 7.04 of the General Conditions. The burden of proof of the merit of the proposed item is upon the Bidder. Engineer's decision of approval or disapproval of a proposed item will be final. If Engineer approves any proposed item, such approval will be set forth in an Addendum issued to all prospective Bidders. Bidders shall not rely upon approvals made in any other manner.
- 11.02 Substitutions for materials, equipment, or methods specified or described in the Bidding Documents may only be made after the effective date of the Agreement and provided said substitutions are approved in writing by Change Order. Bidders shall not rely upon approvals for substitutions. The Contract for the Work, if awarded, will be on the basis of materials and equipment specified or described in the Bidding Documents without consideration during the bidding and Contract award process of possible substitute or “or-equal” items. In cases in which the Contract allows the Contractor to request that Engineer authorize the use of a substitute or “or-equal” item of material or equipment, application for such acceptance may not be made to and will not be considered by Engineer until after the Effective Date of the Contract.

ARTICLE 12 – SUBCONTRACTORS, SUPPLIERS, AND OTHERS

- 12.01 Bidder shall disclose first-tier subcontractors on First-Tier Subcontractor Disclosure Form, Section 00435, sign and submit the completed form to Owner within two working hours of

the time and at the place for receipt of Bids as identified in the Advertisement for Bids, Section 00100. The Bidder shall submit to the Owner a disclosure of the first-tier subcontractors that:

- A. Will be furnishing labor or will be furnishing labor and materials in connection with the public improvement,
- B. and Will have a contract value equal to or greater than
 - 1. Five percent of the total Bid Amount, or \$15,000; whatever is greater, or
 - 2. \$350,000, regardless of the percentage of the total Bid Amount.
- C. If there are no subcontractors who meet the criteria stated in 12.01 A, and B above, Bidder must state "none" on each page of the form provided and submit it to Owner as stated in 12.01 above.
- D. The first-tier subcontractor disclosure form, Section 00435, must be submitted separately. The form may be submitted with the bid or anytime within two working hours of the bid submittal time.
- E. Failure to submit a first-tier subcontractor disclosure form in accordance with the instructions in this Article 12 will result in the Bid being rejected as non-responsive

12.02 If requested by Engineer or Owner, the apparent low bidder will within seven days after the day of the Bid opening submit to Owner an experience statement with pertinent information as to similar projects and other evidence of qualification for each such Subcontractor, Supplier, individual or entity. If Owner or Engineer after due investigation has reasonable objection to any proposed Subcontractor, Supplier, individual or entity, Owner may before giving the Notice of Award request the apparent Successful Bidder to submit an acceptable substitute without an increase in Bid price.

12.03 If the apparent Successful Bidder declines to make any such substitution, the Contract shall not be awarded to such Bidder, but its declining to make any such substitution will not constitute grounds for sacrificing its Bid Security. Any Subcontractor, other person or organization so listed and to whom Owner or Engineer does not make written objection prior to the giving of the Notice of Award will be deemed acceptable to Owner and Engineer subject to revocation of such acceptance after the Effective Date of the Agreement as provided in paragraph 7.06 of the General Conditions. Substitution or replacement of any such subcontractor after the Contract is awarded shall be subject to the approval of the Owner.

12.04 Successful Bidder shall not be required to employ any Subcontractor, Supplier, individual or entity against whom Successful Bidder has reasonable objection.

ARTICLE 13 – PREPARATION OF BID

13.01 The Bid Form(s) are included in Section 00400 and the Supplements to the Bid Forms in Section 00430.

13.02 All blanks on the Bid Form(s) and Supplements shall be typewritten or hand printed in ink. Any interlineation, alteration, or erasure must be initialed by the signer of the Bid.

- 13.03 A Bid by a corporation shall be executed in the corporate name by a corporate officer (whose title must appear under the signature), accompanied by evidence of authority to sign. The corporate address and state of incorporation shall be shown.
- 13.04 A Bid by a partnership shall be executed in the partnership name and signed by a partner (whose title must appear under the signature), accompanied by evidence of authority to sign. The partnership's address for receiving notices shall be shown.
- 13.05 A Bid by a limited liability company shall be executed in the name of the firm by a member or other authorized person and accompanied by evidence of authority to sign. The state of formation of the firm and the firm's address for receiving notices shall be shown.
- 13.06 A Bid by an individual shall show the Bidder's name and address for receiving notices.
- 13.07 A Bid by a joint venture shall be executed by an authorized representative of each joint venture in the manner indicated on the Bid Form. The joint venture's address for receiving notices shall be shown.
- 13.08 All names shall be printed in ink below the signatures.
- 13.09 The Bid shall contain an acknowledgment of receipt of all Addenda, the dates and numbers of which shall be filled in on the Bid Form.
- 13.10 Postal and e-mail addresses and telephone number for communications regarding the Bid are to be directed shall be shown.
- 13.11 The Bid shall contain evidence of Bidder's authority and qualification to do business in the state where the Project is located, or Bidder shall covenant in writing to obtain such authority and qualification prior to award of the Contract and attach such covenant to the Bid. Bidder's state contractor license number, if any, shall also be shown on the Bid Form.
- 13.12 Pursuant to ORS 279C.505 (2), all bidders must certify with their bids that they have an employee drug testing program in place.

ARTICLE 14 – BASIS OF BID

14.01 *Lump Sum*

- A. Bidders shall submit a Bid on a lump sum basis as set forth in the Bid Form.

ARTICLE 15 – SUBMITTAL OF BID

- 15.01 Volume 1 - Bidding Requirements including all Bid Forms, Bid Security and Supplements to Bid Forms completed as instructed and required, and other documents required by the Bidding Documents shall be submitted intact as the bid.
 - A. Volume 1 is intended to be submitted bound along the full left side of the pages in the order listed on the Table of Contents.
 - B. Volume 1 when unbound is not considered to be a valid Bidding Document.
 - C. Volume 1 with pages missing is not considered to be a valid Bidding Document. The exception is sections which are to be submitted separately as detailed in Article 3 and Article 12: Section 00435 (Fist-Tier Subcontractor Disclosure Form) and Section 00451 (Bidder's Prequalification Form) .

- 15.02 A Bid shall be submitted no later than the time and at the place indicated in the Invitation to or Advertisement for Bid and shall be enclosed in an opaque sealed envelope, marked with the Project title, and name and address of the Bidder. If the Bid is sent through the mail or other delivery system, the sealed envelope shall be enclosed in a separate envelope with the notation "BID ENCLOSED" on the face thereof.
- 15.03 Oral, electronic, telephonic, photocopied, telephonic facsimile (FAX) or telegraphic bids are invalid and will not be accepted or receive consideration.
- 15.04 Bids received after the time indicated in the Invitation to or Advertisement for Bid will not be accepted or receive consideration.
- 15.05 When using the mail or other delivery system, the Bidder is totally responsible for the mail or other delivery system delivering the Bid at the place and prior to the time indicated in the invitation to or Advertisement for Bid. A mailed Bid shall be addressed to the owner at the address given in the invitation to or Advertisement for Bid.

ARTICLE 16 – MODIFICATION AND WITHDRAWAL OF BID

- 16.01 A Bid may be modified or withdrawn by an appropriate document duly executed in the same manner that a Bid must be executed. The document must be delivered to the place where Bids are to be submitted prior to the date and time for the opening of Bids.
- 16.02 No bidder may withdraw or modify its bid after the time set for the receipt of bids, and thereafter during the period the bids remain open.

ARTICLE 17 – OPENING OF BIDS

- 17.01 Bids will be opened publicly at the time and place indicated in the Advertisement or Invitation to Bid and unless obviously non-responsive, read aloud publicly. An abstract of the amounts of the Bids will be made available to Bidders after the opening of Bids.

ARTICLE 18 – BIDS TO REMAIN SUBJECT TO ACCEPTANCE

- 18.01 All Bids shall remain subject to acceptance for 70 days after the day of the Bid opening. The Bid Security of any Bidder whom Owner believes to have a reasonable chance of receiving the award may be retained by Owner during this period, but Owner may, in its sole discretion, release any Bid and return the Bid Security prior to that date.

ARTICLE 19 – AWARD OF CONTRACT

- 19.01 Owner reserves the right to reject any and all Bids, to waive any and all informalities and to negotiate contract terms with the Successful Bidder, and the right to disregard all nonconforming, nonresponsive or conditional Bids. Owner further reserves the right to reject the Bid of any Bidder whom it finds, after reasonable inquiry and evaluation, to be non-responsive. Owner also reserves the right to waive all informalities not involving price, time, or changes in the Work and to negotiate contract terms with the Successful Bidder.
- 19.02 More than one Bid for the same Work from an individual or entity under the same or different names will not be considered. Reasonable grounds for believing that any Bidder

- has an interest in more than one Bid for the Work may be cause for disqualification of that Bidder and the rejection of all Bids in which that Bidder has an interest.
- 19.03 In evaluating Bids, Owner shall consider whether or not the Bids comply with the prescribed requirements; and alternates and unit prices, if requested in the Bid forms.
- 19.04 In evaluating Bids submitted by a non-resident Bidder, Owner shall add a percent increase to the Bid of a non-resident Bidder equal to the percent, if any, of the preference given to the non-resident Bidder in the State in which the non-resident Bidder resides.
- 19.05 In evaluating Bidders, Owner will consider the qualifications and experience of the Bidders and may consider the qualifications and experience of the Subcontractors, Suppliers and other individuals and entities proposed for those portions of the Work as to which the identity of Subcontractors and other persons and organizations must be submitted as provided in the Supplementary General Conditions. Operating costs, maintenance considerations, performance data and guarantees of materials and equipment may also be considered by Owner.
- 19.06 Owner may conduct such investigations as it deems necessary to assist in the evaluation of any Bid and to establish the responsibility, qualifications and financial ability of the Bidders, proposed Subcontractors, Suppliers and other individuals and entities to perform the Work in accordance with the Contract Documents.
- 19.07 Owner reserves the right to reject the Bid of any Bidder who does not pass any such evaluation to Owner's satisfaction.
- 19.08 If the Contract is to be awarded, Owner will award the Contract to the following:
- A. The responsive Bidder whose Bid, conforming with all material terms and conditions of The Instructions to Bidders, is lowest.
- 19.09 If the Contract is to be awarded, Owner will give the Successful Bidder a Notice of Award within 14 days after the day of the Bid opening. A Notice of intent to Award will be sent to all Bidders by Certified Mail within seven days after the date of Bid opening.
- 19.10 Any protest of award must be filed with the Owner within Five (5) calendar days of mailing of the Notice of intent to Award.

ARTICLE 20 – CONTRACT SECURITY, INDURANCE, AND OTHER REQUIRED SUBMITTALS

- 20.01 Article 6 of the General Conditions, as may be modified by the Supplementary Conditions, sets forth Owner's requirements as to performance and payment bonds and insurance. When the Successful Bidder delivers the Agreement (executed by Successful Bidder) to Owner, it shall be accompanied by required bonds and insurance documentation.
- 20.02 Article 6 of the General Conditions and the related Supplementary General Conditions set forth insurance requirements. When the successful Bidder returns the executed Agreement to Owner for Owner signature, it shall be accompanied by certificates of insurance (and other evidence of insurance requested by Owner) which Contractor is required to purchase and maintain in accordance with the General Conditions and related Supplementary General Conditions. On return of the signed Agreement to Contractor, Owner shall deliver any certificates of insurance which Owner is required to purchase and maintain in accordance with the General Conditions and related Supplementary General Conditions.

- 20.03 When the successful Bidder returns the executed Agreement to Owner for Owner's signature, it shall be accompanied by proof that successful Bidder has an employee drug testing program in place. Such proof may include a copy of the successful Bidder's adopted policy or program for employee drug testing.
- 20.04 Article 6 of the General Conditions and Supplementary General Conditions set forth Owner's requirements as to public works bond. Before Successful Bidder starts work on the Project, the Successful Bidder and every subcontractor of the Successful Bidder must have a public works bond filed with the Construction Contractors Board unless exempt under ORS 279C.800 - 870.

ARTICLE 21 – SIGNING OF AGREEMENT

- 21.01 When Owner issues a Notice of Award to the Successful Bidder, it shall be accompanied by the at least three copies of the unexecuted counterparts of the Agreement along with the other Contract Documents as identified in the Agreement. Within 15 days thereafter, Successful Bidder shall execute and deliver the required number of counterparts of the Agreement (and any bonds and insurance documentation required to be delivered by the Contract Documents) to Owner. Within ten days thereafter, Owner shall deliver one fully executed counterpart of the Agreement to Successful Bidder.

ARTICLE 22 – SPECIAL REQUIREMENTS

- 22.01 Compliance with ORS 279C.840 and payment of prevailing wage rates is a requirement of this Contract if the lump sum bid amount is \$50,000 or greater. Requirements are further defined in the General Conditions and Supplementary General Conditions.
- 22.02 All bidders must be "equal opportunity employers" and comply with the appropriate provisions of state and federal law. In addition, all bidders are required to comply with ORS 656.017 regarding workers' compensation. Bidder, Contractor, and Subcontractors are required to be registered with Construction Contractors Board.
- 22.03 Project must be completed no later than February 15, 2016, the close of the in-water work period enforced by the Oregon Department of Fish and Wildlife.

END OF SECTION

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SECTION 00400

BID⁽¹⁾

SECTION	TITLE
00400	BID
00430	BID BOND
00435	FIRST TIER SUBDECONTRACTOR DISCLOSURE FORM
00451	PREQUALIFICATION FORM ⁽²⁾
00461	NON-COLLUSION AFFIDAVIT
00469	RESPONSIBILITY AFFIDAVIT

(1) All Forms listed above must be submitted for the Bid to be considered responsive.

(2) Submitted by 5 days prior to bid.

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BID

PROJECT IDENTIFICATION: CITY OF COOS BAY
SANITARY SEWER OUTFALL REPAIR, WASTEWATER TREATMENT PLANT 2

ARTICLE 1 – BID RECEIPT

1.01 This Bid is submitted to:

Jennifer Wirsing
Wastewater Project Engineer
City of Coos Bay Public Works Department
500 Central Avenue
Coos Bay OR 97420

1.02 The undersigned Bidder proposes and agrees, if this Bid is accepted, to enter into an Agreement with Owner in the form included in the Bidding Documents to perform all Work as specified or indicated in the Bidding Documents for the prices and within the times indicated in this Bid and in accordance with the other terms and conditions of the Bidding Documents.

ARTICLE 2 – BIDDER’S ACKNOWLEDGEMENTS

- 2.01 Bidder accepts all of the terms and conditions of the Instructions to Bidders, including without limitation those dealing with the disposition of Bid security. This Bid will remain subject to acceptance for 70 days after the Bid opening, or for such longer period of time that Bidder may agree to in writing upon request of Owner.
- 2.02 Successful bidder will sign the Agreement and submit the Contract Security and other documents required by the contract Documents within fifteen days after the date of Owner’s Notice of Award.

ARTICLE 3 – BIDDER’S REPRESENTATIONS

3.01 In submitting this Bid, Bidder represents that:

- A. Bidder has examined and carefully studied the Bidding Documents, and any data and reference items identified in the Bidding Documents, and hereby acknowledges receipt of the following Addenda:

Addendum No.	Addendum Date
_____	_____
_____	_____
_____	_____
_____	_____

- B. Bidder has visited the Site, conducted a thorough, alert visual examination of the Site and adjacent areas, and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
- C. Bidder is familiar with and has satisfied itself as to all Federal, State, and local Laws and Regulations that may affect cost, progress, and performance of the Work.
- D. Bidder has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or adjacent to the Site and all drawings of physical conditions relating to existing surface or subsurface structures at the Site that have been identified in the Supplementary Conditions, especially with respect to Technical Data in such reports and drawings, and (2) reports and drawings relating to Hazardous Environmental Conditions, if any, at or adjacent to the Site that have been identified in the Supplementary Conditions, especially with respect to Technical Data in such reports and drawings.
- E. Bidder has considered the information known to Bidder itself; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Bidding Documents; and any Site-related reports and drawings identified in the Bidding Documents, with respect to the effect of such information, observations, and documents on (1) the cost, progress, and performance of the Work; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by Bidder; and (3) Bidder's safety precautions and programs.
- F. Bidder agrees, based on the information and observations referred to in the preceding paragraph, that no further examinations, investigations, explorations, tests, studies, or data are necessary for the determination of this Bid for performance of the Work at the price bid and within the times required, and in accordance with the other terms and conditions of the Bidding Documents.
- G. Bidder is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Bidding Documents.
- H. Bidder has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Bidder has discovered in the Bidding Documents, and confirms that the written resolution thereof by Engineer is acceptable to Bidder.
- I. The Bidding Documents are generally sufficient to indicate and convey understanding of all terms and conditions for the performance and furnishing of the Work.
- J. The submission of this Bid constitutes an incontrovertible representation by Bidder that Bidder has complied with every requirement of this Article, and that without exception the Bid and all prices in the Bid are premised upon performing and furnishing the Work required by the Bidding Documents.
- K. Bidder will comply with the applicable provisions of ORS 279C.840 to ORS 279C.870 and with the provisions in the Supplementary General Conditions relating to the payment of prevailing wage rates.
- L. _____ By initialing this space, the Bidder hereby certifies that he or she has not discriminated against minorities, women, or emerging small business enterprises in obtaining any required subcontracts.
- M. The Bidder hereby certifies that it is a resident Bidder as defined in ORS 279A.120, of the State of _____.

- N. Pursuant to ORS 279C .505(2), the Bidder hereby certifies that it has an employee drug testing program in place and if awarded a contract will provide proof of such program when executed Agreements are returned to OWNER.
- O. The Bidder will comply with all requirements of Oregon DEQ and the City of Coos Bay as identified in these Bidding Documents.
- P. The Bidder hereby certifies that this is a complete bid with all Volume 1 pages submitted as instructed in the Instructions to Bidders.

ARTICLE 4 – BIDDER’S CERTIFICATION

4.01 Bidder certifies that:

- A. This Bid is genuine and not made in the interest of or on behalf of any undisclosed individual or entity and is not submitted in conformity with any collusive agreement or rules of any group, association, organization, or corporation;
- B. Bidder has not directly or indirectly induced or solicited any other Bidder to submit a false or sham Bid;
- C. Bidder has not solicited or induced any individual or entity to refrain from bidding; and
- D. Bidder has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for the Contract. For the purposes of this Paragraph 4.01.D:
 - 1. “corrupt practice” means the offering, giving, receiving, or soliciting of anything of value likely to influence the action of a public official in the bidding process;
 - 2. “fraudulent practice” means an intentional misrepresentation of facts made (a) to influence the bidding process to the detriment of Owner, (b) to establish bid prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;
 - 3. “collusive practice” means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish bid prices at artificial, non-competitive levels; and
 - 4. “coercive practice” means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

ARTICLE 5 – BASIS OF BID

- 5.01 Bidder will complete the Work in accordance with the Contract Documents for the following price:

Lump Sum Price: \$ _____

ARTICLE 6 – TIME OF COMPLETION

- 6.01 Bidder agrees that the Work will be substantially complete and will be completed and ready for final payment in accordance with Paragraph 15.06 of the General Conditions on or before the

dates or within the number of calendar days indicated in the Agreement, no later than February 15, 2016.

- 6.02 Bidder accepts the provisions of the Agreement as to liquidated damages. If any, in the event of failure to complete the Work within the times specified above, and agrees to liquidated damages in the amount indicated in the Agreement.

ARTICLE 7 – ATTACHMENTS TO THIS BID

- 7.01 The following documents are submitted with and made a condition of this Bid:
- A. 00431 Required Bid security as stipulate^d in the Instructions to Bidders;
 - B. 00435 First-Tier Subcontractor Disclosure Form (To be submitted in accordance with Article 12 of the Instructions to Bidders).
 - C. 00451 Bidder's Prequalification Form (submitted prior to bid or on file with Owner)
 - D. 00461 Non Collusion Affidavit
 - E. 00462 Responsibility Affidavit

ARTICLE 8 – DEFINED TERMS

- 8.01 The terms used in this Bid with initial capital letters have the meanings stated in the Instructions to Bidders, the General Conditions, and the Supplementary Conditions.
- 8.02 BIDDER indicate in the following coordination schedule which subcontractor (or the general Contractor) by trade name (i.e.; mechanical subcontractor, electrical subcontractor, controls subcontractor, etc.) will be furnishing and/or installing the designated product or service.

ARTICLE 9 – BID SUBMITTAL

- 9.01 Communications concerning this Bid shall be addressed to the BIDDER indicated below.
- 9.02 BIDDER is in compliance with the requirements of and is registered and bonded with the State of Oregon Construction Contractor's Board as follows:

- Registered Classification: _____
- Registration No : _____
- Expiration Date: _____
- Employer's Tax ID No: _____

9.03 SUBMITTED ON _____, 20____

9.04 Bidder to affix signatures below under the appropriate organization.

IF BIDDER IS:

An Individual

Name (typed or printed): _____

By (Individual's Signature) _____

Doing business as _____

Business Address: _____

Telephone Number _____

Fax No: _____

A Partnership

Partnership Name (typed or printed): _____

By (Signature of General Partner)^(*) _____

Business Address: _____

Telephone Number _____

Fax No: _____

* Attach evidence of authority to sign

A Corporation

Corporation Name (typed or printed): _____

State of Incorporation: _____

By (Signature)^(*) _____

Name (typed or printed) _____

Title: _____

Attest _____ (Signature _____ of _____ Corporate
Secretary): 

Date of Qualification to do business in the State of Oregon: _____

Business Address: _____

Telephone Number _____

Fax No: _____

* Attach evidence of authority to sign

A Joint Venture

Joint Venture Name (typed or printed): _____

By (Signature of joint venture partner)^(*) _____

Name (typed or printed) _____

Title: _____

Business Address: _____

Telephone Number _____

Fax No: _____

Second Joint Venture Name (typed or printed): _____

By (Signature of joint venture partner)^(*) _____

Name (typed or printed) _____

Title: _____

Business Address: _____

Telephone Number _____

Fax No: _____

Phone and Fax Number and Address for receipt of official communications:

(Each joint venture must sign. The manner of signing for each individual, partnership and corporation that is party to the venture should be in the manner indicated above.)

* Attach evidence of authority to sign

9.05 Bid submitted on _____, 20____

END OF SECITON

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SECTION 00430

SUPPLEMENTS TO BID FORMS

SECTION	TITLE
00431	BID BOND
00435	FIRST TIER SUBCONTRACTOR DISCLOSURE FORM
00451	BIDDER'S PREQUALIFICATION FORM
00461	NON-COLLUSION AFFIDAVIT
00469	RESPNSIBILITY AFFIDAVIT

The supplements to the bid forms consist of the above documents, all of which must be properly executed and submitted with the bid in order for the bid to be considered responsive.

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BID BOND

Any singular reference to Bidder, Surety, Owner or other party shall be considered plural where applicable.

BIDDER (*Name and Address*):

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

OWNER (*Name and Address*):

BID

Bid Due Date:

Description (*Project Name— Include Location*):

BOND

Bond Number:

Date:

Penal sum _____ \$ _____
(Words) (Figures)

Surety and Bidder, intending to be legally bound hereby, subject to the terms set forth below, do each cause this Bid Bond to be duly executed by an authorized officer, agent, or representative.

BIDDER

SURETY

Bidder's Name and Corporate Seal

Surety's Name and Corporate Seal

By: _____
Signature

By: _____
Signature (Attach Power of Attorney)

Print Name

Print Name

Title

Title

Attest: _____
Signature

Attest: _____
Signature

Title

Title

Note: Addresses are to be used for giving any required notice.

Provide execution by any additional parties, such as joint venturers, if necessary.

1. Bidder and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to pay to Owner upon default of Bidder the penal sum set forth on the face of this Bond. Payment of the penal sum is the extent of Bidder's and Surety's liability. Recovery of such penal sum under the terms of this Bond shall be Owner's sole and exclusive remedy upon default of Bidder.
2. Default of Bidder shall occur upon the failure of Bidder to deliver within the time required by the Bidding Documents (or any extension thereof agreed to in writing by Owner) the executed Agreement required by the Bidding Documents and any performance and payment bonds required by the Bidding Documents.
3. This obligation shall be null and void if:
 - 3.1 Owner accepts Bidder's Bid and Bidder delivers within the time required by the Bidding Documents (or any extension thereof agreed to in writing by Owner) the executed Agreement required by the Bidding Documents and any performance and payment bonds required by the Bidding Documents, or
 - 3.2 All Bids are rejected by Owner, or
 - 3.3 Owner fails to issue a Notice of Award to Bidder within the time specified in the Bidding Documents (or any extension thereof agreed to in writing by Bidder and, if applicable, consented to by Surety when required by Paragraph 5 hereof).
4. Payment under this Bond will be due and payable upon default of Bidder and within 30 calendar days after receipt by Bidder and Surety of written notice of default from Owner, which notice will be given with reasonable promptness, identifying this Bond and the Project and including a statement of the amount due.
5. Surety waives notice of any and all defenses based on or arising out of any time extension to issue Notice of Award agreed to in writing by Owner and Bidder, provided that the total time for issuing Notice of Award including extensions shall not in the aggregate exceed 120 days from the Bid due date without Surety's written consent.
6. No suit or action shall be commenced under this Bond prior to 30 calendar days after the notice of default required in Paragraph 4 above is received by Bidder and Surety and in no case later than one year after the Bid due date.
7. Any suit or action under this Bond shall be commenced only in a court of competent jurisdiction located in the state in which the Project is located.
8. Notices required hereunder shall be in writing and sent to Bidder and Surety at their respective addresses shown on the face of this Bond. Such notices may be sent by personal delivery, commercial courier, or by United States Registered or Certified Mail, return receipt requested, postage pre-paid, and shall be deemed to be effective upon receipt by the party concerned.
9. Surety shall cause to be attached to this Bond a current and effective Power of Attorney evidencing the authority of the officer, agent, or representative who executed this Bond on behalf of Surety to execute, seal, and deliver such Bond and bind the Surety thereby.
10. This Bond is intended to conform to all applicable statutory requirements. Any applicable requirement of any applicable statute that has been omitted from this Bond shall be deemed to be included herein as if set forth at length. If any provision of this Bond conflicts with any applicable statute, then the provision of said statute shall govern and the remainder of this Bond that is not in conflict therewith shall continue in full force and effect.
11. The term "Bid" as used herein includes a Bid, offer, or proposal as applicable.

SECTION 00435

FIRST-TIER SUBCONTRACTOR DISCLOSURE FORM

Bid Closing on _____, 20__ at 2:00 p.m. PDT

1. This form must be submitted at the ^{tion}local~~e~~ specified in the Invitation to Bid on the advertised bid closing date and within two (2) ours after the advertised bid closing time.

2. As ^especified in the Instructions to Bidders, Section 0200, Article 12, the Bidder shall list below the name of each subcontractor that will be furnishing labor or labor and materials, and that is required to be disclosed, Construction Contractors Board Number (CCB#), the category of work that the subcontractor will be performing and the dollar value of the subcontract. Enter "NONE" if there are no subcontractors that need to be disclosed. (ATTACH ADDITONAL SHEETS IF NEEDED)

Name	CCB#	Description of Work	Value of Subcontract

3. Total value of work provided by all subcontractors including those listed above is \$_____.

The total value of all work subcontracted shall not exceed 50% of the Contract Amount. Failure to submit this form by the disclosure deadline will result in a non-responsive bid. A non-responsive bid will not be considered for award.

Form Submitted By

Contact/Signature/Title

Phone Number

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SECTION 00451

BIDDER'S PREQUALIFICATION FORM

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BIDDER'S PREQUALIFICATION FORM

The Owner requires a statement as to the financial ability, equipment, and relevant experience to be completed and submitted by prospective bidders for this Work. No Bidder is eligible to bid until the following form has been completely filled out and submitted in accordance with the Instructions to Bidders, and the Bidder has been accepted as a qualified Bidder by OWNER.

The information submitted in this form will be regarded as confidential to the extent of the law.

To prequalify for this project you must at least:

- 1) Have completed new construction, retrofit or repair of a municipal sewage outfall and/or diffuser, involving underwater construction, in at least three (3) applications in the past ten (10) years.
- 2) Commit a field superintendent with relevant, successful experience to the project. The field superintendent shall have the following specific experience:

Field superintendent shall have been the person in charge of at least one new construction, retrofit or repair of a municipal sewage outfall and/or diffuser, involving underwater construction that has been successfully completed prior to bidding this project in the last five years. The reference project shall be relevant to this project.

The field superintendent shall be on the project site in responsible charge, full time, during all construction and retrofit activities.

Submitted to: City of Coos Bay

Address: _____

Attention: Jennifer Wirsing, PE

By: _____
(CONTRACTOR)

(Circle One)
A Corporation
A Partnership
An Individual

Address: _____

Contact Name: _____

Contact E-mail: _____ Contact Phone: _____

EXPERIENCE QUESTIONNAIRE

1. How many years has your organization been in business as a contractor under your current business name? _____

2. How many years experience in the proposed type and size of construction work has your organization had as a general contractor: _____
3. List the outfall/diffuser construction, repair or retrofit projects your organization has had in the last 10 years that are similar in type and size to the work proposed herein. A minimum of three (3) are required: (Provide an attachment if additional space is required.)

Contract Amount	Project Description	When Completed	Owner Contact: Name, Title, Organization and Phone Number

4. Have you ever failed to complete any work awarded to you? _____. If so, where and why?

5. What is the construction experience of the principal individuals of your organization that you are proposing to work on this project:

Individual's Name	Current Position	Years of Construction Experience	Magnitude and Type of Work	In What Capacity

6. Name the field superintendent who will be in direct charge if awarded this Contract and state his or her relevant, successful experience. Indicate the owner of the projects referenced and the year the projects were constructed.

7. List below the contracts to which you, or your company, or corporation were party, during the previous 10 years that were involved in litigation of any type:

The undersigned hereby declares that the foregoing statements are true.

Dated at _____ this _____ day of _____, 2016.

By _____

Title _____

Date _____

SECTION 00461

NON-COLLUSION AFFIDAVIT

Contract Bid No. _____

STATE OF _____)

)

County of _____)

I state that I am (title) _____ of (Name of Firm) _____ and that I am authorized to make this Affidavit on behalf of my firm, and its owners, directors, and officers. I am the person responsible in my firm for the price(s) and the amount of this bid.

I state that:

1. The price(s) and amount of this bid have been arrived at independently and without consultation, communication or agreement with any other contractor, bidder or potential bidder, except as disclosed on the attached appendix.
2. That neither the price(s) nor the amount of this bid, and neither the approximate price(s) nor approximate amount of this bid, have been disclosed to any other firm or person who is a bidder or potential bidder, and they will not be disclosed before bid opening.
3. No attempt has been made or will be made to induce any firm or person to refrain from bidding on this contract, or to submit a bid higher than this bid, or to submit any intentionally high or non-competitive bid or other form of complementary bid.
4. The bid of my firm is made in good faith and not pursuant to any agreement or discussion with, or inducement from, any firm or person to submit a complementary or other non-competitive bid.
5. _____ (Name of Firm), its affiliates, subsidiaries, officers, directors and employees are not currently under investigation by any governmental agency and have not in the last four years been convicted of or found liable for any act prohibited by State or Federal law in any jurisdiction, involving conspiracy or collusion with respect to bidding on any public contract, except as described on the attached appendix

I state that _____ (Name of Firm) understands and acknowledges that the above representations are material and important, and will be relied on by the Owner in awarding the contract(s) for which this bid is submitted. I understand and my firm understands that any misstatement in this Affidavit is and shall be treated as fraudulent concealment from the Owner of the true facts relating to the submission of bids for this Contract

Name and Position: _____

Subscribed and sworn to before me this _____ day of _____,
20____

Notary public for _____
My Commission Expires _____

END OF SECTION

**SECTION 00462
RESPONIBLITY AFFIDAVIT**

Contract Bid No. _____

STATE OF _____)

)

County of _____)

I state that I am (title) _____ of (Name of Firm) _____

And that I am authorized to make the Affidavit on behalf of my firm, and its owners, directors, and officers.

I state that my firm meets the following criteria as defined in ORS 279C.375 (2)(a) and (b):

1. Is not on the list of non-responsible bidders created by the Construction Contractors Board under ORS 701.227.
2. Meets the standards of responsibility as defined in ORS 279C (2) (a) and (b).
3. Has available the appropriate financial, material, equipment, facility and personnel resources and expertise, or the ability to obtain the resources and expertise, necessary to meet all contractual responsibilities.
4. Has a satisfactory record of performance.
5. Has a satisfactory record of integrity.
6. Is qualified legally to contract with the OWNER, a public agency.
7. Holds current licenses that businesses or service professionals operating in this state must hold in order to undertake or perform the work specified in the contract.
8. Is covered by liability insurance and other insurance in amounts required in the solicitation documents.
9. Qualifies as a carrier-insured employer or a self-insured employer under ORS 656.407 or has elected coverage under ORS 656.128.
10. Has disclosed the bidder's first-tier subcontractors in accordance with ORS 279C.370.
- 11.
12. Has supplied all necessary information in connection with the inquiry concerning responsibility

I state that _____(Name of Firm) understands and acknowledges that the above representations are material and important, and will be relied on by the Owner in awarding the contract(s) for which this bid is submitted. I understand and my firm understands that any misstatement in this Affidavit is and shall be treated as fraudulent concealment from the Owner of the true facts relating to the submission of bids for this Contract

Name and Position: _____

Subscribed and sworn to before me this _____day of _____,
20____

Notary public for_____
My Commission Expires_____

END OF SECTION

SECTION 00495

SAMPLE FORMS

SECTION	TITLE
00496	NOTICE OF INTENT TO AWARD
00497	NOTICE OF AWARD

THE FORMS LISTED ABOVE ARE SAMPLES OF THE DOCUMENTS THAT WILL BE SENT AFTER THE BID AND DO NOT NEED TO BE FILLED OUT PRIOR TO BID.

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_____, 20____

(Name of Bidder)

(Address of Bidder)

Attention : _____ (Signing Bidder)

Re: Notice of Intent to Award for _____ (Project Name), City of Coos
Bay, Project Number _____

Dear _____,

Bids were received and opened on _____, 20____ for the above project.
After review and evaluation of the bids, the apparent lowest responsive bidder was
determined to be _____.

The City of Coos Bay (Owner) at their regular scheduled City Council meeting on
_____, 2015 intends to award the Contract to the apparent low bidder.
The City will require any protest to this intended award to be filed within seven (7)
calendar days of the mailing of this notice. Please send all protests to the following:
City of Coos Bay, Attention: Jennifer Wirsing, 500 Central Avenue, Coos Bay OR
97420. The award will be final upon the later of the following: eight (8) days after the
date of the Notice of Intent to Award or until the city provides written responses to all
timely filed protests that denies the protest and affirms the award.

In the event that a protest is filed, then the City reserves the right to reject all bids and
rebid the project or take other actions it deems in its best interest.

Sincerely,

Jennifer Wirsing
Wastewater Project Engineer

cc: Nate McClintock (Owner's Attorney)

Attachment: Copy of Bid Tabulation

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NOTICE OF AWARD

Date of Issuance:

Owner:

Owner's Contract No.:

Engineer:

Engineer's Project No.:

Project:

Contract Name:

Bidder:

Bidder's Address:

TO BIDDER:

You are notified that Owner has accepted your Bid dated [] for the above Contract, and that you are the Successful Bidder and are awarded a Contract for:

[describe Work, alternates, or sections of Work awarded]

The Contract Price of the awarded Contract is: \$ [] *[note if subject to unit prices, or cost-plus]*

[] unexecuted counterparts of the Agreement accompany this Notice of Award, and one copy of the Contract Documents accompanies this Notice of Award, or has been transmitted or made available to Bidder electronically. *[revise if multiple copies accompany the Notice of Award]*

☐ a set of the Drawings will be delivered separately from the other Contract Documents.

You must comply with the following conditions precedent within 15 days of the date of this Notice of Award:

1. Deliver to Owner [] counterparts of the Agreement, fully executed by Bidder.
2. Deliver with the executed Agreement(s) the Contract security *[e.g., performance and payment bonds]* and insurance documentation as specified in the Instructions to Bidders and General Conditions, Articles 2 and 6.
3. Other conditions precedent (if any):

Failure to comply with these conditions within the time specified will entitle Owner to consider you in default, annul this Notice of Award, and declare your Bid security forfeited.

Within ten days after you comply with the above conditions, Owner will return to you one fully executed counterpart of the Agreement, together with any additional copies of the Contract Documents as indicated in Paragraph 2.02 of the General Conditions.

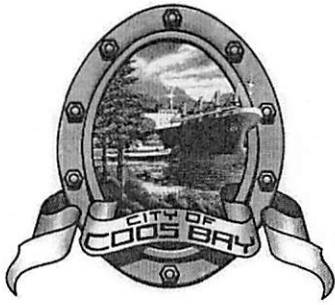
Owner:

Authorized Signature

By:

Title:

Copy: Engineer



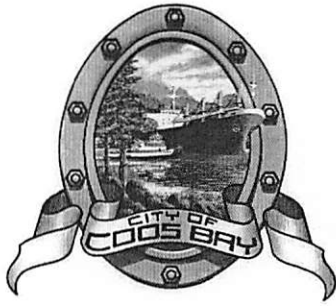
VOLUME 2 CONTRACT DOCUMENTS

Sanitary Sewer Outfall Repair (Wastewater Treatment Plant 2)

City of Coos Bay
Coos County, Oregon

City Project No. 140091

December 22, 2015



VOLUME 2 CONTRACT DOCUMENTS

Sanitary Sewer Outfall Repair (Wastewater Treatment Plant 2)

City of Coos Bay
Coos County, Oregon

City Project No. 140091

December 22, 2015

VOLUME 1 - BIDDING REQUIREMENTS

SECTION NO.	DESCRIPTION
00100	ADVERTISEMENT FOR BIDS
00200	INSTRUCTIONS TO BIDDERS
00400	BID FORMS
00410 *	BID
00430	SUPPLEMENTS TO BIDS FORMS
00431 *	BID BOND
00435*	FIRST-TIER SUBCONTRACTOR DISCLOSURE FORM
00450	REPRESENTATIONS AND CERTIFICATIONS
00451 *	BIDDER 'S PREQUALIFICATION FORM
00460	AGENCY REQUIRED SUPPLEMENTS
00461 *	NON-COLLUSION AFFIDAVIT
00462*	RESPONSIBILITY AFFIDAVIT
00495	SAMPLE FORMS
00496	NOTICE OF INTENT TO AWARD
00497	NOTICE OF AWARD

* These forms require completion by Bidder.

VOLUME 2 – CONTRACT DOCUMENTS

00510	NOTICE OF AWARD
00520	AGREEMENT BETWEEN OWNER AND CONTRACTOR FOR CONSTRUCTION CONTRACT
00540	EXHIBITS TO THE AGREEMENT
00550	NOTICE TO PROCEED
00600	BONDS AND CERTIFICATES
00610	PERFORMANCE BOND
00615	PAYMENT BOND
00619	SAMPLE FORMS
00620	CONTRACTOR'S APPLICATION FOR PAYMENT
00625	CERTIFICATE OF SUBSTANTIAL COMPLETION
00630	REQUEST FOR INFORMATION
00641	CHANGE ORDER
00643	CONTRACTOR'S AFFIDAVIT OF PAYMENT
00700	GENERAL CONDITIONS
00800	SUPPLEMENTARY GENERAL CONDITIONS
00830	PREVAILING WAGE RATES
00900	ADDENDA

SECTION NO.

DIVISION I - GENERAL REQUIREMENTS

01010	SUMMARY OF WORK
01025	MEASUREMENT AND PAYMENT
01040	COORDINATION
01060	REGULATORY REQUIREMENTS
01070	ABBREVIATIONS AND SYMBOLS
01230	CONSTRUCTION SCHEDULING
01300	SUBMITTALS
01500	CONSTRUCTION FACILITIES AND TEMPORARY CONTROLS

VOLUME 3:

TECHINICAL SPECIFICATIONS:

00 01 01	PROJECT TITLE PAGE
00 01 07	SEALS PAGE
35 20 50	CORRUGATED METAL PIPE OUTFALL REHABILITATION

PROJECT DRAWINGS:

CIVIL:	Sheet 1
DETAILS:	Sheets 2 through 3

CITY OF COOS BAY
SANITARY SEWER OUTFALL REPAIR

NOTICE OF AWARD
SECTION 00510 - PAGE 1

SECTION 00510
NOTICE OF AWARD

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SECTION 00520

EJCDC AGREEMENT (C-520) BETWEEN OWNER AND CONTRACTOR

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This document has important legal consequences; consultation with an attorney is encouraged with respect to its use or modification. This document should be adapted to the particular circumstances of the contemplated Project and the controlling Laws and Regulations.

**AGREEMENT
BETWEEN OWNER AND CONTRACTOR FOR
CONSTRUCTION CONTRACT (STIPULATED PRICE)**

Prepared by



Issued and Published Jointly by



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INTRODUCTION

This Agreement between Owner and Contractor for Construction Contract (Stipulated Price) ("Agreement") has been prepared for use with the Suggested Instructions to Bidders for Construction Contracts ("Instructions to Bidders") (EJCDC® C-200, 2013 Edition); the Suggested Bid Form for Construction Contracts ("Bid Form") (EJCDC® C 410, 2013 Edition); and the Standard General Conditions of the Construction Contract ("General Conditions") (EJCDC® C-700, 2013 Edition). Their provisions are interrelated, and a change in one may necessitate a change in the others. See also the Guide to the Preparation of Supplementary Conditions (EJCDC® C-800, 2013 Edition), and the Commentary on the 2013 EJCDC Construction Documents (EJCDC® C-001, 2013 Edition).

In construction contracting, as a general matter the "agreement" is the legal instrument executed (signed) by the project owner and the construction contractor, binding the parties to the terms of the contract. See CSI Project Delivery Practice Guide (2011), Section 11.1.2, p. 210, and CSI Construction Specification Practice Guide (2011), Section 5.1, p. 75. This EJCDC Agreement form serves that basic function, by identifying the parties and Contract Documents, and establishing the Contract Price and Contract Times. This Agreement form is specifically intended for stipulated price (fixed price) contracts—that is, contracts in which Owner and Contractor identify specific lump sums and unit prices as Contractor's compensation for performing the Work. For construction contracts in which the Contract Price is primarily based on costs incurred during construction, users should select EJCDC® C-525, Agreement between Owner and Contractor for Construction Contract (Cost-Plus).

This Agreement form is drafted to be flexible enough to be used on projects that are competitively bid, and for public and private contracts that are negotiated or awarded through a proposal process or otherwise. On competitively bid projects, the following documentary information would typically be made available to bidders:

- Bidding Requirements, which include the Advertisement or invitation to bid, the Instructions to Bidders, and the Bid Form that is suggested or prescribed, all of which provide information and guidance for all Bidders, and Bid Form supplements (if any) such as Bid Bond and Qualifications Statement.
- Contract Documents, which include the Agreement, performance and payment bonds, the General Conditions, the Supplementary Conditions, the Drawings, and the Specifications.
- Documents referred to in the Supplementary Conditions or elsewhere as being of interest to bidders for reference purposes, but which are not Contract Documents.

Together, the Bidding Requirements and the Contract Documents are referred to as the Bidding Documents. (The terms "Bidding Documents," "Bidding Requirements," and "Contract Documents" are defined in Article 1 of the General Conditions.) The Bidding Requirements are not Contract Documents because much of their substance pertains to the relationships prior to the award of the Contract and has little effect or impact thereafter. Many contracts are awarded without even going through a bidding process, and thus have no Bidding Requirements, illustrating that the bidding items are typically superfluous to the formation of a binding and comprehensive construction contract. In some cases, however, a bid or proposal will contain numerous line items and their prices; in such case the actual bid or proposal document may be attached as an exhibit to the Agreement to avoid extensive rekeying.

Suggested provisions are accompanied by “Notes to User” and bracketed notes and prompts to assist in preparing the Agreement. The provisions have been coordinated with the other forms produced by EJCDC. Much of the language should be usable on most projects, but modifications and additional provisions will often be necessary. When modifying the suggested language or writing additional provisions, the user must check the other documents thoroughly for conflicts and coordination of terms, and make appropriate revisions in all affected documents.

All parties involved in construction projects benefit significantly from a standardized approach in the location of subject matter throughout the documents. Experience confirms the danger of addressing the same subject matter in more than one location; doing so frequently leads to confusion and unanticipated legal consequences. When preparing documents for a construction project, careful attention should be given to the guidance provided in EJCDC® N-122/AIA® A521, Uniform Location of Subject Matter (2012 Edition), available at no charge from the EJCDC website, www.ejcdc.org, and from the websites of EJCDC’s sponsoring organizations.

CSI MasterFormat™ (50-Division format) designates Document “00 52 XX” for various forms of the owner-contractor agreement. If this format is used, the first page of the Agreement would be numbered 00 52 13-1 (or other appropriate third pair of numbers, in accordance with MasterFormat™).

Instructions and restrictions regarding the use of this document are set out in the License Agreement that accompanied the document at the time of purchase. To prepare the Agreement for inclusion in a Project Manual or for use in a specific contractual engagement, (1) remove the cover pages and this Introduction, (2) fill in Project-specific information and make revisions to the Agreement, following the guidance in the Notes to Users and bracketed notes and prompts, and the advice of legal counsel, and (3) delete the Notes to Users and bracketed notes and prompts.

**AGREEMENT
BETWEEN OWNER AND CONTRACTOR
FOR CONSTRUCTION CONTRACT (STIPULATED PRICE)**

THIS AGREEMENT is by and between _____ (“Owner”) and
_____ (“Contractor”).

Owner and Contractor hereby agree as follows:

ARTICLE 1 – WORK

1.01 Contractor shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows:

A. Coos Bay Waste Water Treatment Plant 2 Outfall Improvements

- a. General requirements pertaining to offshore construction equipment and diving operations. Placing buoys, lights, and warnings to mariners around offshore worksites.
- b. Providing equipment and work platform as necessary to accomplish the work.
- c. Dredging or water jetting as necessary to accomplish the work
- d. Lowering repair pieces to project area.
- e. Cutting off and removing existing bulkhead on terminal end of the outfall and diffuser ports as shown. Installation of repair and rehabilitation pieces.

ARTICLE 2 – THE PROJECT

2.01 The Project, of which the Work under the Contract Documents is a part, is generally described as follows: Coos Bay Waste Water Treatment Plant 2 Outfall Improvements

ARTICLE 3 – ENGINEER

3.01 The part of the Project that pertains to the Work has been designed by CH2M Hill Engineers, Inc

ARTICLE 4 – CONTRACT TIMES

4.01 Time of the Essence

- A. All time limits for Milestones, if any, Substantial Completion, and completion and readiness for final payment as stated in the Contract Documents are of the essence of the Contract.

4.02 Contract Times: Dates

- A. The Work will be substantially completed on or before February 8, 2016, and completed and ready for final payment in accordance with Paragraph 15.06 of the General Conditions on or before February 15, 2016.

4.03 *Liquidated Damages*

- A. Contractor and Owner recognize that time is of the essence as stated in Paragraph 4.01 above and that Owner will suffer financial and other losses if the Work is not completed and Milestones not achieved within the times specified in Paragraph 4.02 above, plus any extensions thereof allowed in accordance with the Contract. The parties also recognize the delays, expense, and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty):
1. Substantial Completion: Contractor shall pay Owner \$250 for each day that expires after the time (as duly adjusted pursuant to the Contract) specified in Paragraph 4.02.A above for Substantial Completion until the Work is substantially complete.
 2. Completion of Remaining Work: After Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Times (as duly adjusted pursuant to the Contract) for completion and readiness for final payment, Contractor shall pay Owner \$ 250 for each day that expires after such time until the Work is completed and ready for final payment.
 3. Liquidated damages for failing to timely attain Substantial Completion and final completion are not additive and will not be imposed concurrently.

ARTICLE 5 – CONTRACT PRICE

5.01 Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents the amounts that follow, subject to adjustment under the Contract:

- A. For all Work, a lump sum of: \$.

All specific cash allowances are included in the above price in accordance with Paragraph 13.02 of the General Conditions.

- B. For all Work, at the prices stated in Contractor's Bid, attached hereto as an exhibit.

ARTICLE 6 – PAYMENT PROCEDURES

6.01 *Submittal and Processing of Payments*

- A. Contractor shall submit Applications for Payment in accordance with Article 15 of the General Conditions. Applications for Payment will be processed by Engineer as provided in the General Conditions.

6.02 *Progress Payments; Retainage*

- A. Owner shall make progress payments on account of the Contract Price on the basis of Contractor's Applications for Payment on or about the 10 day of each month during performance of the Work as provided in Paragraph 6.02.A.1 below, provided that such Applications for Payment have been submitted in a timely manner and otherwise meet the requirements of the Contract. All such payments will be measured by the Schedule of Values established as provided in the General Conditions (and in the case of Unit Price Work based on the number of units completed) or, in the event there is no Schedule of Values, as provided elsewhere in the Contract.

1. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below but, in each case, less the aggregate of payments previously made and less such amounts as Owner may withhold, including but not limited to liquidated damages, in accordance with the Contract
 - a. 95 percent of Work completed (with the balance being retainage); and
 - b. 95 percent of cost of materials and equipment not incorporated in the Work (with the balance being retainage).
- B. Upon Substantial Completion, Owner shall pay an amount sufficient to increase total payments to Contractor to 95 percent of the Work completed, less such amounts set off by Owner pursuant to Paragraph 15.01.E of the General Conditions, and not including 100percent of Engineer's estimate of the value of Work to be completed or corrected as shown on the punch list of items to be completed or corrected prior to final payment.

6.03 *Final Payment*

- A. Upon final completion and acceptance of the Work in accordance with Paragraph 15.06 of the General Conditions, Owner shall pay the remainder of the Contract Price as recommended by Engineer as provided in said Paragraph 15.06.

ARTICLE 7 – INTEREST

- 7.01 All amounts not paid when due shall bear interest at the legal rate required by ORS 279C.570.

ARTICLE 8 – CONTRACTOR'S REPRESENTATIONS

- 8.01 In order to induce Owner to enter into this Contract, Contractor makes the following representations:
- A. Contractor has examined and carefully studied the Contract Documents, and any data and reference items identified in the Contract Documents.
 - B. Contractor has visited the Site, conducted a thorough, alert visual examination of the Site and adjacent areas, and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
 - C. Contractor is familiar with and is satisfied as to all Laws and Regulations that may affect cost, progress, and performance of the Work.
 - D. Contractor has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or adjacent to the Site and all drawings of physical conditions relating to existing surface or subsurface structures at the Site that have been identified in the Supplementary Conditions, especially with respect to Technical Data in such reports and drawings, and (2) reports and drawings relating to Hazardous Environmental Conditions, if any, at or adjacent to the Site that have been identified in the Supplementary Conditions, especially with respect to Technical Data in such reports and drawings.
 - E. Contractor has considered the information known to Contractor itself; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Contract Documents; and the Site-related reports and drawings identified in the Contract Documents, with respect to the effect of such information, observations, and documents on (1) the cost, progress, and performance of the Work; (2) the means, methods, techniques, sequences, and procedures of

construction to be employed by Contractor; and (3) Contractor's safety precautions and programs.

- F. Based on the information and observations referred to in the preceding paragraph, Contractor agrees that no further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract.
- G. Contractor is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.
- H. Contractor has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and the written resolution thereof by Engineer is acceptable to Contractor.
- I. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.
- J. Contractor's entry into this Contract constitutes an incontrovertible representation by Contractor that without exception all prices in the Agreement are premised upon performing and furnishing the Work required by the Contract Documents.

ARTICLE 9 – CONTRACT DOCUMENTS

9.01 Contents

- A. The Contract Documents consist of the following:
 - 1. This Agreement (pages 1 to 17, inclusive).
 - 2. Performance bond (pages 18 to 19, inclusive).
 - 3. Payment bond (pages 20 to 21, inclusive).
 - 4. General Conditions, Section 0700).
 - 5. Supplementary Conditions, Section 0800 .
 - 6. Specifications as listed in the table of contents of the Project Manual.
 - 7. Drawings (not attached but incorporated by reference) consisting of] the Drawings listed on the attached sheet index.
 - 8. Addenda (numbers 1 to 2, inclusive).
 - 9. Exhibits to this Agreement (enumerated as follows):
 - a. Contractor's Bid (pages 22 to 23, inclusive).
 - 10. The following which may be delivered or issued on or after the Effective Date of the Contract and are not attached hereto:
 - a. Notice to Proceed.
 - b. Work Change Directives.
 - c. Change Orders.
 - d. Field Orders.

- B. The documents listed in Paragraph 9.01.A are attached to this Agreement (except as expressly noted otherwise above).
- C. There are no Contract Documents other than those listed above in this Article 9.
- D. The Contract Documents may only be amended, modified, or supplemented as provided in the General Conditions.

ARTICLE 10 – MISCELLANEOUS

10.01 *Terms*

- A. Terms used in this Agreement will have the meanings stated in the General Conditions and the Supplementary Conditions.

10.02 *Assignment of Contract*

- A. Unless expressly agreed to elsewhere in the Contract, no assignment by a party hereto of any rights under or interests in the Contract will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, money that may become due and money that is due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

10.03 *Successors and Assigns*

- A. Owner and Contractor each binds itself, its successors, assigns, and legal representatives to the other party hereto, its successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

10.04 *Severability*

- A. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Contractor, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

10.05 *Contractor's Certifications*

- A. Contractor certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract. For the purposes of this Paragraph 10.05:
 - 1. "corrupt practice" means the offering, giving, receiving, or soliciting of anything of value likely to influence the action of a public official in the bidding process or in the Contract execution;
 - 2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the bidding process or the execution of the Contract to the detriment of Owner, (b) to establish Bid or Contract prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;

3. "collusive practice" means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish Bid prices at artificial, non-competitive levels; and
4. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

10.06 *Other Provisions*

- A. Owner stipulates that if the General Conditions that are made a part of this Contract are based on EJCDC® C-700, Standard General Conditions for the Construction Contract, published by the Engineers Joint Contract Documents Committee®, and if Owner is the party that has furnished said General Conditions, then Owner has plainly shown all modifications to the standard wording of such published document to the Contractor, through a process such as highlighting or "track changes" (redline/strikeout), or in the Supplementary Conditions.

IN WITNESS WHEREOF, Owner and Contractor have signed this Agreement.

This Agreement will be effective on _____ (which is the Effective Date of the Contract).

NOTE(S) TO USER:

1. See Article 21 of the Instructions to Bidders and correlate procedures for format and signing of the documents.
2. The Effective Date of the Contract stated above and the dates of any construction performance bond (EJCDC® C-610 or other) and construction payment bond (EJCDC® C-615 or other) should be the same, if possible. In no case should the date of any bonds be earlier than the Effective Date of the Contract.

OWNER:

CONTRACTOR:

By: _____

Title: _____

Attest: _____

Title: _____

Address for giving notices:

(If Owner is a corporation, attach evidence of authority to sign. If Owner is a public body, attach evidence of authority to sign and resolution or other documents authorizing execution of this Agreement.)

By: _____

Title: _____

(If Contractor is a corporation, a partnership, or a joint venture, attach evidence of authority to sign.)

Attest: _____

Title: _____

Address for giving notices:

License No.: _____
(where applicable)

NOTE TO USER: Use in those states or other jurisdictions where applicable or required.

SECITON 00550

NOTICE TO PROCEED (C-550)

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NOTICE TO PROCEED

Owner:	Owner's Contract No.:
Contractor:	Contractor's Project No.:
Engineer:	Engineer's Project No.:
Project:	Contract Name:
	Effective Date of Contract:

TO CONTRACTOR:

Owner hereby notifies Contractor that the Contract Times under the above Contract will commence to run on [REDACTED], 20[REDACTED]. [see Paragraph 4.01 of the General Conditions]

On that date, Contractor shall start performing its obligations under the Contract Documents. No Work shall be done at the Site prior to such date. In accordance with the Agreement, [the date of Substantial Completion is _____, and the date of readiness for final payment is _____] **or** [the number of days to achieve Substantial Completion is _____, and the number of days to achieve readiness for final payment is _____].

Before starting any Work at the Site, Contractor must comply with the following:
[Note any access limitations, security procedures, or other restrictions]

Owner:

Authorized Signature

By:

Title:

Date Issued:

Copy: Engineer

SECTION 00610

PERFORMANCE BOND (C-610)

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PERFORMANCE BOND

CONTRACTOR *(name and address):*

SURETY *(name and address of principal place of business):*

OWNER *(name and address):*

CONSTRUCTION CONTRACT

Effective Date of the Agreement:

Amount:

Description *(name and location):*

BOND

Bond Number:

Date *(not earlier than the Effective Date of the Agreement of the Construction Contract):*

Amount:

Modifications to this Bond Form: ☐ None ☐ See Paragraph 16

Surety and Contractor, intending to be legally bound hereby, subject to the terms set forth below, do each cause this Performance Bond to be duly executed by an authorized officer, agent, or representative.

CONTRACTOR AS PRINCIPAL

SURETY

Contractor's Name and Corporate Seal

Surety's Name and Corporate Seal

By: _____
Signature

By: _____
Signature *(attach power of attorney)*

Print Name

Print Name

Title

Title

Attest: _____
Signature

Attest: _____
Signature

Title

Title

Notes: (1) Provide supplemental execution by any additional parties, such as joint venturers. (2) Any singular reference to Contractor, Surety, Owner, or other party shall be considered plural where applicable.

1. The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to the Owner for the performance of the Construction Contract, which is incorporated herein by reference.

2. If the Contractor performs the Construction Contract, the Surety and the Contractor shall have no obligation under this Bond, except when applicable to participate in a conference as provided in Paragraph 3.

3. If there is no Owner Default under the Construction Contract, the Surety's obligation under this Bond shall arise after:

3.1 The Owner first provides notice to the Contractor and the Surety that the Owner is considering declaring a Contractor Default. Such notice shall indicate whether the Owner is requesting a conference among the Owner, Contractor, and Surety to discuss the Contractor's performance. If the Owner does not request a conference, the Surety may, within five (5) business days after receipt of the Owner's notice, request such a conference. If the Surety timely requests a conference, the Owner shall attend. Unless the Owner agrees otherwise, any conference requested under this Paragraph 3.1 shall be held within ten (10) business days of the Surety's receipt of the Owner's notice. If the Owner, the Contractor, and the Surety agree, the Contractor shall be allowed a reasonable time to perform the Construction Contract, but such an agreement shall not waive the Owner's right, if any, subsequently to declare a Contractor Default;

3.2 The Owner declares a Contractor Default, terminates the Construction Contract and notifies the Surety; and

3.3 The Owner has agreed to pay the Balance of the Contract Price in accordance with the terms of the Construction Contract to the Surety or to a contractor selected to perform the Construction Contract.

4. Failure on the part of the Owner to comply with the notice requirement in Paragraph 3.1 shall not constitute a failure to comply with a condition precedent to the Surety's obligations, or release the Surety from its obligations, except to the extent the Surety demonstrates actual prejudice.

5. When the Owner has satisfied the conditions of Paragraph 3, the Surety shall promptly and at the Surety's expense take one of the following actions:

5.1 Arrange for the Contractor, with the consent of the Owner, to perform and complete the Construction Contract;

5.2 Undertake to perform and complete the Construction Contract itself, through its agents or independent contractors;

5.3 Obtain bids or negotiated proposals from qualified contractors acceptable to the Owner for a contract for performance and completion of the Construction Contract, arrange for a contract to be prepared for execution by the

Owner and a contractor selected with the Owners concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Construction Contract, and pay to the Owner the amount of damages as described in Paragraph 7 in excess of the Balance of the Contract Price incurred by the Owner as a result of the Contractor Default; or

5.4 Waive its right to perform and complete, arrange for completion, or obtain a new contractor, and with reasonable promptness under the circumstances:

5.4.1 After investigation, determine the amount for which it may be liable to the Owner and, as soon as practicable after the amount is determined, make payment to the Owner; or

5.4.2 Deny liability in whole or in part and notify the Owner, citing the reasons for denial.

6. If the Surety does not proceed as provided in Paragraph 5 with reasonable promptness, the Surety shall be deemed to be in default on this Bond seven days after receipt of an additional written notice from the Owner to the Surety demanding that the Surety perform its obligations under this Bond, and the Owner shall be entitled to enforce any remedy available to the Owner. If the Surety proceeds as provided in Paragraph 5.4, and the Owner refuses the payment or the Surety has denied liability, in whole or in part, without further notice the Owner shall be entitled to enforce any remedy available to the Owner.

7. If the Surety elects to act under Paragraph 5.1, 5.2, or 5.3, then the responsibilities of the Surety to the Owner shall not be greater than those of the Contractor under the Construction Contract, and the responsibilities of the Owner to the Surety shall not be greater than those of the Owner under the Construction Contract. Subject to the commitment by the Owner to pay the Balance of the Contract Price, the Surety is obligated, without duplication for:

7.1 the responsibilities of the Contractor for correction of defective work and completion of the Construction Contract;

7.2 additional legal, design professional, and delay costs resulting from the Contractor's Default, and resulting from the actions or failure to act of the Surety under Paragraph 5; and

7.3 liquidated damages, or if no liquidated damages are specified in the Construction Contract, actual damages caused by delayed performance or non-performance of the Contractor.

8. If the Surety elects to act under Paragraph 5.1, 5.3, or 5.4, the Surety's liability is limited to the amount of this Bond.

9. The Surety shall not be liable to the Owner or others for obligations of the Contractor that are unrelated to the Construction Contract, and the Balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this Bond to any person or entity other than

the Owner or its heirs, executors, administrators, successors, and assigns.

10. The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders, and other obligations.

11. Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction in the location in which the work or part of the work is located and shall be instituted within two years after a declaration of Contractor Default or within two years after the Contractor ceased working or within two years after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this paragraph are void or prohibited by law, the minimum periods of limitations available to sureties as a defense in the jurisdiction of the suit shall be applicable.

12. Notice to the Surety, the Owner, or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears.

13. When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

14. Definitions

14.1 Balance of the Contract Price: The total amount payable by the Owner to the Contractor under the Construction Contract after all proper adjustments have been made including

allowance for the Contractor for any amounts received or to be received by the Owner in settlement of insurance or other claims for damages to which the Contractor is entitled, reduced by all valid and proper payments made to or on behalf of the Contractor under the Construction Contract.

14.2 Construction Contract: The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and changes made to the agreement and the Contract Documents.

14.3 Contractor Default: Failure of the Contractor, which has not been remedied or waived, to perform or otherwise to comply with a material term of the Construction Contract.

14.4 Owner Default: Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.

14.5 Contract Documents: All the documents that comprise the agreement between the Owner and Contractor.

15. If this Bond is issued for an agreement between a contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

16. Modifications to this Bond are as follows:

SECTION 00615

PAYMENT BOND (C-615)

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PAYMENT BOND

CONTRACTOR *(name and address):*

SURETY *(name and address of principal place of business):*

OWNER *(name and address):*

CONSTRUCTION CONTRACT

Effective Date of the Agreement:

Amount:

Description *(name and location):*

BOND

Bond Number:

Date *(not earlier than the Effective Date of the Agreement of the Construction Contract):*

Amount:

Modifications to this Bond Form: ☐ None ☐ See Paragraph 18

Surety and Contractor, intending to be legally bound hereby, subject to the terms set forth below, do each cause this Payment Bond to be duly executed by an authorized officer, agent, or representative.

CONTRACTOR AS PRINCIPAL

SURETY

(seal)

Contractor's Name and Corporate Seal

(seal)

Surety's Name and Corporate Seal

By: _____

Signature

By: _____

Signature *(attach power of attorney)*

Print Name

Print Name

Title

Title

Attest: _____

Signature

Attest: _____

Signature

Title

Title

Notes: (1) Provide supplemental execution by any additional parties, such as joint venturers. (2) Any singular reference to Contractor, Surety, Owner, or other party shall be considered plural where applicable.

1. The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to the Owner to pay for labor, materials, and equipment furnished for use in the performance of the Construction Contract, which is incorporated herein by reference, subject to the following terms.
2. If the Contractor promptly makes payment of all sums due to Claimants, and defends, indemnifies, and holds harmless the Owner from claims, demands, liens, or suits by any person or entity seeking payment for labor, materials, or equipment furnished for use in the performance of the Construction Contract, then the Surety and the Contractor shall have no obligation under this Bond.
3. If there is no Owner Default under the Construction Contract, the Surety's obligation to the Owner under this Bond shall arise after the Owner has promptly notified the Contractor and the Surety (at the address described in Paragraph 13) of claims, demands, liens, or suits against the Owner or the Owner's property by any person or entity seeking payment for labor, materials, or equipment furnished for use in the performance of the Construction Contract, and tendered defense of such claims, demands, liens, or suits to the Contractor and the Surety.
4. When the Owner has satisfied the conditions in Paragraph 3, the Surety shall promptly and at the Surety's expense defend, indemnify, and hold harmless the Owner against a duly tendered claim, demand, lien, or suit.
5. The Surety's obligations to a Claimant under this Bond shall arise after the following:
 - 5.1 Claimants who do not have a direct contract with the Contractor,
 - 5.1.1 have furnished a written notice of non-payment to the Contractor, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were, or equipment was, furnished or supplied or for whom the labor was done or performed, within ninety (90) days after having last performed labor or last furnished materials or equipment included in the Claim; and
 - 5.1.2 have sent a Claim to the Surety (at the address described in Paragraph 13).
 - 5.2 Claimants who are employed by or have a direct contract with the Contractor have sent a Claim to the Surety (at the address described in Paragraph 13).
6. If a notice of non-payment required by Paragraph 5.1.1 is given by the Owner to the Contractor, that is sufficient to satisfy a Claimant's obligation to furnish a written notice of non-payment under Paragraph 5.1.1.
7. When a Claimant has satisfied the conditions of Paragraph 5.1 or 5.2, whichever is applicable, the Surety shall promptly and at the Surety's expense take the following actions:
 - 7.1 Send an answer to the Claimant, with a copy to the Owner, within sixty (60) days after receipt of the Claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed; and
 - 7.2 Pay or arrange for payment of any undisputed amounts.
 - 7.3 The Surety's failure to discharge its obligations under Paragraph 7.1 or 7.2 shall not be deemed to constitute a waiver of defenses the Surety or Contractor may have or acquire as to a Claim, except as to undisputed amounts for which the Surety and Claimant have reached agreement. If, however, the Surety fails to discharge its obligations under Paragraph 7.1 or 7.2, the Surety shall indemnify the Claimant for the reasonable attorney's fees the Claimant incurs thereafter to recover any sums found to be due and owing to the Claimant.
8. The Surety's total obligation shall not exceed the amount of this Bond, plus the amount of reasonable attorney's fees provided under Paragraph 7.3, and the amount of this Bond shall be credited for any payments made in good faith by the Surety.
9. Amounts owed by the Owner to the Contractor under the Construction Contract shall be used for the performance of the Construction Contract and to satisfy claims, if any, under any construction performance bond. By the Contractor furnishing and the Owner accepting this Bond, they agree that all funds earned by the Contractor in the performance of the Construction Contract are dedicated to satisfy obligations of the Contractor and Surety under this Bond, subject to the Owner's priority to use the funds for the completion of the work.
10. The Surety shall not be liable to the Owner, Claimants, or others for obligations of the Contractor that are unrelated to the Construction Contract. The Owner shall not be liable for the payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligation to make payments to or give notice on behalf of Claimants, or otherwise have any obligations to Claimants under this Bond.
11. The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders, and other obligations.

12. No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the state in which the project that is the subject of the Construction Contract is located or after the expiration of one year from the date (1) on which the Claimant sent a Claim to the Surety pursuant to Paragraph 5.1.2 or 5.2, or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Construction Contract, whichever of (1) or (2) first occurs. If the provisions of this paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.
13. Notice and Claims to the Surety, the Owner, or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears. Actual receipt of notice or Claims, however accomplished, shall be sufficient compliance as of the date received.
14. When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.
15. Upon requests by any person or entity appearing to be a potential beneficiary of this Bond, the Contractor and Owner shall promptly furnish a copy of this Bond or shall permit a copy to be made.
- 16. Definitions**
- 16.1 **Claim:** A written statement by the Claimant including at a minimum:
1. The name of the Claimant;
 2. The name of the person for whom the labor was done, or materials or equipment furnished;
 3. A copy of the agreement or purchase order pursuant to which labor, materials, or equipment was furnished for use in the performance of the Construction Contract;
 4. A brief description of the labor, materials, or equipment furnished;
 5. The date on which the Claimant last performed labor or last furnished materials or equipment for use in the performance of the Construction Contract;
 6. The total amount earned by the Claimant for labor, materials, or equipment furnished as of the date of the Claim;
 7. The total amount of previous payments received by the Claimant; and
8. The total amount due and unpaid to the Claimant for labor, materials, or equipment furnished as of the date of the Claim.
- 16.2 **Claimant:** An individual or entity having a direct contract with the Contractor or with a subcontractor of the Contractor to furnish labor, materials, or equipment for use in the performance of the Construction Contract. The term Claimant also includes any individual or entity that has rightfully asserted a claim under an applicable mechanic's lien or similar statute against the real property upon which the Project is located. The intent of this Bond shall be to include without limitation in the terms of "labor, materials, or equipment" that part of the water, gas, power, light, heat, oil, gasoline, telephone service, or rental equipment used in the Construction Contract, architectural and engineering services required for performance of the work of the Contractor and the Contractor's subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials, or equipment were furnished.
- 16.3 **Construction Contract:** The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and all changes made to the agreement and the Contract Documents.
- 16.4 **Owner Default:** Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.
- 16.5 **Contract Documents:** All the documents that comprise the agreement between the Owner and Contractor.
17. If this Bond is issued for an agreement between a contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.
18. Modifications to this Bond are as follows:

SECTION 00619

SAMPLE FORMS

SECTION	TITLE
00620	CONTRACTOR'S APPLICATION FOR PAYMENT
00625	CERTIFICATE OF SUBSTANTIAL COMPLETION
00630	REQUEST FOR INFORMATION
00641	CHANGE ORDER
00643	CONTRACTOR'S AFFIDAVIT OF PAYMENT

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SECTION 00620

CONTRACTOR'S APPLICATION FOR PAYMENT (C-620)

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Contractor's Application for Payment No. _____

	Application Period:	Application Date:
To (Owner):	From (Contractor):	Via (Engineer):
Project:	Contract:	
Owner's Contract No.:	Contractor's Project No.:	Engineer's Project No.:

Application For Payment Change Order Summary

Approved Change Orders		
Number	Additions	Deductions
TOTALS		
NET CHANGE BY CHANGE ORDERS		

1. ORIGINAL CONTRACT PRICE..... \$ _____
2. Net change by Change Orders..... \$ _____
3. Current Contract Price (Line 1 ± 2)..... \$ _____
4. TOTAL COMPLETED AND STORED TO DATE
(Column F total on Progress Estimates)..... \$ _____
5. RETAINAGE:
 - a. X _____ Work Completed..... \$ _____
 - b. X _____ Stored Material..... \$ _____
 - c. Total Retainage (Line 5.a + Line 5.b)..... \$ _____
6. AMOUNT ELIGIBLE TO DATE (Line 4 - Line 5.c)..... \$ _____
7. LESS PREVIOUS PAYMENTS (Line 6 from prior Application)..... \$ _____
8. AMOUNT DUE THIS APPLICATION..... \$ _____
9. BALANCE TO FINISH, PLUS RETAINAGE
(Column G total on Progress Estimates + Line 5.c above)..... \$ _____

Contractor's Certification The undersigned Contractor certifies, to the best of its knowledge, the following: (1) All previous progress payments received from Owner on account of Work done under the Contract have been applied on account to discharge Contractor's legitimate obligations incurred in connection with the Work covered by prior Applications for Payment; (2) Title to all Work, materials and equipment incorporated in said Work, or otherwise listed in or covered by this Application for Payment, will pass to Owner at time of payment free and clear of all Liens, security interests, and encumbrances (except such as are covered by a bond acceptable to Owner indemnifying Owner against any such Liens, security interest, or encumbrances); and (3) All the Work covered by this Application for Payment is in accordance with the Contract Documents and is not defective.	
Contractor Signature By: _____ Date: _____	

Payment of:	\$ _____ (Line 8 or other - attach explanation of the other amount)
is recommended by:	_____ (Engineer) _____ (Date)
Payment of:	\$ _____ (Line 8 or other - attach explanation of the other amount)
is approved by:	_____ (Owner) _____ (Date)
Approved by:	_____ (Date) Funding or Financing Entity (if applicable)

Progress Estimate - Lump Sum Work

Contractor's Application

For (Contract):					Application Number:			
Application Period:					Application Date:			
			Work Completed		E	F		G
	A	B	C	D	Materials Presently Stored (not in C or D)	Total Completed and Stored to Date (C + D + E)	% (F / B)	Balance to Finish (B - F)
Specification Section No.	Description	Scheduled Value (\$)	From Previous Application (C+D)	This Period				
	Totals							

SECTION 00625

CERTIFICATE OF SUBSTANTIAL COMPLETION (C-625)

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CERTIFICATE OF SUBSTANTIAL COMPLETION

Owner:

Owner's Contract No.:

Contractor:

Contractor's Project No.:

Engineer:

Engineer's Project No.:

Project:

Contract Name:

This [preliminary] [final] Certificate of Substantial Completion applies to:

☐ All Work

☐ The following specified portions of the Work:

Date of Substantial Completion

The Work to which this Certificate applies has been inspected by authorized representatives of Owner, Contractor, and Engineer, and found to be substantially complete. The Date of Substantial Completion of the Work or portion thereof designated above is hereby established, subject to the provisions of the Contract pertaining to Substantial Completion. The date of Substantial Completion in the final Certificate of Substantial Completion marks the commencement of the contractual correction period and applicable warranties required by the Contract.

A punch list of items to be completed or corrected is attached to this Certificate. This list may not be all-inclusive, and the failure to include any items on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract.

The responsibilities between Owner and Contractor for security, operation, safety, maintenance, heat, utilities, insurance, and warranties upon Owner's use or occupancy of the Work shall be as provided in the Contract, except as amended as follows: *[Note: Amendments of contractual responsibilities recorded in this Certificate should be the product of mutual agreement of Owner and Contractor; see Paragraph 15.03.D of the General Conditions.]*

Amendments to Owner's
responsibilities:

☐ None

☐ As follows

Amendments to
Contractor's responsibilities:

☐ None

☐ As follows:

The following documents are attached to and made a part of this Certificate: *[punch list; others]*

This Certificate does not constitute an acceptance of Work not in accordance with the Contract Documents, nor is it a release of Contractor's obligation to complete the Work in accordance with the Contract.

EXECUTED BY ENGINEER:

RECEIVED:

RECEIVED:

By: _____
(Authorized signature)

By: _____
Owner (Authorized Signature)

By: _____
Contractor (Authorized Signature)

Title: _____

Title: _____

Title: _____

Date: _____

Date: _____

Date: _____

Request for Information Form

DATE: _____

Dwg. No.	Specification Section	Other
----------	-----------------------	-------

Contractor:	Person	Company
-------------	--------	---------

Date _____

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SECTION 00641
CHANGE ORDER (C-641)

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Change Order No. _____

Date of Issuance:

Effective Date:

Owner:

Owner's Contract No.:

Contractor:

Contractor's Project No.:

Engineer:

Engineer's Project No.:

Project:

Contract Name:

The Contract is modified as follows upon execution of this Change Order:

Description:

Attachments: *[List documents supporting change]*

CHANGE IN CONTRACT PRICE	CHANGE IN CONTRACT TIMES <i>[note changes in Milestones if applicable]</i>
Original Contract Price: \$ _____	Original Contract Times: Substantial Completion: _____ Ready for Final Payment: _____ days or dates
[Increase] [Decrease] from previously approved Change Orders No. ____ to No. ____: \$ _____	[Increase] [Decrease] from previously approved Change Orders No. ____ to No. ____: Substantial Completion: _____ Ready for Final Payment: _____ days
Contract Price prior to this Change Order: \$ _____	Contract Times prior to this Change Order: Substantial Completion: _____ Ready for Final Payment: _____ days or dates
[Increase] [Decrease] of this Change Order: \$ _____	[Increase] [Decrease] of this Change Order: Substantial Completion: _____ Ready for Final Payment: _____ days or dates
Contract Price incorporating this Change Order: \$ _____	Contract Times with all approved Change Orders: Substantial Completion: _____ Ready for Final Payment: _____ days or dates

RECOMMENDED:

ACCEPTED:

ACCEPTED:

By: _____	By: _____	By: _____
Engineer (if required)	Owner (Authorized Signature)	Contractor (Authorized Signature)
Title: _____	Title _____	Title _____
Date: _____	Date _____	Date _____

Approved by Funding Agency (if applicable)

By: _____ Date: _____
Title: _____

CITY OF COOS BAY
SANITARY SEWER OUTFALL REPAIR

CONTRACTOR'S AFFIDAVIT OF PAYMENT
SECTION 00643 - PAGE 1

SECTION 00643

CONTRACTOR'S AFFIDAVIT OF PAYMENT

SECTION 00643

CONTRACTOR'S AFFIDAVIT OF PAYMENT

NOTICE TO ALL BY THESE PRESENTS, that the undersigned,

(Name of Company representative) of _____
(Name of Contracting Company)
having furnished labor and materials to or for the benefit of The City of Coos Bay (City) in the
performance of a certain Contract between the City and the undersigned dated _____ (City
Contract No. 150031 -150041) for the repair, remodeling, or construction of Sanitary Sewer Outfall Repair in the
State of Oregon, said Contractor, does hereby fully and finally release and forever discharge the City, its
members, officers, agents, and employees, of and from any and all claims, demands, suits, debts, liens, or
obligations of whatsoever nature or kind arising out of or in any way connected with said construction contract.
This Release is given in consideration of the final payment to the undersigned of all sums remaining due and
payable to it under said Contract on account of said work and for other valuable consideration.

The undersigned also hereby certifies that all work required to be done under terms of the above described
Contract has been fully performed and completed in conformance with the Contract and that payments due
under applicable provisions of ORS 279C have been made to all required parties.

(Name of Contractor Company)

By _____
(Signature)

(Type Name and Title)

STATE OF OREGON)
COOS COUNTY)

_____ (name) being first duly sworn does under oath depose and
says that he is the _____ (title) of the
_____ (company) named in the above Release; that
at the time of the execution of said Release he furnished to the City of Coos Bay Releases signed by any
claimants or potential claimants of any liens, claims, or rights to withholdings arising out of the Contract
described in the foregoing Release, or receipts in full in lieu thereof; and that so far as the undersigned has
knowledge or information the Release and receipts include all the labor and materials for which a lien, claim, or
right to withholdings could be filed.

(Signature)

Subscribed and sworn before me this _____ day of _____, 20_____.

[SEAL]

NOTARY PUBLIC
My Commission expires: _____.

SECTION 00700

GENERAL CONDITIONS (C-700)

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This document has important legal consequences; consultation with an attorney is encouraged with respect to its use or modification. This document should be adapted to the particular circumstances of the contemplated Project and the controlling Laws and Regulations.

STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

Prepared by



Issued and Published Jointly by



These General Conditions have been prepared for use with the Agreement Between Owner and Contractor for Construction Contract (EJCDC® C-520, Stipulated Sum, or C-525, Cost-Plus, 2013 Editions). Their provisions are interrelated and a change in one may necessitate a change in the other.

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STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

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ARTICLE 1 – DEFINITIONS AND TERMINOLOGY

1.01 *Defined Terms*

- A. Wherever used in the Bidding Requirements or Contract Documents, a term printed with initial capital letters, including the term's singular and plural forms, will have the meaning indicated in the definitions below. In addition to terms specifically defined, terms with initial capital letters in the Contract Documents include references to identified articles and paragraphs, and the titles of other documents or forms.
1. *Addenda*—Written or graphic instruments issued prior to the opening of Bids which clarify, correct, or change the Bidding Requirements or the proposed Contract Documents.
 2. *Agreement*—The written instrument, executed by Owner and Contractor, that sets forth the Contract Price and Contract Times, identifies the parties and the Engineer, and designates the specific items that are Contract Documents.
 3. *Application for Payment*—The form acceptable to Engineer which is to be used by Contractor during the course of the Work in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Contract Documents.
 4. *Bid*—The offer of a Bidder submitted on the prescribed form setting forth the prices for the Work to be performed.
 5. *Bidder*—An individual or entity that submits a Bid to Owner.
 6. *Bidding Documents*—The Bidding Requirements, the proposed Contract Documents, and all Addenda.
 7. *Bidding Requirements*—The advertisement or invitation to bid, Instructions to Bidders, Bid Bond or other Bid security, if any, the Bid Form, and the Bid with any attachments.
 8. *Change Order*—A document which is signed by Contractor and Owner and authorizes an addition, deletion, or revision in the Work or an adjustment in the Contract Price or the Contract Times, or other revision to the Contract, issued on or after the Effective Date of the Contract.
 9. *Change Proposal*—A written request by Contractor, duly submitted in compliance with the procedural requirements set forth herein, seeking an adjustment in Contract Price or Contract Times, or both; contesting an initial decision by Engineer concerning the requirements of the Contract Documents or the acceptability of Work under the Contract Documents; challenging a set-off against payments due; or seeking other relief with respect to the terms of the Contract.
 10. *Claim*—(a) A demand or assertion by Owner directly to Contractor, duly submitted in compliance with the procedural requirements set forth herein: seeking an adjustment of Contract Price or Contract Times, or both; contesting an initial decision by Engineer concerning the requirements of the Contract Documents or the acceptability of Work under the Contract Documents; contesting Engineer's decision regarding a Change Proposal; seeking resolution of a contractual issue that Engineer has declined to address; or seeking other relief with respect to the terms of the Contract; or (b) a demand or assertion by Contractor directly to Owner, duly submitted in compliance with the procedural requirements set forth herein, contesting Engineer's decision regarding a Change Proposal; or seeking resolution of a contractual issue that Engineer

has declined to address. A demand for money or services by a third party is not a Claim.

11. *Constituent of Concern*—Asbestos, petroleum, radioactive materials, polychlorinated biphenyls (PCBs), hazardous waste, and any substance, product, waste, or other material of any nature whatsoever that is or becomes listed, regulated, or addressed pursuant to (a) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq. ("CERCLA"); (b) the Hazardous Materials Transportation Act, 49 U.S.C. §§5101 et seq.; (c) the Resource Conservation and Recovery Act, 42 U.S.C. §§6901 et seq. ("RCRA"); (d) the Toxic Substances Control Act, 15 U.S.C. §§2601 et seq.; (e) the Clean Water Act, 33 U.S.C. §§1251 et seq.; (f) the Clean Air Act, 42 U.S.C. §§7401 et seq.; or (g) any other federal, state, or local statute, law, rule, regulation, ordinance, resolution, code, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.
12. *Contract*—The entire and integrated written contract between the Owner and Contractor concerning the Work.
13. *Contract Documents*—Those items so designated in the Agreement, and which together comprise the Contract.
14. *Contract Price*—The money that Owner has agreed to pay Contractor for completion of the Work in accordance with the Contract Documents. .
15. *Contract Times*—The number of days or the dates by which Contractor shall: (a) achieve Milestones, if any; (b) achieve Substantial Completion; and (c) complete the Work.
16. *Contractor*—The individual or entity with which Owner has contracted for performance of the Work.
17. *Cost of the Work*—See Paragraph 13.01 for definition.
18. *Drawings*—The part of the Contract that graphically shows the scope, extent, and character of the Work to be performed by Contractor.
19. *Effective Date of the Contract*—The date, indicated in the Agreement, on which the Contract becomes effective.
20. *Engineer*—The individual or entity named as such in the Agreement.
21. *Field Order*—A written order issued by Engineer which requires minor changes in the Work but does not change the Contract Price or the Contract Times.
22. *Hazardous Environmental Condition*—The presence at the Site of Constituents of Concern in such quantities or circumstances that may present a danger to persons or property exposed thereto. The presence at the Site of materials that are necessary for the execution of the Work, or that are to be incorporated in the Work, and that are controlled and contained pursuant to industry practices, Laws and Regulations, and the requirements of the Contract, does not establish a Hazardous Environmental Condition.
23. *Laws and Regulations; Laws or Regulations*—Any and all applicable laws, statutes, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.

24. *Liens*—Charges, security interests, or encumbrances upon Contract-related funds, real property, or personal property.
25. *Milestone*—A principal event in the performance of the Work that the Contract requires Contractor to achieve by an intermediate completion date or by a time prior to Substantial Completion of all the Work.
26. *Notice of Award*—The written notice by Owner to a Bidder of Owner's acceptance of the Bid.
27. *Notice to Proceed*—A written notice by Owner to Contractor fixing the date on which the Contract Times will commence to run and on which Contractor shall start to perform the Work.
28. *Owner*—The individual or entity with which Contractor has contracted regarding the Work, and which has agreed to pay Contractor for the performance of the Work, pursuant to the terms of the Contract.
29. *Progress Schedule*—A schedule, prepared and maintained by Contractor, describing the sequence and duration of the activities comprising the Contractor's plan to accomplish the Work within the Contract Times.
30. *Project*—The total undertaking to be accomplished for Owner by engineers, contractors, and others, including planning, study, design, construction, testing, commissioning, and start-up, and of which the Work to be performed under the Contract Documents is a part.
31. *Project Manual*—The written documents prepared for, or made available for, procuring and constructing the Work, including but not limited to the Bidding Documents or other construction procurement documents, geotechnical and existing conditions information, the Agreement, bond forms, General Conditions, Supplementary Conditions, and Specifications. The contents of the Project Manual may be bound in one or more volumes.
32. *Resident Project Representative*—The authorized representative of Engineer assigned to assist Engineer at the Site. As used herein, the term Resident Project Representative or "RPR" includes any assistants or field staff of Resident Project Representative.
33. *Samples*—Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and that establish the standards by which such portion of the Work will be judged.
34. *Schedule of Submittals*—A schedule, prepared and maintained by Contractor, of required submittals and the time requirements for Engineer's review of the submittals and the performance of related construction activities.
35. *Schedule of Values*—A schedule, prepared and maintained by Contractor, allocating portions of the Contract Price to various portions of the Work and used as the basis for reviewing Contractor's Applications for Payment.
36. *Shop Drawings*—All drawings, diagrams, illustrations, schedules, and other data or information that are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work. Shop Drawings, whether approved or not, are not Drawings and are not Contract Documents.

37. *Site*—Lands or areas indicated in the Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements, and such other lands furnished by Owner which are designated for the use of Contractor.
38. *Specifications*—The part of the Contract that consists of written requirements for materials, equipment, systems, standards, and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable to the Work.
39. *Subcontractor*—An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work.
40. *Substantial Completion*—The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms “substantially complete” and “substantially completed” as applied to all or part of the Work refer to Substantial Completion thereof.
41. *Successful Bidder*—The Bidder whose Bid the Owner accepts, and to which the Owner makes an award of contract, subject to stated conditions.
42. *Supplementary Conditions*—The part of the Contract that amends or supplements these General Conditions.
43. *Supplier*—A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or a Subcontractor.
44. *Technical Data*—Those items expressly identified as Technical Data in the Supplementary Conditions, with respect to either (a) subsurface conditions at the Site, or physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities) or (b) Hazardous Environmental Conditions at the Site. If no such express identifications of Technical Data have been made with respect to conditions at the Site, then the data contained in boring logs, recorded measurements of subsurface water levels, laboratory test results, and other factual, objective information regarding conditions at the Site that are set forth in any geotechnical or environmental report prepared for the Project and made available to Contractor are hereby defined as Technical Data with respect to conditions at the Site under Paragraphs 5.03, 5.04, and 5.06.
45. *Underground Facilities*—All underground pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or attachments, and any encasements containing such facilities, including but not limited to those that convey electricity, gases, steam, liquid petroleum products, telephone or other communications, fiber optic transmissions, cable television, water, wastewater, storm water, other liquids or chemicals, or traffic or other control systems.
46. *Unit Price Work*—Work to be paid for on the basis of unit prices.
47. *Work*—The entire construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction; furnishing, installing, and incorporating all materials and equipment into such construction; and may include related services such as testing, start-up, and commissioning, all as required by the Contract Documents.

48. *Work Change Directive*—A written directive to Contractor issued on or after the Effective Date of the Contract, signed by Owner and recommended by Engineer, ordering an addition, deletion, or revision in the Work.

1.02 Terminology

- A. The words and terms discussed in the following paragraphs are not defined but, when used in the Bidding Requirements or Contract Documents, have the indicated meaning.
- B. *Intent of Certain Terms or Adjectives:*
1. The Contract Documents include the terms “as allowed,” “as approved,” “as ordered,” “as directed” or terms of like effect or import to authorize an exercise of professional judgment by Engineer. In addition, the adjectives “reasonable,” “suitable,” “acceptable,” “proper,” “satisfactory,” or adjectives of like effect or import are used to describe an action or determination of Engineer as to the Work. It is intended that such exercise of professional judgment, action, or determination will be solely to evaluate, in general, the Work for compliance with the information in the Contract Documents and with the design concept of the Project as a functioning whole as shown or indicated in the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective is not intended to and shall not be effective to assign to Engineer any duty or authority to supervise or direct the performance of the Work, or any duty or authority to undertake responsibility contrary to the provisions of Article 10 or any other provision of the Contract Documents.
- C. *Day:*
1. The word “day” means a calendar day of 24 hours measured from midnight to the next midnight.
- D. *Defective:*
1. The word “defective,” when modifying the word “Work,” refers to Work that is unsatisfactory, faulty, or deficient in that it:
 - a. does not conform to the Contract Documents; or
 - b. does not meet the requirements of any applicable inspection, reference standard, test, or approval referred to in the Contract Documents; or
 - c. has been damaged prior to Engineer’s recommendation of final payment (unless responsibility for the protection thereof has been assumed by Owner at Substantial Completion in accordance with Paragraph 15.03 or 15.04).
- E. *Furnish, Install, Perform, Provide:*
1. The word “furnish,” when used in connection with services, materials, or equipment, shall mean to supply and deliver said services, materials, or equipment to the Site (or some other specified location) ready for use or installation and in usable or operable condition.
 2. The word “install,” when used in connection with services, materials, or equipment, shall mean to put into use or place in final position said services, materials, or equipment complete and ready for intended use.

3. The words “perform” or “provide,” when used in connection with services, materials, or equipment, shall mean to furnish and install said services, materials, or equipment complete and ready for intended use.
 4. If the Contract Documents establish an obligation of Contractor with respect to specific services, materials, or equipment, but do not expressly use any of the four words “furnish,” “install,” “perform,” or “provide,” then Contractor shall furnish and install said services, materials, or equipment complete and ready for intended use.
- F. Unless stated otherwise in the Contract Documents, words or phrases that have a well-known technical or construction industry or trade meaning are used in the Contract Documents in accordance with such recognized meaning.

ARTICLE 2 – PRELIMINARY MATTERS

2.01 *Delivery of Bonds and Evidence of Insurance*

- A. ***Bonds:*** When Contractor delivers the executed counterparts of the Agreement to Owner, Contractor shall also deliver to Owner such bonds as Contractor may be required to furnish.
- B. ***Evidence of Contractor’s Insurance:*** When Contractor delivers the executed counterparts of the Agreement to Owner, Contractor shall also deliver to Owner, with copies to each named insured and additional insured (as identified in the Supplementary Conditions or elsewhere in the Contract), the certificates and other evidence of insurance required to be provided by Contractor in accordance with Article 6.
- C. ***Evidence of Owner’s Insurance:*** After receipt of the executed counterparts of the Agreement and all required bonds and insurance documentation, Owner shall promptly deliver to Contractor, with copies to each named insured and additional insured (as identified in the Supplementary Conditions or otherwise), the certificates and other evidence of insurance required to be provided by Owner under Article 6.

2.02 *Copies of Documents*

- A. Owner shall furnish to Contractor four printed copies of the Contract (including one fully executed counterpart of the Agreement), and one copy in electronic portable document format (PDF). Additional printed copies will be furnished upon request at the cost of reproduction.
- B. Owner shall maintain and safeguard at least one original printed record version of the Contract, including Drawings and Specifications signed and sealed by Engineer and other design professionals. Owner shall make such original printed record version of the Contract available to Contractor for review. Owner may delegate the responsibilities under this provision to Engineer.

2.03 *Before Starting Construction*

- A. ***Preliminary Schedules:*** Within 10 days after the Effective Date of the Contract (or as otherwise specifically required by the Contract Documents), Contractor shall submit to Engineer for timely review:
 1. a preliminary Progress Schedule indicating the times (numbers of days or dates) for starting and completing the various stages of the Work, including any Milestones specified in the Contract;
 2. a preliminary Schedule of Submittals; and

3. a preliminary Schedule of Values for all of the Work which includes quantities and prices of items which when added together equal the Contract Price and subdivides the Work into component parts in sufficient detail to serve as the basis for progress payments during performance of the Work. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work.

2.04 *Preconstruction Conference; Designation of Authorized Representatives*

- A. Before any Work at the Site is started, a conference attended by Owner, Contractor, Engineer, and others as appropriate will be held to establish a working understanding among the parties as to the Work and to discuss the schedules referred to in Paragraph 2.03.A, procedures for handling Shop Drawings, Samples, and other submittals, processing Applications for Payment, electronic or digital transmittals, and maintaining required records.
- B. At this conference Owner and Contractor each shall designate, in writing, a specific individual to act as its authorized representative with respect to the services and responsibilities under the Contract. Such individuals shall have the authority to transmit and receive information, render decisions relative to the Contract, and otherwise act on behalf of each respective party.

2.05 *Initial Acceptance of Schedules*

- A. At least 10 days before submission of the first Application for Payment a conference, attended by Contractor, Engineer, and others as appropriate, will be held to review for acceptability to Engineer as provided below the schedules submitted in accordance with Paragraph 2.03.A. Contractor shall have an additional 10 days to make corrections and adjustments and to complete and resubmit the schedules. No progress payment shall be made to Contractor until acceptable schedules are submitted to Engineer.
 1. The Progress Schedule will be acceptable to Engineer if it provides an orderly progression of the Work to completion within the Contract Times. Such acceptance will not impose on Engineer responsibility for the Progress Schedule, for sequencing, scheduling, or progress of the Work, nor interfere with or relieve Contractor from Contractor's full responsibility therefor.
 2. Contractor's Schedule of Submittals will be acceptable to Engineer if it provides a workable arrangement for reviewing and processing the required submittals.
 3. Contractor's Schedule of Values will be acceptable to Engineer as to form and substance if it provides a reasonable allocation of the Contract Price to the component parts of the Work.

2.06 *Electronic Transmittals*

- A. Except as otherwise stated elsewhere in the Contract, the Owner, Engineer, and Contractor may transmit, and shall accept, Project-related correspondence, text, data, documents, drawings, information, and graphics, including but not limited to Shop Drawings and other submittals, in electronic media or digital format, either directly, or through access to a secure Project website.
- B. If the Contract does not establish protocols for electronic or digital transmittals, then Owner, Engineer, and Contractor shall jointly develop such protocols.
- C. When transmitting items in electronic media or digital format, the transmitting party makes no representations as to long term compatibility, usability, or readability of the items resulting from the recipient's use of software application packages, operating systems, or

computer hardware differing from those used in the drafting or transmittal of the items, or from those established in applicable transmittal protocols.

ARTICLE 3 – DOCUMENTS: INTENT, REQUIREMENTS, REUSE

3.01 Intent

- A. The Contract Documents are complementary; what is required by one is as binding as if required by all.
- B. It is the intent of the Contract Documents to describe a functionally complete project (or part thereof) to be constructed in accordance with the Contract Documents.
- C. Unless otherwise stated in the Contract Documents, if there is a discrepancy between the electronic or digital versions of the Contract Documents (including any printed copies derived from such electronic or digital versions) and the printed record version, the printed record version shall govern.
- D. The Contract supersedes prior negotiations, representations, and agreements, whether written or oral.
- E. Engineer will issue clarifications and interpretations of the Contract Documents as provided herein.

3.02 Reference Standards

- A. Standards Specifications, Codes, Laws and Regulations
 - 1. Reference in the Contract Documents to standard specifications, manuals, reference standards, or codes of any technical society, organization, or association, or to Laws or Regulations, whether such reference be specific or by implication, shall mean the standard specification, manual, reference standard, code, or Laws or Regulations in effect at the time of opening of Bids (or on the Effective Date of the Contract if there were no Bids), except as may be otherwise specifically stated in the Contract Documents.
 - 2. No provision of any such standard specification, manual, reference standard, or code, or any instruction of a Supplier, shall be effective to change the duties or responsibilities of Owner, Contractor, or Engineer, or any of their subcontractors, consultants, agents, or employees, from those set forth in the part of the Contract Documents prepared by or for Engineer. No such provision or instruction shall be effective to assign to Owner, Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, any duty or authority to supervise or direct the performance of the Work or any duty or authority to undertake responsibility inconsistent with the provisions of the part of the Contract Documents prepared by or for Engineer.

3.03 Reporting and Resolving Discrepancies

- A. *Reporting Discrepancies:*
 - 1. *Contractor's Verification of Figures and Field Measurements:* Before undertaking each part of the Work, Contractor shall carefully study the Contract Documents, and check and verify pertinent figures and dimensions therein, particularly with respect to applicable field measurements. Contractor shall promptly report in writing to Engineer any conflict, error, ambiguity, or discrepancy that Contractor discovers, or has actual knowledge of, and shall not proceed with any Work affected thereby until the conflict,

error, ambiguity, or discrepancy is resolved, by a clarification or interpretation by Engineer, or by an amendment or supplement to the Contract Documents issued pursuant to Paragraph 11.01.

2. *Contractor's Review of Contract Documents:* If, before or during the performance of the Work, Contractor discovers any conflict, error, ambiguity, or discrepancy within the Contract Documents, or between the Contract Documents and (a) any applicable Law or Regulation, (b) actual field conditions, (c) any standard specification, manual, reference standard, or code, or (d) any instruction of any Supplier, then Contractor shall promptly report it to Engineer in writing. Contractor shall not proceed with the Work affected thereby (except in an emergency as required by Paragraph 7.15) until the conflict, error, ambiguity, or discrepancy is resolved, by a clarification or interpretation by Engineer, or by an amendment or supplement to the Contract Documents issued pursuant to Paragraph 11.01.
3. Contractor shall not be liable to Owner or Engineer for failure to report any conflict, error, ambiguity, or discrepancy in the Contract Documents unless Contractor had actual knowledge thereof.

B. *Resolving Discrepancies:*

1. Except as may be otherwise specifically stated in the Contract Documents, the provisions of the part of the Contract Documents prepared by or for Engineer shall take precedence in resolving any conflict, error, ambiguity, or discrepancy between such provisions of the Contract Documents and:
 - a. the provisions of any standard specification, manual, reference standard, or code, or the instruction of any Supplier (whether or not specifically incorporated by reference as a Contract Document); or
 - b. the provisions of any Laws or Regulations applicable to the performance of the Work (unless such an interpretation of the provisions of the Contract Documents would result in violation of such Law or Regulation).

3.04 *Requirements of the Contract Documents*

- A. During the performance of the Work and until final payment, Contractor and Owner shall submit to the Engineer all matters in question concerning the requirements of the Contract Documents (sometimes referred to as requests for information or interpretation—RFIs), or relating to the acceptability of the Work under the Contract Documents, as soon as possible after such matters arise. Engineer will be the initial interpreter of the requirements of the Contract Documents, and judge of the acceptability of the Work thereunder.
- B. Engineer will, with reasonable promptness, render a written clarification, interpretation, or decision on the issue submitted, or initiate an amendment or supplement to the Contract Documents. Engineer's written clarification, interpretation, or decision will be final and binding on Contractor, unless it appeals by submitting a Change Proposal, and on Owner, unless it appeals by filing a Claim.
- C. If a submitted matter in question concerns terms and conditions of the Contract Documents that do not involve (1) the performance or acceptability of the Work under the Contract Documents, (2) the design (as set forth in the Drawings, Specifications, or otherwise), or (3) other engineering or technical matters, then Engineer will promptly give written notice to Owner and Contractor that Engineer is unable to provide a decision or interpretation. If Owner and Contractor are unable to agree on resolution of such a matter in question, either party may pursue resolution as provided in Article 12.

3.05 *Reuse of Documents*

- A. Contractor and its Subcontractors and Suppliers shall not:
 - 1. have or acquire any title to or ownership rights in any of the Drawings, Specifications, or other documents (or copies of any thereof) prepared by or bearing the seal of Engineer or its consultants, including electronic media editions, or reuse any such Drawings, Specifications, other documents, or copies thereof on extensions of the Project or any other project without written consent of Owner and Engineer and specific written verification or adaptation by Engineer; or
 - 2. have or acquire any title or ownership rights in any other Contract Documents, reuse any such Contract Documents for any purpose without Owner's express written consent, or violate any copyrights pertaining to such Contract Documents.
- B. The prohibitions of this Paragraph 3.05 will survive final payment, or termination of the Contract. Nothing herein shall preclude Contractor from retaining copies of the Contract Documents for record purposes.

ARTICLE 4 – COMMENCEMENT AND PROGRESS OF THE WORK

4.01 *Commencement of Contract Times; Notice to Proceed*

- A. The Contract Times will commence to run on the thirtieth day after the Effective Date of the Contract or, if a Notice to Proceed is given, on the day indicated in the Notice to Proceed. A Notice to Proceed may be given at any time within 30 days after the Effective Date of the Contract. In no event will the Contract Times commence to run later than the sixtieth day after the day of Bid opening or the thirtieth day after the Effective Date of the Contract, whichever date is earlier.

4.02 *Starting the Work*

- A. Contractor shall start to perform the Work on the date when the Contract Times commence to run. No Work shall be done at the Site prior to such date.

4.03 *Reference Points*

- A. Owner shall provide engineering surveys to establish reference points for construction which in Engineer's judgment are necessary to enable Contractor to proceed with the Work. Contractor shall be responsible for laying out the Work, shall protect and preserve the established reference points and property monuments, and shall make no changes or relocations without the prior written approval of Owner. Contractor shall report to Engineer whenever any reference point or property monument is lost or destroyed or requires relocation because of necessary changes in grades or locations, and shall be responsible for the accurate replacement or relocation of such reference points or property monuments by professionally qualified personnel.

4.04 *Progress Schedule*

- A. Contractor shall adhere to the Progress Schedule established in accordance with Paragraph 2.05 as it may be adjusted from time to time as provided below.
 - 1. Contractor shall submit to Engineer for acceptance (to the extent indicated in Paragraph 2.05) proposed adjustments in the Progress Schedule that will not result in changing the Contract Times.

2. Proposed adjustments in the Progress Schedule that will change the Contract Times shall be submitted in accordance with the requirements of Article 11.
- B. Contractor shall carry on the Work and adhere to the Progress Schedule during all disputes or disagreements with Owner. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, or during any appeal process, except as permitted by Paragraph 16.04, or as Owner and Contractor may otherwise agree in writing.

4.05 *Delays in Contractor's Progress*

- A. If Owner, Engineer, or anyone for whom Owner is responsible, delays, disrupts, or interferes with the performance or progress of the Work, then Contractor shall be entitled to an equitable adjustment in the Contract Times and Contract Price. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times.
- B. Contractor shall not be entitled to an adjustment in Contract Price or Contract Times for delay, disruption, or interference caused by or within the control of Contractor. Delay, disruption, and interference attributable to and within the control of a Subcontractor or Supplier shall be deemed to be within the control of Contractor.
- C. If Contractor's performance or progress is delayed, disrupted, or interfered with by unanticipated causes not the fault of and beyond the control of Owner, Contractor, and those for which they are responsible, then Contractor shall be entitled to an equitable adjustment in Contract Times. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times. Such an adjustment shall be Contractor's sole and exclusive remedy for the delays, disruption, and interference described in this paragraph. Causes of delay, disruption, or interference that may give rise to an adjustment in Contract Times under this paragraph include but are not limited to the following:
 1. severe and unavoidable natural catastrophes such as fires, floods, epidemics, and earthquakes;
 2. abnormal weather conditions;
 3. acts or failures to act of utility owners (other than those performing other work at or adjacent to the Site by arrangement with the Owner, as contemplated in Article 8); and
 4. acts of war or terrorism.
- D. Delays, disruption, and interference to the performance or progress of the Work resulting from the existence of a differing subsurface or physical condition, an Underground Facility that was not shown or indicated by the Contract Documents, or not shown or indicated with reasonable accuracy, and those resulting from Hazardous Environmental Conditions, are governed by Article 5.
- E. Paragraph 8.03 governs delays, disruption, and interference to the performance or progress of the Work resulting from the performance of certain other work at or adjacent to the Site.
- F. Contractor shall not be entitled to an adjustment in Contract Price or Contract Times for any delay, disruption, or interference if such delay is concurrent with a delay, disruption, or interference caused by or within the control of Contractor.

- G. Contractor must submit any Change Proposal seeking an adjustment in Contract Price or Contract Times under this paragraph within 30 days of the commencement of the delaying, disrupting, or interfering event.

ARTICLE 5 – AVAILABILITY OF LANDS; SUBSURFACE AND PHYSICAL CONDITIONS; HAZARDOUS ENVIRONMENTAL CONDITIONS

5.01 *Availability of Lands*

- A. Owner shall furnish the Site. Owner shall notify Contractor of any encumbrances or restrictions not of general application but specifically related to use of the Site with which Contractor must comply in performing the Work.
- B. Upon reasonable written request, Owner shall furnish Contractor with a current statement of record legal title and legal description of the lands upon which permanent improvements are to be made and Owner's interest therein as necessary for giving notice of or filing a mechanic's or construction lien against such lands in accordance with applicable Laws and Regulations.
- C. Contractor shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment.

5.02 *Use of Site and Other Areas*

A. *Limitation on Use of Site and Other Areas:*

- 1. Contractor shall confine construction equipment, temporary construction facilities, the storage of materials and equipment, and the operations of workers to the Site, adjacent areas that Contractor has arranged to use through construction easements or otherwise, and other adjacent areas permitted by Laws and Regulations, and shall not unreasonably encumber the Site and such other adjacent areas with construction equipment or other materials or equipment. Contractor shall assume full responsibility for (a) damage to the Site; (b) damage to any such other adjacent areas used for Contractor's operations; (c) damage to any other adjacent land or areas; and (d) for injuries and losses sustained by the owners or occupants of any such land or areas; provided that such damage or injuries result from the performance of the Work or from other actions or conduct of the Contractor or those for which Contractor is responsible.
- 2. If a damage or injury claim is made by the owner or occupant of any such land or area because of the performance of the Work, or because of other actions or conduct of the Contractor or those for which Contractor is responsible, Contractor shall (a) take immediate corrective or remedial action as required by Paragraph 7.12, or otherwise; (b) promptly attempt to settle the claim as to all parties through negotiations with such owner or occupant, or otherwise resolve the claim by arbitration or other dispute resolution proceeding, or at law; and (c) to the fullest extent permitted by Laws and Regulations, indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against any such claim, and against all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any claim or action, legal or equitable, brought by any such owner or occupant against Owner, Engineer, or any other party indemnified hereunder to the extent caused directly or indirectly, in whole or in part

by, or based upon, Contractor's performance of the Work, or because of other actions or conduct of the Contractor or those for which Contractor is responsible.

- B. *Removal of Debris During Performance of the Work:* During the progress of the Work the Contractor shall keep the Site and other adjacent areas free from accumulations of waste materials, rubbish, and other debris. Removal and disposal of such waste materials, rubbish, and other debris shall conform to applicable Laws and Regulations.
- C. *Cleaning:* Prior to Substantial Completion of the Work Contractor shall clean the Site and the Work and make it ready for utilization by Owner. At the completion of the Work Contractor shall remove from the Site and adjacent areas all tools, appliances, construction equipment and machinery, and surplus materials and shall restore to original condition all property not designated for alteration by the Contract Documents.
- D. *Loading of Structures:* Contractor shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall Contractor subject any part of the Work or adjacent structures or land to stresses or pressures that will endanger them.

5.03 *Subsurface and Physical Conditions*

- A. *Reports and Drawings:* The Supplementary Conditions identify:
 - 1. those reports known to Owner of explorations and tests of subsurface conditions at or adjacent to the Site;
 - 2. those drawings known to Owner of physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities); and
 - 3. Technical Data contained in such reports and drawings.
- B. *Reliance by Contractor on Technical Data Authorized:* Contractor may rely upon the accuracy of the Technical Data expressly identified in the Supplementary Conditions with respect to such reports and drawings, but such reports and drawings are not Contract Documents. If no such express identification has been made, then Contractor may rely upon the accuracy of the Technical Data (as defined in Article 1) contained in any geotechnical or environmental report prepared for the Project and made available to Contractor. Except for such reliance on Technical Data, Contractor may not rely upon or make any claim against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, with respect to:
 - 1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, and safety precautions and programs incident thereto; or
 - 2. other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings; or
 - 3. any Contractor interpretation of or conclusion drawn from any Technical Data or any such other data, interpretations, opinions, or information.

5.04 *Differing Subsurface or Physical Conditions*

- A. *Notice by Contractor:* If Contractor believes that any subsurface or physical condition that is uncovered or revealed at the Site either:
1. is of such a nature as to establish that any Technical Data on which Contractor is entitled to rely as provided in Paragraph 5.03 is materially inaccurate; or
 2. is of such a nature as to require a change in the Drawings or Specifications; or
 3. differs materially from that shown or indicated in the Contract Documents; or
 4. is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents;

then Contractor shall, promptly after becoming aware thereof and before further disturbing the subsurface or physical conditions or performing any Work in connection therewith (except in an emergency as required by Paragraph 7.15), notify Owner and Engineer in writing about such condition. Contractor shall not further disturb such condition or perform any Work in connection therewith (except with respect to an emergency) until receipt of a written statement permitting Contractor to do so.

- B. *Engineer's Review:* After receipt of written notice as required by the preceding paragraph, Engineer will promptly review the subsurface or physical condition in question; determine the necessity of Owner's obtaining additional exploration or tests with respect to the condition; conclude whether the condition falls within any one or more of the differing site condition categories in Paragraph 5.04.A above; obtain any pertinent cost or schedule information from Contractor; prepare recommendations to Owner regarding the Contractor's resumption of Work in connection with the subsurface or physical condition in question and the need for any change in the Drawings or Specifications; and advise Owner in writing of Engineer's findings, conclusions, and recommendations.
- C. *Owner's Statement to Contractor Regarding Site Condition:* After receipt of Engineer's written findings, conclusions, and recommendations, Owner shall issue a written statement to Contractor (with a copy to Engineer) regarding the subsurface or physical condition in question, addressing the resumption of Work in connection with such condition, indicating whether any change in the Drawings or Specifications will be made, and adopting or rejecting Engineer's written findings, conclusions, and recommendations, in whole or in part.
- D. *Possible Price and Times Adjustments:*
1. Contractor shall be entitled to an equitable adjustment in Contract Price or Contract Times, or both, to the extent that the existence of a differing subsurface or physical condition, or any related delay, disruption, or interference, causes an increase or decrease in Contractor's cost of, or time required for, performance of the Work; subject, however, to the following:
 - a. such condition must fall within any one or more of the categories described in Paragraph 5.04.A;
 - b. with respect to Work that is paid for on a unit price basis, any adjustment in Contract Price will be subject to the provisions of Paragraph 13.03; and,

- c. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times.
2. Contractor shall not be entitled to any adjustment in the Contract Price or Contract Times with respect to a subsurface or physical condition if:
 - a. Contractor knew of the existence of such condition at the time Contractor made a commitment to Owner with respect to Contract Price and Contract Times by the submission of a Bid or becoming bound under a negotiated contract, or otherwise; or
 - b. the existence of such condition reasonably could have been discovered or revealed as a result of any examination, investigation, exploration, test, or study of the Site and contiguous areas expressly required by the Bidding Requirements or Contract Documents to be conducted by or for Contractor prior to Contractor's making such commitment; or
 - c. Contractor failed to give the written notice as required by Paragraph 5.04.A.
3. If Owner and Contractor agree regarding Contractor's entitlement to and the amount or extent of any adjustment in the Contract Price or Contract Times, or both, then any such adjustment shall be set forth in a Change Order.
4. Contractor may submit a Change Proposal regarding its entitlement to or the amount or extent of any adjustment in the Contract Price or Contract Times, or both, no later than 30 days after Owner's issuance of the Owner's written statement to Contractor regarding the subsurface or physical condition in question.

5.05 *Underground Facilities*

- A. *Contractor's Responsibilities:* The information and data shown or indicated in the Contract Documents with respect to existing Underground Facilities at or adjacent to the Site is based on information and data furnished to Owner or Engineer by the owners of such Underground Facilities, including Owner, or by others. Unless it is otherwise expressly provided in the Supplementary Conditions:
 1. Owner and Engineer do not warrant or guarantee the accuracy or completeness of any such information or data provided by others; and
 2. the cost of all of the following will be included in the Contract Price, and Contractor shall have full responsibility for:
 - a. reviewing and checking all information and data regarding existing Underground Facilities at the Site;
 - b. locating all Underground Facilities shown or indicated in the Contract Documents as being at the Site;
 - c. coordination of the Work with the owners (including Owner) of such Underground Facilities, during construction; and
 - d. the safety and protection of all existing Underground Facilities at the Site, and repairing any damage thereto resulting from the Work.
- B. *Notice by Contractor:* If Contractor believes that an Underground Facility that is uncovered or revealed at the Site was not shown or indicated in the Contract Documents, or was not shown or indicated with reasonable accuracy, then Contractor shall, promptly after

becoming aware thereof and before further disturbing conditions affected thereby or performing any Work in connection therewith (except in an emergency as required by Paragraph 7.15), identify the owner of such Underground Facility and give written notice to that owner and to Owner and Engineer.

- C. *Engineer's Review:* Engineer will promptly review the Underground Facility and conclude whether such Underground Facility was not shown or indicated in the Contract Documents, or was not shown or indicated with reasonable accuracy; obtain any pertinent cost or schedule information from Contractor; prepare recommendations to Owner regarding the Contractor's resumption of Work in connection with the Underground Facility in question; determine the extent, if any, to which a change is required in the Drawings or Specifications to reflect and document the consequences of the existence or location of the Underground Facility; and advise Owner in writing of Engineer's findings, conclusions, and recommendations. During such time, Contractor shall be responsible for the safety and protection of such Underground Facility.
- D. *Owner's Statement to Contractor Regarding Underground Facility:* After receipt of Engineer's written findings, conclusions, and recommendations, Owner shall issue a written statement to Contractor (with a copy to Engineer) regarding the Underground Facility in question, addressing the resumption of Work in connection with such Underground Facility, indicating whether any change in the Drawings or Specifications will be made, and adopting or rejecting Engineer's written findings, conclusions, and recommendations in whole or in part.
- E. *Possible Price and Times Adjustments:*
 - 1. Contractor shall be entitled to an equitable adjustment in the Contract Price or Contract Times, or both, to the extent that any existing Underground Facility at the Site that was not shown or indicated in the Contract Documents, or was not shown or indicated with reasonable accuracy, or any related delay, disruption, or interference, causes an increase or decrease in Contractor's cost of, or time required for, performance of the Work; subject, however, to the following:
 - a. Contractor did not know of and could not reasonably have been expected to be aware of or to have anticipated the existence or actual location of the Underground Facility in question;
 - b. With respect to Work that is paid for on a unit price basis, any adjustment in Contract Price will be subject to the provisions of Paragraph 13.03;
 - c. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times; and
 - d. Contractor gave the notice required in Paragraph 5.05.B.
 - 2. If Owner and Contractor agree regarding Contractor's entitlement to and the amount or extent of any adjustment in the Contract Price or Contract Times, or both, then any such adjustment shall be set forth in a Change Order.
 - 3. Contractor may submit a Change Proposal regarding its entitlement to or the amount or extent of any adjustment in the Contract Price or Contract Times, or both, no later than 30 days after Owner's issuance of the Owner's written statement to Contractor regarding the Underground Facility in question.

5.06 *Hazardous Environmental Conditions at Site*

- A. *Reports and Drawings:* The Supplementary Conditions identify:
1. those reports and drawings known to Owner relating to Hazardous Environmental Conditions that have been identified at or adjacent to the Site; and
 2. Technical Data contained in such reports and drawings.
- B. *Reliance by Contractor on Technical Data Authorized:* Contractor may rely upon the accuracy of the Technical Data expressly identified in the Supplementary Conditions with respect to such reports and drawings, but such reports and drawings are not Contract Documents. If no such express identification has been made, then Contractor may rely on the accuracy of the Technical Data (as defined in Article 1) contained in any geotechnical or environmental report prepared for the Project and made available to Contractor. Except for such reliance on Technical Data, Contractor may not rely upon or make any claim against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors with respect to:
1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences and procedures of construction to be employed by Contractor and safety precautions and programs incident thereto; or
 2. other data, interpretations, opinions and information contained in such reports or shown or indicated in such drawings; or
 3. any Contractor interpretation of or conclusion drawn from any Technical Data or any such other data, interpretations, opinions or information.
- C. Contractor shall not be responsible for removing or remediating any Hazardous Environmental Condition encountered, uncovered, or revealed at the Site unless such removal or remediation is expressly identified in the Contract Documents to be within the scope of the Work.
- D. Contractor shall be responsible for controlling, containing, and duly removing all Constituents of Concern brought to the Site by Contractor, Subcontractors, Suppliers, or anyone else for whom Contractor is responsible, and for any associated costs; and for the costs of removing and remediating any Hazardous Environmental Condition created by the presence of any such Constituents of Concern.
- E. If Contractor encounters, uncovers, or reveals a Hazardous Environmental Condition whose removal or remediation is not expressly identified in the Contract Documents as being within the scope of the Work, or if Contractor or anyone for whom Contractor is responsible creates a Hazardous Environmental Condition, then Contractor shall immediately: (1) secure or otherwise isolate such condition; (2) stop all Work in connection with such condition and in any area affected thereby (except in an emergency as required by Paragraph 7.15); and (3) notify Owner and Engineer (and promptly thereafter confirm such notice in writing). Owner shall promptly consult with Engineer concerning the necessity for Owner to retain a qualified expert to evaluate such condition or take corrective action, if any. Promptly after consulting with Engineer, Owner shall take such actions as are necessary to permit Owner to timely obtain required permits and provide Contractor the written notice required by Paragraph 5.06.F. If Contractor or anyone for whom Contractor is responsible created the Hazardous Environmental Condition in question, then Owner may remove and remediate the Hazardous Environmental Condition, and impose a set-off against payments to account for the associated costs.

- F. Contractor shall not resume Work in connection with such Hazardous Environmental Condition or in any affected area until after Owner has obtained any required permits related thereto, and delivered written notice to Contractor either (1) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work, or (2) specifying any special conditions under which such Work may be resumed safely.
- G. If Owner and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times, or both, as a result of such Work stoppage or such special conditions under which Work is agreed to be resumed by Contractor, then within 30 days of Owner's written notice regarding the resumption of Work, Contractor may submit a Change Proposal, or Owner may impose a set-off.
- H. If after receipt of such written notice Contractor does not agree to resume such Work based on a reasonable belief it is unsafe, or does not agree to resume such Work under such special conditions, then Owner may order the portion of the Work that is in the area affected by such condition to be deleted from the Work, following the contractual change procedures in Article 11. Owner may have such deleted portion of the Work performed by Owner's own forces or others in accordance with Article 8.
- I. To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Contractor, Subcontractors, and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition, provided that such Hazardous Environmental Condition (1) was not shown or indicated in the Drawings, Specifications, or other Contract Documents, identified as Technical Data entitled to limited reliance pursuant to Paragraph 5.06.B, or identified in the Contract Documents to be included within the scope of the Work, and (2) was not created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 5.06.I shall obligate Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.
- J. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to the failure to control, contain, or remove a Constituent of Concern brought to the Site by Contractor or by anyone for whom Contractor is responsible, or to a Hazardous Environmental Condition created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 5.06.J shall obligate Contractor to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.
- K. The provisions of Paragraphs 5.03, 5.04, and 5.05 do not apply to the presence of Constituents of Concern or to a Hazardous Environmental Condition uncovered or revealed at the Site.

ARTICLE 6 – BONDS AND INSURANCE

6.01 *Performance, Payment, and Other Bonds*

- A. Contractor shall furnish a performance bond and a payment bond, each in an amount at least equal to the Contract Price, as security for the faithful performance and payment of all of Contractor's obligations under the Contract. These bonds shall remain in effect until one year after the date when final payment becomes due or until completion of the correction period specified in Paragraph 15.08, whichever is later, except as provided otherwise by Laws or Regulations, the Supplementary Conditions, or other specific provisions of the Contract. Contractor shall also furnish such other bonds as are required by the Supplementary Conditions or other specific provisions of the Contract.
- B. All bonds shall be in the form prescribed by the Contract except as provided otherwise by Laws or Regulations, and shall be executed by such sureties as are named in "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (as amended and supplemented) by the Financial Management Service, Surety Bond Branch, U.S. Department of the Treasury. A bond signed by an agent or attorney-in-fact must be accompanied by a certified copy of that individual's authority to bind the surety. The evidence of authority shall show that it is effective on the date the agent or attorney-in-fact signed the accompanying bond.
- C. Contractor shall obtain the required bonds from surety companies that are duly licensed or authorized in the jurisdiction in which the Project is located to issue bonds in the required amounts.
- D. If the surety on a bond furnished by Contractor is declared bankrupt or becomes insolvent, or its right to do business is terminated in any state or jurisdiction where any part of the Project is located, or the surety ceases to meet the requirements above, then Contractor shall promptly notify Owner and Engineer and shall, within 20 days after the event giving rise to such notification, provide another bond and surety, both of which shall comply with the bond and surety requirements above.
- E. If Contractor has failed to obtain a required bond, Owner may exclude the Contractor from the Site and exercise Owner's termination rights under Article 16.
- F. Upon request, Owner shall provide a copy of the payment bond to any Subcontractor, Supplier, or other person or entity claiming to have furnished labor or materials used in the performance of the Work.

6.02 *Insurance—General Provisions*

- A. Owner and Contractor shall obtain and maintain insurance as required in this Article and in the Supplementary Conditions.
- B. All insurance required by the Contract to be purchased and maintained by Owner or Contractor shall be obtained from insurance companies that are duly licensed or authorized, in the state or jurisdiction in which the Project is located, to issue insurance policies for the required limits and coverages. Unless a different standard is indicated in the Supplementary Conditions, all companies that provide insurance policies required under this Contract shall have an A.M. Best rating of A-VII or better.
- C. Contractor shall deliver to Owner, with copies to each named insured and additional insured (as identified in this Article, in the Supplementary Conditions, or elsewhere in the Contract), certificates of insurance establishing that Contractor has obtained and is

maintaining the policies, coverages, and endorsements required by the Contract. Upon request by Owner or any other insured, Contractor shall also furnish other evidence of such required insurance, including but not limited to copies of policies and endorsements, and documentation of applicable self-insured retentions and deductibles. Contractor may block out (redact) any confidential premium or pricing information contained in any policy or endorsement furnished under this provision.

- D. Owner shall deliver to Contractor, with copies to each named insured and additional insured (as identified in this Article, the Supplementary Conditions, or elsewhere in the Contract), certificates of insurance establishing that Owner has obtained and is maintaining the policies, coverages, and endorsements required of Owner by the Contract (if any). Upon request by Contractor or any other insured, Owner shall also provide other evidence of such required insurance (if any), including but not limited to copies of policies and endorsements, and documentation of applicable self-insured retentions and deductibles. Owner may block out (redact) any confidential premium or pricing information contained in any policy or endorsement furnished under this provision.
- E. Failure of Owner or Contractor to demand such certificates or other evidence of the other party's full compliance with these insurance requirements, or failure of Owner or Contractor to identify a deficiency in compliance from the evidence provided, shall not be construed as a waiver of the other party's obligation to obtain and maintain such insurance.
- F. If either party does not purchase or maintain all of the insurance required of such party by the Contract, such party shall notify the other party in writing of such failure to purchase prior to the start of the Work, or of such failure to maintain prior to any change in the required coverage.
- G. If Contractor has failed to obtain and maintain required insurance, Owner may exclude the Contractor from the Site, impose an appropriate set-off against payment, and exercise Owner's termination rights under Article 16.
- H. Without prejudice to any other right or remedy, if a party has failed to obtain required insurance, the other party may elect to obtain equivalent insurance to protect such other party's interests at the expense of the party who was required to provide such coverage, and the Contract Price shall be adjusted accordingly.
- I. Owner does not represent that insurance coverage and limits established in this Contract necessarily will be adequate to protect Contractor or Contractor's interests.
- J. The insurance and insurance limits required herein shall not be deemed as a limitation on Contractor's liability under the indemnities granted to Owner and other individuals and entities in the Contract.

6.03 Contractor's Insurance

- A. **Workers' Compensation:** Contractor shall purchase and maintain workers' compensation and employer's liability insurance for:
 - 1. claims under workers' compensation, disability benefits, and other similar employee benefit acts.
 - 2. United States Longshoreman and Harbor Workers' Compensation Act and Jones Act coverage (if applicable).
 - 3. claims for damages because of bodily injury, occupational sickness or disease, or death of Contractor's employees (by stop-gap endorsement in monopolist worker's compensation states).

4. Foreign voluntary worker compensation (if applicable).
- B. *Commercial General Liability—Claims Covered:* Contractor shall purchase and maintain commercial general liability insurance, covering all operations by or on behalf of Contractor, on an occurrence basis, against:
1. claims for damages because of bodily injury, sickness or disease, or death of any person other than Contractor's employees.
 2. claims for damages insured by reasonably available personal injury liability coverage.
 3. claims for damages, other than to the Work itself, because of injury to or destruction of tangible property wherever located, including loss of use resulting therefrom.
- C. *Commercial General Liability—Form and Content:* Contractor's commercial liability policy shall be written on a 1996 (or later) ISO commercial general liability form (occurrence form) and include the following coverages and endorsements:
1. Products and completed operations coverage:
 - a. Such insurance shall be maintained for three years after final payment.
 - b. Contractor shall furnish Owner and each other additional insured (as identified in the Supplementary Conditions or elsewhere in the Contract) evidence of continuation of such insurance at final payment and three years thereafter.
 2. Blanket contractual liability coverage, to the extent permitted by law, including but not limited to coverage of Contractor's contractual indemnity obligations in Paragraph 7.18.
 3. Broad form property damage coverage.
 4. Severability of interest.
 5. Underground, explosion, and collapse coverage.
 6. Personal injury coverage.
 7. Additional insured endorsements that include both ongoing operations and products and completed operations coverage through ISO Endorsements CG 20 10 10 01 and CG 20 37 10 01 (together); or CG 20 10 07 04 and CG 20 37 07 04 (together); or their equivalent.
 8. For design professional additional insureds, ISO Endorsement CG 20 32 07 04, "Additional Insured—Engineers, Architects or Surveyors Not Engaged by the Named Insured" or its equivalent.
- D. *Automobile liability:* Contractor shall purchase and maintain automobile liability insurance against claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance, or use of any motor vehicle. The automobile liability policy shall be written on an occurrence basis.
- E. *Umbrella or excess liability:* Contractor shall purchase and maintain umbrella or excess liability insurance written over the underlying employer's liability, commercial general liability, and automobile liability insurance described in the paragraphs above. Subject to industry-standard exclusions, the coverage afforded shall follow form as to each and every one of the underlying policies.
- F. *Contractor's pollution liability insurance:* Contractor shall purchase and maintain a policy covering third-party injury and property damage claims, including clean-up costs, as a result

of pollution conditions arising from Contractor's operations and completed operations. This insurance shall be maintained for no less than three years after final completion.

- G. *Additional insureds:* The Contractor's commercial general liability, automobile liability, umbrella or excess, and pollution liability policies shall include and list as additional insureds Owner and Engineer, and any individuals or entities identified in the Supplementary Conditions; include coverage for the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of all such additional insureds; and the insurance afforded to these additional insureds shall provide primary coverage for all claims covered thereby (including as applicable those arising from both ongoing and completed operations) on a non-contributory basis. Contractor shall obtain all necessary endorsements to support these requirements.
- H. *Contractor's professional liability insurance:* If Contractor will provide or furnish professional services under this Contract, through a delegation of professional design services or otherwise, then Contractor shall be responsible for purchasing and maintaining applicable professional liability insurance. This insurance shall provide protection against claims arising out of performance of professional design or related services, and caused by a negligent error, omission, or act for which the insured party is legally liable. It shall be maintained throughout the duration of the Contract and for a minimum of two years after Substantial Completion. If such professional design services are performed by a Subcontractor, and not by Contractor itself, then the requirements of this paragraph may be satisfied through the purchasing and maintenance of such insurance by such Subcontractor.
- I. *General provisions:* The policies of insurance required by this Paragraph 6.03 shall:
 - 1. include at least the specific coverages provided in this Article.
 - 2. be written for not less than the limits of liability provided in this Article and in the Supplementary Conditions, or required by Laws or Regulations, whichever is greater.
 - 3. contain a provision or endorsement that the coverage afforded will not be canceled, materially changed, or renewal refused until at least 10 days prior written notice has been given to Contractor. Within three days of receipt of any such written notice, Contractor shall provide a copy of the notice to Owner, Engineer, and each other insured under the policy.
 - 4. remain in effect at least until final payment (and longer if expressly required in this Article) and at all times thereafter when Contractor may be correcting, removing, or replacing defective Work as a warranty or correction obligation, or otherwise, or returning to the Site to conduct other tasks arising from the Contract Documents.
 - 5. be appropriate for the Work being performed and provide protection from claims that may arise out of or result from Contractor's performance of the Work and Contractor's other obligations under the Contract Documents, whether it is to be performed by Contractor, any Subcontractor or Supplier, or by anyone directly or indirectly employed by any of them to perform any of the Work, or by anyone for whose acts any of them may be liable.
- J. The coverage requirements for specific policies of insurance must be met by such policies, and not by reference to excess or umbrella insurance provided in other policies.

6.04 *Owner's Liability Insurance*

- A. In addition to the insurance required to be provided by Contractor under Paragraph 6.03, Owner, at Owner's option, may purchase and maintain at Owner's expense Owner's own liability insurance as will protect Owner against claims which may arise from operations under the Contract Documents.
- B. Owner's liability policies, if any, operate separately and independently from policies required to be provided by Contractor, and Contractor cannot rely upon Owner's liability policies for any of Contractor's obligations to the Owner, Engineer, or third parties.

6.05 *Property Insurance*

- A. **Builder's Risk:** Unless otherwise provided in the Supplementary Conditions, Contractor shall purchase and maintain builder's risk insurance upon the Work on a completed value basis, in the amount of the full insurable replacement cost thereof (subject to such deductible amounts as may be provided in the Supplementary Conditions or required by Laws and Regulations). This insurance shall:
 - 1. include the Owner and Contractor as named insureds, and all Subcontractors, and any individuals or entities required by the Supplementary Conditions to be insured under such builder's risk policy, as insureds or named insureds. For purposes of the remainder of this Paragraph 6.05, Paragraphs 6.06 and 6.07, and any corresponding Supplementary Conditions, the parties required to be insured shall collectively be referred to as "insureds."
 - 2. be written on a builder's risk "all risk" policy form that shall at least include insurance for physical loss or damage to the Work, temporary buildings, falsework, and materials and equipment in transit, and shall insure against at least the following perils or causes of loss: fire; lightning; windstorm; riot; civil commotion; terrorism; vehicle impact; aircraft; smoke; theft; vandalism and malicious mischief; mechanical breakdown, boiler explosion, and artificially generated electric current; earthquake; volcanic activity, and other earth movement; flood; collapse; explosion; debris removal; demolition occasioned by enforcement of Laws and Regulations; water damage (other than that caused by flood); and such other perils or causes of loss as may be specifically required by the Supplementary Conditions. If insurance against mechanical breakdown, boiler explosion, and artificially generated electric current; earthquake; volcanic activity, and other earth movement; or flood, are not commercially available under builder's risk policies, by endorsement or otherwise, such insurance may be provided through other insurance policies acceptable to Owner and Contractor.
 - 3. cover, as insured property, at least the following: (a) the Work and all materials, supplies, machinery, apparatus, equipment, fixtures, and other property of a similar nature that are to be incorporated into or used in the preparation, fabrication, construction, erection, or completion of the Work, including Owner-furnished or assigned property; (b) spare parts inventory required within the scope of the Contract; and (c) temporary works which are not intended to form part of the permanent constructed Work but which are intended to provide working access to the Site, or to the Work under construction, or which are intended to provide temporary support for the Work under construction, including scaffolding, form work, fences, shoring, falsework, and temporary structures.
 - 4. cover expenses incurred in the repair or replacement of any insured property (including but not limited to fees and charges of engineers and architects).

5. extend to cover damage or loss to insured property while in temporary storage at the Site or in a storage location outside the Site (but not including property stored at the premises of a manufacturer or Supplier).
 6. extend to cover damage or loss to insured property while in transit.
 7. allow for partial occupation or use of the Work by Owner, such that those portions of the Work that are not yet occupied or used by Owner shall remain covered by the builder's risk insurance.
 8. allow for the waiver of the insurer's subrogation rights, as set forth below.
 9. provide primary coverage for all losses and damages caused by the perils or causes of loss covered.
 10. not include a co-insurance clause.
 11. include an exception for ensuing losses from physical damage or loss with respect to any defective workmanship, design, or materials exclusions.
 12. include performance/hot testing and start-up.
 13. be maintained in effect, subject to the provisions herein regarding Substantial Completion and partial occupancy or use of the Work by Owner, until the Work is complete.
- B. *Notice of Cancellation or Change:* All the policies of insurance (and the certificates or other evidence thereof) required to be purchased and maintained in accordance with this Paragraph 6.05 will contain a provision or endorsement that the coverage afforded will not be canceled or materially changed or renewal refused until at least 10 days prior written notice has been given to the purchasing policyholder. Within three days of receipt of any such written notice, the purchasing policyholder shall provide a copy of the notice to each other insured.
- C. *Deductibles:* The purchaser of any required builder's risk or property insurance shall pay for costs not covered because of the application of a policy deductible.
- D. *Partial Occupancy or Use by Owner:* If Owner will occupy or use a portion or portions of the Work prior to Substantial Completion of all the Work as provided in Paragraph 15.04, then Owner (directly, if it is the purchaser of the builder's risk policy, or through Contractor) will provide notice of such occupancy or use to the builder's risk insurer. The builder's risk insurance shall not be canceled or permitted to lapse on account of any such partial use or occupancy; rather, those portions of the Work that are occupied or used by Owner may come off the builder's risk policy, while those portions of the Work not yet occupied or used by Owner shall remain covered by the builder's risk insurance.
- E. *Additional Insurance:* If Contractor elects to obtain other special insurance to be included in or supplement the builder's risk or property insurance policies provided under this Paragraph 6.05, it may do so at Contractor's expense.
- F. *Insurance of Other Property:* If the express insurance provisions of the Contract do not require or address the insurance of a property item or interest, such as tools, construction equipment, or other personal property owned by Contractor, a Subcontractor, or an employee of Contractor or a Subcontractor, then the entity or individual owning such property item will be responsible for deciding whether to insure it, and if so in what amount.

6.06 *Waiver of Rights*

- A. All policies purchased in accordance with Paragraph 6.05, expressly including the builder's risk policy, shall contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any insureds thereunder, or against Engineer or its consultants, or their officers, directors, members, partners, employees, agents, consultants, or subcontractors. Owner and Contractor waive all rights against each other and the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work; and, in addition, waive all such rights against Engineer, its consultants, all Subcontractors, all individuals or entities identified in the Supplementary Conditions as insureds, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, under such policies for losses and damages so caused. None of the above waivers shall extend to the rights that any party making such waiver may have to the proceeds of insurance held by Owner or Contractor as trustee or fiduciary, or otherwise payable under any policy so issued.
- B. Owner waives all rights against Contractor, Subcontractors, and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them, for:
 - 1. loss due to business interruption, loss of use, or other consequential loss extending beyond direct physical loss or damage to Owner's property or the Work caused by, arising out of, or resulting from fire or other perils whether or not insured by Owner; and
 - 2. loss or damage to the completed Project or part thereof caused by, arising out of, or resulting from fire or other insured peril or cause of loss covered by any property insurance maintained on the completed Project or part thereof by Owner during partial occupancy or use pursuant to Paragraph 15.04, after Substantial Completion pursuant to Paragraph 15.03, or after final payment pursuant to Paragraph 15.06.
- C. Any insurance policy maintained by Owner covering any loss, damage or consequential loss referred to in Paragraph 6.06.B shall contain provisions to the effect that in the event of payment of any such loss, damage, or consequential loss, the insurers will have no rights of recovery against Contractor, Subcontractors, or Engineer, or the officers, directors, members, partners, employees, agents, consultants, or subcontractors of each and any of them.
- D. Contractor shall be responsible for assuring that the agreement under which a Subcontractor performs a portion of the Work contains provisions whereby the Subcontractor waives all rights against Owner, Contractor, all individuals or entities identified in the Supplementary Conditions as insureds, the Engineer and its consultants, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, relating to, or resulting from any of the perils or causes of loss covered by builder's risk insurance and any other property insurance applicable to the Work.

6.07 *Receipt and Application of Property Insurance Proceeds*

- A. Any insured loss under the builder's risk and other policies of insurance required by Paragraph 6.05 will be adjusted and settled with the named insured that purchased the

policy. Such named insured shall act as fiduciary for the other insureds, and give notice to such other insureds that adjustment and settlement of a claim is in progress. Any other insured may state its position regarding a claim for insured loss in writing within 15 days after notice of such claim.

- B. Proceeds for such insured losses may be made payable by the insurer either jointly to multiple insureds, or to the named insured that purchased the policy in its own right and as fiduciary for other insureds, subject to the requirements of any applicable mortgage clause. A named insured receiving insurance proceeds under the builder's risk and other policies of insurance required by Paragraph 6.05 shall distribute such proceeds in accordance with such agreement as the parties in interest may reach, or as otherwise required under the dispute resolution provisions of this Contract or applicable Laws and Regulations.
- C. If no other special agreement is reached, the damaged Work shall be repaired or replaced, the money so received applied on account thereof, and the Work and the cost thereof covered by Change Order, if needed.

ARTICLE 7 – CONTRACTOR'S RESPONSIBILITIES

7.01 *Supervision and Superintendence*

- A. Contractor shall supervise, inspect, and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. Contractor shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction.
- B. At all times during the progress of the Work, Contractor shall assign a competent resident superintendent who shall not be replaced without written notice to Owner and Engineer except under extraordinary circumstances.

7.02 *Labor; Working Hours*

- A. Contractor shall provide competent, suitably qualified personnel to survey and lay out the Work and perform construction as required by the Contract Documents. Contractor shall at all times maintain good discipline and order at the Site.
- B. Except as otherwise required for the safety or protection of persons or the Work or property at the Site or adjacent thereto, and except as otherwise stated in the Contract Documents, all Work at the Site shall be performed during regular working hours, Monday through Friday. Contractor will not perform Work on a Saturday, Sunday, or any legal holiday. Contractor may perform Work outside regular working hours or on Saturdays, Sundays, or legal holidays only with Owner's written consent, which will not be unreasonably withheld.

7.03 *Services, Materials, and Equipment*

- A. Unless otherwise specified in the Contract Documents, Contractor shall provide and assume full responsibility for all services, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities and incidentals necessary for the performance, testing, start up, and completion of the Work, whether or not such items are specifically called for in the Contract Documents.
- B. All materials and equipment incorporated into the Work shall be of good quality and new, except as otherwise provided in the Contract Documents. All special warranties and

guarantees required by the Specifications shall expressly run to the benefit of Owner. If required by Engineer, Contractor shall furnish satisfactory evidence (including reports of required tests) as to the source, kind, and quality of materials and equipment.

- C. All materials and equipment shall be stored, applied, installed, connected, erected, protected, used, cleaned, and conditioned in accordance with instructions of the applicable Supplier, except as otherwise may be provided in the Contract Documents.

7.04 "Or Equals"

- A. Whenever an item of material or equipment is specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular Supplier, the Contract Price has been based upon Contractor furnishing such item as specified. The specification or description of such an item is intended to establish the type, function, appearance, and quality required. Unless the specification or description contains or is followed by words reading that no like, equivalent, or "or equal" item is permitted, Contractor may request that Engineer authorize the use of other items of material or equipment, or items from other proposed suppliers under the circumstances described below.
 - 1. If Engineer in its sole discretion determines that an item of material or equipment proposed by Contractor is functionally equal to that named and sufficiently similar so that no change in related Work will be required, Engineer shall deem it an "or equal" item. For the purposes of this paragraph, a proposed item of material or equipment will be considered functionally equal to an item so named if:
 - a. in the exercise of reasonable judgment Engineer determines that:
 - 1) it is at least equal in materials of construction, quality, durability, appearance, strength, and design characteristics;
 - 2) it will reliably perform at least equally well the function and achieve the results imposed by the design concept of the completed Project as a functioning whole;
 - 3) it has a proven record of performance and availability of responsive service; and
 - 4) it is not objectionable to Owner.
 - b. Contractor certifies that, if approved and incorporated into the Work:
 - 1) there will be no increase in cost to the Owner or increase in Contract Times; and
 - 2) it will conform substantially to the detailed requirements of the item named in the Contract Documents.
 - B. *Contractor's Expense:* Contractor shall provide all data in support of any proposed "or equal" item at Contractor's expense.
 - C. *Engineer's Evaluation and Determination:* Engineer will be allowed a reasonable time to evaluate each "or-equal" request. Engineer may require Contractor to furnish additional data about the proposed "or-equal" item. Engineer will be the sole judge of acceptability. No "or-equal" item will be ordered, furnished, installed, or utilized until Engineer's review is complete and Engineer determines that the proposed item is an "or-equal", which will be evidenced by an approved Shop Drawing or other written communication. Engineer will advise Contractor in writing of any negative determination.

- D. *Effect of Engineer's Determination:* Neither approval nor denial of an "or-equal" request shall result in any change in Contract Price. The Engineer's denial of an "or-equal" request shall be final and binding, and may not be reversed through an appeal under any provision of the Contract Documents.
- E. *Treatment as a Substitution Request:* If Engineer determines that an item of material or equipment proposed by Contractor does not qualify as an "or-equal" item, Contractor may request that Engineer consider the proposed item as a substitute pursuant to Paragraph 7.05.

7.05 Substitutes

- A. Unless the specification or description of an item of material or equipment required to be furnished under the Contract Documents contains or is followed by words reading that no substitution is permitted, Contractor may request that Engineer authorize the use of other items of material or equipment under the circumstances described below. To the extent possible such requests shall be made before commencement of related construction at the Site.
 - 1. Contractor shall submit sufficient information as provided below to allow Engineer to determine if the item of material or equipment proposed is functionally equivalent to that named and an acceptable substitute therefor. Engineer will not accept requests for review of proposed substitute items of material or equipment from anyone other than Contractor.
 - 2. The requirements for review by Engineer will be as set forth in Paragraph 7.05.B, as supplemented by the Specifications, and as Engineer may decide is appropriate under the circumstances.
 - 3. Contractor shall make written application to Engineer for review of a proposed substitute item of material or equipment that Contractor seeks to furnish or use. The application:
 - a. shall certify that the proposed substitute item will:
 - 1) perform adequately the functions and achieve the results called for by the general design,
 - 2) be similar in substance to that specified, and
 - 3) be suited to the same use as that specified.
 - b. will state:
 - 1) the extent, if any, to which the use of the proposed substitute item will necessitate a change in Contract Times,
 - 2) whether use of the proposed substitute item in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with Owner for other work on the Project) to adapt the design to the proposed substitute item, and
 - 3) whether incorporation or use of the proposed substitute item in connection with the Work is subject to payment of any license fee or royalty.
 - c. will identify:
 - 1) all variations of the proposed substitute item from that specified, and

- 2) available engineering, sales, maintenance, repair, and replacement services.
 - d. shall contain an itemized estimate of all costs or credits that will result directly or indirectly from use of such substitute item, including but not limited to changes in Contract Price, shared savings, costs of redesign, and claims of other contractors affected by any resulting change.
- B. *Engineer's Evaluation and Determination:* Engineer will be allowed a reasonable time to evaluate each substitute request, and to obtain comments and direction from Owner. Engineer may require Contractor to furnish additional data about the proposed substitute item. Engineer will be the sole judge of acceptability. No substitute will be ordered, furnished, installed, or utilized until Engineer's review is complete and Engineer determines that the proposed item is an acceptable substitute. Engineer's determination will be evidenced by a Field Order or a proposed Change Order accounting for the substitution itself and all related impacts, including changes in Contract Price or Contract Times. Engineer will advise Contractor in writing of any negative determination.
- C. *Special Guarantee:* Owner may require Contractor to furnish at Contractor's expense a special performance guarantee or other surety with respect to any substitute.
- D. *Reimbursement of Engineer's Cost:* Engineer will record Engineer's costs in evaluating a substitute proposed or submitted by Contractor. Whether or not Engineer approves a substitute so proposed or submitted by Contractor, Contractor shall reimburse Owner for the reasonable charges of Engineer for evaluating each such proposed substitute. Contractor shall also reimburse Owner for the reasonable charges of Engineer for making changes in the Contract Documents (or in the provisions of any other direct contract with Owner) resulting from the acceptance of each proposed substitute.
- E. *Contractor's Expense:* Contractor shall provide all data in support of any proposed substitute at Contractor's expense.
- F. *Effect of Engineer's Determination:* If Engineer approves the substitution request, Contractor shall execute the proposed Change Order and proceed with the substitution. The Engineer's denial of a substitution request shall be final and binding, and may not be reversed through an appeal under any provision of the Contract Documents. Contractor may challenge the scope of reimbursement costs imposed under Paragraph 7.05.D, by timely submittal of a Change Proposal.

7.06 Concerning Subcontractors, Suppliers, and Others

- A. Contractor may retain Subcontractors and Suppliers for the performance of parts of the Work. Such Subcontractors and Suppliers must be acceptable to Owner.
- B. Contractor shall retain specific Subcontractors, Suppliers, or other individuals or entities for the performance of designated parts of the Work if required by the Contract to do so.
- C. Subsequent to the submittal of Contractor's Bid or final negotiation of the terms of the Contract, Owner may not require Contractor to retain any Subcontractor, Supplier, or other individual or entity to furnish or perform any of the Work against which Contractor has reasonable objection.
- D. Prior to entry into any binding subcontract or purchase order, Contractor shall submit to Owner the identity of the proposed Subcontractor or Supplier (unless Owner has already deemed such proposed Subcontractor or Supplier acceptable, during the bidding process or otherwise). Such proposed Subcontractor or Supplier shall be deemed acceptable to Owner unless Owner raises a substantive, reasonable objection within five days.

- E. Owner may require the replacement of any Subcontractor, Supplier, or other individual or entity retained by Contractor to perform any part of the Work. Owner also may require Contractor to retain specific replacements; provided, however, that Owner may not require a replacement to which Contractor has a reasonable objection. If Contractor has submitted the identity of certain Subcontractors, Suppliers, or other individuals or entities for acceptance by Owner, and Owner has accepted it (either in writing or by failing to make written objection thereto), then Owner may subsequently revoke the acceptance of any such Subcontractor, Supplier, or other individual or entity so identified solely on the basis of substantive, reasonable objection after due investigation. Contractor shall submit an acceptable replacement for the rejected Subcontractor, Supplier, or other individual or entity.
- F. If Owner requires the replacement of any Subcontractor, Supplier, or other individual or entity retained by Contractor to perform any part of the Work, then Contractor shall be entitled to an adjustment in Contract Price or Contract Times, or both, with respect to the replacement; and Contractor shall initiate a Change Proposal for such adjustment within 30 days of Owner's requirement of replacement.
- G. No acceptance by Owner of any such Subcontractor, Supplier, or other individual or entity, whether initially or as a replacement, shall constitute a waiver of the right of Owner to the completion of the Work in accordance with the Contract Documents.
- H. On a monthly basis Contractor shall submit to Engineer a complete list of all Subcontractors and Suppliers having a direct contract with Contractor, and of all other Subcontractors and Suppliers known to Contractor at the time of submittal.
- I. Contractor shall be fully responsible to Owner and Engineer for all acts and omissions of the Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work just as Contractor is responsible for Contractor's own acts and omissions.
- J. Contractor shall be solely responsible for scheduling and coordinating the work of Subcontractors, Suppliers, and all other individuals or entities performing or furnishing any of the Work.
- K. Contractor shall restrict all Subcontractors, Suppliers, and such other individuals or entities performing or furnishing any of the Work from communicating with Engineer or Owner, except through Contractor or in case of an emergency, or as otherwise expressly allowed herein.
- L. The divisions and sections of the Specifications and the identifications of any Drawings shall not control Contractor in dividing the Work among Subcontractors or Suppliers or delineating the Work to be performed by any specific trade.
- M. All Work performed for Contractor by a Subcontractor or Supplier shall be pursuant to an appropriate contractual agreement that specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract Documents for the benefit of Owner and Engineer.
- N. Owner may furnish to any Subcontractor or Supplier, to the extent practicable, information about amounts paid to Contractor on account of Work performed for Contractor by the particular Subcontractor or Supplier.

O. Nothing in the Contract Documents:

1. shall create for the benefit of any such Subcontractor, Supplier, or other individual or entity any contractual relationship between Owner or Engineer and any such Subcontractor, Supplier, or other individual or entity; nor
2. shall create any obligation on the part of Owner or Engineer to pay or to see to the payment of any money due any such Subcontractor, Supplier, or other individual or entity except as may otherwise be required by Laws and Regulations.

7.07 Patent Fees and Royalties

- A. Contractor shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product, or device which is the subject of patent rights or copyrights held by others. If a particular invention, design, process, product, or device is specified in the Contract Documents for use in the performance of the Work and if, to the actual knowledge of Owner or Engineer, its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights shall be disclosed by Owner in the Contract Documents.
- B. To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Contractor, and its officers, directors, members, partners, employees, agents, consultants, and subcontractors from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device specified in the Contract Documents, but not identified as being subject to payment of any license fee or royalty to others required by patent rights or copyrights.
- C. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device not specified in the Contract Documents.

7.08 Permits

- A. Unless otherwise provided in the Contract Documents, Contractor shall obtain and pay for all construction permits and licenses. Owner shall assist Contractor, when necessary, in obtaining such permits and licenses. Contractor shall pay all governmental charges and inspection fees necessary for the prosecution of the Work which are applicable at the time of the submission of Contractor's Bid (or when Contractor became bound under a negotiated contract). Owner shall pay all charges of utility owners for connections for providing permanent service to the Work

7.09 Taxes

- A. Contractor shall pay all sales, consumer, use, and other similar taxes required to be paid by Contractor in accordance with the Laws and Regulations of the place of the Project which are applicable during the performance of the Work.

7.10 Laws and Regulations

- A. Contractor shall give all notices required by and shall comply with all Laws and Regulations applicable to the performance of the Work. Except where otherwise expressly required by applicable Laws and Regulations, neither Owner nor Engineer shall be responsible for monitoring Contractor's compliance with any Laws or Regulations.
- B. If Contractor performs any Work or takes any other action knowing or having reason to know that it is contrary to Laws or Regulations, Contractor shall bear all resulting costs and losses, and shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such Work or other action. It shall not be Contractor's responsibility to make certain that the Work described in the Contract Documents is in accordance with Laws and Regulations, but this shall not relieve Contractor of Contractor's obligations under Paragraph 3.03.
- C. Owner or Contractor may give notice to the other party of any changes after the submission of Contractor's Bid (or after the date when Contractor became bound under a negotiated contract) in Laws or Regulations having an effect on the cost or time of performance of the Work, including but not limited to changes in Laws or Regulations having an effect on procuring permits and on sales, use, value-added, consumption, and other similar taxes. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times resulting from such changes, then within 30 days of such notice Contractor may submit a Change Proposal, or Owner may initiate a Claim.

7.11 Record Documents

- A. Contractor shall maintain in a safe place at the Site one printed record copy of all Drawings, Specifications, Addenda, Change Orders, Work Change Directives, Field Orders, written interpretations and clarifications, and approved Shop Drawings. Contractor shall keep such record documents in good order and annotate them to show changes made during construction. These record documents, together with all approved Samples, will be available to Engineer for reference. Upon completion of the Work, Contractor shall deliver these record documents to Engineer.

7.12 Safety and Protection

- A. Contractor shall be solely responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work. Such responsibility does not relieve Subcontractors of their responsibility for the safety of persons or property in the performance of their work, nor for compliance with applicable safety Laws and Regulations. Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury, or loss to:
 - 1. all persons on the Site or who may be affected by the Work;

2. all the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and
 3. other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, other work in progress, utilities, and Underground Facilities not designated for removal, relocation, or replacement in the course of construction.
- B. Contractor shall comply with all applicable Laws and Regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and shall erect and maintain all necessary safeguards for such safety and protection. Contractor shall notify Owner; the owners of adjacent property, Underground Facilities, and other utilities; and other contractors and utility owners performing work at or adjacent to the Site, when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property or work in progress.
 - C. Contractor shall comply with the applicable requirements of Owner's safety programs, if any. The Supplementary Conditions identify any Owner's safety programs that are applicable to the Work.
 - D. Contractor shall inform Owner and Engineer of the specific requirements of Contractor's safety program with which Owner's and Engineer's employees and representatives must comply while at the Site.
 - E. All damage, injury, or loss to any property referred to in Paragraph 7.12.A.2 or 7.12.A.3 caused, directly or indirectly, in whole or in part, by Contractor, any Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, shall be remedied by Contractor at its expense (except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of Owner or Engineer or anyone employed by any of them, or anyone for whose acts any of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of Contractor or any Subcontractor, Supplier, or other individual or entity directly or indirectly employed by any of them).
 - F. Contractor's duties and responsibilities for safety and protection shall continue until such time as all the Work is completed and Engineer has issued a notice to Owner and Contractor in accordance with Paragraph 15.06.B that the Work is acceptable (except as otherwise expressly provided in connection with Substantial Completion).
 - G. Contractor's duties and responsibilities for safety and protection shall resume whenever Contractor or any Subcontractor or Supplier returns to the Site to fulfill warranty or correction obligations, or to conduct other tasks arising from the Contract Documents.

7.13 Safety Representative

- A. Contractor shall designate a qualified and experienced safety representative at the Site whose duties and responsibilities shall be the prevention of accidents and the maintaining and supervising of safety precautions and programs.

7.14 Hazard Communication Programs

- A. Contractor shall be responsible for coordinating any exchange of material safety data sheets or other hazard communication information required to be made available to or

exchanged between or among employers at the Site in accordance with Laws or Regulations.

7.15 Emergencies

- A. In emergencies affecting the safety or protection of persons or the Work or property at the Site or adjacent thereto, Contractor is obligated to act to prevent threatened damage, injury, or loss. Contractor shall give Engineer prompt written notice if Contractor believes that any significant changes in the Work or variations from the Contract Documents have been caused thereby or are required as a result thereof. If Engineer determines that a change in the Contract Documents is required because of the action taken by Contractor in response to such an emergency, a Work Change Directive or Change Order will be issued.

7.16 Shop Drawings, Samples, and Other Submittals

A. Shop Drawing and Sample Submittal Requirements:

1. Before submitting a Shop Drawing or Sample, Contractor shall have:
 - a. reviewed and coordinated the Shop Drawing or Sample with other Shop Drawings and Samples and with the requirements of the Work and the Contract Documents;
 - b. determined and verified all field measurements, quantities, dimensions, specified performance and design criteria, installation requirements, materials, catalog numbers, and similar information with respect thereto;
 - c. determined and verified the suitability of all materials and equipment offered with respect to the indicated application, fabrication, shipping, handling, storage, assembly, and installation pertaining to the performance of the Work; and
 - d. determined and verified all information relative to Contractor's responsibilities for means, methods, techniques, sequences, and procedures of construction, and safety precautions and programs incident thereto.
2. Each submittal shall bear a stamp or specific written certification that Contractor has satisfied Contractor's obligations under the Contract Documents with respect to Contractor's review of that submittal, and that Contractor approves the submittal.
3. With each submittal, Contractor shall give Engineer specific written notice of any variations that the Shop Drawing or Sample may have from the requirements of the Contract Documents. This notice shall be set forth in a written communication separate from the Shop Drawings or Sample submittal; and, in addition, in the case of Shop Drawings by a specific notation made on each Shop Drawing submitted to Engineer for review and approval of each such variation.

- B. *Submittal Procedures for Shop Drawings and Samples:* Contractor shall submit Shop Drawings and Samples to Engineer for review and approval in accordance with the accepted Schedule of Submittals. Each submittal will be identified as Engineer may require.

1. Shop Drawings:

- a. Contractor shall submit the number of copies required in the Specifications.
- b. Data shown on the Shop Drawings will be complete with respect to quantities, dimensions, specified performance and design criteria, materials, and similar data to show Engineer the services, materials, and equipment Contractor proposes to

provide and to enable Engineer to review the information for the limited purposes required by Paragraph 7.16.D.

2. *Samples:*

- a. Contractor shall submit the number of Samples required in the Specifications.
- b. Contractor shall clearly identify each Sample as to material, Supplier, pertinent data such as catalog numbers, the use for which intended and other data as Engineer may require to enable Engineer to review the submittal for the limited purposes required by Paragraph 7.16.D.

3. Where a Shop Drawing or Sample is required by the Contract Documents or the Schedule of Submittals, any related Work performed prior to Engineer's review and approval of the pertinent submittal will be at the sole expense and responsibility of Contractor.

C. *Other Submittals:* Contractor shall submit other submittals to Engineer in accordance with the accepted Schedule of Submittals, and pursuant to the applicable terms of the Specifications.

D. *Engineer's Review:*

1. Engineer will provide timely review of Shop Drawings and Samples in accordance with the Schedule of Submittals acceptable to Engineer. Engineer's review and approval will be only to determine if the items covered by the submittals will, after installation or incorporation in the Work, conform to the information given in the Contract Documents and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.
2. Engineer's review and approval will not extend to means, methods, techniques, sequences, or procedures of construction or to safety precautions or programs incident thereto.
3. Engineer's review and approval of a separate item as such will not indicate approval of the assembly in which the item functions.
4. Engineer's review and approval of a Shop Drawing or Sample shall not relieve Contractor from responsibility for any variation from the requirements of the Contract Documents unless Contractor has complied with the requirements of Paragraph 7.16.A.3 and Engineer has given written approval of each such variation by specific written notation thereof incorporated in or accompanying the Shop Drawing or Sample. Engineer will document any such approved variation from the requirements of the Contract Documents in a Field Order.
5. Engineer's review and approval of a Shop Drawing or Sample shall not relieve Contractor from responsibility for complying with the requirements of Paragraph 7.16.A and B.
6. Engineer's review and approval of a Shop Drawing or Sample, or of a variation from the requirements of the Contract Documents, shall not, under any circumstances, change the Contract Times or Contract Price, unless such changes are included in a Change Order.
7. Neither Engineer's receipt, review, acceptance or approval of a Shop Drawing, Sample, or other submittal shall result in such item becoming a Contract Document.

8. Contractor shall perform the Work in compliance with the requirements and commitments set forth in approved Shop Drawings and Samples, subject to the provisions of Paragraph 7.16.D.4.

E. *Resubmittal Procedures:*

1. Contractor shall make corrections required by Engineer and shall return the required number of corrected copies of Shop Drawings and submit, as required, new Samples for review and approval. Contractor shall direct specific attention in writing to revisions other than the corrections called for by Engineer on previous submittals.
2. Contractor shall furnish required submittals with sufficient information and accuracy to obtain required approval of an item with no more than three submittals. Engineer will record Engineer's time for reviewing a fourth or subsequent submittal of a Shop Drawings, sample, or other item requiring approval, and Contractor shall be responsible for Engineer's charges to Owner for such time. Owner may impose a set-off against payments due to Contractor to secure reimbursement for such charges.
3. If Contractor requests a change of a previously approved submittal item, Contractor shall be responsible for Engineer's charges to Owner for its review time, and Owner may impose a set-off against payments due to Contractor to secure reimbursement for such charges, unless the need for such change is beyond the control of Contractor.

7.17 *Contractor's General Warranty and Guarantee*

- A. Contractor warrants and guarantees to Owner that all Work will be in accordance with the Contract Documents and will not be defective. Engineer and its officers, directors, members, partners, employees, agents, consultants, and subcontractors shall be entitled to rely on Contractor's warranty and guarantee.
- B. Contractor's warranty and guarantee hereunder excludes defects or damage caused by:
 1. abuse, modification, or improper maintenance or operation by persons other than Contractor, Subcontractors, Suppliers, or any other individual or entity for whom Contractor is responsible; or
 2. normal wear and tear under normal usage.
- C. Contractor's obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute. None of the following will constitute an acceptance of Work that is not in accordance with the Contract Documents or a release of Contractor's obligation to perform the Work in accordance with the Contract Documents:
 1. observations by Engineer;
 2. recommendation by Engineer or payment by Owner of any progress or final payment;
 3. the issuance of a certificate of Substantial Completion by Engineer or any payment related thereto by Owner;
 4. use or occupancy of the Work or any part thereof by Owner;
 5. any review and approval of a Shop Drawing or Sample submittal;
 6. the issuance of a notice of acceptability by Engineer;
 7. any inspection, test, or approval by others; or
 8. any correction of defective Work by Owner.

- D. If the Contract requires the Contractor to accept the assignment of a contract entered into by Owner, then the specific warranties, guarantees, and correction obligations contained in the assigned contract shall govern with respect to Contractor's performance obligations to Owner for the Work described in the assigned contract.

7.18 Indemnification

- A. To the fullest extent permitted by Laws and Regulations, and in addition to any other obligations of Contractor under the Contract or otherwise, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to the performance of the Work, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom but only to the extent caused by any negligent act or omission of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work or anyone for whose acts any of them may be liable.
- B. In any and all claims against Owner or Engineer or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors by any employee (or the survivor or personal representative of such employee) of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, the indemnification obligation under Paragraph 7.18.A shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Contractor or any such Subcontractor, Supplier, or other individual or entity under workers' compensation acts, disability benefit acts, or other employee benefit acts.
- C. The indemnification obligations of Contractor under Paragraph 7.18.A shall not extend to the liability of Engineer and Engineer's officers, directors, members, partners, employees, agents, consultants and subcontractors arising out of:
 - 1. the preparation or approval of, or the failure to prepare or approve maps, Drawings, opinions, reports, surveys, Change Orders, designs, or Specifications; or
 - 2. giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage.

7.19 Delegation of Professional Design Services

- A. Contractor will not be required to provide professional design services unless such services are specifically required by the Contract Documents for a portion of the Work or unless such services are required to carry out Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. Contractor shall not be required to provide professional services in violation of applicable Laws and Regulations.
- B. If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of Contractor by the Contract Documents, Owner and Engineer will specify all performance and design criteria that such services must satisfy. Contractor shall cause such services or certifications to be provided by a properly licensed professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, and other submittals prepared by such professional. Shop

Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to Engineer.

- C. Owner and Engineer shall be entitled to rely upon the adequacy, accuracy, and completeness of the services, certifications, or approvals performed by such design professionals, provided Owner and Engineer have specified to Contractor all performance and design criteria that such services must satisfy.
- D. Pursuant to this paragraph, Engineer's review and approval of design calculations and design drawings will be only for the limited purpose of checking for conformance with performance and design criteria given and the design concept expressed in the Contract Documents. Engineer's review and approval of Shop Drawings and other submittals (except design calculations and design drawings) will be only for the purpose stated in Paragraph 7.16.D.1.
- E. Contractor shall not be responsible for the adequacy of the performance or design criteria specified by Owner or Engineer.

ARTICLE 8 – OTHER WORK AT THE SITE

8.01 *Other Work*

- A. In addition to and apart from the Work under the Contract Documents, the Owner may perform other work at or adjacent to the Site. Such other work may be performed by Owner's employees, or through contracts between the Owner and third parties. Owner may also arrange to have third-party utility owners perform work on their utilities and facilities at or adjacent to the Site.
- B. If Owner performs other work at or adjacent to the Site with Owner's employees, or through contracts for such other work, then Owner shall give Contractor written notice thereof prior to starting any such other work. If Owner has advance information regarding the start of any utility work at or adjacent to the Site, Owner shall provide such information to Contractor.
- C. Contractor shall afford each other contractor that performs such other work, each utility owner performing other work, and Owner, if Owner is performing other work with Owner's employees, proper and safe access to the Site, and provide a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work. Contractor shall do all cutting, fitting, and patching of the Work that may be required to properly connect or otherwise make its several parts come together and properly integrate with such other work. Contractor shall not endanger any work of others by cutting, excavating, or otherwise altering such work; provided, however, that Contractor may cut or alter others' work with the written consent of Engineer and the others whose work will be affected.
- D. If the proper execution or results of any part of Contractor's Work depends upon work performed by others under this Article 8, Contractor shall inspect such other work and promptly report to Engineer in writing any delays, defects, or deficiencies in such other work that render it unavailable or unsuitable for the proper execution and results of Contractor's Work. Contractor's failure to so report will constitute an acceptance of such other work as fit and proper for integration with Contractor's Work except for latent defects and deficiencies in such other work.

8.02 *Coordination*

- A. If Owner intends to contract with others for the performance of other work at or adjacent to the Site, to perform other work at or adjacent to the Site with Owner's employees, or to arrange to have utility owners perform work at or adjacent to the Site, the following will be set forth in the Supplementary Conditions or provided to Contractor prior to the start of any such other work:
 - 1. the identity of the individual or entity that will have authority and responsibility for coordination of the activities among the various contractors;
 - 2. an itemization of the specific matters to be covered by such authority and responsibility; and
 - 3. the extent of such authority and responsibilities.
- B. Unless otherwise provided in the Supplementary Conditions, Owner shall have sole authority and responsibility for such coordination.

8.03 *Legal Relationships*

- A. If, in the course of performing other work at or adjacent to the Site for Owner, the Owner's employees, any other contractor working for Owner, or any utility owner for whom the Owner is responsible causes damage to the Work or to the property of Contractor or its Subcontractors, or delays, disrupts, interferes with, or increases the scope or cost of the performance of the Work, through actions or inaction, then Contractor shall be entitled to an equitable adjustment in the Contract Price or the Contract Times, or both. Contractor must submit any Change Proposal seeking an equitable adjustment in the Contract Price or the Contract Times under this paragraph within 30 days of the damaging, delaying, disrupting, or interfering event. The entitlement to, and extent of, any such equitable adjustment shall take into account information (if any) regarding such other work that was provided to Contractor in the Contract Documents prior to the submittal of the Bid or the final negotiation of the terms of the Contract. When applicable, any such equitable adjustment in Contract Price shall be conditioned on Contractor assigning to Owner all Contractor's rights against such other contractor or utility owner with respect to the damage, delay, disruption, or interference that is the subject of the adjustment. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times.
- B. Contractor shall take reasonable and customary measures to avoid damaging, delaying, disrupting, or interfering with the work of Owner, any other contractor, or any utility owner performing other work at or adjacent to the Site. If Contractor fails to take such measures and as a result damages, delays, disrupts, or interferes with the work of any such other contractor or utility owner, then Owner may impose a set-off against payments due to Contractor, and assign to such other contractor or utility owner the Owner's contractual rights against Contractor with respect to the breach of the obligations set forth in this paragraph.
- C. When Owner is performing other work at or adjacent to the Site with Owner's employees, Contractor shall be liable to Owner for damage to such other work, and for the reasonable direct delay, disruption, and interference costs incurred by Owner as a result of Contractor's failure to take reasonable and customary measures with respect to Owner's other work. In response to such damage, delay, disruption, or interference, Owner may impose a set-off against payments due to Contractor.

- D. If Contractor damages, delays, disrupts, or interferes with the work of any other contractor, or any utility owner performing other work at or adjacent to the Site, through Contractor's failure to take reasonable and customary measures to avoid such impacts, or if any claim arising out of Contractor's actions, inactions, or negligence in performance of the Work at or adjacent to the Site is made by any such other contractor or utility owner against Contractor, Owner, or Engineer, then Contractor shall (1) promptly attempt to settle the claim as to all parties through negotiations with such other contractor or utility owner, or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law, and (2) indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against any such claims, and against all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such damage, delay, disruption, or interference.

ARTICLE 9 – OWNER'S RESPONSIBILITIES

9.01 *Communications to Contractor*

- A. Except as otherwise provided in these General Conditions, Owner shall issue all communications to Contractor through Engineer.

9.02 *Replacement of Engineer*

- A. Owner may at its discretion appoint an engineer to replace Engineer, provided Contractor makes no reasonable objection to the replacement engineer. The replacement engineer's status under the Contract Documents shall be that of the former Engineer.

9.03 *Furnish Data*

- A. Owner shall promptly furnish the data required of Owner under the Contract Documents.

9.04 *Pay When Due*

- A. Owner shall make payments to Contractor when they are due as provided in the Agreement.

9.05 *Lands and Easements; Reports, Tests, and Drawings*

- A. Owner's duties with respect to providing lands and easements are set forth in Paragraph 5.01.
- B. Owner's duties with respect to providing engineering surveys to establish reference points are set forth in Paragraph 4.03.
- C. Article 5 refers to Owner's identifying and making available to Contractor copies of reports of explorations and tests of conditions at the Site, and drawings of physical conditions relating to existing surface or subsurface structures at the Site.

9.06 *Insurance*

- A. Owner's responsibilities, if any, with respect to purchasing and maintaining liability and property insurance are set forth in Article 6.

9.07 *Change Orders*

- A. Owner's responsibilities with respect to Change Orders are set forth in Article 11.

9.08 *Inspections, Tests, and Approvals*

- A. Owner's responsibility with respect to certain inspections, tests, and approvals is set forth in Paragraph 14.02.B.

9.09 *Limitations on Owner's Responsibilities*

- A. The Owner shall not supervise, direct, or have control or authority over, nor be responsible for, Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Owner will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.

9.10 *Undisclosed Hazardous Environmental Condition*

- A. Owner's responsibility in respect to an undisclosed Hazardous Environmental Condition is set forth in Paragraph 5.06.

9.11 *Evidence of Financial Arrangements*

- A. Upon request of Contractor, Owner shall furnish Contractor reasonable evidence that financial arrangements have been made to satisfy Owner's obligations under the Contract Documents (including obligations under proposed changes in the Work).

9.12 *Safety Programs*

- A. While at the Site, Owner's employees and representatives shall comply with the specific applicable requirements of Contractor's safety programs of which Owner has been informed.
- B. Owner shall furnish copies of any applicable Owner safety programs to Contractor.

ARTICLE 10 – ENGINEER'S STATUS DURING CONSTRUCTION

10.01 *Owner's Representative*

- A. Engineer will be Owner's representative during the construction period. The duties and responsibilities and the limitations of authority of Engineer as Owner's representative during construction are set forth in the Contract.

10.02 *Visits to Site*

- A. Engineer will make visits to the Site at intervals appropriate to the various stages of construction as Engineer deems necessary in order to observe as an experienced and qualified design professional the progress that has been made and the quality of the various aspects of Contractor's executed Work. Based on information obtained during such visits and observations, Engineer, for the benefit of Owner, will determine, in general, if the Work is proceeding in accordance with the Contract Documents. Engineer will not be required to make exhaustive or continuous inspections on the Site to check the quality or quantity of the Work. Engineer's efforts will be directed toward providing for Owner a greater degree of confidence that the completed Work will conform generally to the Contract Documents. On the basis of such visits and observations, Engineer will keep Owner informed of the progress of the Work and will endeavor to guard Owner against defective Work.
- B. Engineer's visits and observations are subject to all the limitations on Engineer's authority and responsibility set forth in Paragraph 10.08. Particularly, but without limitation, during

or as a result of Engineer's visits or observations of Contractor's Work, Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work.

10.03 *Project Representative*

- A. If Owner and Engineer have agreed that Engineer will furnish a Resident Project Representative to represent Engineer at the Site and assist Engineer in observing the progress and quality of the Work, then the authority and responsibilities of any such Resident Project Representative will be as provided in the Supplementary Conditions, and limitations on the responsibilities thereof will be as provided in Paragraph 10.08. If Owner designates another representative or agent to represent Owner at the Site who is not Engineer's consultant, agent, or employee, the responsibilities and authority and limitations thereon of such other individual or entity will be as provided in the Supplementary Conditions.

10.04 *Rejecting Defective Work*

- A. Engineer has the authority to reject Work in accordance with Article 14.

10.05 *Shop Drawings, Change Orders and Payments*

- A. Engineer's authority, and limitations thereof, as to Shop Drawings and Samples, are set forth in Paragraph 7.16.
- B. Engineer's authority, and limitations thereof, as to design calculations and design drawings submitted in response to a delegation of professional design services, if any, are set forth in Paragraph 7.19.
- C. Engineer's authority as to Change Orders is set forth in Article 11.
- D. Engineer's authority as to Applications for Payment is set forth in Article 15.

10.06 *Determinations for Unit Price Work*

- A. Engineer will determine the actual quantities and classifications of Unit Price Work performed by Contractor as set forth in Paragraph 13.03.

10.07 *Decisions on Requirements of Contract Documents and Acceptability of Work*

- A. Engineer will render decisions regarding the requirements of the Contract Documents, and judge the acceptability of the Work, pursuant to the specific procedures set forth herein for initial interpretations, Change Proposals, and acceptance of the Work. In rendering such decisions and judgments, Engineer will not show partiality to Owner or Contractor, and will not be liable to Owner, Contractor, or others in connection with any proceedings, interpretations, decisions, or judgments conducted or rendered in good faith.

10.08 *Limitations on Engineer's Authority and Responsibilities*

- A. Neither Engineer's authority or responsibility under this Article 10 or under any other provision of the Contract, nor any decision made by Engineer in good faith either to exercise or not exercise such authority or responsibility or the undertaking, exercise, or performance of any authority or responsibility by Engineer, shall create, impose, or give rise to any duty in contract, tort, or otherwise owed by Engineer to Contractor, any Subcontractor, any Supplier, any other individual or entity, or to any surety for or employee or agent of any of them.

- B. Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Engineer will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.
- C. Engineer will not be responsible for the acts or omissions of Contractor or of any Subcontractor, any Supplier, or of any other individual or entity performing any of the Work.
- D. Engineer's review of the final Application for Payment and accompanying documentation and all maintenance and operating instructions, schedules, guarantees, bonds, certificates of inspection, tests and approvals, and other documentation required to be delivered by Paragraph 15.06.A will only be to determine generally that their content complies with the requirements of, and in the case of certificates of inspections, tests, and approvals, that the results certified indicate compliance with the Contract Documents.
- E. The limitations upon authority and responsibility set forth in this Paragraph 10.08 shall also apply to the Resident Project Representative, if any.

10.09 Compliance with Safety Program

- A. While at the Site, Engineer's employees and representatives will comply with the specific applicable requirements of Owner's and Contractor's safety programs (if any) of which Engineer has been informed.

ARTICLE 11 – AMENDING THE CONTRACT DOCUMENTS; CHANGES IN THE WORK

11.01 Amending and Supplementing Contract Documents

- A. The Contract Documents may be amended or supplemented by a Change Order, a Work Change Directive, or a Field Order.
 - 1. *Change Orders:*
 - a. If an amendment or supplement to the Contract Documents includes a change in the Contract Price or the Contract Times, such amendment or supplement must be set forth in a Change Order. A Change Order also may be used to establish amendments and supplements of the Contract Documents that do not affect the Contract Price or Contract Times.
 - b. Owner and Contractor may amend those terms and conditions of the Contract Documents that do not involve (1) the performance or acceptability of the Work, (2) the design (as set forth in the Drawings, Specifications, or otherwise), or (3) other engineering or technical matters, without the recommendation of the Engineer. Such an amendment shall be set forth in a Change Order.
 - 2. *Work Change Directives:* A Work Change Directive will not change the Contract Price or the Contract Times but is evidence that the parties expect that the modification ordered or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order, following negotiations by the parties as to the Work Change Directive's effect, if any, on the Contract Price and Contract Times; or, if negotiations are unsuccessful, by a determination under the terms of the Contract Documents governing adjustments, expressly including Paragraph 11.04 regarding change of Contract Price. Contractor must submit any Change Proposal seeking an

adjustment of the Contract Price or the Contract Times, or both, no later than 30 days after the completion of the Work set out in the Work Change Directive. Owner must submit any Claim seeking an adjustment of the Contract Price or the Contract Times, or both, no later than 60 days after issuance of the Work Change Directive.

3. *Field Orders:* Engineer may authorize minor changes in the Work if the changes do not involve an adjustment in the Contract Price or the Contract Times and are compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. Such changes will be accomplished by a Field Order and will be binding on Owner and also on Contractor, which shall perform the Work involved promptly. If Contractor believes that a Field Order justifies an adjustment in the Contract Price or Contract Times, or both, then before proceeding with the Work at issue, Contractor shall submit a Change Proposal as provided herein.

11.02 *Owner-Authorized Changes in the Work*

- A. Without invalidating the Contract and without notice to any surety, Owner may, at any time or from time to time, order additions, deletions, or revisions in the Work. Such changes shall be supported by Engineer's recommendation, to the extent the change involves the design (as set forth in the Drawings, Specifications, or otherwise), or other engineering or technical matters. Such changes may be accomplished by a Change Order, if Owner and Contractor have agreed as to the effect, if any, of the changes on Contract Times or Contract Price; or by a Work Change Directive. Upon receipt of any such document, Contractor shall promptly proceed with the Work involved; or, in the case of a deletion in the Work, promptly cease construction activities with respect to such deleted Work. Added or revised Work shall be performed under the applicable conditions of the Contract Documents. Nothing in this paragraph shall obligate Contractor to undertake work that Contractor reasonably concludes cannot be performed in a manner consistent with Contractor's safety obligations under the Contract Documents or Laws and Regulations.

11.03 *Unauthorized Changes in the Work*

- A. Contractor shall not be entitled to an increase in the Contract Price or an extension of the Contract Times with respect to any work performed that is not required by the Contract Documents, as amended, modified, or supplemented, except in the case of an emergency as provided in Paragraph 7.15 or in the case of uncovering Work as provided in Paragraph 14.05.

11.04 *Change of Contract Price*

- A. The Contract Price may only be changed by a Change Order. Any Change Proposal for an adjustment in the Contract Price shall comply with the provisions of Paragraph 11.06. Any Claim for an adjustment of Contract Price shall comply with the provisions of Article 12.
- B. An adjustment in the Contract Price will be determined as follows:
 1. where the Work involved is covered by unit prices contained in the Contract Documents, then by application of such unit prices to the quantities of the items involved (subject to the provisions of Paragraph 13.03); or
 2. where the Work involved is not covered by unit prices contained in the Contract Documents, then by a mutually agreed lump sum (which may include an allowance for overhead and profit not necessarily in accordance with Paragraph 11.04.C.2); or
 3. where the Work involved is not covered by unit prices contained in the Contract Documents and the parties do not reach mutual agreement to a lump sum, then on

the basis of the Cost of the Work (determined as provided in Paragraph 13.01) plus a Contractor's fee for overhead and profit (determined as provided in Paragraph 11.04.C).

C. *Contractor's Fee:* When applicable, the Contractor's fee for overhead and profit shall be determined as follows:

1. a mutually acceptable fixed fee; or
2. if a fixed fee is not agreed upon, then a fee based on the following percentages of the various portions of the Cost of the Work:
 - a. for costs incurred under Paragraphs 13.01.B.1 and 13.01.B.2, the Contractor's fee shall be 15 percent;
 - b. for costs incurred under Paragraph 13.01.B.3, the Contractor's fee shall be five percent;
 - c. where one or more tiers of subcontracts are on the basis of Cost of the Work plus a fee and no fixed fee is agreed upon, the intent of Paragraphs 11.04.C.2.a and 11.04.C.2.b is that the Contractor's fee shall be based on: (1) a fee of 15 percent of the costs incurred under Paragraphs 13.01.A.1 and 13.01.A.2 by the Subcontractor that actually performs the Work, at whatever tier, and (2) with respect to Contractor itself and to any Subcontractors of a tier higher than that of the Subcontractor that actually performs the Work, a fee of five percent of the amount (fee plus underlying costs incurred) attributable to the next lower tier Subcontractor; provided, however, that for any such subcontracted work the maximum total fee to be paid by Owner shall be no greater than 27 percent of the costs incurred by the Subcontractor that actually performs the work;
 - d. no fee shall be payable on the basis of costs itemized under Paragraphs 13.01.B.4, 13.01.B.5, and 13.01.C;
 - e. the amount of credit to be allowed by Contractor to Owner for any change which results in a net decrease in cost will be the amount of the actual net decrease in cost plus a deduction in Contractor's fee by an amount equal to five percent of such net decrease; and
 - f. when both additions and credits are involved in any one change, the adjustment in Contractor's fee shall be computed on the basis of the net change in accordance with Paragraphs 11.04.C.2.a through 11.04.C.2.e, inclusive.

11.05 *Change of Contract Times*

- A. The Contract Times may only be changed by a Change Order. Any Change Proposal for an adjustment in the Contract Times shall comply with the provisions of Paragraph 11.06. Any Claim for an adjustment in the Contract Times shall comply with the provisions of Article 12.
- B. An adjustment of the Contract Times shall be subject to the limitations set forth in Paragraph 4.05, concerning delays in Contractor's progress.

11.06 *Change Proposals*

- A. Contractor shall submit a Change Proposal to Engineer to request an adjustment in the Contract Times or Contract Price; appeal an initial decision by Engineer concerning the requirements of the Contract Documents or relating to the acceptability of the Work under the Contract Documents; contest a set-off against payment due; or seek other relief under

the Contract. The Change Proposal shall specify any proposed change in Contract Times or Contract Price, or both, or other proposed relief, and explain the reason for the proposed change, with citations to any governing or applicable provisions of the Contract Documents.

1. *Procedures:* Contractor shall submit each Change Proposal to Engineer promptly (but in no event later than 30 days) after the start of the event giving rise thereto, or after such initial decision. The Contractor shall submit supporting data, including the proposed change in Contract Price or Contract Time (if any), to the Engineer and Owner within 15 days after the submittal of the Change Proposal. The supporting data shall be accompanied by a written statement that the supporting data are accurate and complete, and that any requested time or price adjustment is the entire adjustment to which Contractor believes it is entitled as a result of said event. Engineer will advise Owner regarding the Change Proposal, and consider any comments or response from Owner regarding the Change Proposal.
 2. *Engineer's Action:* Engineer will review each Change Proposal and, within 30 days after receipt of the Contractor's supporting data, either deny the Change Proposal in whole, approve it in whole, or deny it in part and approve it in part. Such actions shall be in writing, with a copy provided to Owner and Contractor. If Engineer does not take action on the Change Proposal within 30 days, then either Owner or Contractor may at any time thereafter submit a letter to the other party indicating that as a result of Engineer's inaction the Change Proposal is deemed denied, thereby commencing the time for appeal of the denial under Article 12.
 3. *Binding Decision:* Engineer's decision will be final and binding upon Owner and Contractor, unless Owner or Contractor appeals the decision by filing a Claim under Article 12.
- B. *Resolution of Certain Change Proposals:* If the Change Proposal does not involve the design (as set forth in the Drawings, Specifications, or otherwise), the acceptability of the Work, or other engineering or technical matters, then Engineer will notify the parties that the Engineer is unable to resolve the Change Proposal. For purposes of further resolution of such a Change Proposal, such notice shall be deemed a denial, and Contractor may choose to seek resolution under the terms of Article 12.

11.07 Execution of Change Orders

- A. Owner and Contractor shall execute appropriate Change Orders covering:
1. changes in the Contract Price or Contract Times which are agreed to by the parties, including any undisputed sum or amount of time for Work actually performed in accordance with a Work Change Directive;
 2. changes in Contract Price resulting from an Owner set-off, unless Contractor has duly contested such set-off;
 3. changes in the Work which are: (a) ordered by Owner pursuant to Paragraph 11.02, (b) required because of Owner's acceptance of defective Work under Paragraph 14.04 or Owner's correction of defective Work under Paragraph 14.07, or (c) agreed to by the parties, subject to the need for Engineer's recommendation if the change in the Work involves the design (as set forth in the Drawings, Specifications, or otherwise), or other engineering or technical matters; and
 4. changes in the Contract Price or Contract Times, or other changes, which embody the substance of any final and binding results under Paragraph 11.06, or Article 12.

- B. If Owner or Contractor refuses to execute a Change Order that is required to be executed under the terms of this Paragraph 11.07, it shall be deemed to be of full force and effect, as if fully executed.

11.08 *Notification to Surety*

- A. If the provisions of any bond require notice to be given to a surety of any change affecting the general scope of the Work or the provisions of the Contract Documents (including, but not limited to, Contract Price or Contract Times), the giving of any such notice will be Contractor's responsibility. The amount of each applicable bond will be adjusted to reflect the effect of any such change.

ARTICLE 12 – CLAIMS

12.01 *Claims*

- A. *Claims Process:* The following disputes between Owner and Contractor shall be submitted to the Claims process set forth in this Article:
 - 1. Appeals by Owner or Contractor of Engineer's decisions regarding Change Proposals;
 - 2. Owner demands for adjustments in the Contract Price or Contract Times, or other relief under the Contract Documents; and
 - 3. Disputes that Engineer has been unable to address because they do not involve the design (as set forth in the Drawings, Specifications, or otherwise), the acceptability of the Work, or other engineering or technical matters.
- B. *Submittal of Claim:* The party submitting a Claim shall deliver it directly to the other party to the Contract promptly (but in no event later than 30 days) after the start of the event giving rise thereto; in the case of appeals regarding Change Proposals within 30 days of the decision under appeal. The party submitting the Claim shall also furnish a copy to the Engineer, for its information only. The responsibility to substantiate a Claim shall rest with the party making the Claim. In the case of a Claim by Contractor seeking an increase in the Contract Times or Contract Price, or both, Contractor shall certify that the Claim is made in good faith, that the supporting data are accurate and complete, and that to the best of Contractor's knowledge and belief the amount of time or money requested accurately reflects the full amount to which Contractor is entitled.
- C. *Review and Resolution:* The party receiving a Claim shall review it thoroughly, giving full consideration to its merits. The two parties shall seek to resolve the Claim through the exchange of information and direct negotiations. The parties may extend the time for resolving the Claim by mutual agreement. All actions taken on a Claim shall be stated in writing and submitted to the other party, with a copy to Engineer.
- D. *Mediation:*
 - 1. At any time after initiation of a Claim, Owner and Contractor may mutually agree to mediation of the underlying dispute. The agreement to mediate shall stay the Claim submittal and response process.
 - 2. If Owner and Contractor agree to mediation, then after 60 days from such agreement, either Owner or Contractor may unilaterally terminate the mediation process, and the Claim submittal and decision process shall resume as of the date of the termination. If the mediation proceeds but is unsuccessful in resolving the dispute, the Claim

submittal and decision process shall resume as of the date of the conclusion of the mediation, as determined by the mediator.

3. Owner and Contractor shall each pay one-half of the mediator's fees and costs.
- E. *Partial Approval*: If the party receiving a Claim approves the Claim in part and denies it in part, such action shall be final and binding unless within 30 days of such action the other party invokes the procedure set forth in Article 17 for final resolution of disputes.
- F. *Denial of Claim*: If efforts to resolve a Claim are not successful, the party receiving the Claim may deny it by giving written notice of denial to the other party. If the receiving party does not take action on the Claim within 90 days, then either Owner or Contractor may at any time thereafter submit a letter to the other party indicating that as a result of the inaction, the Claim is deemed denied, thereby commencing the time for appeal of the denial. A denial of the Claim shall be final and binding unless within 30 days of the denial the other party invokes the procedure set forth in Article 17 for the final resolution of disputes.
- G. *Final and Binding Results*: If the parties reach a mutual agreement regarding a Claim, whether through approval of the Claim, direct negotiations, mediation, or otherwise; or if a Claim is approved in part and denied in part, or denied in full, and such actions become final and binding; then the results of the agreement or action on the Claim shall be incorporated in a Change Order to the extent they affect the Contract, including the Work, the Contract Times, or the Contract Price.

ARTICLE 13 – COST OF THE WORK; ALLOWANCES; UNIT PRICE WORK

13.01 Cost of the Work

- A. *Purposes for Determination of Cost of the Work*: The term Cost of the Work means the sum of all costs necessary for the proper performance of the Work at issue, as further defined below. The provisions of this Paragraph 13.01 are used for two distinct purposes:
 1. To determine Cost of the Work when Cost of the Work is a component of the Contract Price, under cost-plus-fee, time-and-materials, or other cost-based terms; or
 2. To determine the value of a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price. When the value of any such adjustment is determined on the basis of Cost of the Work, Contractor is entitled only to those additional or incremental costs required because of the change in the Work or because of the event giving rise to the adjustment.
- B. *Costs Included*: Except as otherwise may be agreed to in writing by Owner, costs included in the Cost of the Work shall be in amounts no higher than those prevailing in the locality of the Project, shall not include any of the costs itemized in Paragraph 13.01.C, and shall include only the following items:
 1. Payroll costs for employees in the direct employ of Contractor in the performance of the Work under schedules of job classifications agreed upon by Owner and Contractor. Such employees shall include, without limitation, superintendents, foremen, and other personnel employed full time on the Work. Payroll costs for employees not employed full time on the Work shall be apportioned on the basis of their time spent on the Work. Payroll costs shall include, but not be limited to, salaries and wages plus the cost of fringe benefits, which shall include social security contributions, unemployment, excise, and payroll taxes, workers' compensation, health and retirement benefits, bonuses, sick leave, and vacation and holiday pay applicable

thereto. The expenses of performing Work outside of regular working hours, on Saturday, Sunday, or legal holidays, shall be included in the above to the extent authorized by Owner.

2. Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and Suppliers' field services required in connection therewith. All cash discounts shall accrue to Contractor unless Owner deposits funds with Contractor with which to make payments, in which case the cash discounts shall accrue to Owner. All trade discounts, rebates, and refunds and returns from sale of surplus materials and equipment shall accrue to Owner, and Contractor shall make provisions so that they may be obtained.
3. Payments made by Contractor to Subcontractors for Work performed by Subcontractors. If required by Owner, Contractor shall obtain competitive bids from subcontractors acceptable to Owner and Contractor and shall deliver such bids to Owner, who will then determine, with the advice of Engineer, which bids, if any, will be acceptable. If any subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work plus a fee, the Subcontractor's Cost of the Work and fee shall be determined in the same manner as Contractor's Cost of the Work and fee as provided in this Paragraph 13.01.
4. Costs of special consultants (including but not limited to engineers, architects, testing laboratories, surveyors, attorneys, and accountants) employed for services specifically related to the Work.
5. Supplemental costs including the following:
 - a. The proportion of necessary transportation, travel, and subsistence expenses of Contractor's employees incurred in discharge of duties connected with the Work.
 - b. Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office, and temporary facilities at the Site, and hand tools not owned by the workers, which are consumed in the performance of the Work, and cost, less market value, of such items used but not consumed which remain the property of Contractor.
 - c. Rentals of all construction equipment and machinery, and the parts thereof, whether rented from Contractor or others in accordance with rental agreements approved by Owner with the advice of Engineer, and the costs of transportation, loading, unloading, assembly, dismantling, and removal thereof. All such costs shall be in accordance with the terms of said rental agreements. The rental of any such equipment, machinery, or parts shall cease when the use thereof is no longer necessary for the Work.
 - d. Sales, consumer, use, and other similar taxes related to the Work, and for which Contractor is liable, as imposed by Laws and Regulations.
 - e. Deposits lost for causes other than negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and royalty payments and fees for permits and licenses.
 - f. Losses and damages (and related expenses) caused by damage to the Work, not compensated by insurance or otherwise, sustained by Contractor in connection with the performance of the Work (except losses and damages within the deductible amounts of property insurance established in accordance with Paragraph 6.05), provided such losses and damages have resulted from causes

other than the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses shall include settlements made with the written consent and approval of Owner. No such losses, damages, and expenses shall be included in the Cost of the Work for the purpose of determining Contractor's fee.

- g. The cost of utilities, fuel, and sanitary facilities at the Site.
- h. Minor expenses such as communication service at the Site, express and courier services, and similar petty cash items in connection with the Work.
- i. The costs of premiums for all bonds and insurance that Contractor is required by the Contract Documents to purchase and maintain.

C. *Costs Excluded:* The term Cost of the Work shall not include any of the following items:

- 1. Payroll costs and other compensation of Contractor's officers, executives, principals (of partnerships and sole proprietorships), general managers, safety managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks, and other personnel employed by Contractor, whether at the Site or in Contractor's principal or branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in Paragraph 13.01.B.1 or specifically covered by Paragraph 13.01.B.4. The payroll costs and other compensation excluded here are to be considered administrative costs covered by the Contractor's fee.
- 2. Expenses of Contractor's principal and branch offices other than Contractor's office at the Site.
- 3. Any part of Contractor's capital expenses, including interest on Contractor's capital employed for the Work and charges against Contractor for delinquent payments.
- 4. Costs due to the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of defective Work, disposal of materials or equipment wrongly supplied, and making good any damage to property.
- 5. Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in Paragraph 13.01.B.

D. *Contractor's Fee:* When the Work as a whole is performed on the basis of cost-plus, Contractor's fee shall be determined as set forth in the Agreement. When the value of any Work covered by a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price is determined on the basis of Cost of the Work, Contractor's fee shall be determined as set forth in Paragraph 11.04.C.

E. *Documentation:* Whenever the Cost of the Work for any purpose is to be determined pursuant to this Article 13, Contractor will establish and maintain records thereof in accordance with generally accepted accounting practices and submit in a form acceptable to Engineer an itemized cost breakdown together with supporting data.

13.02 Allowances

- A. It is understood that Contractor has included in the Contract Price all allowances so named in the Contract Documents and shall cause the Work so covered to be performed for such sums and by such persons or entities as may be acceptable to Owner and Engineer.

- B. *Cash Allowances*: Contractor agrees that:
 - 1. the cash allowances include the cost to Contractor (less any applicable trade discounts) of materials and equipment required by the allowances to be delivered at the Site, and all applicable taxes; and
 - 2. Contractor's costs for unloading and handling on the Site, labor, installation, overhead, profit, and other expenses contemplated for the cash allowances have been included in the Contract Price and not in the allowances, and no demand for additional payment on account of any of the foregoing will be valid.
- C. *Contingency Allowance*: Contractor agrees that a contingency allowance, if any, is for the sole use of Owner to cover unanticipated costs.
- D. Prior to final payment, an appropriate Change Order will be issued as recommended by Engineer to reflect actual amounts due Contractor on account of Work covered by allowances, and the Contract Price shall be correspondingly adjusted.

13.03 *Unit Price Work*

- A. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to the sum of the unit price for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement.
- B. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Price. Payments to Contractor for Unit Price Work will be based on actual quantities.
- C. Each unit price will be deemed to include an amount considered by Contractor to be adequate to cover Contractor's overhead and profit for each separately identified item.
- D. Engineer will determine the actual quantities and classifications of Unit Price Work performed by Contractor. Engineer will review with Contractor the Engineer's preliminary determinations on such matters before rendering a written decision thereon (by recommendation of an Application for Payment or otherwise). Engineer's written decision thereon will be final and binding (except as modified by Engineer to reflect changed factual conditions or more accurate data) upon Owner and Contractor, subject to the provisions of the following paragraph.
- E. Within 30 days of Engineer's written decision under the preceding paragraph, Contractor may submit a Change Proposal, or Owner may file a Claim, seeking an adjustment in the Contract Price if:
 - 1. the quantity of any item of Unit Price Work performed by Contractor differs materially and significantly from the estimated quantity of such item indicated in the Agreement;
 - 2. there is no corresponding adjustment with respect to any other item of Work; and
 - 3. Contractor believes that it is entitled to an increase in Contract Price as a result of having incurred additional expense or Owner believes that Owner is entitled to a decrease in Contract Price, and the parties are unable to agree as to the amount of any such increase or decrease.

ARTICLE 14 – TESTS AND INSPECTIONS; CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK

14.01 Access to Work

- A. Owner, Engineer, their consultants and other representatives and personnel of Owner, independent testing laboratories, and authorities having jurisdiction will have access to the Site and the Work at reasonable times for their observation, inspection, and testing. Contractor shall provide them proper and safe conditions for such access and advise them of Contractor's safety procedures and programs so that they may comply therewith as applicable.

14.02 Tests, Inspections, and Approvals

- A. Contractor shall give Engineer timely notice of readiness of the Work (or specific parts thereof) for all required inspections and tests, and shall cooperate with inspection and testing personnel to facilitate required inspections and tests.
- B. Owner shall retain and pay for the services of an independent inspector, testing laboratory, or other qualified individual or entity to perform all inspections and tests expressly required by the Contract Documents to be furnished and paid for by Owner, except that costs incurred in connection with tests or inspections of covered Work shall be governed by the provisions of Paragraph 14.05.
- C. If Laws or Regulations of any public body having jurisdiction require any Work (or part thereof) specifically to be inspected, tested, or approved by an employee or other representative of such public body, Contractor shall assume full responsibility for arranging and obtaining such inspections, tests, or approvals, pay all costs in connection therewith, and furnish Engineer the required certificates of inspection or approval.
- D. Contractor shall be responsible for arranging, obtaining, and paying for all inspections and tests required:
 - 1. by the Contract Documents, unless the Contract Documents expressly allocate responsibility for a specific inspection or test to Owner;
 - 2. to attain Owner's and Engineer's acceptance of materials or equipment to be incorporated in the Work;
 - 3. by manufacturers of equipment furnished under the Contract Documents;
 - 4. for testing, adjusting, and balancing of mechanical, electrical, and other equipment to be incorporated into the Work; and
 - 5. for acceptance of materials, mix designs, or equipment submitted for approval prior to Contractor's purchase thereof for incorporation in the Work.

Such inspections and tests shall be performed by independent inspectors, testing laboratories, or other qualified individuals or entities acceptable to Owner and Engineer.

- E. If the Contract Documents require the Work (or part thereof) to be approved by Owner, Engineer, or another designated individual or entity, then Contractor shall assume full responsibility for arranging and obtaining such approvals.
- F. If any Work (or the work of others) that is to be inspected, tested, or approved is covered by Contractor without written concurrence of Engineer, Contractor shall, if requested by Engineer, uncover such Work for observation. Such uncovering shall be at Contractor's expense unless Contractor had given Engineer timely notice of Contractor's intention to

cover the same and Engineer had not acted with reasonable promptness in response to such notice.

14.03 *Defective Work*

- A. *Contractor's Obligation:* It is Contractor's obligation to assure that the Work is not defective.
- B. *Engineer's Authority:* Engineer has the authority to determine whether Work is defective, and to reject defective Work.
- C. *Notice of Defects:* Prompt notice of all defective Work of which Owner or Engineer has actual knowledge will be given to Contractor.
- D. *Correction, or Removal and Replacement:* Promptly after receipt of written notice of defective Work, Contractor shall correct all such defective Work, whether or not fabricated, installed, or completed, or, if Engineer has rejected the defective Work, remove it from the Project and replace it with Work that is not defective.
- E. *Preservation of Warranties:* When correcting defective Work, Contractor shall take no action that would void or otherwise impair Owner's special warranty and guarantee, if any, on said Work.
- F. *Costs and Damages:* In addition to its correction, removal, and replacement obligations with respect to defective Work, Contractor shall pay all claims, costs, losses, and damages arising out of or relating to defective Work, including but not limited to the cost of the inspection, testing, correction, removal, replacement, or reconstruction of such defective Work, fines levied against Owner by governmental authorities because the Work is defective, and the costs of repair or replacement of work of others resulting from defective Work. Prior to final payment, if Owner and Contractor are unable to agree as to the measure of such claims, costs, losses, and damages resulting from defective Work, then Owner may impose a reasonable set-off against payments due under Article 15.

14.04 *Acceptance of Defective Work*

- A. If, instead of requiring correction or removal and replacement of defective Work, Owner prefers to accept it, Owner may do so (subject, if such acceptance occurs prior to final payment, to Engineer's confirmation that such acceptance is in general accord with the design intent and applicable engineering principles, and will not endanger public safety). Contractor shall pay all claims, costs, losses, and damages attributable to Owner's evaluation of and determination to accept such defective Work (such costs to be approved by Engineer as to reasonableness), and for the diminished value of the Work to the extent not otherwise paid by Contractor. If any such acceptance occurs prior to final payment, the necessary revisions in the Contract Documents with respect to the Work shall be incorporated in a Change Order. If the parties are unable to agree as to the decrease in the Contract Price, reflecting the diminished value of Work so accepted, then Owner may impose a reasonable set-off against payments due under Article 15. If the acceptance of defective Work occurs after final payment, Contractor shall pay an appropriate amount to Owner.

14.05 *Uncovering Work*

- A. Engineer has the authority to require additional inspection or testing of the Work, whether or not the Work is fabricated, installed, or completed.

- B. If any Work is covered contrary to the written request of Engineer, then Contractor shall, if requested by Engineer, uncover such Work for Engineer's observation, and then replace the covering, all at Contractor's expense.
- C. If Engineer considers it necessary or advisable that covered Work be observed by Engineer or inspected or tested by others, then Contractor, at Engineer's request, shall uncover, expose, or otherwise make available for observation, inspection, or testing as Engineer may require, that portion of the Work in question, and provide all necessary labor, material, and equipment.
 - 1. If it is found that the uncovered Work is defective, Contractor shall be responsible for all claims, costs, losses, and damages arising out of or relating to such uncovering, exposure, observation, inspection, and testing, and of satisfactory replacement or reconstruction (including but not limited to all costs of repair or replacement of work of others); and pending Contractor's full discharge of this responsibility the Owner shall be entitled to impose a reasonable set-off against payments due under Article 15.
 - 2. If the uncovered Work is not found to be defective, Contractor shall be allowed an increase in the Contract Price or an extension of the Contract Times, or both, directly attributable to such uncovering, exposure, observation, inspection, testing, replacement, and reconstruction. If the parties are unable to agree as to the amount or extent thereof, then Contractor may submit a Change Proposal within 30 days of the determination that the Work is not defective.

14.06 *Owner May Stop the Work*

- A. If the Work is defective, or Contractor fails to supply sufficient skilled workers or suitable materials or equipment, or fails to perform the Work in such a way that the completed Work will conform to the Contract Documents, then Owner may order Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of Owner to stop the Work shall not give rise to any duty on the part of Owner to exercise this right for the benefit of Contractor, any Subcontractor, any Supplier, any other individual or entity, or any surety for, or employee or agent of any of them.

14.07 *Owner May Correct Defective Work*

- A. If Contractor fails within a reasonable time after written notice from Engineer to correct defective Work, or to remove and replace rejected Work as required by Engineer, or if Contractor fails to perform the Work in accordance with the Contract Documents, or if Contractor fails to comply with any other provision of the Contract Documents, then Owner may, after seven days written notice to Contractor, correct or remedy any such deficiency.
- B. In exercising the rights and remedies under this Paragraph 14.07, Owner shall proceed expeditiously. In connection with such corrective or remedial action, Owner may exclude Contractor from all or part of the Site, take possession of all or part of the Work and suspend Contractor's services related thereto, and incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere. Contractor shall allow Owner, Owner's representatives, agents and employees, Owner's other contractors, and Engineer and Engineer's consultants access to the Site to enable Owner to exercise the rights and remedies under this paragraph.
- C. All claims, costs, losses, and damages incurred or sustained by Owner in exercising the rights and remedies under this Paragraph 14.07 will be charged against Contractor as set-offs against payments due under Article 15. Such claims, costs, losses and damages will

include but not be limited to all costs of repair, or replacement of work of others destroyed or damaged by correction, removal, or replacement of Contractor's defective Work.

- D. Contractor shall not be allowed an extension of the Contract Times because of any delay in the performance of the Work attributable to the exercise by Owner of Owner's rights and remedies under this Paragraph 14.07.

ARTICLE 15 – PAYMENTS TO CONTRACTOR; SET-OFFS; COMPLETION; CORRECTION PERIOD

15.01 *Progress Payments*

- A. *Basis for Progress Payments:* The Schedule of Values established as provided in Article 2 will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to Engineer. Progress payments on account of Unit Price Work will be based on the number of units completed during the pay period, as determined under the provisions of Paragraph 13.03. Progress payments for cost-based Work will be based on Cost of the Work completed by Contractor during the pay period.
- B. *Applications for Payments:*
1. At least 20 days before the date established in the Agreement for each progress payment (but not more often than once a month), Contractor shall submit to Engineer for review an Application for Payment filled out and signed by Contractor covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the Site or at another location agreed to in writing, the Application for Payment shall also be accompanied by a bill of sale, invoice, or other documentation warranting that Owner has received the materials and equipment free and clear of all Liens, and evidence that the materials and equipment are covered by appropriate property insurance, a warehouse bond, or other arrangements to protect Owner's interest therein, all of which must be satisfactory to Owner.
 2. Beginning with the second Application for Payment, each Application shall include an affidavit of Contractor stating that all previous progress payments received on account of the Work have been applied on account to discharge Contractor's legitimate obligations associated with prior Applications for Payment.
 3. The amount of retainage with respect to progress payments will be as stipulated in the Agreement.
- C. *Review of Applications:*
1. Engineer will, within 10 days after receipt of each Application for Payment, including each resubmittal, either indicate in writing a recommendation of payment and present the Application to Owner, or return the Application to Contractor indicating in writing Engineer's reasons for refusing to recommend payment. In the latter case, Contractor may make the necessary corrections and resubmit the Application.
 2. Engineer's recommendation of any payment requested in an Application for Payment will constitute a representation by Engineer to Owner, based on Engineer's observations of the executed Work as an experienced and qualified design professional, and on Engineer's review of the Application for Payment and the accompanying data and schedules, that to the best of Engineer's knowledge, information and belief:

- a. the Work has progressed to the point indicated;
 - b. the quality of the Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, the results of any subsequent tests called for in the Contract Documents, a final determination of quantities and classifications for Unit Price Work under Paragraph 13.03, and any other qualifications stated in the recommendation); and
 - c. the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Engineer's responsibility to observe the Work.
3. By recommending any such payment Engineer will not thereby be deemed to have represented that:
- a. inspections made to check the quality or the quantity of the Work as it has been performed have been exhaustive, extended to every aspect of the Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in the Contract; or
 - b. there may not be other matters or issues between the parties that might entitle Contractor to be paid additionally by Owner or entitle Owner to withhold payment to Contractor.
4. Neither Engineer's review of Contractor's Work for the purposes of recommending payments nor Engineer's recommendation of any payment, including final payment, will impose responsibility on Engineer:
- a. to supervise, direct, or control the Work, or
 - b. for the means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or
 - c. for Contractor's failure to comply with Laws and Regulations applicable to Contractor's performance of the Work, or
 - d. to make any examination to ascertain how or for what purposes Contractor has used the money paid on account of the Contract Price, or
 - e. to determine that title to any of the Work, materials, or equipment has passed to Owner free and clear of any Liens.
5. Engineer may refuse to recommend the whole or any part of any payment if, in Engineer's opinion, it would be incorrect to make the representations to Owner stated in Paragraph 15.01.C.2.
6. Engineer will recommend reductions in payment (set-offs) necessary in Engineer's opinion to protect Owner from loss because:
- a. the Work is defective, requiring correction or replacement;
 - b. the Contract Price has been reduced by Change Orders;
 - c. Owner has been required to correct defective Work in accordance with Paragraph 14.07, or has accepted defective Work pursuant to Paragraph 14.04;
 - d. Owner has been required to remove or remediate a Hazardous Environmental Condition for which Contractor is responsible; or

- e. Engineer has actual knowledge of the occurrence of any of the events that would constitute a default by Contractor and therefore justify termination for cause under the Contract Documents.

D. *Payment Becomes Due:*

- 1. Ten days after presentation of the Application for Payment to Owner with Engineer's recommendation, the amount recommended (subject to any Owner set-offs) will become due, and when due will be paid by Owner to Contractor.

E. *Reductions in Payment by Owner:*

- 1. In addition to any reductions in payment (set-offs) recommended by Engineer, Owner is entitled to impose a set-off against payment based on any of the following:
 - a. claims have been made against Owner on account of Contractor's conduct in the performance or furnishing of the Work, or Owner has incurred costs, losses, or damages on account of Contractor's conduct in the performance or furnishing of the Work, including but not limited to claims, costs, losses, or damages from workplace injuries, adjacent property damage, non-compliance with Laws and Regulations, and patent infringement;
 - b. Contractor has failed to take reasonable and customary measures to avoid damage, delay, disruption, and interference with other work at or adjacent to the Site;
 - c. Contractor has failed to provide and maintain required bonds or insurance;
 - d. Owner has been required to remove or remediate a Hazardous Environmental Condition for which Contractor is responsible;
 - e. Owner has incurred extra charges or engineering costs related to submittal reviews, evaluations of proposed substitutes, tests and inspections, or return visits to manufacturing or assembly facilities;
 - f. the Work is defective, requiring correction or replacement;
 - g. Owner has been required to correct defective Work in accordance with Paragraph 14.07, or has accepted defective Work pursuant to Paragraph 14.04;
 - h. the Contract Price has been reduced by Change Orders;
 - i. an event that would constitute a default by Contractor and therefore justify a termination for cause has occurred;
 - j. liquidated damages have accrued as a result of Contractor's failure to achieve Milestones, Substantial Completion, or final completion of the Work;
 - k. Liens have been filed in connection with the Work, except where Contractor has delivered a specific bond satisfactory to Owner to secure the satisfaction and discharge of such Liens;
 - l. there are other items entitling Owner to a set off against the amount recommended.
- 2. If Owner imposes any set-off against payment, whether based on its own knowledge or on the written recommendations of Engineer, Owner will give Contractor immediate written notice (with a copy to Engineer) stating the reasons for such action and the specific amount of the reduction, and promptly pay Contractor any amount

remaining after deduction of the amount so withheld. Owner shall promptly pay Contractor the amount so withheld, or any adjustment thereto agreed to by Owner and Contractor, if Contractor remedies the reasons for such action. The reduction imposed shall be binding on Contractor unless it duly submits a Change Proposal contesting the reduction.

3. Upon a subsequent determination that Owner's refusal of payment was not justified, the amount wrongfully withheld shall be treated as an amount due as determined by Paragraph 15.01.C.1 and subject to interest as provided in the Agreement.

15.02 Contractor's Warranty of Title

- A. Contractor warrants and guarantees that title to all Work, materials, and equipment furnished under the Contract will pass to Owner free and clear of (1) all Liens and other title defects, and (2) all patent, licensing, copyright, or royalty obligations, no later than seven days after the time of payment by Owner.

15.03 Substantial Completion

- A. When Contractor considers the entire Work ready for its intended use Contractor shall notify Owner and Engineer in writing that the entire Work is substantially complete and request that Engineer issue a certificate of Substantial Completion. Contractor shall at the same time submit to Owner and Engineer an initial draft of punch list items to be completed or corrected before final payment.
- B. Promptly after Contractor's notification, Owner, Contractor, and Engineer shall make an inspection of the Work to determine the status of completion. If Engineer does not consider the Work substantially complete, Engineer will notify Contractor in writing giving the reasons therefor.
- C. If Engineer considers the Work substantially complete, Engineer will deliver to Owner a preliminary certificate of Substantial Completion which shall fix the date of Substantial Completion. Engineer shall attach to the certificate a punch list of items to be completed or corrected before final payment. Owner shall have seven days after receipt of the preliminary certificate during which to make written objection to Engineer as to any provisions of the certificate or attached punch list. If, after considering the objections to the provisions of the preliminary certificate, Engineer concludes that the Work is not substantially complete, Engineer will, within 14 days after submission of the preliminary certificate to Owner, notify Contractor in writing that the Work is not substantially complete, stating the reasons therefor. If Owner does not object to the provisions of the certificate, or if despite consideration of Owner's objections Engineer concludes that the Work is substantially complete, then Engineer will, within said 14 days, execute and deliver to Owner and Contractor a final certificate of Substantial Completion (with a revised punch list of items to be completed or corrected) reflecting such changes from the preliminary certificate as Engineer believes justified after consideration of any objections from Owner.
- D. At the time of receipt of the preliminary certificate of Substantial Completion, Owner and Contractor will confer regarding Owner's use or occupancy of the Work following Substantial Completion, review the builder's risk insurance policy with respect to the end of the builder's risk coverage, and confirm the transition to coverage of the Work under a permanent property insurance policy held by Owner. Unless Owner and Contractor agree otherwise in writing, Owner shall bear responsibility for security, operation, protection of the Work, property insurance, maintenance, heat, and utilities upon Owner's use or occupancy of the Work.

- E. After Substantial Completion the Contractor shall promptly begin work on the punch list of items to be completed or corrected prior to final payment. In appropriate cases Contractor may submit monthly Applications for Payment for completed punch list items, following the progress payment procedures set forth above.
- F. Owner shall have the right to exclude Contractor from the Site after the date of Substantial Completion subject to allowing Contractor reasonable access to remove its property and complete or correct items on the punch list.

15.04 *Partial Use or Occupancy*

- A. Prior to Substantial Completion of all the Work, Owner may use or occupy any substantially completed part of the Work which has specifically been identified in the Contract Documents, or which Owner, Engineer, and Contractor agree constitutes a separately functioning and usable part of the Work that can be used by Owner for its intended purpose without significant interference with Contractor's performance of the remainder of the Work, subject to the following conditions:
 - 1. At any time Owner may request in writing that Contractor permit Owner to use or occupy any such part of the Work that Owner believes to be substantially complete. If and when Contractor agrees that such part of the Work is substantially complete, Contractor, Owner, and Engineer will follow the procedures of Paragraph 15.03.A through E for that part of the Work.
 - 2. At any time Contractor may notify Owner and Engineer in writing that Contractor considers any such part of the Work substantially complete and request Engineer to issue a certificate of Substantial Completion for that part of the Work.
 - 3. Within a reasonable time after either such request, Owner, Contractor, and Engineer shall make an inspection of that part of the Work to determine its status of completion. If Engineer does not consider that part of the Work to be substantially complete, Engineer will notify Owner and Contractor in writing giving the reasons therefor. If Engineer considers that part of the Work to be substantially complete, the provisions of Paragraph 15.03 will apply with respect to certification of Substantial Completion of that part of the Work and the division of responsibility in respect thereof and access thereto.
 - 4. No use or occupancy or separate operation of part of the Work may occur prior to compliance with the requirements of Paragraph 6.05 regarding builder's risk or other property insurance.

15.05 *Final Inspection*

- A. Upon written notice from Contractor that the entire Work or an agreed portion thereof is complete, Engineer will promptly make a final inspection with Owner and Contractor and will notify Contractor in writing of all particulars in which this inspection reveals that the Work, or agreed portion thereof, is incomplete or defective. Contractor shall immediately take such measures as are necessary to complete such Work or remedy such deficiencies.

15.06 *Final Payment*

- A. *Application for Payment:*
 - 1. After Contractor has, in the opinion of Engineer, satisfactorily completed all corrections identified during the final inspection and has delivered, in accordance with the Contract Documents, all maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance, certificates of

inspection, annotated record documents (as provided in Paragraph 7.11), and other documents, Contractor may make application for final payment.

2. The final Application for Payment shall be accompanied (except as previously delivered) by:
 - a. all documentation called for in the Contract Documents;
 - b. consent of the surety, if any, to final payment;
 - c. satisfactory evidence that all title issues have been resolved such that title to all Work, materials, and equipment has passed to Owner free and clear of any Liens or other title defects, or will so pass upon final payment.
 - d. a list of all disputes that Contractor believes are unsettled; and
 - e. complete and legally effective releases or waivers (satisfactory to Owner) of all Lien rights arising out of the Work, and of Liens filed in connection with the Work.
3. In lieu of the releases or waivers of Liens specified in Paragraph 15.06.A.2 and as approved by Owner, Contractor may furnish receipts or releases in full and an affidavit of Contractor that: (a) the releases and receipts include all labor, services, material, and equipment for which a Lien could be filed; and (b) all payrolls, material and equipment bills, and other indebtedness connected with the Work for which Owner might in any way be responsible, or which might in any way result in liens or other burdens on Owner's property, have been paid or otherwise satisfied. If any Subcontractor or Supplier fails to furnish such a release or receipt in full, Contractor may furnish a bond or other collateral satisfactory to Owner to indemnify Owner against any Lien, or Owner at its option may issue joint checks payable to Contractor and specified Subcontractors and Suppliers.

B. *Engineer's Review of Application and Acceptance:*

1. If, on the basis of Engineer's observation of the Work during construction and final inspection, and Engineer's review of the final Application for Payment and accompanying documentation as required by the Contract Documents, Engineer is satisfied that the Work has been completed and Contractor's other obligations under the Contract have been fulfilled, Engineer will, within ten days after receipt of the final Application for Payment, indicate in writing Engineer's recommendation of final payment and present the Application for Payment to Owner for payment. Such recommendation shall account for any set-offs against payment that are necessary in Engineer's opinion to protect Owner from loss for the reasons stated above with respect to progress payments. At the same time Engineer will also give written notice to Owner and Contractor that the Work is acceptable, subject to the provisions of Paragraph 15.07. Otherwise, Engineer will return the Application for Payment to Contractor, indicating in writing the reasons for refusing to recommend final payment, in which case Contractor shall make the necessary corrections and resubmit the Application for Payment.
- C. *Completion of Work:* The Work is complete (subject to surviving obligations) when it is ready for final payment as established by the Engineer's written recommendation of final payment.
- D. *Payment Becomes Due:* Thirty days after the presentation to Owner of the final Application for Payment and accompanying documentation, the amount recommended by Engineer (less any further sum Owner is entitled to set off against Engineer's recommendation,

including but not limited to set-offs for liquidated damages and set-offs allowed under the provisions above with respect to progress payments) will become due and shall be paid by Owner to Contractor.

15.07 Waiver of Claims

- A. The making of final payment will not constitute a waiver by Owner of claims or rights against Contractor. Owner expressly reserves claims and rights arising from unsettled Liens, from defective Work appearing after final inspection pursuant to Paragraph 15.05, from Contractor's failure to comply with the Contract Documents or the terms of any special guarantees specified therein, from outstanding Claims by Owner, or from Contractor's continuing obligations under the Contract Documents.
- B. The acceptance of final payment by Contractor will constitute a waiver by Contractor of all claims and rights against Owner other than those pending matters that have been duly submitted or appealed under the provisions of Article 17.

15.08 Correction Period

- A. If within one year after the date of Substantial Completion (or such longer period of time as may be prescribed by the terms of any applicable special guarantee required by the Contract Documents, or by any specific provision of the Contract Documents), any Work is found to be defective, or if the repair of any damages to the Site, adjacent areas that Contractor has arranged to use through construction easements or otherwise, and other adjacent areas used by Contractor as permitted by Laws and Regulations, is found to be defective, then Contractor shall promptly, without cost to Owner and in accordance with Owner's written instructions:
 - 1. correct the defective repairs to the Site or such other adjacent areas;
 - 2. correct such defective Work;
 - 3. if the defective Work has been rejected by Owner, remove it from the Project and replace it with Work that is not defective, and
 - 4. satisfactorily correct or repair or remove and replace any damage to other Work, to the work of others, or to other land or areas resulting therefrom.
- B. If Contractor does not promptly comply with the terms of Owner's written instructions, or in an emergency where delay would cause serious risk of loss or damage, Owner may have the defective Work corrected or repaired or may have the rejected Work removed and replaced. Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or repair or such removal and replacement (including but not limited to all costs of repair or replacement of work of others).
- C. In special circumstances where a particular item of equipment is placed in continuous service before Substantial Completion of all the Work, the correction period for that item may start to run from an earlier date if so provided in the Specifications.
- D. Where defective Work (and damage to other Work resulting therefrom) has been corrected or removed and replaced under this paragraph, the correction period hereunder with respect to such Work will be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.

- E. Contractor's obligations under this paragraph are in addition to all other obligations and warranties. The provisions of this paragraph shall not be construed as a substitute for, or a waiver of, the provisions of any applicable statute of limitation or repose.

ARTICLE 16 – SUSPENSION OF WORK AND TERMINATION

16.01 *Owner May Suspend Work*

- A. At any time and without cause, Owner may suspend the Work or any portion thereof for a period of not more than 90 consecutive days by written notice to Contractor and Engineer. Such notice will fix the date on which Work will be resumed. Contractor shall resume the Work on the date so fixed. Contractor shall be entitled to an adjustment in the Contract Price or an extension of the Contract Times, or both, directly attributable to any such suspension. Any Change Proposal seeking such adjustments shall be submitted no later than 30 days after the date fixed for resumption of Work.

16.02 *Owner May Terminate for Cause*

- A. The occurrence of any one or more of the following events will constitute a default by Contractor and justify termination for cause:
 - 1. Contractor's persistent failure to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment or failure to adhere to the Progress Schedule);
 - 2. Failure of Contractor to perform or otherwise to comply with a material term of the Contract Documents;
 - 3. Contractor's disregard of Laws or Regulations of any public body having jurisdiction; or
 - 4. Contractor's repeated disregard of the authority of Owner or Engineer.
- B. If one or more of the events identified in Paragraph 16.02.A occurs, then after giving Contractor (and any surety) ten days written notice that Owner is considering a declaration that Contractor is in default and termination of the contract, Owner may proceed to:
 - 1. declare Contractor to be in default, and give Contractor (and any surety) notice that the Contract is terminated; and
 - 2. enforce the rights available to Owner under any applicable performance bond.
- C. Subject to the terms and operation of any applicable performance bond, if Owner has terminated the Contract for cause, Owner may exclude Contractor from the Site, take possession of the Work, incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere, and complete the Work as Owner may deem expedient.
- D. Owner may not proceed with termination of the Contract under Paragraph 16.02.B if Contractor within seven days of receipt of notice of intent to terminate begins to correct its failure to perform and proceeds diligently to cure such failure.
- E. If Owner proceeds as provided in Paragraph 16.02.B, Contractor shall not be entitled to receive any further payment until the Work is completed. If the unpaid balance of the Contract Price exceeds the cost to complete the Work, including all related claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals) sustained by Owner, such excess will be paid to Contractor. If the cost to complete the Work including such related claims, costs, losses,

and damages exceeds such unpaid balance, Contractor shall pay the difference to Owner. Such claims, costs, losses, and damages incurred by Owner will be reviewed by Engineer as to their reasonableness and, when so approved by Engineer, incorporated in a Change Order. When exercising any rights or remedies under this paragraph, Owner shall not be required to obtain the lowest price for the Work performed.

- F. Where Contractor's services have been so terminated by Owner, the termination will not affect any rights or remedies of Owner against Contractor then existing or which may thereafter accrue, or any rights or remedies of Owner against Contractor or any surety under any payment bond or performance bond. Any retention or payment of money due Contractor by Owner will not release Contractor from liability.
- G. If and to the extent that Contractor has provided a performance bond under the provisions of Paragraph 6.01.A, the provisions of that bond shall govern over any inconsistent provisions of Paragraphs 16.02.B and 16.02.D.

16.03 *Owner May Terminate For Convenience*

- A. Upon seven days written notice to Contractor and Engineer, Owner may, without cause and without prejudice to any other right or remedy of Owner, terminate the Contract. In such case, Contractor shall be paid for (without duplication of any items):
 - 1. completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead and profit on such Work;
 - 2. expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials, or equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses; and
 - 3. other reasonable expenses directly attributable to termination, including costs incurred to prepare a termination for convenience cost proposal.
- B. Contractor shall not be paid on account of loss of anticipated overhead, profits, or revenue, or other economic loss arising out of or resulting from such termination.

16.04 *Contractor May Stop Work or Terminate*

- A. If, through no act or fault of Contractor, (1) the Work is suspended for more than 90 consecutive days by Owner or under an order of court or other public authority, or (2) Engineer fails to act on any Application for Payment within 30 days after it is submitted, or (3) Owner fails for 30 days to pay Contractor any sum finally determined to be due, then Contractor may, upon seven days written notice to Owner and Engineer, and provided Owner or Engineer do not remedy such suspension or failure within that time, terminate the contract and recover from Owner payment on the same terms as provided in Paragraph 16.03.
- B. In lieu of terminating the Contract and without prejudice to any other right or remedy, if Engineer has failed to act on an Application for Payment within 30 days after it is submitted, or Owner has failed for 30 days to pay Contractor any sum finally determined to be due, Contractor may, seven days after written notice to Owner and Engineer, stop the Work until payment is made of all such amounts due Contractor, including interest thereon. The provisions of this paragraph are not intended to preclude Contractor from submitting a Change Proposal for an adjustment in Contract Price or Contract Times or otherwise for

expenses or damage directly attributable to Contractor's stopping the Work as permitted by this paragraph.

ARTICLE 17 – FINAL RESOLUTION OF DISPUTES

17.01 *Methods and Procedures*

- A. *Disputes Subject to Final Resolution:* The following disputed matters are subject to final resolution under the provisions of this Article:
 - 1. A timely appeal of an approval in part and denial in part of a Claim, or of a denial in full; and
 - 2. Disputes between Owner and Contractor concerning the Work or obligations under the Contract Documents, and arising after final payment has been made.
- B. *Final Resolution of Disputes:* For any dispute subject to resolution under this Article, Owner or Contractor may:
 - 1. elect in writing to invoke the dispute resolution process provided for in the Supplementary Conditions; or
 - 2. agree with the other party to submit the dispute to another dispute resolution process; or
 - 3. if no dispute resolution process is provided for in the Supplementary Conditions or mutually agreed to, give written notice to the other party of the intent to submit the dispute to a court of competent jurisdiction.

ARTICLE 18 – MISCELLANEOUS

18.01 *Giving Notice*

- A. Whenever any provision of the Contract Documents requires the giving of written notice, it will be deemed to have been validly given if:
 - 1. delivered in person, by a commercial courier service or otherwise, to the individual or to a member of the firm or to an officer of the corporation for which it is intended; or
 - 2. delivered at or sent by registered or certified mail, postage prepaid, to the last business address known to the sender of the notice.

18.02 *Computation of Times*

- A. When any period of time is referred to in the Contract by days, it will be computed to exclude the first and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday or on a day made a legal holiday by the law of the applicable jurisdiction, such day will be omitted from the computation.

18.03 *Cumulative Remedies*

- A. The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by Laws or Regulations, by special warranty or guarantee, or by other provisions of the Contract. The provisions of this paragraph will be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right, and remedy to which they apply.

18.04 *Limitation of Damages*

- A. With respect to any and all Change Proposals, Claims, disputes subject to final resolution, and other matters at issue, neither Owner nor Engineer, nor any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, shall be liable to Contractor for any claims, costs, losses, or damages sustained by Contractor on or in connection with any other project or anticipated project.

18.05 *No Waiver*

- A. A party's non-enforcement of any provision shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Contract.

18.06 *Survival of Obligations*

- A. All representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with the Contract, as well as all continuing obligations indicated in the Contract, will survive final payment, completion, and acceptance of the Work or termination or completion of the Contract or termination of the services of Contractor.

18.07 *Controlling Law*

- A. This Contract is to be governed by the law of the state in which the Project is located.

18.08 *Headings*

- A. Article and paragraph headings are inserted for convenience only and do not constitute parts of these General Conditions.

SECTION 00800

SUPPLEMENTARY GENERAL CONDITIONS

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DIVISION 00800

SUPPLEMENTARY GENERAL CONDITIONS

These Supplementary General Conditions amend or supplement the Standard General Conditions of the Construction Contract, EJCDC Document No. C-700, Revision 1 (2013 Edition) and other provisions of the Contract Documents as indicated below. All provisions which are not so amended or supplemented remain in full force and effect. Where any section, paragraph, subparagraph or clause in the General Conditions is supplemented by one of the following paragraphs, the provisions of such section, paragraph, subparagraph or clause in the General Conditions is amended, voided or superseded by such following paragraph. The provisions of such section, paragraph, subparagraph or clause not so amended, voided or superseded shall remain in effect.

SGC-1.01.A.3: Add the following language to the end of paragraph 1.01.A.3:

“The Application for Payment form to be used on this Project is included as Section 00620 of the Agreement.”

SGC-1.10.A.7: Add the following language to the end of subparagraph 1.10.A.7.

“When Bidder submits the bid, it will include the Bidding Requirements submitted intact with all forms completed and attachments included as instructed and required.”

SGC-1.01.A.9: Add the following language to the end of paragraph 1.01.A.9:

“The Change Order form to be used on this Project is included as Section 00641 of the Agreement.”

SGC-1.01.A.31: Delete Paragraph 1.01.A.31 in its entirety and replace with the following:

31. Project Manual – The bound documentary information prepared for bidding and construction the work including the bound Volume 1 - Bidding Requirements and Volume 2 - Contract Documents including the Technical Specifications. Project Manual does not include the Project Drawings.

SGC-1.01.A.40: Delete paragraph 1.01.A.40 in its entirety and insert the following in its place:

40. Substantial Completion - The time at which the Work (or a designated part thereof) has progressed to the point where, in the opinion of Engineer, it is 100% complete in accordance with the Contract Documents with the exception of minor and specific corrective items that would normally be itemized on a final punch list and completed before final acceptance. The date on the Engineer's certificate of Substantial Completion shall be the date of Substantial Completion; or if no such certificate is issued, when the Work is complete and ready for final payment as evidenced by Engineer's written recommendation of final payment in accordance with paragraph 15.06. The terms "substantially complete" and "substantially completed" as applied to all or part of the Work refer to Substantial Completion thereof.

SGC-1.01.A.47: Add the following to the end of subparagraph 1.01.A.47:

The Work and the Work Area include only new additions as well as changes to existing structures and conditions so designated for alteration as shown and specified herein.

SGC-1.01.A: Add the following paragraphs immediately following subparagraph 1.10.A.48:

49. Final Acceptance – The time at which the final Application for Payment has been approved by all of the following: Contractor, Engineer, Funding Agency and Owner.
50. Abnormal Weather Conditions – Receiving more than 1.0 inches of rain in a 24-hour period that includes a normal workday or 1.0 inches of snow in a 24-hour period that includes a normal workday or winds in excess of 40 knots as reported at the Southwest Oregon Regional Airport between the hours of 7:00 a.m. and 6:00 p.m. on a normal workday.

SGC-3.03.B: Add the following subparagraphs immediately following 3.03.B.1:

2. Where a conflict occurs between or within the standards, specifications, and drawings, the more stringent or higher quality requirements shall apply. The precedence of the Construction Documents is in the following sequence:
 - a. Addenda and modifications via Change Order, Field Order, Work Change Directive, Written Amendment to the Drawings and Specifications take precedence over the original construction documents.
 - b. In the Drawings, the precedence shall be Drawings of a larger scale over those of a smaller scale, figured dimensions over scaled dimensions, and noted materials over graphic indications.
 - c. Should there be a conflict within the Specifications, on the Drawings, or between the Drawings and the Specifications, the Engineer shall decide which stipulation will provide the best installation and his decision shall be final.
3. Before executing the Agreement, the Contractor shall thoroughly familiarize itself with all specified products and submit written notice to Engineer if it objects to the proposed use of any product.
4. Referenced standards are a part of these specifications. If choices or options are contained therein, selection will be made by the Engineer.
5. Wherever in these specifications a product is referred to in the singular number, such reference shall include as many such items as are indicated or required to complete work.

- 1 6. These specifications are of the abbreviated or 'streamlined' type and frequently
2 include incomplete sentences. Words such as 'shall,' 'shall be,' 'the Contractor
3 shall,' and similar phrases shall be supplied by inference.
4

5 SGC-4.01.A: Delete paragraph 4.01.A in its entirety and insert the following in its place:
6

- 7 A. The Contract Times will commence to run on the day indicated in the Notice to Proceed.
8 A Notice to Proceed may be given at any time within 30 days after the Effective Date of
9 the Agreement.
10

11 SGC-5.03: Add the following immediately after paragraph 5.03.B:
12

- 13 C. No reports of explorations or tests of subsurface conditions have been performed at the
14 site except for videos and a report of the dive inspection identified below. The video is
15 available to view at the office of the Owner.
16
17 D. In the preparation of drawings and specifications, Engineer or Engineer's Consultants
18 relied upon the following drawings of physical conditions in or relating to existing
19 surface and subsurface features and structures (except Underground Facilities) which are
20 at or contiguous to the site of Work:
21
22 1. Plans prepared by HGE titled, Coos Bay Sewage Treatment Plant No. 2, dated
23 1973
24
25 2. Dive Inspection Report performed April 16, 2015
26
27 3. April 16, 2015 Dive Inspection Video
28
29 4. Army Corps of Engineer's Nationwide Permit 2003-733/3
30
31
32 E. Copies of reports and drawings itemized in SGC-5.03.C and SGC-5.03.D that are not
33 included with Bidding Documents may be examined at the office of the Owner during
34 regular business hours. These reports and drawings are not part of the Contract
35 Documents, but the "technical data" contained therein upon which the Contractor may
36 rely as identified and established above are incorporated therein by reference. Contractor
37 is not entitled to rely upon other information and data utilized by Engineer and
38 Engineer's Consultants in the preparation of the Drawings and Specifications.
39

40 SGC-5.04.A.4: Add to the end of the fifth line of paragraph 5.04.A.4 the following:
41

42 ... "Prompt notice is hereby defined as notification within 24-hours of the
43 determination that such conditions exist and prior to proceeding with the Work."
44

45 SGC-5.05: Add the following paragraph immediately after 5.05.E.3:
46

- 47 F. Oregon law requires Contractor to follow rules adopted by the Oregon Utility
48 Notification Center (OUNC). These rules are set forth in OAR 952-001-0010 through
49 952-001-0090. OUNC can be contacted at (800) 332-2344 or 811 and copies of the rules
50 can be obtained from the center.
51

SGC-5.06.A: Add the following subparagraphs immediately following subparagraph 5.06.A.2:

3. No reports or drawings of Hazardous Environmental Conditions have been performed at the site. Engineer has not used or relied upon any drawings or other documents relating to existing Hazardous Environmental Conditions at the site in the preparation of the Contract Documents.
4. The Video and Report identified in SGC 5.03.C have identified the outfall as corrugated steel pipe with a smooth lining. It is not known what type of material the lining is, it is possible that some may have asbestos-cement pipe.

SGC-5.06.C: Add the following subparagraph immediately following Paragraph 5.06.C:

1. Should asbestos abatement be required, the Contractor shall be responsible for and shall pay all costs associated with the abatement, removal and disposal of any existing Asbestos-Cement pipe requiring removal or disturbed during the Work within the limits described in the Construction Drawings or Specifications.

SGC-5.06.I: Make the following changes to the first sentence of Paragraph 5.06.I:

Add to the beginning "Subject to the provisions of the Oregon Constitution, applicable laws and regulations, and to the limits of the Oregon Tort Claims Act," and delete "To the fullest extent permitted by laws and regulations."

SGC ARTICLE 5: Add the following paragraph immediately after 5.06.K:

5.07. Historical or Archaeological Finds.

- A. Where historical objects of archaeological or paleontological nature are encountered during construction, including but not limited to ruins, sites, buildings, artifacts, human remains, and fossils, the Contractor shall suspend operations in the area, preserve all such objects from disturbance and shall notify the Engineer of the nature and location of such finds. The Engineer will arrange for the disposition of all finds and shall notify the Contractor when to proceed with construction in the affected area. The Contractor shall be entitled to a change in the contract time equal to the delay caused by such finds, but shall not be entitled to costs, except for the cost of labor to preserve the site and maintain sewer services around the site during the delay.

SGC-6.01.B: Add the following subparagraphs immediately following Paragraph 6.01.B:

1. "The Bonds shall be accompanied by the name, address and phone number of the agent for the surety who is authorized to receive notice of claims against the Bond."
2. "If the Contractor submits a cashier's check or a certified check in lieu of a performance bond pursuant to ORS 279C.380 (a), the Owner will hold the check for a period of 200 days beyond the date of final acceptance of the Work. If the Owner receives a notice of claim under ORS 279C.600-279C.625, the Owner will hold an amount sufficient to cover the claim for a period of two years following final acceptance of the Work. If an action is instituted against the

cashier's check or certified check under ORS 279.536, the Owner will hold an amount sufficient to cover the amount of claim until the action is resolved."

SGC-6.01: Add the following paragraph immediately after Paragraph 6.01.F:

G. Public Works Bond

1. Contractor shall have a public works bond filed with the Oregon Construction Contractors Board before starting Work on the project unless exempt under ORS 279C.800-870.
2. Contractor shall include in every subcontract a provision requiring every Subcontractor to have a public works bond filed with the Oregon Construction Contractors Board before starting Work on the Project unless exempt under ORS 279C.800-870.

SGC-6.02.A: Add the following subparagraphs to Paragraph 6.02.A:

1. Bonds and insurance shall be written by companies licensed to do business in the State of Oregon.
2. The bond and insurance companies shall be satisfactory to the Owner. The Owner reserves the right to review, investigate, and reject Insurance companies proposed to be used by Contractor if they are determined inadequate to provide necessary coverages as specified in these documents.

SGC-6.03.C.1: Add the following subparagraph after 6.03.C.1.b:

- c. Coverage shall eliminate the exclusions relating to property under the care, custody and control of the Contractor.

SGC-6.03.D: Add to the end of Paragraph 6.03D:

"Automobile insurance coverage shall include use of any motor vehicle, including owned, non-owned and hired."

SGC-6.03.F: Delete this paragraph in its entirety.

SGC-6.03 Add the following paragraphs immediately following Paragraph 6.03.J:

6.03 Contractor's Insurance

K. Any company or individual performing work for the City of Coos Bay (Owner) shall be required to provide proof of insurance to the Owner per applicable insurance level.

1. General Liability shall be a per occurrence form and must cover the time for which the work contract is being performed.
2. Proof of insurance of not less than the amount required is to be provided. Limits shown in the requirements are a minimum per occurrence limit.

3. If the Owner is required to use Federal or State insurance policy limits, or is subject to the Federal or State tort claim limits, the limits required through this statement shall be superseded by such limits.
4. If a claim occurs where the amount of the claim exceeds the insurance policy limits required by this directive, the company or individual performing work assumes full responsibility for the payment of such claim.
5. Waivers of the policy limits or provisions in this policy must be approved by the City Manager, City Attorney and the City Risk Manager of Record.
6. Tail Coverage: If any of the required liability insurance is on a "claims made" basis, recipient shall maintain either "tail" coverage or continuous "claims made" liability coverage, provided the effective date of the continuous "claims made" coverage is on or before the effective date of the Contract/Agreement, for a minimum of 24 months following the later of:
 - a. Recipient's completion of all services and the Owner's acceptance of all services required under the Contract/Agreement, or
 - b. The expiration of all warranty periods provided under the Contract/Agreement. Notwithstanding the foregoing 24-month requirement, if recipient elects to maintain "tail" coverage and the maximum time period "tail" coverage is reasonably available in the marketplace is less than the 24-month period described above, recipient shall maintain "tail" coverage for the maximum time period "tail" coverage is reasonably available in the marketplace for the coverage required.

K. Definitions:

1. Commercial General Liability: To cover bodily injury, death, and property damage. This insurance shall include contractual liability coverage for the indemnity provided under those listed in the Agreement/Contract, personal and advertising injury liability, products liability and completed operations liability. Coverage may be written in combination with Automobile Liability Insurance (with separate limits).
2. Professional Liability: To cover error, omission or negligent acts related to the professional services to be provided under the Agreement/Contract.
3. Automobile Liability: To cover each accident for bodily injury and property damage, including coverage for owned, hired, non-owned, leased, or rented vehicles as applicable. This coverage may be written in combination with the Commercial General Liability Insurance (with separate limits).
4. Builders Risk: To cover structures being built, temporary structures at the building site, and building materials not yet having become part of the building. The building materials are covered while on the insured location, in transit, or in storage at another location.

1
2 5. Installation Floater: To cover materials, equipment, and personal property while
3 in transit, installation, and until coverage terminates according to the terms of the
4 floater. This coverage can cover the property of others in the contractor's care,
5 custody or control that is often excluded under the contractor's general liability
6 coverage.

7
8 6. Umbrella Liability: To cover excess liability over several of the insured's primary
9 liability policies. An excess liability policy may be what is called a following
10 form policy, which means it is subject to the same terms as the underlying
11 policies; it may be a self-contained policy, which means it is subject to its own
12 terms only; or it may be a combination of these two types of excess policies.
13 Umbrella policies provide three functions:

- 14
15 a. To provide additional limits above the each occurrence limit of the
16 insured's primary policies;
17
18 b. To take the place of primary insurance when primary aggregate limits are
19 reduced or exhausted; and
20
21 c. To provide broader coverage for some claims that would not be covered
22 by the insured's primary insurance policies, which would be subject to
23 the policy retention. Most umbrella liability policies contain one
24 comprehensive insuring agreement. The agreement usually states it will
25 pay the ultimate net loss, which is the total amount in excess of the
26 primary limit for which the insured becomes legally obligated to pay for
27 damages of bodily injury, property damage, personal injury, and
28 advertising injury.
29

30 L. Inadequate Coverage Limits

- 31
32 1. Should the Umbrella/Excess Insurance coverage combined with Commercial
33 General Liability coverage not equal or exceed the minimum combined coverage
34 shown, coverage must be increased to equal or exceed the minimum total
35 coverage limits shown.
36
37 2. If there is no Umbrella/Excess Insurance coverage, then the Commercial General
38 Liability, Employers Liability, and Automobile Liability limits must be increased
39 to equal or exceed the minimum total coverage limits shown.
40

41 M. Property Coverage

- 42
43 1. (If applicable) Contractor will purchase and maintain property insurance for the
44 entire work at the site on a replacement cost basis.
45
46 2. Contractor shall obtain, at Contractor's expense, and keep in effect until final
47 acceptance of the work performed under this contract, an Installation Floater or
48 equivalent property coverage for materials, equipment, supplies, and tools to be
49 used for completion of the work performed under this contract.
50
51 3. The Installation Floater shall include coverage for testing, if applicable.

4. The minimum amount of coverage to be carried shall be equal to the full amount of this contract.

5. The contractor will be responsible for any applicable deductibles.

N. Insurance Forms and Formats

1. The Certificate of Insurance(s) and Endorsement(s) will be a part of the Contract/Agreement and shall be provided to the Owner with endorsement(s) indicating that the Commercial General Liability insurance coverage is in effect which shall be **primary and non-contributory** with any insurance maintained by the Owner and shall include a "waiver of subrogation" in favor of the Owner.
2. For construction contracts, a per project aggregate (form CG 2503 05/09 or equivalent) shall also be required.
3. In all situations, the Owner shall be included as an additional insured under the commercial general liability, automobile liability, and umbrella liability policies as applicable.
4. As applicable, a waiver of subrogation under the workers' compensation and commercial general liability policies shall also be provided.
5. Copies of such endorsements or coverage enhancements **shall be attached to the certificate(s)** provided to the Owner and will become a part of the Contract/Agreement.

O. Insurance Coverage provided must be underwritten by an insurance company deemed acceptable by the Owner. The Owner reserves the right to reject all or any insurance carrier(s) with an unacceptable financial rating.

P. Minimum Insurance Limits

1. Commercial General Liability \$ 1,000,000
2. Workers' Compensation (if applicable) Statutory Limit
3. Employer's Liability \$ 500,000
4. Umbrella/Excess Insurance \$ 1,000,000
5. Automobile Liability \$1,000,000
6. Builders Risk Insurance and Installation Floater See Paragraph SGC 6.03.M.

SGC-6.05.A: Add the following subparagraph immediately following 6.05A.13:

14. be subject to a deductible amount no greater than \$2,500 for direct physical loss in any one occurrence. Any deductible amounts shall be borne by the Contractor.

SGC-7.02.B: Add the following subparagraph to Paragraph 7.02.B:

1. Regular working hours are defined in Section 01010 of the Technical Specifications.

SGC-7.03.B: Add the following subparagraph to Paragraph 7.03.B:

1. Contractor agrees to prefer goods or services that have been manufactured or produced in the State of Oregon if price, fitness, availability and quality are otherwise equal.

SGC-7.04: Add to the end of Paragraph 7.04.A the following:

“Prior to Bid Opening the Contract, if awarded, will be on the basis of materials and equipment specified or described in the Bidding Documents, or "or equal" materials and equipment approved by the Engineer and identified by Addendum. Request for Engineer’s clarification of materials and equipment considered “or equal” prior to the Effective Date of the Agreement must be received by the Engineer at least 5 days prior to the date specified for issuing the last Addendum. Requests for authorization of an “Or Equal” product made after this date shall be made after the Effective Date of Agreement.”

SGC-7.04.A: Add the following subparagraph immediately following Paragraph 7.04.A.1.b:

- c. It shall be the responsibility of the Contractor to insure that the items to be furnished as “or-equal” shall fit within the space and envelope of the originally specified item. The Contractor shall make necessary field measurements to ascertain space requirements, including those for connections, and shall order such sizes and shapes of equipment that the final installation shall suit the true intent and meaning of the plans and specifications. Where equipment requiring a different arrangement of connections from those shown is approved, it shall be the responsibility of the Contractor to install the equipment to operate properly and in harmony with the intent of the plans and specifications and to make all changes in the work required by the different arrangement of connections.

SGC-7.05: Add to the end of Paragraph 7.05.A the following:

“Requests for authorization of a “Substitute” product shall be made after the Effective Date of Agreement.”

SGC-7.05.A: Add the following subparagraph immediately following Paragraph 7.05.A.3.e:

- f. It shall be the responsibility of the Contractor to insure that the items to be furnished as substitution shall fit within the space and envelope of the originally specified item. The Contractor shall make necessary field measurements to ascertain space requirements, including those for connections, and shall order such sizes and shapes of equipment that the final installation shall suit the true intent and meaning of the plans and specifications. Where equipment requiring different arrangement of

connections from those shown is approved, it shall be the responsibility of the Contractor to install the equipment to operate properly and in harmony with the intent of the plans and specifications and to make all changes in the work required by the different arrangement of connections.

SGC-7.06.B: Immediately after Paragraph 7.06.D add the following subparagraph:

1. Once a subcontractor list has been submitted and approved by the Owner (or Owner makes no objection thereto), Contractor shall not substitute any subcontractor without the written approval of Owner.

SGC-7.06: Add the following paragraphs immediately following 7.06.O:

P. Contractor agrees to make all provisions of the contract with the Owner applicable to any Subcontractor performing work under the contract.

Q. Contractor and all first tier Subcontractors and Suppliers must comply with prompt payment provisions pursuant to ORS 279C.515. Contractor shall include each of the following in each subcontract for property, materials or services (1) a payment clause which obligates the Contractor to pay such Subcontractor or Supplier within ten (10) days of receiving payment from the Owner, (2) an interest penalty clause which obligates the Contractor to pay the Subcontractor an interest penalty as provided in ORS 279C.580 on payments not made within 30 days receiving payment from the Owner, and (3) a clause which requires first tier Subcontractors or Suppliers to include similar payment and interest penalty clauses in lower tier subcontracts. These clauses and the rights and obligations described thereby, shall conform to the requirements of ORS 279C.515 and ORS 279C.580.

1. If the contractor fails, neglects or refuses to pay promptly a person's claim for labor or services that the person provides to the contractor or a subcontractor in connection with the public improvement contract as the claim becomes due, the proper officer that represents the Owner may pay the amount of the claim to the person that provides 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.
2. If the contractor or a first-tier subcontractor fails, neglects or refuses to pay a person that provides labor or materials in connection with the public improvement contract within 30 days after receiving payment from the contracting agency or a contractor, the contractor or first-tier subcontractor owes the person the amount due plus interest charges that begin at the end of the 10-day period within which payment is due under ORS 279C.580 (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.
3. If the contractor or a subcontractor fails, neglects or refuses to pay a person that provides 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.

1 4. Paying a claim in the manner authorized in this section does not relieve the
2 contractor or the contractor's surety from obligation with respect to an unpaid
3 claim.
4

5
6 R. Contractor shall not award work to all Subcontractors which total more than 60% of the
7 Contract amount.
8

9 S. Notwithstanding ORS 279C.555, the Contractor shall retain 25 percent of any amount
10 earned by a first-tier subcontractor on the Project until the subcontractor has filed with
11 the Owner certified statements regarding payment of prevailing rates of wage per ORS
12 279C.845. Contractor shall verify that the first-tier subcontractor has filed the required
13 certified statements before the Contractor may pay the subcontractor any amount retained
14 under this subsection. Contractor shall pay the first-tier subcontractor the amount
15 retained under this subsection within 14 days after the Owner's receipt of the certified
16 statements.
17

18 T. Contractor will comply with ORS 279C.580 regarding all relations with subcontractor.
19

20 SGC-7.08: Add the following paragraphs immediately following 7.08.A:
21

22 B. Contractor shall fully comply with all provisions of permits and requirements of the
23 Permitting Agency governing the Work or allowing access to adjacent land areas whether
24 the permit is acquired by Owner or by Contractor. Contractor to assume all
25 responsibilities, obligations and conditions of the named Permit Holder as identified in
26 the permit. Should there be a conflict between requirements of any permit and these
27 Contract Documents, the more stringent requirement shall be followed.
28

29 C. Contractor shall have a valid City of Coos Bay Business License prior to submitting a
30 Bid, which license shall be maintained during the entire course of completing the Work.
31

32 SGC-7.09.A: Add the following subparagraphs to Paragraph 7.09.A:
33

- 34 1. Contractor and any Subcontractor shall pay to the Department of Revenue all
35 sums withheld from employees pursuant to ORS 316.167.
36
37 2. Contractor shall pay promptly all contributions or amounts to the State Industrial
38 Accident Fund and the State Unemployment Compensation Fund from
39 Contractor or any Subcontractor in connection with the performance of the
40 contract.
41

42 SGC-7.10: Add the following paragraphs immediately following 7.10.C:
43

44 D. Payment of Prevailing Wage Rates for Public Works. The Contractor and all persons
45 doing or contracting to do any of the work contemplated by the Contract shall comply
46 with all Federal and State Laws in employment and payment of labor. Contractor shall
47 comply with all provisions of said laws (and pay all related fees), not only in regard to the
48 payment of prevailing wage rates, but also in the matter of the necessary certificates and
49 affidavits required to accompany each request for payment. No payment, progress or
50 otherwise, will be paid unless accompanied by the necessary certificates, certified
51 statements and affidavits pertaining to prevailing wages.

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- E. The minimum wages to be paid workers on this project shall not be less than the prevailing rate including fringe benefits in accordance with ORS Ch 279, paid to the corresponding classes of workers in the locality where the public work is being provided. Prevailing rates shall be in accordance with the most current version (or as it is modified by addendum) of the "Prevailing Wage Rates for Public Works Contracts in Oregon" as published by the Oregon Bureau of Labor and Industries. Such publications are available from the Oregon Bureau of Labor and Industries and a copy of the most current version is to be supplied to the Owner with the first pay request. If a dispute arises as to what is the prevailing wage rate for any class of workers, and a dispute cannot be settled by the parties involved, it may be referred to the Commissioner of Labor, State of Oregon, for final determination.
1. The wage rates are minimum rates only and the Owner will not consider any claims for additional compensation because of payment made by the Contractor or a Subcontractor of any wage rate in excess of the prevailing rate.
 2. If Owner determines at any time that the prevailing rate of wage has not or is not being paid as required herein, it may retain from moneys due to Contractor an amount sufficient to make up the difference between the wages actually paid and the prevailing rate of wages, and retains the option to cancel the Contract for cause. Liquidated damages for failure to pay the rate of wage required herein shall be an additional amount equal to the unpaid premium, over and above the liability of the Contractor, any Subcontractor, or surety to pay said unpaid minimum to any workers affected.
- F. Under the provisions of Oregon Law, ORS 279C.845, the wage certification form on public works contracts must be provided for each week during which the Contractor or Subcontractor employs a worker to do any work contemplated by the Contract. Payroll information is to be filed once a month, by the fifth business day of the following month, with both the public contracting agency and the Wage and Hour Division, Bureau of Labor and Industries, 1400 S.W. 5th Avenue, Portland, Oregon 97201. This payroll information must be kept by the Contractor and/or Subcontractor for three (3) years from the date of completion of the Contract.
- G. Contractor shall strictly observe and obey all of the terms and provisions of Chapter 279, Oregon Revised Statutes, pertaining specifically, but not exclusively, to the furnishings of Workers Compensation Insurance, payment of laborers and materialmen, the withholding of State and Federal income and other taxes, hours of labor, and all other regulations provided in said chapter, and shall hold Owner harmless on account thereof.
- H. Contractor shall employ no person for more than ten hours in any one day, or 40 hours in any one week, except in cases of necessity, emergency or where the public policy absolutely requires it. In such cases, Contractor shall pay the laborer at least time and a half regular rate pay for all overtime in excess of eight hours a day and for work performed on any legal holiday specified in ORS 279C.540. When specifically agreed to in a written labor-management negotiated labor agreement, a laborer may be paid at least time and a half pay for work performed in any legal holiday specified in ORS 187.010 and 187.020 and not listed in ORS 279C.540 (1). Contractor shall comply with ORS 279C.540 to 279C.545 regarding hours of labor and overtime.

- 1 I. Contractor shall comply with ORS 279C.530 and shall make payment promptly, as due,
2 to any person, co-partnership, association, or corporation furnishing medical, surgical,
3 hospital, or other needed care of attention incident to sickness or injury to the employees
4 of Contractor of all sums which the Contractor agreed to pay or collected or deducted
5 from the wages of employees pursuant to any law, Contractor or agreement for the
6 purpose of providing payment for such service.
7
8 J. The Contractor, or its Subcontractors, if any, and all employers working under this
9 Contract are subject employers under Oregon Workers' Compensation Law and shall
10 comply with ORS 656.017, which requires them to provide Workers' Compensation for
11 all their subject workers as defined under ORS chapter 656 (ORS 279C.530).
12
13 K. Contractor shall comply with all federal, state, and local laws and regulations dealing
14 with the prevention of environmental pollution and the preservation of natural resources
15 that affect the performance of the Contract. If new or amended statutes, ordinances, or
16 regulations are adopted, or the Contractor encounters a condition not referred to in the bid
17 document not caused by the Contractor and not discoverable by reasonable site inspection
18 which requires compliance with federal, state, or local laws or regulations dealing with
19 the prevention of environmental pollution or the preservation of natural resources, both
20 the Owner and the Contractor shall have all the rights and obligations specified in ORS
21 279C.525 to handle the situation.
22
23 L. This Contractor and all Subcontractors shall not discriminate against any employee or
24 applicant for employment because of race, color, religion, sex, handicap, marital status,
25 age or national origin. Such action shall include, but not be limited to: employment,
26 upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of
27 pay or other forms of compensation and selection for training, including apprenticeship.
28
29 1. The Contractor shall post in conspicuous places available to employees and
30 applicant for employment, notices setting forth the provisions of this
31 nondiscrimination clause. Contractor's and Subcontractor's solicitations and
32 advertisements for employees shall state that all qualified applicants will receive
33 consideration for employment without regard to race, color, religion, sex,
34 handicap, marital status, age or national origin.
35
36 M. Contractor certifies that all subcontractors performing work described in ORS 701.005(2)
37 (i.e. construction work) will be registered with the Construction Contractors Board or
38 licensed by the State Landscape Contractors Board in accordance with ORS 701.035 to
39 701.055 before the subcontractors commence work under the Contract.
40
41

42 SGC-7.18: Add the following paragraphs immediately following 7.18.C:
43

- 44 D. Contractor shall not be required to indemnify any indemnitee to the extent the claim, cost,
45 loss or damage is caused by the indemnitee's negligence.
46
47 E. The performance of this Contract is at Contractor's sole risk. The service or services to
48 be rendered under this Contract are those of an independent Contractor who is not an
49 officer or agent of the Owner as those terms are used in ORS 30.265.
50

- 1 F. The Contractor shall not permit any lien or claim to be filed or prosecuted against the
2 Owner in connection with this Contract and agrees to assume full responsibility for their
3 satisfaction should any lien or claim be filed.
4

5 SGC-8.01: Add the following paragraph immediately following 8.01.D:
6

- 7 E. Owner has not contracted with other contractors or others for performance of work that
8 relates to the Work at the Site. Owner will not perform work that relates to the Work at
9 the Site.
10

11 SGC-10.03.A: Delete paragraph 10.03.A in its entirety and substitute the following two paragraphs:
12

- 13 A. The Engineer or Owner's identified staff will be the Resident Project Representative.
14

- 15 1. General: RPR's dealings in matters pertaining to the Work in general shall be
16 with Owner and Contractor. RPR's dealings with Subcontractors shall only be
17 through or with the full knowledge and approval of Contractor. RPR shall
18 generally communicate with Owner only with the knowledge of and under the
19 direction of Engineer.
20
21 2. Schedules: Review the progress schedule, schedule of Shop Drawing and
22 Sample submittals, and Schedule of Values prepared by Contractor and consult
23 with Owner concerning acceptability.
24
25 3. Conferences and Meetings: Attend meetings with Contractor, such as
26 preconstruction conferences, progress meetings, job conferences, and other
27 Project-related meetings, and prepare and circulate copies of minutes thereof.
28
29 4. Liaison:
30
31 a. Serve as Owner's liaison with Contractor. Working principally through
32 Contractor's authorized representative or designee, assist in providing
33 information regarding the provisions and intent of the Contract
34 Documents.
35
36 b. Assist in obtaining from Owner additional details or information, when
37 required for proper execution of the Work.
38
39 5. Interpretation of Contract Documents: Issue clarifications and interpretations of
40 the Contract Documents when needed.
41
42 6. Shop Drawings and Samples:
43
44 a. Record date of receipt of Samples and Contractor-approved Shop
45 Drawings.
46
47 b. Receive Samples which are furnished at the Site by Contractor.
48
49 c. Advise Contractor of the commencement of any portion of the Work
50 requiring a Shop Drawing or Sample submittal for which RPR believes
51 that the submittal has not been approved by Engineer.

7. Modifications: Consider and evaluate Contractor's suggestions for modifications in Drawings or Specifications and issue decisions in writing.
8. Review of Work and Rejection of Defective Work:
 - a. Conduct on-Site observations of Contractor's work in progress to assist Owner in determining if the Work is in general proceeding in accordance with the Contract Documents.
 - b. Report to Owner whenever RPR believes that any part of Contractor's work in progress is defective, will not produce a completed Project that conforms generally to the Contract Documents, or will imperil the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents, or has been damaged, or does not meet the requirements of any inspection, test or approval required to be made; and advise Owner of that part of work in progress that RPR believes should be corrected or rejected or should be uncovered for observation, or requires special testing, inspection or approval.
9. Inspections, Tests, and System Start-ups:
 - a. Verify that tests, equipment, and systems start-ups and operating and maintenance training are conducted in the presence of appropriate Owner's personnel, and that Contractor maintains adequate records thereof.
 - b. Observe and record appropriate details relative to the test procedures and systems start-ups.
10. Records:
 - a. Prepare a report or keep a diary or log book for site visits, recording the general Site conditions and activities, data relative to questions of Change Orders, Field Orders, Work Change Directives, or changed conditions, Site visitors, deliveries of equipment or materials, daily activities, decisions, observations in general, and specific observations in more detail as in the case of observing test procedures; and send copies to Owner.
 - b. Record names, addresses, fax numbers, e-mail addresses, web site locations, and telephone numbers of all Contractors, Subcontractors, and major Suppliers of materials and equipment.
 - c. Maintain records for use in preparing Project documentation.
11. Reports:
 - a. Furnish to Owner periodic reports as required of progress of the Work and of Contractor's compliance with the Progress Schedule and schedule of Shop Drawing and Sample submittals.

- b. Draft and recommend to Owner proposed Change Orders, Work Change Directives, and Field Orders. Obtain backup material from Contractor.
- c. Immediately notify Owner of the occurrence of any Site accidents, emergencies, acts of God endangering the Work, force majeure or delay events, damage to property by fire or other causes, or the discovery of any Constituent of Concern or Hazardous Environmental Condition.

12. Payment Requests: Review applications for payment with Contractor for compliance with the established procedure for their submission and forward with recommendations to Owner, noting particularly the relationship of the payment requested to the Schedule of Values, Work completed, and materials and equipment delivered at the Site but not incorporated in the Work.

13. Certificates, Operation and Maintenance Manuals: During the course of the Work, verify that materials and equipment certificates, operation and maintenance manuals and other data required by the Contract Documents to be assembled and furnished by Contractor are applicable to the items actually installed and in accordance with the Contract Documents, and have these documents delivered to Engineer for review and forwarding to Owner prior to payment for that part of the Work.

14. Completion:

- a. Visit the Site to determine Substantial Completion and the preparation of a punch list of items to be completed or corrected.
- b. Conduct final visit to the Site to determine completion of the Work, in the company of Owner and Contractor, and prepare a final punch list of items to be completed and deficiencies to be remedied.
- c. Observe whether all items on the final list have been completed or corrected and make recommendations to Owner concerning acceptance and issuance of the notice of acceptability of the work.

B. The RPR (when the Engineer) shall not:

1. Exceed limitations of Engineer's authority as set forth in the Contract Documents.
2. Undertake any of the responsibilities of Contractor, Subcontractors, or Suppliers.
3. Advise on, issue directions relative to, or assume control over any aspect of the means, methods, techniques, sequences or procedures of Contractor's work.
4. Advise on, issue directions regarding, or assume control over security or safety practices, precautions, and programs in connection with the activities or operations of Owner or Contractor.
5. Accept Shop Drawing or Sample submittals from anyone other than Contractor.
6. Authorize Owner to occupy the Project in whole or in part.

SGC-11.04.C.2.a: Modify the lines of Paragraph 11.04.C.2.a as indicated below:

Change paragraph 11.04.C.2.a, line 3 "15" to "ten."

SGC-11.04.C.2.c: Delete paragraph 11.04.C.2.c in its entirety and replace with the following:

- c. Where one or more tiers of subcontracts are on the basis of Cost of the Work plus a fee and no fixed fee is agreed upon, the intent of paragraph 11.04.C.2.a is that the Contractor will be paid a fee of five percent and that the Subcontractor who actually performs the work and any higher tier Subcontractor will be paid a total fee of ten percent of the costs incurred by Subcontractor performing the Work. The maximum total fee paid by the Owner shall be no greater than 15% of the costs incurred by the Subcontractor that actually performs the work.

SGC-12.01.A: Modify the lines of Paragraph 12.01.B as indicated below:

Change "30" to "14" in all occurrences in this paragraph.

SGC-12.01.F: Modify the lines of Paragraph 12.01.F as indicated below:

Change "90" to "60" in all occurrences in this paragraph.

SGC-14.02.A: Add the following subparagraph directly after Paragraph 14.02.A:

1. Timely notice for inspections, tests, or approvals shall mean not less than 48 hours prior to the time when inspection, test, or approval is required.

SGC-14.03: Add the following paragraph directly after Paragraph 14.03.F:

- G. Contractor shall pay for all Owner's engineering costs associated with correction of the defective Work and re-inspection of the corrected Work.

SGC-14.07.A: Add the following subparagraph to Paragraph 14.07.A:

1. For defective items that the Engineer deems to be critical because the defect poses a health or safety hazard, may cause environmental damage or pollution, or are likely to cause damage to the Work, "Reasonable Time" may be as short as immediately. For other defective items, the Engineer will submit an opinion of "Reasonable Time" for the correction.

SGC-15.01.B.1: Change the first sentence of paragraph 15.01.B.1 to read:

"At least 30 days before the date (remainder stays the same)."

SGC-15.01.B.2: Add the following subparagraphs to 15.01.B.2:

- a. Payments of Liens, Withholding Taxes, Contributions to Industrial Accident Fund, Labor, and Materials. The Contractor shall make

1 payment promptly as due to all persons supplying to the Contractor labor
2 or materials for the prosecution of the work provided for herein, and
3 shall pay all contributions or amounts due the State Industrial Accident
4 Fund from the Contractor or subcontractors incurred in the performance
5 of this Contract. The Contractor shall permit no lien or claim to be filed
6 or prosecuted against the Owner on account of any labor or material
7 furnished, and shall promptly pay any and all withholding taxes, whether
8 state or federal, all social security charges and all contributions on
9 amounts due to the State Unemployment Compensation Trust Fund, and
10 promptly pay or cause to be withheld, as the case may be, any and all
11 taxes, charges, or fees, or sums whatsoever which are now or may
12 hereafter be required to be paid or withheld under any laws of the state
13 and location where the work is to be performed. Contractor shall assume
14 responsibility for satisfaction of any liens or claims filed or prosecuted
15 and shall defend, indemnify and hold Owner harmless against any such
16 liens or claims.

- 17
18 b. Payment of Claims by the Owner. In the event the Contractor shall fail,
19 neglect, or refuse to make prompt payment of any claim for labor or
20 services furnished to the Contractor or Subcontractor by any person in
21 connection with this contract as such claim becomes due, whether said
22 services and labor be performed for the Contractor or a Subcontractor,
23 then in such event, the proper officer or officers representing the Owner
24 may pay such claim to the person furnishing the labor or services and
25 charge the amount of the payment against funds due or to become due to
26 the Contractor. The payment of a claim in the manner authorized herein
27 shall not relieve the Contractor or his Surety from his or its obligation
28 with respect to any unpaid claims. If the Owner is unable to determine
29 the validity of any claim for labor or material furnished, the Owner may
30 withhold from any current payment due Contractor an amount equal to
31 said claim until its validity is determined, and the claim, if valid, is paid
32 by the Contractor or the Owner. There shall be no final acceptance of
33 the work under the Contract until all such claims have been resolved.

34
35 SGC-15.01.B.3: Delete paragraph 15.01.B.3 in its entirety and replace with the following paragraph:

- 36
37 3. A percentage of the amount requested on each payment certificate will be
38 withheld as retainage until final acceptance of the work by the Owner. Retainage
39 amounts and details are stipulated in the Agreement.

40
41 SGC-15.01.D: Delete paragraph 15.01.D.1 in its entirety and replace with the following subparagraphs:

- 42
43 1. After presentation of the Application for Payment to Owner by Engineer with
44 Engineer's recommendation, the Application for Payment will be reviewed and
45 processed by Owner and other involved funding agencies, if any, and the amount
46 recommended and accepted by Owner and other involved agencies, if any, will
47 (subject to the provisions of sections 15.01.C and 15.01.E) become due and
48 payable by Owner to Contractor on the date established for progress payments in
49 the Agreement.
50

- 1 2. The Owner and the Contractor are bound by the rights and responsibilities of the
2 prompt payment policies and shall comply with the procedures for prompt
3 payment as stated in ORS 279C.515, 279C.570, and ORS 279C.580.
4

5 SGC-15.01.E.1 Add the following subparagraphs immediately after 15.01.E.1.i:
6

- 7 m. Third party claims filed or evidence indicating probable filing of such
8 claims.
9
10 n. Failure of Contractor to make payments properly or promptly to
11 subcontractors for material, labor, or equipment.
12
13 o. Damage to Owner or others.
14
15 p. Failure of Contractor to file certified statements regarding payment of
16 prevailing rates of wages ORS 279C.845 with the Owner for each week
17 of Work covered in the submitted Application for Payment.
18

19 SGC-15.01.E: Add the following subparagraph immediately after 15.01.E.3:
20

- 21 4. The Owner may make payment at any time to Contractor under protest, stating
22 generally the reason for the protest. Such payment may be made with respect to
23 the matters described in 15.01.DE.1, with respect to matters described or
24 referenced in Paragraph 10.07, or with respect to any other claim or demand of
25 Contractor. The Owner may then make a claim against Contractor, in the method
26 described in this agreement, for recovery of the amount paid under protest,
27 together with interest at the statutory rate of 9% per annum.
28

29 SGC-15.03: Add the following paragraphs immediately after Paragraph 15.03.F:
30

- 31 G. Substantially complete is further defined and clarified as being 100% complete in
32 accordance with the Contract Documents with the exception of minor and specific
33 corrective items that would normally be itemized on a final punch list and completed
34 before final acceptance. Final completion of the entire project shall be no later than the
35 time indicated on the Certificate of Substantial Completion. If no date is indicated, then
36 thirty (30) calendar days from the date of substantial completion will be considered
37 maximum. If final completion is not accomplished within the time indicated, liquidated
38 damages if included in this Contract and as defined in the Agreement will be reinstated at
39 that date and will continue until final completion or a time extension is granted.
40
41
42 H. If some or all of the Work has been determined not to be at a point of Substantial
43 Completion and will require re-inspection or retesting, including the cost of time, travel
44 and living expenses, shall be paid by Contractor to Owner. If Contractor does not pay, or
45 the parties are unable to agree as to the amount owed, then Owner may impose a
46 reasonable set-off against payments due under Article 15.
47
48 I. Liquidated Damages. Should the Contractor fail to accomplish Substantial Completion
49 or Final Acceptance in the time agreed upon in the Contract or within such extra time as
50 may have been allowed for delays by extensions granted as provided in the Contract, the
51 Contractor shall reimburse the Owner for the additional expense and damage for every

1 day, that the Contract remains uncompleted after the date of completion given in the
2 Contract. It is agreed that the amount of such additional expense and damage incurred by
3 reason of failure to complete the Work within the time agreed is the per diem rate
4 stipulated in the Agreement as a minimum. The said amounts are hereby agreed upon as
5 liquidated damages for the loss to the Owner and on account of the value of the operation
6 of the works dependent thereon. It is expressly understood and agreed that this amount is
7 not to be considered in the nature of a penalty, but as actual expense and damages
8 experienced by the Owner for delay of completion beyond the agreed to Contract times.
9 Owner is authorized to deduct the amount of such damages from any monies due the
10 Contractor for work performed or material furnished under this Contract, and the
11 Contractor and his sureties shall be liable for any excess. Liquidated damages include
12 only cost and expenses incurred by the Owner for delay of completion beyond the agreed
13 to Contract times. Liquidated damages do not include any other cost, expense or claim
14 Owner may have against Contractor for any other reason.
15

16 SGC-15.06.A.2: Add the following to the end of the last sentence of Paragraph 15.06.A.2.a:

17
18 ...“including the fully completed and signed notarized affidavit included
19 in Section 00554 of these Contract Documents. Contractor shall request
20 a blank copy from the Engineer.”
21

22 SGC-15.06.D: Add the following sentence to the end of Paragraph 15.06.D:

23
24 “Final Payment shall include all amounts withheld as retainage.”
25

26 SGC-15.07.A: Add the following to the end of the last sentence of Paragraph 15.07.A:

27
28 ...”and for payments made under protest.”
29

30 SGC-16.02.A: Add the following subparagraphs immediately after Paragraph 16.02.A.4:

- 31
32 5. Failure to make prompt payment to subcontractors or for materials or labor, or
33
34 6. Abandonment of the Work by the Contractor; or
35
36 7. Subletting the Work without the previous written consent of the Owner; or
37
38 8. Assignment of this Agreement, or any claim thereunder, without the previous
39 written consent of Owner; or
40
41 9. Failing to achieve Substantial Completion within the Contract Time; or
42
43 10. Failing to make diligent and timely progress toward Substantial Completion.
44

45 SC-17.02: Add the following new paragraph immediately after Paragraph 17.01:

46
47 SC-17.02 Resolution of Disputes
48

- 49 A. Any controversy or claim arising out of or relating to this Contract, including without
50 limitation, the making, performance, or interpretation of this Contract or the Contract
51 documents, shall be settled in the Circuit Court for the State of Oregon in Coos County,

Oregon. Provided, if any litigation arising under this Contract must be brought in a federal forum, it shall be brought and maintained solely and exclusively in the United States District Court for the District of Oregon in Eugene, Oregon.

- B. If the Owner or Contractor disagree whether the Owner or Contractor is legally entitled to recover damages under this Contract or the Contract documents, then either Owner or Contractor may make a written demand to the other party with a copy to the Engineer.
- C. This Agreement, the rights and obligations of the Parties hereto, and any claims or disputes relating thereto shall be governed by, interpreted, construed and enforced in accordance with the laws of the State of Oregon.
- D. In the event a dispute shall arise under or about this Agreement, then the prevailing party therein shall be entitled to recover from the non-prevailing party all costs, expenses and attorneys' fees which may be incurred on account of such dispute, whether or not suit or other legal or quasi-legal proceedings may be brought, as well as at every stage of any such proceedings from the time such dispute first arises through trial, arbitration or other proceedings and all appellate processes.
- E. In the event of any dispute relating to the enforcement, cancellation, performance, breach or damages under or pursuant to the terms and conditions of this Agreement (excluding lien enforcement and foreclosure and a bond enforcement action), either party may demand arbitration of all such disputes if the dispute does not exceed \$10,000. Any demand for arbitration must be made in writing and will be conducted in accordance with Oregon Laws. Discovery will be conducted under Oregon's Discovery Rules of Procedure. If the Parties cannot agree on an arbitrator, then the Presiding Judge for Coos County Circuit Court will appoint the arbitrator. The arbitration shall be carried out in Coos Bay, Oregon, at a place convenient to the arbitrators. The award by the arbitrator will be conclusive and it may be entered in any court of competent jurisdiction in accordance with Oregon Law. The cost of arbitration shall be shared equally by the Parties.

SGC-18.09: Add the following new paragraph immediately after Paragraph 18.08

18.09 Assignment of the Contract

- A. Neither party to the Contract shall assign the Contract or sublet it as a whole without the written consent of the other, nor shall the Contractor assign any moneys due or to become due hereunder, without the previous written consent of the Owner.

END OF SECTION

SECTION 00900

ADDENDA

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SECTION 01010
SUMMARY OF WORK

1 - GENERAL REQUIREMENTS

1. GENERAL REQUIREMENTS

- A. The Contractor shall furnish all labor, equipment, permits (aside from the US Army Corps of Engineers nationwide permit for maintenance work which the City had already procured) and materials necessary to complete all work in accordance with the plans, specifications, and the terms of the Contract. This section also specifies work constraints relating to sequence and phasing of the new improvements
- B. Project Location
 - 1. The work is located in the City of Coos Bay, Coos County, Oregon. For more specific locations, see the location and vicinity maps on the Plans.
- C. Project Scope
 - 1. The project scope includes the repair and modification of the existing Coos Bay Wastewater Treatment Plant 2 (WWTP2) outfall diffuser. Scope included the procurement and installation of all materials to make a complete and functioning diffuser as identified in the technical specifications and drawings. In addition, the Contractor shall provide submittals relating to the construction plan and testing as outline in the technical specifications.
- D. Work Sequence and Constraints
 - A. The WWTP2 shall remain in operation at all times with treated effluent flows at the diffuser varying depending on influent flows to the plant that can range from 1 to 7 million gallons per day. Further, the window for in-water work is limited by the Oregon Department of Fish and Wildlife, and closes after February 15, 2016. All work shall be complete on or prior to February 15, 2016.

2. GENERAL REQUIREMENTS – NOT USED

3. WORKMANSHIP – NOT USED

END OF SECTION

SECITON 01000

DIVISION 1 – GENERAL REQUIRMENTS

X3

SECTION 01010
MEASUREMENT AND PAYMENT

1. General

A. Requirement Included

1. Scope of Payment
2. Lump Sum Items

B. Related Requirements

1. Document 004100 – Bid
2. Document 00700 – General Conditions: Payment to Contractor
3. Document 00800 – Supplementary General Conditions: Payment to Contractor

C. Scope of Payment

1. Lump Sum - Payments on lump sum contracts and/or bid items will be made based on the percentage of work complete at the end of the particular payment period.
2. Lump Sum - Percentage of work complete will be recorded and submitted by the Contractor and estimated by the Engineer based on inspection. Payment will be based on the approved Schedule of Values as submitted by the Contractor.
3. Lump Sum - When so required by the Owner, Contractor shall provide copies of the subcontracts or other data acceptable to the Owner substantiating the sums described.
4. Wherever in the Specifications an article, device or piece of equipment is referred to in singular, such reference shall include as many such items as are shown on the Drawings or required to complete the installation.
5. Miscellaneous items required in the project that do not have a corresponding section on the Bid Form are to be considered incidental costs to the project. Compensation for such items and/or work shall be incorporated into other related bid items or total costs. No separate measurement and payment will occur for such incidental costs.
6. Monthly progress payments and final payment will be made in accordance with the Contract, the General Conditions, and the Special Provisions. A portion of all progress payments will be withheld as "retainage" in accordance with the General Conditions.
7. Additional detail on measurement and payment may be found in other Sections detailing specific items.

2. GENERAL REQUIREMENTS – NOT USED

3. WORKMANSHIP – NOT USED

END OF SECTION

**SECTION 01040
COORDINATION**

1. GENERAL

- A. The Contractor shall coordinate his work with the following:
 - 1. City of Coos Bay
 - 2. Other affected utilities and agencies
- B. The Contractor shall inform all private property owners prior to, during, and upon completion of any work to be performed on private property. The Contractor shall provide a minimum of 24 hour's notice before entering said property.
- C. Refer to Section 01010 for constraints on use of City right-of-ways.
- D. Construct all work in an efficient manner and minimize public inconvenience.
- E. The Contractor shall make every reasonable effort to minimize the inconvenience to private property owners.
- F. Cleanup and restoration work shall be completed in conjunction with the construction of each part of the project. The Contractor shall exercise every reasonable effort to maintain streets and property clean and clear of excess excavation, debris, dirt, and other materials.
- G. The Contractor shall provide emergency telephone numbers.

2. MATERIALS - NOT USED

3. WORKMANSHIP - NOT USED

END OF SECTION

**SECTION 01041
EXISTING UTILITIES AND IMPROVEMENTS**

1. GENERAL

- A. Any information shown as to the location of existing utilities, topography, or structures has been compiled from the best available sources, but is not guaranteed to be accurate. The Contractor shall investigate and verify the disposition of interfering utilities and structures ahead of the work. Neither the Owner nor its agents will be responsible to the Contractor for damages as a result of underground utilities not shown on the Plans, or being in a location other than that shown on the Plans
- B. The Contractor shall notify all utility companies concerned at least 48 hours prior to any work in which those utilities may be involved.
- C. The Contractor shall notify the Oregon Utility Notification Center at 1 -800-332-2344 (or 811) and receive notice that locates have been completed prior to disturbing any
- D. If the Contractor encounters existing facilities, which will prevent the construction, they shall promptly notify the Engineer so that field revisions can be made. The expense of any associated delay shall be borne by the Contractor without additional cost to the Owner.
- E. At locations where the Contractor's operations may damage or disturb existing facilities, no work shall be started until the Owner of such facilities has arranged for the protection thereof. The Contractor shall be solely responsible to the owners of such facilities for any damage, injury, suits, actions, claims, or expenses resulting from the Contractor's operations.
- F. The Contractor shall cooperate with the Owner and shall schedule his work to insure a non-interrupted utility service to the public, private residences, and businesses.
- G. Any utilities or structure damaged by the Contractor's operation shall be repaired or replaced in accordance with the requirements of the utility company and at the sole expense of the Contractor. Any damage shall be immediately reported to the affected owner or, company.

2. MATERIALS - NOT USED

3. WORKMANSHIP - NOT USED

END OF SECTION

**SECTION 01042
PUBLIC CONVENIENCE**

1. GENERAL

- A. The Contractor shall conduct his work in such a manner as to minimize the inconvenience to the public, traffic, and property owners.
- B. The Contractor shall confine his operations to public easements and right-of-way and property owned by the Owner. Where the Contractor is required to construct improvements on private property he shall keep his operations to a minimum. All disturbed areas must be restored to an original or better condition. It is critical that the Contractor keep all affected property owners informed of his operations. Notify each property owner before entering their property.
- C. The Contractor shall make provisions as may be required to insure access to all property owners to their property. At the end of the workday, the Contractor shall provide private property owner unrestricted vehicle access unless other arrangements are made with the property owner.
- D. Prevent dust nuisance by applying water or other specified materials at times and in locations required by the Engineer.

2. MATERIALS - NOT USED

3. WORKMANSHIP - NOT USED

END OF SECTION

SECTION 01060

REGULATORY REQUIREMENTS

1. GENERAL

- A. Contractor at all times shall observe and comply with all Federal and State laws, and lawful regulations issued thereunder, and local laws, ordinances and regulations, which in any manner affect the activities of the Contractor under this contract, and further, shall observe and comply with all orders or decrees as exist at present and those which may be enacted later by bodies or tribunals having any jurisdiction or authority over such activities of the Contractor.
- B. Contractor shall be responsible and liable for all accidents, damage or injury to any person or property resulting from any activities, duties and obligations of the Contractor under this Contract for which the Contractor may be legally liable, and the Contractor shall hold blameless and harmless, and shall indemnify the Owner and its officers, employees and agents against any and all claims, demands, loss, injury, damage, actions and costs of actions whatsoever which they or any of them may sustain by reason of any act, omission or neglect of Contractor or employees, agents, representatives or assignees of Contractor in connection with the activities, duties and obligations of the Contractor under this Contract.
- C. Contractor shall follow Oregon Department of Environmental Quality (DEQ) guidelines, rules, and regulations for handling domestic sewage and for handling and disposal of any materials removed from the domestic sewer system, including wastewater and solids and demolition debris.

2. MATERIALS - NOT USED

3. WORKMANSHIP - NOT USED

END OF SECTION

SECTION 01070

ABBREVIATIONS AND SYMBOLS

1. GENERAL

- A. The following abbreviations may be used in the plans or specifications:

AASHTO	American Association of State Highway and Transportation Officials
ACI	American Concrete Institute
AISC	American Institute of Steel Construction
AISI	American Iron and Steel Institute
ANSI	American National Standards Institute
APWA	American Public Works Association
ASHRAE	American Society of Heating, Refrigeration and Air Conditioning Engineers
ASTM	American Society for Testing and Materials
AWWA	American Water Works Association
AWS	American Welding Society
AWPA	American Wood Preservers Association
CRSI	Concrete Reinforcing Steel Institute
ICBO	International Conference of Building Officials
MSS	Manufacturer's Standardization Society
NEC	National Electrical Code
NEMA	National Electrical Manufacturer's Association
NESC	National Electric Safety Code
NFPA	National Fire Protection Association
NLMA	National Lumber Manufacturer's Association
NSF	NSF International
ODOT	Oregon Department of Transportation
OSHD	Oregon State Highway Division
OSHA	Occupational Safety and Health Act (Federal & State)
SSPC	Steel Structures Painting Council
UBC	Uniform Building Code
UL	Underwriters' Laboratories, Inc.
WWPA	Western Wood Products Association

- B. The abbreviation "N.I.C.," if shown in the plans or specifications, signifies work that is "Not in Contract". N.I.C. indicates work to be constructed by the Owner or others and for which the Contractor will not be responsible.

END OF SECTION

SECTION 01230

CONSTRUCTION SCHEDULING

1. GENERAL

- A. This section specifies detailed scheduling requirements and procedures including the overall schedule.
- B. Submittals
 - 1. The Contractor shall submit the following items as specified in this Section:
 - a. Overall Schedule
- C. Progress of the Work
 - 1. The Contractor shall execute work with such progress as necessary to prevent delay to the overall completion of the project and with such forces, materials and equipment to assure completion in the time established by the Contract.
 - 2. The Contractor may find it necessary to work overtime, double shifts, weekends and/or holidays if such a schedule is required to complete the project within the time allowed.
- D. Overall Schedule
 - 1. The General Contractor shall prepare and submit, within 10 days after the award of Contract, an Overall Schedule composed of all construction operations in connection with the Contract. The Overall Schedule shall be updated monthly as noted below.
 - 2. Overall Schedule shall indicate the sequence of work and the time of starting and completion of each activity. Activities shall include, but not be limited to, the following items as they pertain to the Contract:
 - a. Each subcontractor's items of work.
 - b. Submittals from Contractor to Engineer for review and return to the Contractor.
 - c. Material and equipment order, manufacture and delivery.
 - d. Final cleanup.
 - e. Allowance for inclement weather
 - 3. No activity on the schedule shall have a duration longer than 21 days or assigned value greater than \$50,000, except activities comprising only fabrication, and delivery may extend for more than 21 days. Activities which exceed these limits shall be divided into more detailed components. The schedule duration of each activity shall be based on the work being performed during the normal 40-hour work week with allowances made for legal holidays and normal weather conditions.
 - 4. Upon completion of the Overall Schedule, the Contractor shall submit an electronic copy in PDF format or three paper copies to the Engineer for his review. Within seven (7) days after receipt of the submittal, the Engineer shall review the submitted schedule and return one copy of the marked-up original to the Contractor. If the Engineer finds that the submitted schedule does not comply with specified requirements, the corrective revisions will be noted on the submittal copy returned to the Contractor for corrections and resubmitted.
 - 5. Schedule shall be updated each month.
 - 6. After each revision, the Contractor shall submit the revised schedule to the Engineer.

2. MATERIALS - NOT USED
3. WORKMANSHIP - NOT USED

End of Section

SECTION 01300

SUBMITTALS

1. GENERAL

- A. This section outlines in general the items the Contractor must prepare or assemble during the progress of the work including technical submittals and record drawings.
- B. Technical Submittals
 - 1. Technical submittals covered by these specifications include manufacturer's information, shop drawings, test procedures, test results, samples, request for substitutions and miscellaneous work related submittals. Submittals shall also include, but not limited to, materials, reinforcing steel, fabricated items, and piping details.
 - 2. Contractor's Responsibilities
 - a. The Contractor shall furnish all drawings, specifications, descriptive data, certifications, samples, tests, methods, schedules and manufacturers installation and other instructions as required by the contract documents to demonstrate fully that the materials and equipment to be furnished and the methods of work comply with the provisions and intent of the contract documents.
 - b. The Contractor shall be responsible for the accuracy and completeness of the information contained in each submittal and shall assure that the material, equipment or method of work shall be as described in the submittal. The Contractor shall verify that all features of all products conform to the specified requirements.
 - c. The Contractor shall ensure that there is no conflict with other submittals and notify the Engineer in each Case where his submittal may affect the work as shown on the Plans.
 - d. The Contractor shall coordinate submittals among his subcontractors and suppliers.
 - e. Submittals shall coordinate with the work so that work will not be delayed. Coordinate and schedule different categories of submittals, so that one will not be delayed for lack of coordination with another. No extension of time will be allowed because of failure to properly schedule submittals.
 - f. The Contractor shall not proceed with work related to a submittal until the submittal process is complete.
 - g. The Contractor shall certify on each submittal document that they have reviewed the submittal, verified final conditions and complied with the contract documents. The Contractor may authorize in writing a material or equipment supplier to deal directly with the Engineer. The interaction shall be limited to contract interpretations to clarify and expedite the work.

- h. Charges will be documented and the Contractor will be charged for review of multiple non-conforming submittals for any one (1) item in excess of two (2) times.
- 3. Request for Substitution
 - a. Requests for substitution for equipment specified by manufacturer or manufacturer's model number as specified throughout the Contract documents shall be in writing and be accompanied with sufficient information to allow the Engineer to identify the nature and scope of the request. Information to be provided shall include.
 - 1. All submittal information required for the specified equipment, including all deviations from the specified requirements necessitated by the proposed substitution.
 - 2. Materials of construction, including material specifications and references.
 - 3. Performance data including performance curves and guaranteed power consumption, over the range of specified operating conditions.
 - 4. Dimensional drawings, showing required access and clearances, including any changes to the work required to accommodate the proposed substitution.
 - 5. Piping, process and instrumentation drawings, along with control descriptions where applicable.
 - 6. Information and performance characteristics for all system components and ancillary devices to be furnished as a part of the proposed substitution.
- 4. Review Requirements
 - a. Review shall not extend to means, methods techniques, sequences or procedures of construction, or to verify quantities, dimensions, weights or gages, or to fabrication processes, except when specifically indicated or required by the contract documents, or to safety precautions or programs.
 - b. The Contractor shall submit five (5) copies of all submittal material to engineer. Three (3) copies will be returned upon final approval. If the submittal is rejected four (4) copies will be returned.
 - c. Unless otherwise specified, within 14 calendar days after receipt of submittal, the Engineer will return the marked-up copies. The Contractor shall take appropriate action if the submittal needs to be resubmitted. If specified submittal material is to be used for O&M data, all corrections shall be made and new clean copies shall be submitted with the O&M data.
 - d. Review of contract documents, method of work or information regarding materials or equipment the Contractor proposes to provide, shall not relieve the Contractor of his responsibilities for errors therein and shall not be regarded as

an assumption of risks or liability by the Engineer or Owner. The Contractor shall have no claim under the Contract on account of failure or partial failure of the method of work, material or equipment so reviewed.

C. Record Drawings

1. The Contractor shall maintain in a safe place at the site one record copy of all drawings, specifications, addenda, written amendments, change orders, field orders, written interpretations and clarifications, hand shop drawings in good order, annotated to show all changes made during construction. In addition, the Contractor shall maintain a booklet during the project showing locations and listing as-built dimensions of all utilities poured in concrete and all underground facilities installed under this Contract. The record shall include locations of all pipe lines, cleanouts, valves, manholes, electrical conduit, elbows and bends as applicable. A detailed site plan showing locations of facilities as actually installed shall be prepared. The plan need not be of draftsman quality, but shall be suitable for preparation of as-built drawings by the Engineer. In addition, detailed as-built drawings of all electrical wiring and control panels shall be prepared by the Contractor. All wires and terminal blocks shall be numbered in the drawings to correspond with numbering on components actually installed. The records and drawings shall be submitted to the Engineer within ten (10) days after completion of construction and prior to submission of final payment request.
2. The Contractor shall allow the Engineer to review his record drawings during the course of construction so that the Engineer can review any changes or notes to the Plans.
3. Failure to maintain record drawings shall be sufficient cause for withholding payment to the Contractor.

2. MATERIALS - NOT USED

3. WORKMANSHIP - NOT USED

END OF SECTION

SECTION 01500

CONSTRUCTION FACILITIES AND TEMPORARY CONTROLS

GENERAL

A. This section includes mobilization, temporary utilities required during construction, temporary construction, safety requirements, temporary environmental controls, and temporary traffic control.

B. Submittals

1. Staging area plan and notification of any obstructions encountered during Mobilization.
2. Temporary Environmental Controls

2. MATERIALS

A. Signs, Barricades, and Other Warning Devices

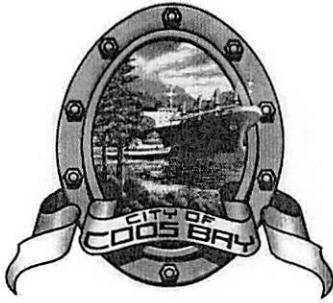
1. All signs, barricades, lights, flags and other warning and safety devices shall meet the requirements of the safety manual of the Oregon Department of Transportation.

B. Temporary Restroom Facilities - Comply with Section 01500-3.

3. WORKMANSHIP

- A. Mobilization shall include de-mobilization and consist of preparatory work and operations, including but not limited to, those necessary for the movement of personnel, equipment, supplies and incidentals to and from the project site; for the establishment of offices, buildings and other facilities necessary for work on the project; for premiums on bond and insurance for the project, and for other work and operations which the Contractor must perform or costs he must incur before beginning work on the project and after completion of the project.

END OF SECTION



VOLUME 3

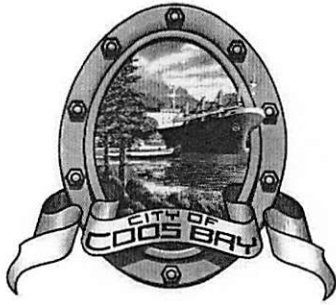
TECHNICAL SPECIFICATIONS AND DRAWINGS

Sanitary Sewer Outfall Repair (Wastewater Treatment Plant 2)

City of Coos Bay
Coos County, Oregon

City Project No. 140091

December 22, 2016



VOLUME 3

TECHNICAL SPECIFICATIONS AND DRAWINGS

Sanitary Sewer Outfall Repair (Wastewater Treatment Plant 2)

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VOLUME 1 - BIDDING REQUIREMENTS

SECTION NO.	DESCRIPTION
00100	ADVERTISEMENT FOR BIDS
00200	INSTRUCTIONS TO BIDDERS
00400	BID FORMS
00410 *	BID
00430	SUPPLEMENTS TO BIDS FORMS
00431 *	BID BOND
00435*	FIRST-TIER SUBCONTRACTOR DISCLOSURE FORM
00450	REPRESENTATIONS AND CERTIFICATIONS
00451 *	BIDDER 'S PREQUALIFICATION FORM
00460	AGENCY REQUIRED SUPPLEMENTS
00461 *	NON-COLLUSION AFFIDAVIT
00462*	RESPONSIBILITY AFFIDAVIT
00495	SAMPLE FORMS
00496	NOTICE OF INTENT TO AWARD
00497	NOTICE OF AWARD

* These forms require completion by Bidder.

VOLUME 2 – CONTRACT DOCUMENTS

00510	NOTICE OF AWARD
00520	AGREEMENT BETWEEN OWNER AND CONTRACTOR FOR CONSTRUCTION CONTRACT
00540	EXHIBITS TO THE AGREEMENT
00550	NOTICE TO PROCEED
00600	BONDS AND CERTIFICATES
00610	PERFORMANCE BOND
00615	PAYMENT BOND
00619	SAMPLE FORMS
00620	CONTRACTOR'S APPLICATION FOR PAYMENT
00625	CERTIFICATE OF SUBSTANTIAL COMPLETION
00630	REQUEST FOR INFORMATION
00641	CHANGE ORDER
00643	CONTRACTOR'S AFFIDAVIT OF
00700	GENERAL CONDITIONS
00800	SUPPLEMENTARY GENERAL CONDITIONS
00830	PREVAILING WAGE RATES
00900	ADDENDA

SECTION NO.

DIVISION I - GENERAL REQUIREMENTS

01010	SUMMARY OF WORK
01025	MEASUREMENT AND PAYMENT
01040	COORDINATION
01060	REGULATORY REQUIREMENTS
01070	ABBREVIATIONS AND SYMBOLS
01230	CONSTRUCTION SCHEDULING
01300	SUBMITTALS
01500	CONSTRUCTION FACILITIES AND TEMPORARY CONTROLS

VOLUME 3:

TECHINICAL SPECIFICATIONS:

00 01 01	PROJECT TITLE PAGE
00 01 07	SEALS PAGE
35 20 50	CORRUGATED METAL PIPE OUTFALL REHABILITATION

PROJECT DRAWINGS:

CIVIL:	Sheet 1
DETAILS:	Sheets 2 through 3

TECHNICAL SPECIFICATIONS

SECTION	TITLE
00 01 01	PROJECT TITLE PAGE
00 01 07	SEALS PAGE
32020 50	CORRUGATED METAL PIPE OUTFALL REHABILITATION

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CITY OF COOS BAY
COOS BAY, OREGON
TECHNICAL SPECIFICATION AND DRAWING

for the construction of the

OUTFALL REPAIR

CH2M HILL
Corvallis, Oregon
December 2015

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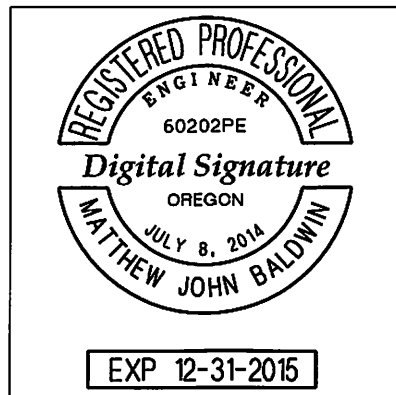
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Project No. 495901

Copy No. _____

**SECTION 00 01 07
SEALS PAGE**

SPECIFICATIONS



Digitally Signed on
December 17, 2015
Matthew J. Baldwin

END OF SECTION

SECTION 35 20 50
CORRUGATED METAL PIPE OUTFALL REHABILITATION

PART 1 GENERAL

1.01 SUMMARY

A. The work in this section consists of general offshore operations relating to the construction of the outfall repair and documentation of the final work product. This Work includes, but may not be limited to:

1. General requirements pertaining to offshore construction equipment and diving operations.
2. Placing buoys, lights, and warnings to mariners around offshore worksites.
3. Providing equipment and work platform as necessary to accomplish the work.
4. Dredging or water jetting as necessary to accomplish the work.
5. Lowering repair pieces to project area.
6. Cutting off and removing existing bulkhead on terminal end of the outfall and diffuser ports as shown.
7. Installation of repair and rehabilitation pieces.

1.02 REFERENCES

A. The following is a list of standards that may be referenced in this section:

1. American Association of State Highway and Transportation Officials (AASHTO):
 - a. M36M, Standard Specification for Corrugated Steel Pipe, Metallic-Coated, for Sewers and Drains.
 - b. M190M, Standard Specification for Bituminous Coated Corrugated Metal Culvert Pipe and Pipe Arches.
2. ASTM International (ASTM):
 - a. A193/A193M, Standard Specification for Alloy-Steel and Stainless Steel Bolting Materials for High Temperature or High Pressure Service and Other Special Purpose Applications.
 - b. A194/A194M, Standard Specification for Carbon and Alloy Steel Nuts for Bolts for High Pressure or High Temperature Service, or Both.
 - c. A240/A240M, Standard Specification for Chromium and Chromium-Nickel Stainless Steel Plate, Sheet, and Strip for Pressure Vessels and for General Applications.
 - d. A563, Standard Specification for Carbon and Alloy Steel Nuts.

OUTFALL REHAB

1.03 CONTRACTOR SUBMITTALS

- A. Dive Schedule, including anticipated dates and hours of dive work and required recuperation time.
- B. Underwater Installation Plan including tools, equipment, and narrative approach to accomplish the work.
- C. Visual Testing and Documentation Plan, including equipment and frequency of photo documentation of installation.
- D. Staffing Plan including list of team members, experience, and description of responsibilities.
- E. Buoys, Lights, and Other Navigation Aids: Submit plan indicating the location and type of all buoys, lights, and navigation aids to be deployed. Provide appropriate details of each device.
- F. Spill Control/Containment: Submit plan for spill control/containment, including emergency deployment of sorbent boom around the work vessels in the event of a major spill.

PART 2 PRODUCTS

2.01 NAVIGATION AIDS

- A. Comply with all other applicable OMB (Oregon Marine Board) and U.S. Coast Guard (USCG) regulations and in particular the USCG Rules for Inland Navigation.
 - 1. Construction vessels will be properly signed and illuminated in conformance with OMB and USCG requirements.

2.02 EQUIPMENT FOR OFFSHORE WORK

- A. The offshore equipment employed for the construction of the Work shall be appropriate and suitable for the work required and the bay and wind conditions involved. It shall comply with all applicable safety and regulatory requirements. Any barges or flotation units shall be of sufficient size and be stable and equipped with adequate mooring equipment for operations under the wind and wave conditions anticipated for the specific site and seasons. All floating equipment shall be adequate to survive under extreme wind, and wave conditions. All fuel, oil, and other containment storage areas shall be in good working order and leak-free. All anchor systems shall be adequate for Site conditions.

- B. The primary construction vessel shall have on board and in a condition ready to deploy:
 - 1. A 6-inch minimum diameter sorbent boom with a length at least two times the vessel perimeter.
 - 2. A suitable number of sorbent pads for mop up and plastic bags for sorbent disposal.

2.03 STAGING, LAUNCHING, AND BERTHING FACILITIES

- A. Contractor shall negotiate access to appropriate staging, launching, and berthing facilities.

PART 1 EXECUTION

3.01 GENERAL

- A. Contractor's Equipment and Methods: The Contractor shall be responsible for selecting the equipment and methods for all offshore operations such that Project construction specifications are met.
- B. The construction shall be in compliance with the required permits.
- C. The installation methods shall be adequate to safely lower submerged structures in a controlled manner without damage to the structure or the existing outfall.
- D. Weather Monitoring:
 - 1. Make proper allowances for storms and adverse weather and particularly those weather conditions that are seasonal in nature.
 - 2. Give proper consideration to weather conditions when selecting offshore construction methods and equipment and when scheduling work.
 - 3. Continuously monitor local weather forecasts and be prepared to shut down offshore operations and secure equipment and the worksite in the event of adverse weather conditions.

3.02 DIVING OPERATIONS

- A. Conduct all diving operations in conformance with the most stringent of the following standards:
 - 1. Oregon OSHA regulations.
 - 2. Association of Diving Contractors, Consensus Standards for Commercial Diving.

OUTFALL REHAB

3.03 DEBRIS

- A. Do not release or discharge any debris from the construction vessels.
- B. Any buoyant materials that are inadvertently released from the construction vessels shall be immediately retrieved.

3.04 EXCAVATION / SEDIMENT MOVEMENT

- A. Contractor shall move material away from the project area through dredging or water jetting to achieve access to install the repair pieces. Contractor shall take all precautions necessary to prevent damage to the outfall or support structures.
- B. Contractor shall comply with permit requirements for dredging and excavation.

3.05 DEMOLITION

- A. Diffuser Port Removal: Remove diffuser ports cleanly with no protrusion from the outside diameter of the main body of outfall. Clean up hole to remove jagged edges.
- B. Bulkhead Removal: Remove bulkhead and separated diffuser port. Cut shall be clean and square to main body of outfall.
 - 1. Finished plane shall be perpendicular to the axis of the outfall and shall follow a peak or valley in the corrugations to support annular band required spacing.

3.06 INSTALLATION

- A. Bulkhead Repair:
 - 1. Install End Repair Structure:
 - a. Align with end of pipe: Support in place so gasket and annular band can be installed.
 - b. Install 3-piece annular band according to manufacturer's recommendation.
- B. Diffuser Port Rehabilitation:
 - 1. Locate diffuser port saddle plate such that the new diffuser orifice overlaps existing hole in main body of outfall.
 - a. Do not wrinkle gasket material.

2. Install 3-piece annular band according to manufacturer's recommendation.

C. Crown Repair:

1. Locate annular band, centered over hole in crown of outfall.
 - a. Do not wrinkle gasket material.
2. Install 3-piece annular band according to manufacturer's recommendation.

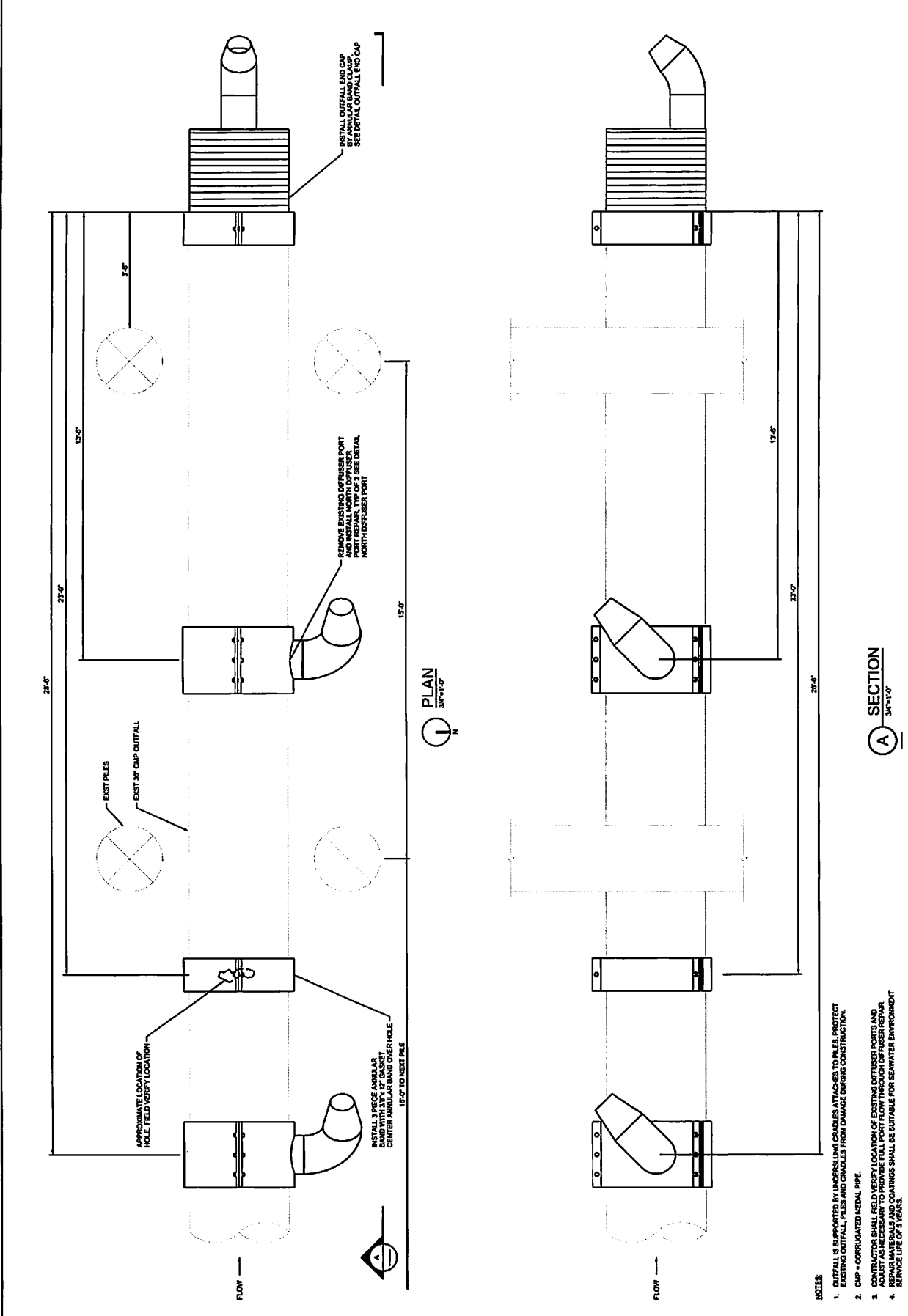
3.07 FIELD QUALITY CONTROL

- A. Document installation and final condition of structures with underwater video or photography according to the approved Visual Inspection and Documentation plan.

END OF SECTION

DRAWINGS

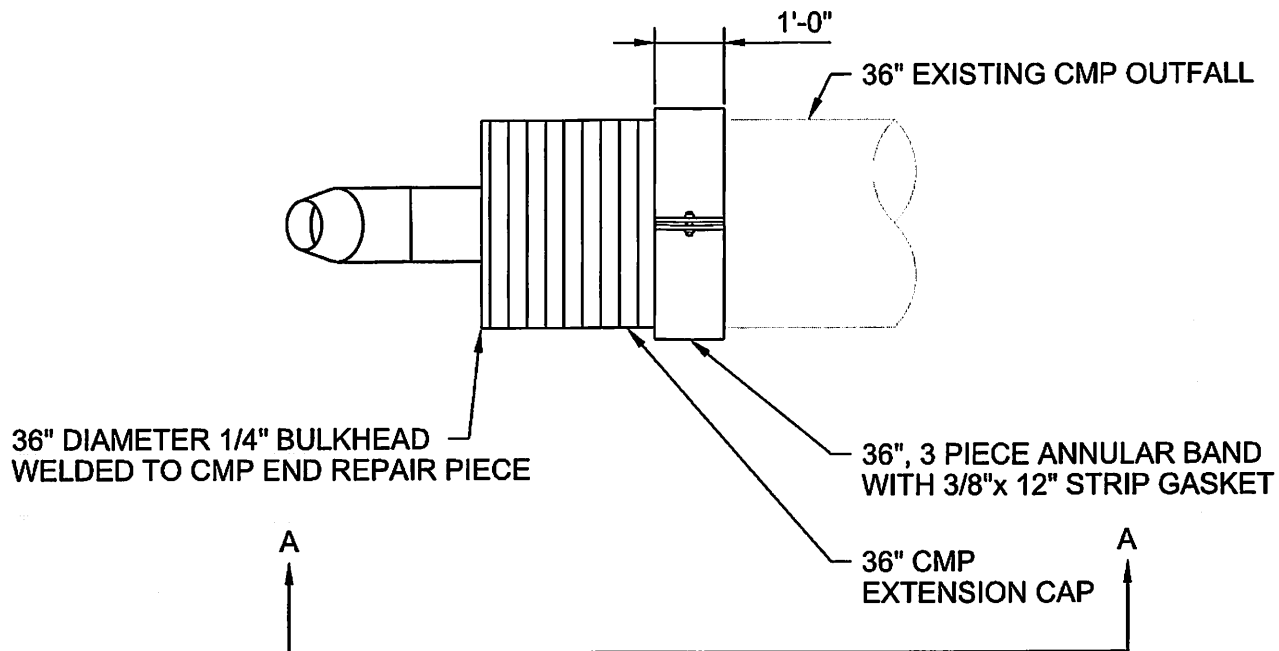
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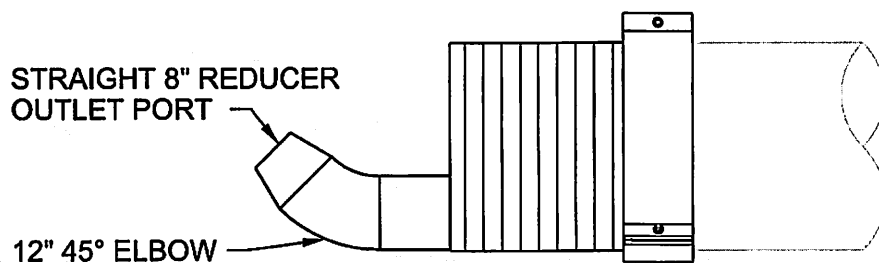
- NOTES:**
1. OUTFALL IS SUPPORTED BY UNDERLUNG CHAIRS ATTACHED TO PILES. INSPECT EXISTING OUTFALL PILES AND CHAIRS FROM DAMAGE DURING CONSTRUCTION.
 2. CUP - CORRUGATED METAL PIPE.
 3. CONTRACTOR SHALL FIELD VERIFY LOCATION OF EXISTING DIFFUSER PORTS AND CHAIRS. IF CHAIRS ARE FOUND TO BE DAMAGED, THEY SHALL BE REPLACED.
 4. REPAIR MATERIALS AND COATINGS SHALL BE SUITABLE FOR SEAWATER ENVIRONMENT SERVICE LIFE OF 5 YEARS.

A SECTION

3'-0" x 1'-0"



PLAN



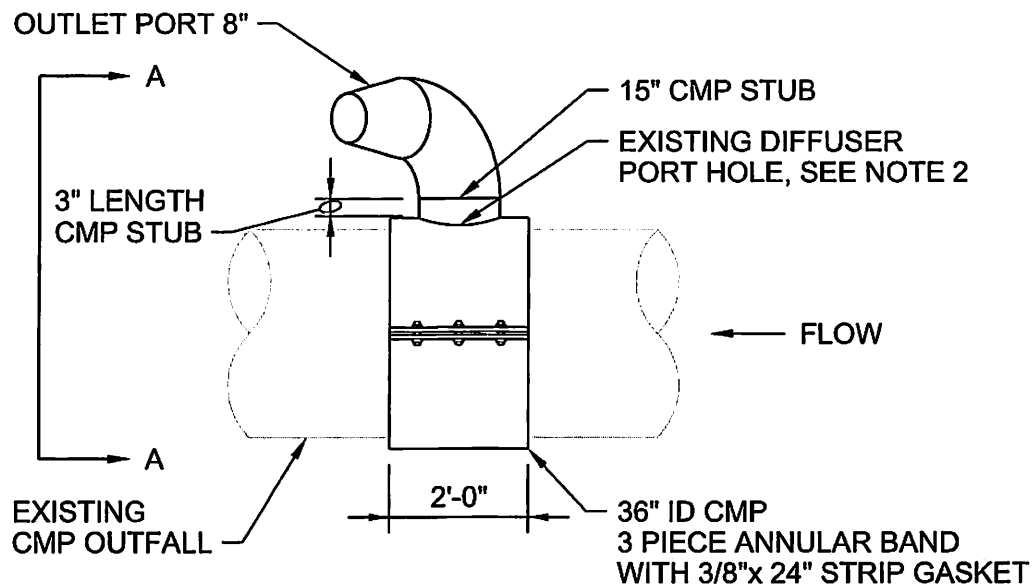
SECTION A

NOTES:

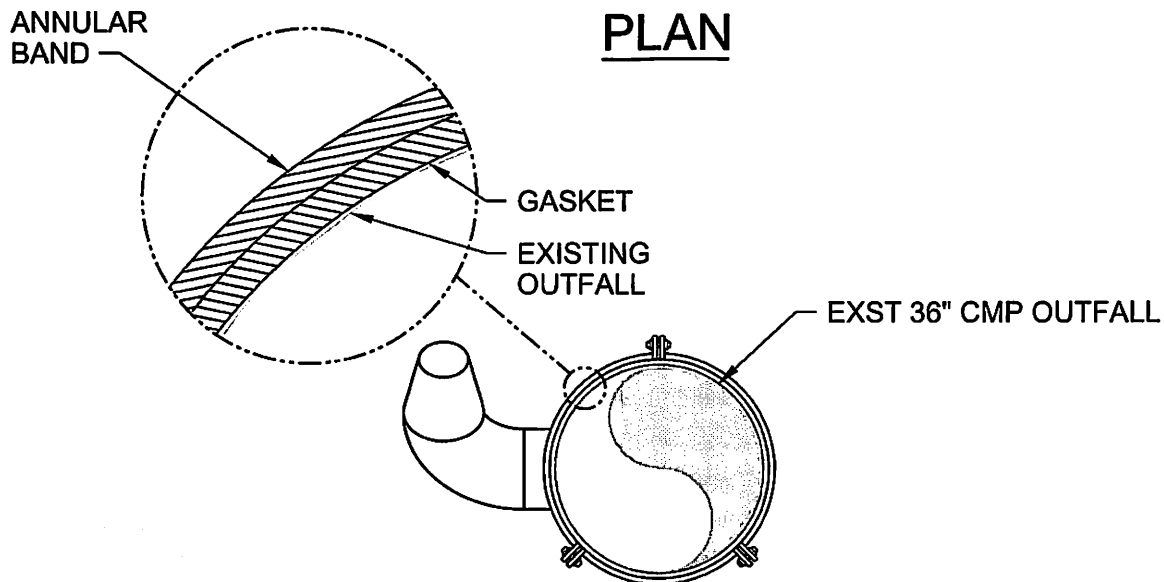
1. ALL CONNECTIONS EXCEPT THE ANNULAR BAND SHALL BE WELDED AND MATERIALS AND COATINGS SHALL BE SUITABLE FOR A SEAWATER ENVIRONMENT SERVICE LIFE OF 5 YEARS.
2. CMP = CORRUGATED METAL PIPE.

OUTFALL END CAP

NTS



PLAN



SECTION A

NOTES:

1. ALL CONNECTIONS EXCEPT THE ANNULAR BAND SHALL BE WELDED AND ALL MATERIALS AND COATINGS SHALL BE SUITABLE FOR A SEWATER ENVIRONMENT.
2. LINE UP OUTLET PORT TO NOT RESTRICT EXISTING DIFFUSER PORT HOLE.
3. CMP = CORRUGATED METAL PIPE.

NORTH DIFFUSER PORT

NTS